

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

Appeal No. 2013000714

**APPEAL FROM HORRY COUNTY
Court of Common Pleas**

Ralph P. Stroman, Special Referee

**CASE NUMBER 2009-CP-26-3596
Consolidated with
CASE NUMBER 2010-CP-26-11320**

Ronald Jarmuth

Appellant;

v.

**The International Club Homeowners
Association, Inc., Rosemary Toth,
and K. A. Diehl & Associates**

Respondents.

CORRECTED RECORD ON APPEAL

VOLUME 5

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1 the amenity center was a matter of public
2 record when you bought your property in
3 October of 2006?

4 A: No.

5 Q: It was not?

6 A: No.

7 Q: And when I say, "Public record," that means
8 being filed in the Register of Mesne office
9 for Horry County.

10 A: The literal answer to your question as you
11 literally stated is no.

12 MS. GOLDING: LET'S GET A COPY ---

13 MR. JARMUTH: CAN I EXPLAIN MY ANSWER,
14 YOUR HONOR?

15 THE COURT: WAIT JUST A MINUTE, LET'S
16 ---

17 A: The only deed of record ---

18 THE COURT: WAIT JUST A SECOND.

19 MS. GOLDING: I WANT TO GET A COPY OF THE
20 DEED, YOUR HONOR. WE HAVE
21 THAT IN OUR EXHIBIT BOOK.

22 THE COURT: GIVE HER JUST A SECOND,
23 THEN YOU CAN TELL ME.

24 MR. JARMUTH: YOUR HONOR, I WOULD
25 STIPULATE ---

1 THE COURT: WAIT JUST A MINUTE.
2 MS. GOLDING: IT WOULD BE DEFENDANT'S
3 EXHIBIT NUMBER 16, YOUR
4 HONOR.
5 THE COURT: ALL RIGHT. YOU GOT IT?
6 ALL RIGHT. NOW, GO AHEAD
7 AND TELL ME WHATEVER IT IS
8 YOU ---
9 MR. JARMUTH: YOUR HONOR, IF THE COURT
10 WILL PLEASE, I WILL
11 STIPULATE THAT THE DEED OF
12 RECORD IS A DEED TO A PIECE
13 OF LAND, HAS NO -- NOTHING
14 WAS BUILT ON THE LAND. IT
15 DOESN'T REFER TO ANY
16 IMPROVEMENTS ON THE LAND,
17 NOR DOES IT USE THE WORD
18 "AMENITY CENTER." IN 2003,
19 PLANTATION GOLF, WHICH IS
20 NOT PLANTATION A.D., DEEDED
21 OVER SOME LAND TO THE
22 INTERNATIONAL CLUB HOA. IT
23 WAS UNIMPROVED. THERE WAS
24 NO, NO PROPERTY ON IT,
25 NOTHING ON IT, NO SWIMMING

1 POOL, AND THERE WAS NOTHING

2 TO GUARANTEE ANYTHING WOULD

3 EVER BE BUILT ON IT.

4 THE COURT: ALL RIGHT.

5 MS. GOLDING: OKAY. THANK YOU, YOUR

6 HONOR. THANK YOU, MR.

7 JARMUTH.

8 MS. GOLDING CONTINUES:

9 Q: Now, Mr. Jarmuth, since you became a property
10 owner in the International Club, the
11 International Club has provided you, the
12 homeowners association has provided you cable
13 service, has it not? You receive cable
14 service through the homeowners association, do
15 you not?

16 A: The International Club ---

17 Q: Mr. Jarmuth, that's a yes or a no.

18 A: I'm trying to answer your question.

19 Q: If you answer yes or no, then you can explain.

20 Is it not a fact that you receive cable
21 service through the International Club

22 Homeowners ---

23 A: Yes.

24 Q: --- Association?

25 A: And I'll explain now that the International

1 Club Homeowners Association has provided me
2 cable service whether I want it or not,
3 without being asked for it. The International
4 Club Homeowners Association is a reseller of
5 cable TV service, which it buys in bulk from
6 Horry Telephone Cooperative, which agreement
7 says that the International Club Homeowners
8 Association may resell it and a charge to be
9 no more than they, HTC sells it to the public,
10 and furthermore, I have not received any
11 statement of a hotline number, which is
12 required by South Carolina, Horry County. Any
13 seller of cable service is required to be,
14 first of all, franchised, and they're not
15 franchised, and to provide a hotline number 24
16 by 7 to be used if there's interruption of
17 service. So, yes, I've been receiving it.
18 No, I haven't asked for it.

19 Q: Is it not a fact that you, as a property owner
20 in the International Club, you receive trash
21 pickup service through this Defendant
22 homeowners association, yes or no?

23 A: No.

24 Q: You do not receive any trash pickup?

25 A: From my understanding, if I explain, Waste

1 Management has a contract with International
2 Homeowners Association to pick up garbage
3 cans. I never put my garbage can out. I pay
4 taxes to Horry County, the recycling facility,
5 and we run the, everything over to the recycle
6 facility, which is what Horry County provides
7 for people in the unincorporated areas.

8 I point out also that the IHOA does not
9 provide those, either service to people in the
10 Villas or the Cambridge, which are also
11 members of the PUD, and I haven't figured that
12 out because, supposedly, everybody in the PUD,
13 according to your argument, has to accept
14 cable and Waste Management services, but
15 somehow you are asking the Villas and the
16 Cambridge to pay for or accept it.

17 Q: Mr. Jarmuth, you'll have to excuse me, but I'm
18 not talking about the PUD, the planned unit
19 development. I'm talking about the homeowners
20 association, and I'm talking about the
21 property subject to the Declaration of
22 Restrictions. You understand that, do you
23 not?

24 A: Yes, I do, ma'am.

25 Q: Now, is it not a fact that the Defendant, the

1 homeowners association, also provides
2 irrigation service to many of the common areas
3 for watering facilities? Is that not a fact?

4 A: Yes.

5 Q: And is it not a fact that this Defendant
6 homeowners association has held annual
7 meetings for all the property owners within
8 the International Club Homeowners Association?

9 A: Would you please clarify for what years you're
10 referring to?

11 Q: What years? How about 2011?

12 A: Yes.

13 Q: 2010?

14 A: Yes.

15 Q: 2009?

16 A: Yes.

17 Q: 2008?

18 A: Yes.

19 Q: 2007?

20 A: Yes.

21 Q: And you were a member ---

22 A: But not the previous years, 2002 through 2006.

23 Q: And you were a member and you attended some of
24 these homeowners' meetings, did you not?

25 A: From 2007 on, the annual meetings.

1 Q: And you didn't attend any other homeowners'
2 meeting other than the ones that were held by
3 the Defendant in this lawsuit, did you?

4 A: Could you please repeat the question?

5 Q: Certainly. As a property owner in the
6 International Club, the only homeowners
7 association meeting you attended were those
8 put on by this Defendant in this lawsuit; is
9 that not correct?

10 A: That's not correct. I also attended
11 homeowners association meetings put on by the
12 people at, of the PUD across the street and
13 probably half a dozen of the homeowners
14 associations.

15 Q: But you don't own property across the street,
16 do you? My question was, ---

17 A: No.

18 Q: --- as a property owner, the only homeowners
19 association annual meetings you attended were
20 the ones put on by the Defendant in this
21 lawsuit; is that not correct?

22 A: I wouldn't agree to the word, phrase, "As a
23 property owner."

24 Q: Well, you own property in the International
25 Club, don't you?

1 A: Yes, ma'am.

2 Q: And your property is the lot and home you
3 bought in October 2006, right?

4 A: Anybody was able to walk into ---

5 Q: Yes or no?

6 A: Repeat the question, please.

7 Q: The property that you own in the International
8 Club is the home and lot that you bought in
9 October of 2006?

10 A: Yes, ma'am.

11 Q: And when you bought that in October of 2006,
12 you became a property owner in the
13 International Club, did you not?

14 A: In the International Club PUD.

15 Q: And your deed says you also are subject to the
16 Declarations; is that correct?

17 A: To the, to the extent that The Court finds
18 them valid.

19 Q: Now, you're asking this court to refund to you
20 all the assessments that you have paid to the
21 Defendant in this lawsuit?

22 A: And my predecessor.

23 Q: The person that owned the property ---

24 A: So far, I am, I am the successor, vertical
25 successor to the person insofar as The Court

1 finds the statute of limitations allow.

2 Q: And are you going to pay it to another entity,
3 those monies?

4 A: If The Court declares another entity to be the
5 association and they assess dues and other
6 assessments, I will.

7 Q: And do you want The Court to say to pay it
8 into the entity you formed, Murrells Inlet
9 Golf Plantation Association, Inc., that you
10 formed?

11 A: I'm saying ---

12 Q: I'm asking you a question. Do you want The
13 Court to order that you pay those monies to
14 Murrells Inlet Golf Plantation Association,
15 Inc.?

16 A: That's not what I've asked The Court to do.

17 Q: And that's your company that you formed, is it
18 not? You formed it in September of 2010, you
19 formed Murrells Inlet Golf Plantation
20 Association, Inc., did you not?

21 A: Yes. I formed that association.

22 Q: And you formed it as a non-profit association;
23 is that correct?

24 A: Yes, ma'am.

25 Q: Okay. Now, that association, that association

1 doesn't provide any irrigation to the

2 International Club property owners, does it?

3 A: Because it doesn't own property to irrigate.

4 Q: Yes or no, this association doesn't provide

5 any irrigation services to any properties in

6 the International Club, does it?

7 A: It doesn't provide any irrigation service to

8 any property that -- it doesn't.

9 Q: And this association that you formed doesn't

10 provide cable or trash pickup or have annual

11 meetings or elect officers and directors, has

12 it?

13 A: That's not true.

14 Q: Okay. Then what's untrue about that

15 statement?

16 A: It has officers.

17 Q: Who are the officers?

18 A: I'm the initial officer.

19 Q: Who other than yourself is an officer?

20 A: No one else yet.

21 Q: Have you invited anybody to attend an annual

22 meeting and elect officers to your

23 corporation?

24 A: The problem is ---

25 Q: Mr. Jarmuth, have you invited any property

1 owners to attend your association and elect
2 officers?

3 A: Yes, I have.

4 Q: Who have you invited?

5 A: I invited Charlie Ferrera, Mike Butryn, Pete
6 Pizzi, Jane Pizzi, Terry Weibel, and probably
7 several dozen other people. I was unable to
8 invite the rest of them because the IHOA has
9 refused to give me a list of owners it's
10 required to do by law, even though I made four
11 separate requests in writing to them, plus the
12 discovery demands for this, and you guys have
13 refused to give it to me in discovery and you
14 refused to give it to me as a supposed
15 putative member of your IHOA. So I've been
16 unable to get the names of the homeowners to
17 ask them.

18 Q: So this Murrells Inlet Golf Plantation
19 Association, Inc. that you individually
20 formed, do you intend to have this association
21 to be controlling all the property in the
22 International Club?

23 A: It's not for me to say. It's what -- If the
24 judge declares that they are the association,
25 that they are the authority to impose

1 assessments, until such time a judge declares
2 that they are the association with the rights
3 and obligations of the association, I see no
4 authority for them to burden the homeowners
5 with a second set of assessments and put them
6 in the position of having to decide which one
7 to pay.

8 Q: When you say, "They are," -- So do you want
9 The Court to say Murrells Inlet Golf
10 Plantation Association, Inc. is the proper
11 association for the International Club
12 community?

13 A: Yes, ma'am.

14 Q: And this association that you formed, is it
15 mentioned anywhere in your Declaration, in the
16 Declarations that govern all this property?

17 A: Yes, it is. It's mentioned in the original
18 covenants.

19 Q: Well, how could it be when it was formed in
20 September 2010 and the original covenants were
21 filed of record in 1999?

22 A: By the same reason that the International Club
23 Homeowners Association was not incorporated
24 until several years later.

25 Q: So you'll agree that the company that you

1 formed, this non-profit company, didn't exist
2 until September 2010; is that correct?

3 A: Yes, ma'am. And neither did the ICHOA.

4 Q: Now, you also formed another company,
5 International Club Association, Inc., as well,
6 didn't you?

7 A: Yes, ma'am.

8 Q: And you formed that in December of 2010; is
9 that correct?

10 A: Yes, ma'am.

11 Q: And this company doesn't provide any cable,
12 waste/trash pickup to any of the members of
13 the International Club community, does it?

14 A: No, ma'am.

15 Q: And this company doesn't have any annual
16 meetings, does it?

17 A: Not yet, ma'am.

18 Q: And has there been any election of officers in
19 this company?

20 A: It no longer exists, ma'am.

21 Q: I'm sorry?

22 A: It no longer exists.

23 Q: What did you do with it?

24 A: It was merged into MIGPA, as per the documents
25 filed with the Secretary of State, as I

1 explained earlier, with the Recorder of Deeds.

2 Q: So did you get permission of all the property
3 owners in the International Club to merge this
4 company?

5 A: Could you please repeat the question?

6 Q: Did you get permission from all the property
7 owners in the International Club community to
8 merge this company that you formed in December
9 of 2010?

10 A: No. And I explain it further, because the
11 statute does not require that.

12 Q: So now you just own one company that you want
13 to be the company to control the ---

14 A: Object to the word "own." I am the declarant,
15 and as I said before, I'll be thrilled to turn
16 this over to a Board of officers elected as
17 soon as, if and when The Court rules they're
18 the association, at which time then the
19 community can have, have, have an election and
20 they can elect whoever they want.

21 Q: But you will agree that this company you have,
22 that you formed, this Murrells Inlet
23 Plantation company, it hasn't conducted any
24 activity as a homeowners association in the
25 International Club community, has it?

1 A: Actually, it has. It's acquired a insurance
2 policy and a bank account.

3 Q: And from whom did it acquire the insurance
4 policy?

5 A: I don't recall the name.

6 Q: And what does it insure?

7 A: Errors and omissions of officers.

8 Q: But it doesn't insure any of the -- Does it
9 insure the amenity center?

10 A: The MIGPA doesn't own any property.

11 Q: Well, does it insure the amenity center?

12 A: No. To qualify, I point out that since MIGPA
13 owns no property, it has no reason to water
14 the property nor to insure the property, and
15 if The Court was to decide that MIGPA is the
16 association, it does not interfere with the
17 continued equitable rights and ownership of
18 everything that ICHA owns.

19 They continue to own everything they
20 own, and they're welcome to operate the
21 amenity center without interference, and if
22 people want to join it, they're welcome to
23 join it, but the MIGPA will, if it acquires
24 property, will need insurance for that
25 property, and if the homeowners say,

1 themselves, they want cable service, they're
2 free to acquire it through some method to be
3 developed. It's my position in my lawsuit,
4 homeowners should not be forced to acquire
5 cable service or waste services they have not
6 asked for.

7 MS. GOLDING: YOUR HONOR, THAT FINISHES
8 MY CROSS-EXAMINATION WITH
9 RESPECT TO HIS CLAIMS AS TO
10 THE LEGALITY OF THE
11 DEFENDANT HOMEOWNERS
12 ASSOCIATION.

13 THE COURT: ANYTHING ELSE WITH
14 REFERENCE TO THAT
15 SPECIFIC POINT THAT SHE
16 JUST MENTIONED?

17 MR. JARMUTH: NO, YOUR HONOR.

18 THE COURT: ARE YOU THROUGH TESTIFYING
19 ON THAT PARTICULAR POINT?

20 MR. JARMUTH: YES, YOUR HONOR.

21 THE COURT: ALL RIGHT. YOU MIGHT COME
22 DOWN.

23 MR. JARMUTH: YOUR HONOR, I THINK I NEED
24 TO BE SWORN ON THE NEXT
25 SUBJECT OR SAY I'M

1 CONTINUED SWORN. THE NEXT
2 SUBJECT IS THAT THE
3 MURRELLS INLET GOLF
4 PLANTATION COVENANTS DO NOT
5 APPLY TO PEBBLE CREEK.
6 THE COURT: NOW, ARE YOU GOING TO
7 FOLLOW THE
8 SAME FORMAT YOU DID BEFORE?
9 MR. JARMUTH: YES, YES, YOUR HONOR.
10 THE COURT: WELL, COME BACK AROUND LIKE
11 YOU WERE
12 BEFORE.
13 *****OFF THE RECORD*****
14 (ON THE RECORD)
15 (MR. JARMUTH CONTINUES TESTIFYING.)
16 Mr. Jarmuth: The question before The
17 Court is whether the Murrells Inlet Golf
18 Plantation covenants, now the International
19 Club, International Club covenants for the
20 Murrells Inlet Golf Plantation PUD or the
21 International Club PUD, the question is do
22 they apply to Pebble Creek?
23 First, the sale of Pebble
24 Creek to Sunbelt, on January 29th, 1999,
25 Plantation A.D. through its manager, Kevin

1 Hewett, sold the land which became the
2 Pebble Creek subdivision to Sunbelt
3 Associates. At that point, Plantation A.D.
4 ceased to hold an equitable interest in
5 horizontal privity in Pebble Creek. The
6 Plantation A.D., Sunbelt, Pebble Creek deed
7 was signed and witnessed on January 29th,
8 1999, by representatives of both parties,
9 and it's my Exhibit 545, page one. The
10 signing is on page one, two, and four, and
11 the witnessing.

12 At the moment of sale,
13 there were no covenants running with
14 purchased land. The contract of sale
15 provided that Pebble Creek would be subject
16 to covenants of record, such as they existed
17 at the moment of sale, Sunbelt deed, my 545.
18 That's all they said. They didn't cite to a
19 deed book and page for any covenants. It
20 said they're only subject to the covenants
21 of record. The deed failed to state a deed
22 book page. As such, the seller was not on
23 notice as to the existence to the actual
24 contents of any covenants.

25 On January 29th, 1999,

1 the deed lacks a promise by the buyer,
2 Sunbelt, to acknowledge and be subject to
3 any future covenants declared by the seller.
4 It also lacks the promise to even be a part
5 of the Murrells Inlet Golf Plantation.
6 There's nothing there in the deed saying
7 that Sunbelt and its property have to be
8 part of the PUD.

9 On January 31st, 1999,
10 two days after the property was sold, R.
11 Scott Pyle, the President of Plantation
12 A.D., declared and signed the covenants for
13 Murrells Inlet Golf Plantation, my 547. On
14 January 31st, 1999, the Plaintiff A.D. had
15 no equitable interest in Pebble Creek, and
16 lacked horizontal privity with Pebble Creek.
17 Plantation A.D. did, however, have an
18 equitable interest and horizontal privity to
19 the rest of the PUD, the unsold portion,
20 which, by the way, was eventually sold to
21 Horton and to the rest of the homeowners.
22 That's on page 27, the witnessing, on
23 January 31st of '99.
24 On February 3rd, 1999,
25 seven days after Pebble Creek was sold, the

1 Declaration of Covenants of property was
2 witnessed by the notary, and that's on page
3 27, bottom of the covenants. The
4 witnessing, the signing of the covenants
5 required by 30-7-20, it's 262, was thus not
6 completed until February 5th, 1999. 30-7-20
7 requires a witness to the declaration
8 recording, which shall be upon -- Well, I
9 don't need to read it to you. And 30-7-90
10 says that notice of unrecorded instruments
11 shall not be -- shall be -- occur only when
12 such notice of the instrument itself is
13 recorded and properly indexed, so not until
14 it was recorded, indexed was there even any
15 notice, and 30-7-90 say that anything, The
16 Court shall operate an order on notice of
17 such instrument.

18 The covenants are
19 ineffective to Pebble Creek if they were not
20 recorded prior to the sale, and the contents
21 were not an actual exhibit to the deed, did
22 not exist, and were not declared until after
23 the sale. They were recorded and indexed
24 February 8th, 1999, which was ten days
25 later. At that point, it'd be actual notice

1 to future buyers of property, but it'd been
2 sold ten days earlier. Thus the question
3 then becomes, who could declare covenants
4 for Pebble Creek?

5 After January 29th, 1999,
6 only the owner of Pebble Creek, Sunbelt
7 Associates, had the equitable interest and
8 privity in Pebble Creek necessary to declare
9 and record covenants of Pebble Creek. If
10 Sunbelt Associates designed the Murrells
11 Inlet Golf Plantation, covenants apply to
12 Pebble Creek, Sunbelt could have endorsed a
13 copy of the same document signed and
14 recorded it was Sunbelt as declarant,
15 indexing it to Pebble Creek. It didn't.

16 The restatement of
17 servitudes, notice of horizontal privity
18 says that the promise must be in writing
19 that satisfies the Statute of Frauds. Well,
20 there's nothing in the deed to Sunbelt which
21 cites to the covenants actually eventually
22 applied. It was not an exhibit to the deed.
23 Horizontal privity must exist, and the party
24 to which it's applied has to have notice of
25 the covenant, and they can't have the notice

1 if they were indexed and recorded ten days
2 after the sale. "Horizontal privity exists
3 between the promissor and the promisee who
4 have mutual, simultaneous interest in the
5 same land," Black's first on privity talks
6 about mutual or successive relationships.
7 If you go to Black's, which is my 942, the
8 next position about privity, which is
9 sufficient at least to me, and it's up to
10 The Court to say, there was no privity
11 existing when the covenants were filed for
12 Pebble Creek. Again, it does exist for the
13 rest of the PUD.

14 Case law, South Carolina
15 courts have freely drawn upon other states'
16 decisions, treatises and restatements of
17 property in passing the law of restrictions
18 and covenants. Lynch 159 Southeast at 30,
19 Marathon Finance Company versus HHC
20 Liquidation Corp, 483 Southeast 2nd 757,
21 764, South Carolina Court of Appeals, 1997,
22 it says, the actual case law it cites was,
23 "There must be privity of estate between the
24 parties to the covenants." Raintree
25 Corporation v. Rowe, 30 North Carolina,

1 Appeal 664, 669, 248, Southeast 2nd, 904,
2 907, 1978, rights, "We adhere to the rule
3 that a party seeking to enforce a covenant
4 as one running with the land at law must
5 show the presence of both horizontal and
6 vertical privity," at the time it was
7 signed.

8 In Player versus
9 Chandler, 299 South Carolina at 105, 382
10 Southeast 2nd, 894, the South Carolina
11 Supreme Court asserted that interpreting the
12 sale, the terms are limited to what is
13 written on the deed itself. The Court wrote
14 that the terms did not include any secret
15 purpose or intention on the part of one of
16 the parties stored away in his mind, which
17 was cited in Clardy versus Clardy v.

18 Bodolosky and United Land-Magnolia, LLC, 383
19 South Carolina 418, 424, 679, Southeast 2nd
20 527, 530, Court of Appeals, 2009, which was
21 an appeal from Horry County.

22 MS. GOLDING: THANK YOU, YOUR HONOR.

23 YOUR HONOR ---

24 THE COURT: YOU'RE FINISHED?

25 MR. JARMUTH: YES, YOUR HONOR.

1 THE COURT: OKAY. YOU MIGHT CROSS-
2 EXAMINE.

3 MS. GOLDING: YES, THANK YOU.

4 CROSS-EXAMINATION

5 BY MS. GOLDING:

6 Q: Mr. Jarmuth, you have as your Exhibits, you
7 have Exhibit 545, which is a deed from
8 Plantation A.D. to Sunbelt, then you have
9 Exhibit 544, which is another deed from
10 Plantation to Sunbelt, and both of these deeds
11 have the identical provision in it, and both
12 these deeds were recorded on February 8, 1999,
13 one at 3:27 and one at 3:36. So both of these
14 deeds were recorded after the Declaration was
15 recorded; is that correct, yes or no?

16 A: They were recorded, yes.

17 Q: They were recorded after the Declaration. And
18 both these deeds have the following statement,
19 "This property is conveyed subject to the
20 Declaration of Covenants and Restrictions for
21 Murrells Inlet Golf Plantation (the
22 'Declaration') which is recorded in Deed book
23 2117 at Page 1353 of the real property records
24 of Horry County"; is that not correct?

25 A: No, it's not correct.

1 Q: Okay, then pull out your Exhibits 544 and 545.

2 Look at Exhibit A, the property description.

3 Look at 544, your Exhibit 544. Look at

4 Exhibit A, the property description, 544,

5 second to the last paragraph on Exhibit A.

6 A: Yeah. What about it?

7 Q: That's what it says, just what I read out,

8 that the property that Sunbelt built, Pebble

9 Creek Golf, is subject to the Declarations.

10 That's what's on your deed, on the original

11 deed that Sunbelt got for the property.

12 MS. GOLDING: NO FURTHER QUESTIONS, YOUR

13 HONOR.

14 A: What was the other document number you had?

15 MS. GOLDING: I HAVE NO FURTHER

16 QUESTIONS, YOUR HONOR.

17 THE COURT: ALL RIGHT. YOU MIGHT COME

18 DOWN.

19 MR. JARMUTH: I'M LOOKING FOR MY OTHER

20 DOCUMENT.

21 THE COURT: SHE HADN'T ASKED YOU

22 ANYTHING ELSE ABOUT THAT AT

23 THIS POINT IN TIME, HAVE

24 YOU?

25 MS. GOLDING: NO, YOUR HONOR, I HAVE NOT.

1 THE COURT: ALL RIGHT. THERE'S NO
2 FURTHER QUESTIONS FOR YOU
3 ON ---
4 MR. JARMUTH: YOUR HONOR, I WANT TO
5 CLARIFY. THAT'S WHY I'M
6 LOOKING FOR SOMETHING. THE
7 DEED AS FILED ---
8 MS. JARMUTH: I HAVE 544 AND 545.
9 MR. JARMUTH: COULD YOU PULL IT OUT FOR
10 ME, PLEASE?
11 MS. JARMUTH: EXHIBIT A, THE SECOND
12 PARAGRAPH FROM THE BOTTOM
13 ON 544.
14 MR. JARMUTH: I'M ON 545. YOUR HONOR, ON
15 EXHIBIT 545, EXHIBIT A ---
16 THE COURT: WAIT JUST A SECOND. TELL
17 ME WHAT YOU'RE RESPONDING
18 TO.
19 Mr. Jarmuth: I'm responding to the
20 citation to the documents. I have the deed
21 as I obtained it from the Recorder of Deeds,
22 Deed Book 2117 at 1403, yeah, 1403, and the
23 copy I have, on the next to the last
24 paragraph, has a blank for that deed book
25 and page, and I've got the stamp of the

1 Recorder of Deeds here, and it says it's
2 recorded in deed book blank at page blank.
3 So, clearly, at the time that the deed was,
4 was created, and as it was recorded, it was
5 recorded with a blank, and someone
6 apparently filled in, after the fact, on the
7 Defendants' copy, the book and page, but
8 that's not what's recorded at the Recorder
9 of Deeds. A copy as recorded at the
10 Recorder of Deeds ---

11 MS. GOLDING: YOUR HONOR, I'LL MAKE AN
12 OBJECTION.

13 I MEAN, I DON'T KNOW WHAT
14 HE'S

15 TRYING TO INFER, BUT I USED
16 HIS

17 EXHIBIT THAT HE PROVIDED TO
18 ME AND

19 ---

20 THE COURT: SHE DOESN'T HAVE ANY OTHER
21 QUESTIONS

22 FOR YOU, UNLESS YOU'VE GOT
23 SOMETHING

24 ELSE -- I UNDERSTAND WHAT
25 YOU'RE

1 SAYING. IS THERE ANYTHING
2 ELSE?
3 MR. JARMUTH: WHAT I'M SAYING, YOUR
4 HONOR, IS THAT
5 THE COPY INDEXED WITH THE
6 RECORDER
7 OF DEEDS DOES NOT HAVE DEED
8 BOOK ---
9 THE COURT: I UNDERSTAND WHAT YOU'RE
10 SAYING.
11 ANYTHING ELSE?
12 MR. JARMUTH: NOT ON THAT MATTER, YOUR
13 HONOR.
14 THE COURT: ALL RIGHT.
15 MR. JARMUTH: YOUR HONOR, FOR
16 CLARIFICATION, I
17 HAVE VERY LARGE, BLOWN-UP
18 COPIES OF
19 PLATS, AND ALTHOUGH I FILED
20 THE
21 EIGHT-BY-ELEVEN COPIES AS
22 EXHIBITS
23 WITHOUT BLOWING IT UP, SOME
24 OF THE
25 DETAILS I'M GOING TO

1 ADDRESS ARE
2 UNREADABLE. THE COPY I
3 OBTAINED
4 FROM THE RECORDER OF DEEDS
5 WAS
6 ACTUALLY THE BIG ONES.
7 THOSE ARE
8 THE ORIGINAL ONES I
9 ACTUALLY GOT
10 FROM THE RECORDER OF DEEDS,
11 HAD THEM
12 PRINT IT OUT FOR ME.
13 THE COURT: HAVE YOU MARKED THOSE?
14 MR. JARMUTH: I HAVE THE SAME NUMBERS ON
15 THAT AS THE ONES IN
16 EVIDENCE. I'M NOT BRINGING
17 THE BIG ONES IN EVIDENCE
18 UNLESS YOU WANT ME TO, YOUR
19 HONOR. I'LL BRING THE
20 LITTLE ONES. I'LL BE
21 HAPPY TO PUT THE BIG ONES
22 INTO EVIDENCE, BUT THE
23 PROBLEM IS THOSE ARE THE
24 ONLY ONES I HAVE. SO I'D
25 LIKE TO PUT THE LITTLE ONES

1 IN EVIDENCE AND LET ---
2 THE COURT: WELL, THE COURT REPORTER IS
3 PRETTY RESPONSIBLE. SHE'LL
4 KEEP UP WITH THEM. IF YOU
5 WANT ME TO LOOK AT THEM,
6 YOU HAVE TO PUT THEM IN.
7 MR. JARMUTH: I'LL PUT THEM INTO
8 EVIDENCE, YOUR HONOR.
9 THE COURT: OKAY. I PROMISE YOU, SHE
10 WON'T STEAL THEM.
11 MR. JARMUTH: SHE HAS COPIES OF THEM
12 ALREADY.
13 THE COURT: I UNDERSTAND, BUT THEY'RE
14 SMALLER,
15 THOUGH, RIGHT?
16 MR. JARMUTH: YES, YOUR HONOR.
17 THE COURT: ALL RIGHT. WELL, YOU GO
18 AHEAD AND LET US HAVE THE
19 LARGER ONES YOU WANT
20 US TO SEE, AND WE'LL BE
21 SURE TO GET IT BACK TO YOU
22 WHEN WE GET THROUGH, OKAY?
23 (MR. JARMUTH CONTINUES TESTIFYING.)
24 Mr. Jarmuth: On January 15th, 19 ---
25 MS. GOLDING: MAY I INQUIRE AS TO WHAT

1 TOPIC MR. JARMUTH IS GOING
2 INTO NOW?
3 THE COURT: PLEASE TELL US WHAT YOU'RE
4 DOING, SIR.
5 MR. JARMUTH: I'M TALKING ABOUT PLATS.
6 THE COURT: PLATS.
7 MR. JARMUTH: I'M RAISING THE QUESTION,
8 WHAT'S IN THE PUD?
9 MS. GOLDING: YOUR HONOR, I'M GOING TO
10 MAKE AN OBJECTION. THE
11 ISSUE OF A PUD, PLANNED
12 UNIT DEVELOPMENT, HAS NO
13 RELEVANCE IN ANY MATTERS
14 HERE.
15 THE COURT: I AGREE, BUT SINCE HE'S PRO
16 SE, I'M GOING TO LET HIM
17 PROCEED.
18 MS. GOLDING: OKAY, THANK YOU, YOUR
19 HONOR.
20 THE COURT: AND TRY TO BE BRIEF BECAUSE
21 I THINK SHE MAY BE RIGHT
22 ABOUT THAT. GO
23 AHEAD.
24 Mr. Jarmuth: When I talk about the
25 PUD, I'm also going to be addressing the

1 sections which are within the covenants,
2 because we have a larger area which is the
3 PUD, and then the covenants takes pieces of
4 the PUD ---

5 THE COURT: WHICH COVENANTS ARE YOU
6 TALKING ABOUT NOW?

7 MR. JARMUTH: THE COVENANTS, 547, THE
8 COVENANTS FOR THE PUD, AND
9 ---

10 THE COURT: ALL RIGHT.

11 MS. GOLDING: YOUR HONOR, THERE ARE NO
12 COVENANTS FOR THE PUD. THE
13 DECLARATION, WHICH IS
14 DEFENDANT'S EXHIBIT NUMBER
15 3, THOSE ARE THE
16 RESTRICTIVE COVENANTS FOR
17 THE INTERNATIONAL CLUB
18 COMMUNITY, AND PORTIONS OF
19 THE INTERNATIONAL CLUB
20 COMMUNITY ARE PART OF A PUD
21 THAT WAS APPROVED BY HORRY
22 COUNTY COUNCIL.

23 THE COURT: DO YOU AGREE WITH THAT?

24 MR. JARMUTH: NO, YOUR HONOR, BECAUSE IF
25 YOU LOOK AT THE FACE OF THE

1 COVENANTS, IT DOESN'T SAY
2 THESE ARE THE DECLARATIONS
3 FOR THE HOA. IT SAYS THESE
4 ARE THE DECLARATIONS FOR
5 THOSE PORTIONS OF THE PUD
6 WHICH ARE STATED BY THE
7 DECLARANT TO BE SUBJECT TO
8 THE COVENANTS. SO WE HAVE
9 TO FIRST SEE WHAT'S THE
10 PUD, WHAT DOES THE
11 COVENANTS SAY, THEY RELATE
12 TO THE PUD?
13 THE COURT: WELL, THAT'S AN
14 INTERPRETATION. I'M ASKING
15 YOU, ARE Y'ALL TALKING
16 ABOUT THE SAME PIECE OF
17 PAPER?
18 MS. GOLDING: RIGHT, THE SAME DOCUMENT.
19 THE COURT: I KNOW WHAT YOU'RE SAYING,
20 YOU DON'T AGREE WITH IT,
21 BUT IS IT THE SAME PIECE,
22 MS. GOLDING?
23 MS. GOLDING: YES, SIR, THE SAME
24 DECLARATION OF COVENANTS
25 AND RESTRICTIONS, WHICH

1 MAKE NO MENTION OF A PUD.
2 THE COURT: OKAY. ALL RIGHT.
3 MS. GOLDING: THANK YOU, YOUR HONOR.
4 MR. JARMUTH: ACTUALLY, THEY SAY THEY
5 AREN'T IN THE PUD, BUT IT
6 SAYS THEY APPLY TO THOSE
7 PORTIONS OF THE PUD, TO
8 EXHIBIT A AND B, HE BRINGS
9 IN.
10 THE COURT: WHAT EXHIBIT IS THAT?
11 MS. GOLDING: IT'S DEFENDANT'S EXHIBIT
12 NUMBER 3. IT'S THE
13 DECLARATION, YOUR HONOR.
14 THE COURT: THANK YOU.
15 MR. JARMUTH: IT'S MY 547, WHICH I'VE
16 BEEN TALKING ABOUT.
17 THE COURT: THE SAME EXHIBIT, I MEAN,
18 THE SAME DOCUMENT?
19 MR. JARMUTH: YES, YOUR HONOR.
20 THE COURT: ALL RIGHT. GO AHEAD.
21 Mr. Jarmuth: Okay. First, the
22 question is, if we're going to talk about
23 subset of the PUD, we should note what's in
24 the PUD. With regard to questioning, what
25 is the, what was brought in directly, by

1 implication, and in a early hearing ---
2 MS. GOLDING: I'M GOING TO -- I KNOW
3 YOU'RE GOING TO LET HIM GO
4 ON, YOUR HONOR, BUT THIS
5 WITNESS IS NOT COMPETENT TO
6 TESTIFY ABOUT A PUD, WHAT'S
7 IN THE PUD, ANYTHING WITH
8 RELATIONSHIP TO THE PUD,
9 AND I JUST WANT TO MAKE AN
10 OBJECTION TO THAT.
11 THE COURT: THANK YOU. GO AHEAD, SIR.
12 Mr. Jarmuth: Okay. I brought this
13 question before Judge Hyman in 2011, and
14 Judge Hyman stated that, at trial, stated
15 he'd be applying, and he cited it, was that
16 an area can be subject to the, I'm talking
17 about the enclaves and fairways, originally
18 the Grand Vistas, by more than just being
19 Exhibit A or Exhibit B, by some other act.
20 But on January 15th, 1997, which was before
21 the covenants were filed, the Horry County
22 Planning Commission was asked to approve a
23 plat of the Murrells Inlet Golf Plantation
24 PUD. That's my Exhibit 450. On February
25 1st, '97, the Planning Commission approved

1 the application, which, which is our 449 and
2 450. 449 is the cover sheet for the
3 approval. 450 is the actual approved plat.
4 It says, "Murrells Inlet Golf Plantation
5 PUD." The area incorporated, everything
6 that the covenants state is subject to the
7 covenants, to the reference Plat Book 160 at
8 79, my 454. I'd like to get those out on
9 the table. I'm looking at 450 and 454. The
10 first of those, 450, is the document from
11 the Planning Commission, and the second one
12 is the Plat 160 at 79, referred to by the
13 covenants.

14 THE COURT: HOLD ON JUST A MINUTE, NOW.

15 ARE YOU GOING TO MARK

16 THESE? MA'AM, ARE YOU

17 GOING TO MARK THESE?

18 MR. JARMUTH: THEY'RE ALREADY MARKED IN

19 THE BOOK.

20 THE COURT: WELL, ON THE SMALL ONES,

21 ARE YOU GOING TO MARK THESE

22 A'S OR B'S?

23 COURT REPORTER: (INDICATES AFFIRMATIVELY.)

24 THE COURT: THANK YOU. GO AHEAD, SORRY

25 TO INTERRUPT YOU.

1 MS. GOLDING: JUST A POINT OF
2 INFORMATION, 450, THEY ARE
3 NOT IN MY BOOK. SO THEY
4 MAY NOT BE IN THE COURT
5 REPORTER'S BOOKS.
6 THE COURT: MADAM, DO YOU HAVE THEM?
7 YOU'RE TALKING ABOUT THE
8 LITTLE PLATS, RIGHT?
9 MS. GOLDING: RIGHT, YES.
10 THE COURT: THIS IS JUST A DUPLICATION
11 BUT A BLOWN-UP VERSION?
12 MS. GOLDING: RIGHT.
13 MR. JARMUTH: THEY'RE STAPLED BEHIND ---
14 THE COURT: WAIT JUST A SECOND. LET
15 HER SEE IF SHE'S GOT
16 THEM.
17 MR. JARMUTH: THEY'RE STAPLED BEHIND THE
18 THING THAT SAYS PLANNING
19 COMMISSION.
20 THE COURT: LET HE SEE IF SHE ---
21 COURT REPORTER: 450, YES, I HAVE SMALL
22 ONES.
23 THE COURT: SHE'S GOT THEM.
24 MS. GOLDING: OKAY, THANK YOU.
25 THE COURT: GO AHEAD, SIR.

1 Mr. Jarmuth: The Court is asked to
2 note that the section in the notes, right-
3 of-way maintenance, is a condition of
4 approval and that all roads, except
5 driveways, shall be dedicated to Horry
6 County. On May 14th, 1999, the Planning
7 Commission approved the modifications of the
8 plat, to the plan. The name now is Lantana
9 PUD, my 451. Now, let me get that out for
10 you.

11 MS. JARMUTH: WHICH ONE DO YOU WANT?

12 MR. JARMUTH: 455.

13 MS. JARMUTH: DO YOU HAVE IT THERE?

14 MR. JARMUTH: NO, LANTANA.

15 MS. JARMUTH: THERE.

16 Mr. Jarmuth: It's interesting to note
17 that on May 14th, 1999, the PUD is now being
18 referred to, not as Murrells Inlet Golf
19 Plantation, but as Lantana PUD by the
20 Planning Commission and by the developer.
21 This is before the covenants were filed.
22 Well, looking at the documents, both of
23 them, the Glens is clearly approved as
24 multi-family. The fairways, J, is clearly
25 both within the PUD and they're multi-

1 family. The Enclaves, I-1, is clearly
2 within the PUD and is multi-family. An
3 additional area currently being developed,
4 marked K, which is 16 point acres, is also
5 clearly within the PUD and is also approved
6 multi-family.

7 Not shown on any of these
8 documents is an area known as the Meadows,
9 built by D.R. Horton. It is currently
10 subject to the IHOA, required to pay
11 assessments. The covenants refer to that
12 plat at 160 at 79 as the extent of land
13 which could be subjected to the covenants.
14 The Meadows is not in any of the documents
15 from the Planning Commission for the PUD, so
16 it can't, by implication, being intended to
17 be subject to the covenants, the developer,
18 back in 1999, and it's not in the plat 160
19 at 79. So there's no ---

20 The covenants provide
21 that the developer or successor could
22 subject additional areas within the PUD map,
23 in Exhibit A or B, to the covenants, but the
24 Meadows is not in Exhibit A or B or in the
25 plat itself. So I would question whether

1 the Meadows, which is being assessed by the
2 IHOA and forced to pay assessments, and a
3 lot of the homeowners have told me they
4 object to it, whether the Meadows is
5 properly within the PUD and whether it's
6 subject to the covenants and, as a next
7 layer down, is subject, whether it's subject
8 to the IHOA, and The Court is asked to
9 declare that the Meadows is not subject to
10 the covenants and, therefore, not properly
11 within the IHOA, because the developer could
12 not say that area marked in Exhibit B is
13 now, which is, A and B was the entire PUD,
14 in 160 at 79 is now subject to the
15 covenants. It was not within his authority.
16 To declare something subject to the
17 covenants, the declarant, Plantation A.D.,
18 had an actual equitable interest in the
19 piece of land at the time he made his
20 declaration, but he didn't have any interest
21 in the Meadows. Has to be indexed.
22 I, at this point, would
23 say that there's a possibility that the
24 entire covenants are defective because the
25 witness did not witness R. Scott Pyle sign -

1 - The notary public said that she notarized
2 or affirmed that the witness said that by
3 hearsay, he had seen, in turn, R. Scott Pyle
4 three days earlier sign the declaration, but
5 the notary never heard a statement by R.
6 Scott Pyle that he had signed the
7 declaration. All she heard and said is that
8 a witness to the signing made a hearsay
9 statement that he, in turn, days earlier,
10 had seen Scott Pyle sign the covenants. I
11 say that's a chain of signing which makes
12 the covenants themselves defective, if
13 they're not properly witnessed as an
14 extension of the deed.

15 Now, one of the issues
16 before The Court is the golf course. The
17 golf course, if we looked over there, is
18 clearly within the area marked as Exhibit A
19 in the PUD, and the amendment to the
20 covenants say Exhibit A to the covenants is
21 within, subject to the covenants. The golf
22 course apparently is saying, and there's a
23 question about the IHOA, that the golf
24 course may be or may not be subject to the
25 covenants. The purpose of a declaratory

1 judgment is to ask The Court to declare the
2 rights and obligations. And I'm asking The
3 Court to say that since the golf course is
4 within the PUD and is an Exhibit A to the
5 covenants, if the covenants are valid, the
6 golf course is subject to the covenants.
7 I'm not asking to say a mandatory member of
8 the HOA, but I'm saying that the Meadows
9 should not be subject to it and the golf
10 course should be, and why is that relevant,
11 because the golf course has been breaking
12 some of the rules of the covenants about use
13 of property and saying, "We don't have to go
14 to the ARB. We can do the restrictions on
15 use." So this is a material, a material
16 declaration to the homeowners.
17 MS. GOLDING: YOUR HONOR, WE'VE NEVER
18 TAKEN THE POSITION THAT THE
19 GOLF COURSE IS NOT A PART
20 OF THE HOA. IT'S A PART OF
21 THE DECLARATION. IT'S
22 WITHIN THE PROPERTY
23 DESCRIPTION. SO THERE IS
24 NO CONTROVERSY OF THAT AT
25 ALL.

1 THE COURT: GO AHEAD.

2 MR. JARMUTH: DID I HEAR THAT THE

3 DEFENDANT IS WILLING TO

4 STIPULATE THAT THE GOLF

5 COURSE IS SUBJECT TO THE

6 COVENANTS?

7 MS. GOLDING: I'M GOING TO STIPULATE THAT

8 THE COVENANTS STATE WHAT

9 THEY STATE, THAT THE GOLF

10 COURSE IS SUBJECT TO THE

11 DECLARATION, THAT THE

12 DECLARATION SETS FORTH

13 SPECIFIC PROVISIONS OF THE

14 GOLF COURSE WHICH EXEMPT

15 THE GOLF COURSE FROM

16 CERTAIN ACTIVITIES AND

17 OBLIGATIONS UNDER THE

18 DECLARATION, BUT AT ALL

19 TIMES, THE GOLF COURSE

20 PROPERTY WAS SUBJECT TO THE

21 DECLARATION, WHICH IS

22 DEFENDANT'S EXHIBIT NUMBER

23 3, YOUR HONOR.

24 THE COURT: OKAY, THANK YOU.

25 Mr. Jarmuth: That's one of the issues

1 for The Court, because at this point, I'd be
2 arguing the application of certain
3 exemptions, but I've been unable to find in
4 the covenants any exemptions. There's
5 exemptions for the developer and for
6 builders but no exemptions for the golf
7 course. That's all for that.

8 CROSS-EXAMINATION

9 BY MS. GOLDING:

10 Q: With respect to the Meadows, Mr. Jarmuth, the
11 Meadows, isn't it a fact that the Meadows
12 became part of the International Club
13 community by the Third Amendment of
14 Declaration of Covenants and Restrictions for
15 International Club?

16 A: No.

17 Q: Then take a look at Defendant's Exhibit 13.

18 A: I'll stipulate that it says what you said, but
19 in explanation, I'll also say that the
20 developer was exercising his rights to add
21 additional areas of a PUD laid out in Exhibit
22 B, subject, make them subject to the
23 covenants, and the Meadows was not in Exhibit
24 B or A, although he did in fact say, "I want
25 to add the covenants and subject to the

1 covenants." If the Meadows is subject to the
2 covenants, he had no authority to do so
3 because it was not one of the rights he was
4 granted in the original covenants. It said he
5 could only add properties within the PUD,
6 within either Exhibit A or B, to the
7 covenants, and that's not in it.

8 MS. GOLDING: DEFENDANT'S EXHIBIT 13,
9 YOUR HONOR, IS THE THIRD
10 AMENDMENT TO THE
11 DECLARATION, ADDING THE
12 MEADOWS TO THE PROPERTY.

13 THE COURT: ALL RIGHT.

14 MR. JARMUTH: I WOULD SAY THAT IT WAS AN
15 ULTRA VIRES ACT OF THE
16 DEVELOPER.

17 THE COURT: ALL RIGHT.

18 MS. GOLDING: NOTHING FURTHER, YOUR
19 HONOR.

20 THE COURT: ANYTHING ELSE?

21 Mr. Jarmuth: Not on that, Your Honor.

22 The next topic is the topic, one of the
23 major topics that brought on this lawsuit,
24 the question of what are the covenants, as
25 affected by the amendments to the covenants,

1 particularly amendment one. By way of
2 explanation, back in 2006, seven, eight, and
3 the beginning of nine, the IHOA and the
4 agent K.A. Diehl had a website which said
5 that the only amendment to the covenants was
6 amendment number one, and when I went over
7 to the office to inspect these, all they
8 could show me was the covenant amendment
9 one, and on my own, I went to the Recorder
10 of Deeds. I discovered amendments two,
11 three, and four, and then in 2008, I
12 discovered later that the Horton, without
13 telling anyone, had made amendment number
14 eight, which was even after he supposedly
15 had turned over control of the PUD to the
16 IHOA or to the association. And when I
17 first challenged the IHOA on this, they
18 said, "No. There is no other amendment
19 except amendment one." And then when I
20 confronted them over that, they said, "We
21 are enforcing the covenants as stated in the
22 unamended original covenant," therefore
23 became, since no agreement of mind could be
24 reached, it looked like we'd have to go for
25 declaratory judgment. There was another

1 reason for this being brought by suit. If
2 they and I had reached agreement on which
3 had been deleted or not, ----

4 MS. GOLDING: CAN I OBJECT? WHEN WE TALK
5 ABOUT, "THEY," COULD HE
6 IDENTIFY WHO HE'S REFERRING
7 TO?

8 THE COURT: YES. TELL US WHO YOU'RE
9 TALKING ABOUT.

10 (MR. JARMUTH CONTINUES TESTIFYING.)

11 Mr. Jarmuth: If the HOA Board and I
12 had agreed on what amendments had been
13 deleted and what they meant, any other of
14 the homeowners could have come along and
15 said, "I disagree," because until a court
16 declares by order what's been deleted,
17 what's not deleted, what it means, it's for
18 eternity subject to dispute, a perfect
19 candidate for declaratory judgment by The
20 Court as to the covenants, and there's a
21 long history of homeowners going to courts
22 for declaratory judgments to interpret the
23 covenants, to say what are rights and
24 obligations before dispute arises. Here,
25 disputes have arisen. And the question is,

1 amendment number one used the language,
2 "Waived this section, waived that section,
3 waived that section," and the IHOA has taken
4 the position that waiver does not mean
5 deleted, and if it waived it, it says it
6 only waived it for the builder, not for
7 homeowners. I'm going to address this whole
8 area of issues.

9 To answer the question,
10 the covenant's amendments will be presented
11 and The Court will be asked to declare the
12 effect of these amendments, what the
13 resulting rights and obligations of the
14 homeowners are. On February 8th, '99,
15 Plantation A.D., the owner of all the
16 property in the future PUD, filed covenants
17 concerning the property, our 547, subject to
18 my question about Pebble Creek. On January
19 29th, '99, ten days later, Plantation sold
20 to Sunbelt.

21 Now, on May 9th, 2000,
22 Plantation A.D. filed amendment one to the
23 covenants, which is my 551, and it's one of
24 their Exhibits, too. The document waived
25 many of the pre-existing covenant

1 restrictions. The IHOA has taken no
2 position that these waivers applied solely
3 and exclusively to the developer, Plantation
4 A.D., to Sunbelt, the developer, and to the
5 International Club Villas, another
6 development. See amendment one. To this
7 day, the Defendants IHOA have attempted to
8 enforce all those covenant provisions
9 against me. As a matter-of-fact, their
10 counterclaim is grounded completely on two
11 of those covenant waivers not being
12 deletions and not applying to homes.

13 I'll recite the
14 amendment. On April 25th, 2003, Plantation
15 A.D. sold its remaining lots to the PUD to
16 Horton, my 556, filed April 29th, '03.
17 April 25th, '03, Plantation A.D. and Horton
18 both jointly executed amendment two to the
19 covenants, filed April 29th, '03. This
20 designated Horton as the successor developer
21 and assigned Plantation's rights to Horton,
22 our 555. No prior or subsequent notice was
23 given to existing homeowners of this
24 amendment. Let me repeat that. Amendment
25 two was made without prior or successive

1 notice to homeowners, who supposedly are
2 subject to amendment two.

3 On March 26, '04, Horton
4 executed amendment three to the covenants,
5 filed it March 29th, '04. That amendment
6 deleted, Scott Pyle added numerous covenant
7 provisions, 559, no prior or subsequent
8 notices given to existing homeowners of that
9 amendment. By the way, I ask The Court to
10 recall the section I read which said no
11 amendment can be made which diminished in
12 any way the rights of homeowners' use of the
13 property or pose any new burden on them.

14 December 23rd, '04,
15 Horton and Sunbelt -- Seacoast Associates,
16 another developer, executed and filed
17 amendment four to the covenants, my 561,
18 filed December 28th, '04, no prior or
19 subsequent notice. These amendments banned
20 all, quote, "Multi-family occupants from the
21 amenity center." It didn't say townhouse,
22 didn't say townhome. It banned multi-family
23 occupants.

24 One of the sources of
25 dispute is the IHOA is saying the Glens,

1 being a townhome, may use the amenity
2 center, and my position being the Glens, as
3 a multi-family area, may not, because the
4 covenants ban multi-family from the use of
5 the amenity center. The Glens was approved
6 by -- The Planning Commission was requested
7 to and did approve the Glens as a multi-
8 family. The Lantana and MIGPA plats we've
9 seen show it as a multi-family. 167 at 69,
10 the plat for the covenants say it's a multi-
11 family area. So one of the questions, of
12 course, interpreting these covenants is, is
13 the Glens a multi-family, based upon all
14 these descriptions, and then is it subject,
15 is it eligible to use the amenity center?

16 I point out that the PUD
17 and the HOA members who are not just the
18 single family homes in the Glens includes
19 the Villas, the condo association, and the
20 Cambridge, which when you look at it, looks
21 like townhomes, but actually are condos, and
22 in the proceedings of the HOA through 2010
23 at least, maybe 2011, these people were
24 denied notice of those meetings of the HOA
25 and denied any vote in the HOA, and the

1 Villas only received the right to vote when
2 they sued the IHOA in this court and got a
3 judgment, consent judgment, this court, in
4 2010, where everybody agreed they now will
5 have a vote and membership on the Board.

6 At times, Maureen
7 Sullivan, a homeowner in the Glens, has been
8 a Board member. Rosemary Toth, a named
9 Defendant, said at a meeting I attended,
10 "How can someone from the Villas be a member
11 of the Board, if they're ineligible to use
12 the amenity center which is controlled by
13 the Board?" The basis for the Villas not
14 being given the vote at the time was they're
15 a multi-family, but the documents for the
16 HOA defines the Glens as a multi-family, as
17 well.

18 The consent agreement was
19 dated May 17th, 2011, case 2001-CP-26-3211,
20 and there's a record in this court, where
21 the IHOA said that multi-families,
22 particularly in the Villas, have a right to
23 vote and the right to sit on the Board. To
24 this date, no Villas homeowner sits on the
25 Board, even though the consent agreement

1 signed by the judge said a homeowner from
2 the Villas will be appointed to the Board.

3 On June 4th, 2008, Horton
4 and yet another developer, AD Ocean
5 Boulevard, signed amendment five to the
6 covenants, filed June 20th, 2008. These are
7 the prior amendments granted all these
8 developers named, who signed along with
9 Horton and Plantation, developer rights,
10 exempting all these developers from the
11 beginning of 1999 from any building
12 restrictions. Plaintiff's 563, amendment
13 five, repeated word-for-word many of the
14 changes that were in amendment four.

15 After, after amendment
16 one, there were homeowners. No declarant
17 has ever asked any homeowner whether he
18 consented to amendments two, three, four,
19 and five. He never notified them before
20 that he was going to do it and he never
21 notified them afterwards. As a matter-of-
22 fact, there's a question whether they even
23 told K.A. Diehl, the Co-Defendant and the
24 agent for IHOA, that they had been made.

25 In paragraph five and

1 seven, page one of amendment number three at
2 559, my Exhibit, the developer -- the
3 declarant acknowledged that any such changes
4 require the consent of existing homeowners.
5 He didn't have it and subsequently didn't
6 have it.

7 Let's look at the meaning
8 of the word "waiver," because amendment one
9 many, many, many covenant provisions were
10 waived, particularly 7.2. The requirement
11 for homeowners to seek prior approval of the
12 Architectural Review Board of the
13 association, waived; the restriction on
14 fences, waived; any restrictions of use of
15 cars on roads and driveways, waived.
16 Black's legal dictionary one, page 1231,
17 says, and the Court is free to look at it,
18 my Exhibit 97 and 98, that waived equates to
19 deleted. It's an abandonment of any right
20 or obligation.

21 How about the argument of
22 the HOA that waivers apply only to
23 developers and builders, not to homeowners?
24 It's clear from the covenants itself and the
25 plain language that this was not the intent,

1 that they didn't need to have anything
2 waived. The original covenants say that
3 developers and builders are exempt from any
4 restrictions, that they can do what they
5 want.

6 "A restriction on the use
7 of property must be created in express terms
8 and by plain and unmistakable implication,
9 and all such restrictions are to be strictly
10 construed, with all doubts resolved in favor
11 of the free use of property," Hamilton
12 versus CCM, Inc., 274 South Carolina 152,
13 157, 263 Southeast 2nd, 373, 380, 1980.

14 "The Court is to construe any ambiguity, any
15 ambiguity in favor of limited duration and
16 against restricting property. Restrictions
17 on the use of property will be strictly
18 construed with all doubts resolved in favor
19 of the free use of property, although the
20 rule of strict construction should not be
21 used to defeat the plain and obvious purpose
22 of the restrictive covenants," Taylor v.
23 Lindsey, 331 South Carolina 1, 4, 498
24 Southeast 2nd 862, 863, 1998. "Restrictive
25 covenants are contractual in nature,"

1 Hoffman v. Cohen, 262, South Carolina 71,
2 75, 202 Southeast 2nd, 363, 365, 1974. "The
3 language of restrictive covenants is to be
4 construed according to the plain and
5 ordinary meaning attributed to it at the
6 time of execution," Taylor, 332 South
7 Carolina at 4, 498 Southeast 2nd at 864,
8 Hardy, et al, versus Aiken, et al, South
9 Carolina Supreme Court, opinion number
10 26130, filed June 12, 2006.

11 Defendants argue that the
12 use of the word waive instead of deleted has
13 some special implication but don't explain
14 how this translates to apply to the waivers
15 only to developers. However, a not too
16 careful reading of the original covenants,
17 immediately puts this limited application
18 argument out of mind.

19 Look at Section 2.2 of
20 the covenants, my 547, and I think I need to
21 read this, "Section 2.2. Plan of
22 Development of Additional Property. The
23 Developer reserves the right to plan,
24 design, develop, construct, maintain and
25 manage the Multi-Family Areas and any unsold

1 Units as Developer deems necessary or
2 convenient for its purposes, including
3 without limitation the right to change the
4 number, shape, size and density of the
5 unsold Units, the Multi-Family areas, and
6 the additional property." He didn't need to
7 waive anything. He already had the right.

8 Let's look at the last
9 paragraph of Section 7.2, "Section 7.2.
10 Prior Review of All Plans." It reads,
11 "Section 7.2 of this Declaration shall not
12 apply to the Developer or to any Designated
13 Builder." 7.2 is a section which says
14 you've got to go to the ARB for prior
15 approval of all plans. Section 7.2 was
16 waived by amendment one. It didn't need to
17 waive it because, for the developer or the
18 builders because in the original language of
19 7.2 itself, it didn't apply to builders and
20 developers.

21 Amendment five added
22 Kinsale as a designated builder. Amendment
23 one added the Villas. Two added Horton.
24 Three added Sunbelt. All the builders were
25 named as designated builders and were exempt

1 from the get-go. The Defendant has argued
2 that indexing and recordation puts everybody
3 on notice, because amendment one was
4 recorded and indexed, the Defendant was on
5 proper notice that all the deleted sections
6 were ineffective, waived, actually deleted.
7 They had access to legal counsel, and they
8 should have known that the -- they should
9 not have been trying to force these against
10 myself and other homeowners. The counter-
11 complaint is grounded exclusively in the
12 argument, 7.2, go to the ARB, and 7.25,
13 restrictions on fences, are still effective,
14 the fence restriction as well as the
15 restrictions on walls and on going to the
16 ARB were waived.

17 Let's look at the
18 provisions which were waived. Section 4.17,
19 "Wells and Effluent," that, that says that
20 the developer and the association can pump
21 from the ponds, was actually waived. I
22 would question whether they could, because
23 the association, MIGPA, had equitable rights
24 in that. Section -- I point out Section
25 1.6, Common Areas. We've got to see that.

1 Common areas are defined, "mean all real and
2 personal property owned by the Association."
3 If the association is MIGPA, then the
4 property owned by IHOA is not the common
5 area of the association and MIGPA would have
6 no obligation to maintain and irrigate land
7 which has been deeded to the IHOA, and there
8 was nothing in the covenants which said that
9 Horton could not deed the area he owned
10 anywhere. As a matter-of-fact, the
11 covenants, he said he's at no obligation to
12 deed any area to be common areas. As a
13 matter-of-fact, paragraph three of amendment
14 one stated that at the time, quote, "There
15 is no 'Common Area' as such term is defined
16 in the Declaration."
17 Now, if you look at Plat
18 Book 181 at 89, 464, we see the following
19 streets were and solely declared, the
20 Lantana PUD, 169 at 79, the plat for the
21 covenants and the MIGPA Declaration of 1997
22 all said the streets, all the streets in the
23 PUD will be dedicated to Horry County, and
24 Plat Book 181 at 89 says the following
25 streets will be dedicated to Horry County,

1 and it even defines the shoulders, Pickering
2 Drive, 66 feet wide, Wicklow Drive, 50 feet
3 wide, Ennis Drive, 50 feet wide, Pickering
4 Drive, an additional 60 feet, Trent,
5 Bristol, Castlebridge, and Hallbrook.

6 I measured the curb to
7 curb distances on the street in front of my
8 house, Pickering Drive. I measured this
9 elsewhere. The typical curb to curb is 24
10 feet, which means that Horry County, as far
11 as I see it, owns 50 feet wide, which is on
12 average 12 and a half feet beyond the curbs
13 to the left or right, and one of the issues
14 is, which I'll address further on, do I as a
15 homeowner have the obligation to mow the
16 grass which is beyond my property line and
17 between, and between my property line and
18 the curb?

19 Now, since that -- the
20 developer originally owned the streets. He
21 owned the whole PUD. He deeded these to
22 Horry County. He never deeded them to the
23 HOA. The HOA never actually owned any
24 street in the PUD. In 2012, the Glens
25 condos and the International Club HOA

1 Defendant reached the agreement to resolve
2 an ambiguity which said that the
3 entranceway, Madrid Drive, to the Glens is
4 now the property of the HOA, but my
5 conversations with the Planning Commission
6 and of the witnesses I'll bring say that the
7 reason the County ---

8 MS. GOLDING: YOUR HONOR, IF HE'S GOING
9 TO BRING WITNESSES, WE NEED
10 TO GO AHEAD AND JUST GET
11 THE WITNESSES.

12 MR. JARMUTH: WELL, I'LL SAY WHAT MY
13 CONVERSATION WAS. MY
14 CONVERSATION, WHEN I ASKED
15 THEM ---

16 MS. GOLDING: YOUR HONOR, THAT CALLS FOR
17 HEARSAY.

18 THE COURT: WAIT, WAIT JUST A MINUTE.

19 Mr. Jarmuth: I asked by FOIA for Horry
20 County to give me the Declarations of all
21 the roads, deeding them to Horry County. I
22 got everything but Madrid Drive. Madrid
23 Drive is designated on all these plats as a
24 private driveway, not a street. It says
25 further, on all these plats I've cited, that

1 they will be the responsibility of the Glens
2 sub-homeowners association, which will
3 maintain it.

4 But the key thing here is
5 not the Glens parking lot and Madrid Drive.
6 It's the idea that the IHOA, which says it
7 has an obligation or a duty to maintain the
8 area of all the roads, doesn't own that
9 area. It's not common property, yet they're
10 spending the bulk of the assessment money
11 spent for buildings and grounds maintenance
12 on maintaining land they never owned, do not
13 own now, which belongs to Horry County or to
14 private homeowners, as the golf course, and
15 I'll get to that.

16 So one of the questions
17 is, I guess, is there anything in the
18 covenants or deeds which gives the IHOA
19 ownership of the streets or of the shoulders
20 or the common areas? I go back to the
21 covenants. It says the common area is only
22 that land which has been deeded to the
23 association, whichever association The Court
24 declares is the association. Furthermore,
25 all these plats are marked with the words,

1 quote, "Public." All the roads are marked
2 public.

3 Please note, if you look
4 at these plats, look at the golf course.
5 The area for the golf cart crossings are
6 marked easements. The roads are not marked
7 easements. So whoever, both the Planning
8 Commission and the declarant knew the
9 distinction between dedication and
10 easements. Easements are used for golf
11 course crossings, dedication used for roads.
12 Later, I want to bring in the actual
13 Declarations for the roads. At that time,
14 you will see the Declarations, documents are
15 marked fee simple, and the Declarations by
16 the County Council are made with no
17 exceptions, under, subject to no conditions.

18 One of the questions I
19 ask The Court to declare is, do I, again, as
20 a homeowner or any of the homeowners, have
21 an obligation to maintain the area beyond my
22 property line, because at this point, if I
23 don't, they're going to levy an assessment
24 on me and fine me for not maintaining my
25 land as, in an orderly manner.

1 Section 6.2 of the
2 covenants provide, describes the purpose of
3 the assessments. The monies, the monthly
4 obligation of homeowners subject to the lien
5 for non-payment. The covenants state that
6 these assessments shall be collected and
7 used exclusively as follows, "Purpose of
8 Assessments. The Assessments levied by the
9 Association shall be used exclusively for
10 the protection, replacement, operation, and
11 maintenance of the common areas and the
12 Recreational Amenities."

13 Section 7.2 of the
14 covenants says assessments can be used only
15 for the common areas. Can we be forced to
16 pay as part our assessments, involuntary,
17 subject to lien, money which the association
18 budgets clearly for the maintenance of a
19 non-common area? Can they fine us? Can
20 they sue us for non-payment of assessments
21 if we don't pay that portion? I say no.
22 Can the homeowner refuse to pay that
23 portion? I say no. I question whose
24 responsibility is it to maintain areas
25 dedicated to Horry County for roadways, and

1 my answer is, I ask The Court to declare
2 it's Horry County, whether you like it or
3 not.

4 The next area which is
5 changed or modified is capital
6 contributions. By the way, Your Honor, I'm
7 not sure what the time is. If you think we
8 should take a break anytime, ---

9 THE COURT: I'LL LET YOU KNOW.

10 MR. JARMUTH: THANK YOU, YOUR HONOR. I
11 NEED TO TAKE SOME WATER AT
12 THIS POINT.

13 THE COURT: THAT'S FINE.

14 Mr. Jarmuth: I recall the wording in
15 the covenants that says no additional burden
16 can be imposed on a homeowner. Homeowners,
17 of course, read the covenants at the time
18 they buy, and they know what sort of burdens
19 on the use of property they'll have. Any
20 additional fees or charge imposed on them
21 for additional things later on means they're
22 to tell a successive buyer, "Hey, you have
23 to pay this other thing," makes it more
24 difficult to buy the land and, therefore, it
25 imposes an additional burden on their use of

1 their property to resell.
2 Section 3.5 of the
3 original covenants talks about capital
4 contributions. It says capital
5 contributions will be paid only at the time
6 of your closing of the initial sale of each
7 unit by the developer. It's ambiguous
8 whether it's paid by the developer or by the
9 homeowner, but the language says, "By the
10 developer." So I would argue it's by the
11 developer, but that's kind of moot because
12 we've all bought our houses. "All sums paid
13 as a capital contributions are in addition
14 to and not in lieu of regular assessments
15 for common expenses," that's language from
16 the section.

17 I'd ask to declare that
18 any change to the requirement that capital
19 contributions are only paid at the initial
20 sale is a change which burdens the free use
21 of property and certainly would require
22 permission from the existing homeowners. I
23 ask that The Court to declare it's a one
24 time expense. Now, there's a question in
25 the interpretation of this. I would ask The

1 Court to note that there are additional
2 areas in the PUD which are subject to the
3 covenants, for example, BallyCastle, which
4 have not yet been built.

5 The assessments rise year
6 to year. It's my argument that all charges
7 are uniformly applied. So, therefore, if
8 the capital contribution's tied to two
9 months times the initial assessment, if a
10 homeowner in the BallyCastle, built in the
11 future, pays two months' assessments, he'll
12 pay, at current rate, \$190 as a capital
13 contribution, but back when my lot was sold,
14 the assessment was maybe 25. So my lot
15 owner only paid \$50, and during the period
16 between then and the future, that amount has
17 been going up and up and up, and I would ask
18 The Court to void that because it's
19 ambiguous. It doesn't cite a specific
20 amount to be paid as a capital contribution,
21 and it means, if applied the way it's
22 written, different people pay different
23 amounts, capital contributions, which is an
24 unfair burden on the later homeowners.

25 As a matter-of-fact,

1 until this year, the annual assessment for
2 condo owners was \$20. So if a condo owner
3 bought a condo in the multi-family area, he
4 paid \$40. If a single-family homeowner
5 bought a home in the rest of the PUD, the
6 same date, he'd pay \$150, but the money is
7 to be used, at least per the covenants, for
8 capital items in the common, common areas,
9 which are the roads, if they own them, and
10 what other capital items or common areas
11 owned by them, which would be maybe
12 buildings, monuments, or some such, but the
13 point of the matter, whatever that common
14 thing is, different homeowners at the same
15 moment in time are paying different amounts
16 of capital contributions to be used for the
17 same purpose, and I believe that is an
18 illegal application which is against the
19 public interest and an improper
20 interpretation of the covenants. And I
21 believe courts -- always owned covenants
22 shall be applied uniformly.

23 Now, Section 6.1 of the
24 covenants, "Creation of the Lien and
25 Personal Obligations of the Association

1 (Assessments)," that was waived. I don't
2 think anyone has a issue with that, but The
3 Court is asked to declare that Section 6.1
4 was waived, that was deleted, just for
5 consistency, we need to know what's in the
6 covenants and what's not.

7 Section 6.2, "Purpose of
8 the Assessments," that was deleted. That
9 was waived, too.

10 Now, let's look at
11 amendment number three, dated March 29th of
12 2004, my number 559. It says, "Section 3.5
13 shall be deleted in its entirety," that's
14 where you paid that single capital
15 contribution, "and the following shall be
16 substituted in its place," and it shall
17 read, bottom line, that the capital
18 contribution will now be paid by the owner
19 every time he sells the house.

20 So instead of being a one
21 time assessment, it's -- goes on and on and
22 on and it has the additional problem, if I
23 never sell my house, my lot will only pay
24 the capital contribution once. If another
25 person pays it four times, he'll pay that

1 capital contribution four times. So the
2 lots in the PUD are unequally contributing
3 to capital contributions, and that seems
4 unreasonable and unfair. It's not a uniform
5 application of the requirements and
6 obligations under the covenants, plus, those
7 are an additional burden on homeowners, and
8 by the very language of the covenants
9 themselves, it says no additional burden
10 will be imposed by amendment unless all
11 existing homeowners are notified first and
12 their permission, at least 75 percent, are
13 obtained. These were obtained without
14 notification or permission.

15 And 6.7 was deleted in
16 its entirety, a new 6.7 was put in, "Capital
17 Contributions." It says, "The Association
18 shall collect a Capital Contribution,"
19 basically, as it says in 3.5, which is from
20 every owner, every time it's sold, and
21 again, that now keeps rising as assessments
22 rise, which is two times the monthly
23 assessment.

24 Amendment four to the
25 covenants, December 2004, my 561, has an

1 additional issue. There's an ambiguity
2 there. It says that, "Owners of Units in
3 the Multi-Family Parcel shall pay the amount
4 of \$150 and not" -- "to the Association at
5 the time a Unit is conveyed from the
6 Developer to a third-party purchaser."
7 There is no way the developer conveys
8 something to a third-party purchaser. He
9 conveys to a second party. So I believe
10 that that provision of the covenants should
11 be declared, as number five, invalid because
12 of ambiguity and the language makes no
13 sense. Furthermore, it says this capital
14 contribution will be for the maintenance of
15 the entrance of roads of the International
16 Club PUD, but the association does not own
17 the entrance roads and the entrance of the
18 International Club PUD and the roads, no
19 roads. I would call that changed
20 circumstances, the reason that provision or
21 any provision of maintenance of roads should
22 be void.

23 I need amendment one.

24 Excuse me, Your Honor. Thank you, Your
25 Honor, for bearing with me. I'd like The

1 Court to note and declare deleted the
2 following sections, declared as waived or
3 deleted by amendment one to the covenants,
4 Section 3.7, which says in the language,
5 it's deleted in its entirety. Section 4.1,
6 Section 4.11, Section 4.12, Section 4.16,
7 Section 4.17, marked as waived, which I ask
8 The Court to declare it's effectively
9 deleted. Section 6.2, deleted, Section 7.2,
10 Section 7.4, Section 7.25, and Section 7.31,
11 marked waived, I'd ask The Court to declare
12 deleted. Section 7.37(c) of the amendment
13 one, which it says is waived.

14 Now, I'm addressing for a
15 declaratory judgment interpretation
16 unamended sections of the covenants.
17 Section 1.18, "Multi-Family Area." It says
18 on its face that multi -- that, "Multi-
19 Family Area shall mean and refer to any
20 portion of the Subdivision designated as
21 such by the Developer," and I'd like to ask
22 The Court to say the developer has in fact
23 designated them as such, because on 167 at
24 79 and on the Planning Commission plats, he
25 showed certain areas as multi-family. So

1 I'd like The Court to declare any area
2 designated on Lantana and Murrells Inlet
3 Golf Plantation Association Planning
4 Commission plats of 16 -- the plat
5 referenced by the covenants, are in fact
6 multi-family, if it's marked multi-family on
7 any of those three documents.

8 Now, you still have 449?

9 Now, the Planning Commission specifically
10 approved the Glens as townhouses, not
11 townhomes, multi-family, Plaintiff's 466.
12 So the additional document, the Glens plat,
13 was approved multi-family, townhouses. I
14 ask The Court to declare that the covenants
15 do not refer to, or depend on any sales
16 literature put out by any builder, such as
17 Horton calling them townhomes, and that
18 townhome description does not alter or
19 affect or modify any way the covenants use
20 of the phrase "multi-family" to decide who
21 is eligible to use the amenity center. Per
22 the Arcadian Shores v. Cromer decision, the
23 terms of interpretation is not allowed.

24 I point out that in 2003,
25 when Horton bought out Plantation's interest

1 in some, not all, of the PUD, because
2 Plantation retained ownership of the
3 enclaves and fairways area on the top of
4 those plats, Horton as the successor
5 developer had the chance to change the word
6 "multi-family" to say something else or say
7 single-family and townhouse, but he didn't.

8 Section 1.25,
9 "Subdivision," says, "shall mean and refer
10 to those tracts or parcels of land described
11 in Exhibit 'A,'" and tracts or parcels
12 described in Exhibit 'B'. The subdivision
13 plat says -- that is the plat that I
14 mentioned there. That's 1.36.

15 Now, the front entrance,
16 until 2010, the roadway between Tournament
17 Drive, which goes from Prince Creek down to
18 Highway 17, Tournament Drive, which goes
19 from that way, all the way to the golf
20 course, which is an alternative entrance to
21 the HOA, the area between Tournament Drive
22 and the Villas was privately owned by D.R.
23 Horton. That area is outside those areas in
24 the PUD, and clearly, if it's not in the
25 PUD, now, it can't be common areas with

1 that, it has to be Exhibit A or Exhibit B.

2 All this time, every
3 homeowner had easement, explicitly a deed,
4 which they inherited vertically through
5 Sunbelt or Horton from Plantation, to use
6 that front entrance. They did not need to
7 have ownership of that road to use it. When
8 Pebble Creek was built, that road from
9 Tournament Drive towards the golf course did
10 not exist. Homeowners in Pebble Creek did
11 not need access to that road, ownership of
12 it, or an easement on it to get in; matter-
13 of-fact, the only road available to them was
14 the road from Pebble Creek to McDowell
15 Shortcut.

16 In 2010, the IHOA Board
17 accepted for one dollar ownership of
18 Horton's rights in the front entrance, but
19 from 2002 to the present, the HOA Board has
20 been using money assessed from the
21 homeowners for use of the common property to
22 maintain the previously Horton owned front
23 entrance, which is not part of the PUD and
24 need not have been part of the PUD, and The
25 Court is free to judge on its own whether

1 it's a sound business practice to buy
2 something which you don't need to buy, which
3 is outside the PUD, for which now Horton has
4 passed on to the HOA the following problem.
5 When and if this road is conveyed to Horry
6 County, the IHOA says they now own the road,
7 not the association, so in their name will
8 have to pay the warranty to the county to
9 guarantee the road till, for one year after
10 it's deeded. So they've got a burden, but
11 that's not my issue, I don't care about it.
12 I care about the question whether the Horton
13 owned the front entrance there, that, and
14 shoulders then and even now a property
15 within the PUD and property common area of
16 the HOA, and therefore, whether the
17 association, whoever it may be, is allowed
18 to spend money on it.
19 Now, furthermore, the
20 IHOA's putative bylaws say that they can
21 only spend money on the common area, since
22 not, that's not -- and since the common
23 area's within the PUD, so there's a question
24 whether if we are voluntary members of the
25 HOA, were they spending voluntary

1 contributions legally on money which is
2 outside their domain. That's one of the
3 reasons the PUD definition was important.
4 Now let's go to another
5 area, The Meadows. The Meadows, I'm told
6 the Meadows was bought by Horton and
7 declared as part of the PUD, but I think
8 before it was owned by Jesse McDowell, TS-
9 194-00-02-012. And that area was outside
10 the PUD, and they're continuing to spend
11 money maintaining some areas in the Meadows
12 area, particularly the roadways and the road
13 signs, and it's a question whether the
14 Meadows' roadways are within the PUD. I
15 previously said are the homes there. Now
16 I'm asking are the roadways in the Meadows
17 area within the HOA domain, the PUD domain,
18 and property subject to spend, forcefully
19 collected money under assessments on its
20 maintenance.

21 Although amendments
22 presented by the Defendants show that areas
23 from Exhibit B was successfully added and
24 made subject to the covenants, there has
25 been no amendment to the covenants which

1 added and made subject to the covenants the
2 front entrance, which the IHOA bought from
3 Horton.

4 Now, let's turn to
5 bylaws. Section -- again, on February 8th,
6 1999, R. Scott Pyle, President of Plantation
7 A.D., signed covenants which purport to be
8 bylaws for the association. This is an
9 exhibit to the covenants. I show it as
10 Exhibit 548, so it can be simply accessed by
11 The Court and by the parties. But the
12 association was incorporated July 20th, '99,
13 which was half a year after the covenants
14 were filed and declared, and the declaration
15 -- the incorporation was at my 552. The
16 developer/incorporator was Ken Grover. He
17 listed no officers. The only declarant was
18 Ken Grover. Ken Grover is not listed as an
19 officer of Plantation A.D. Section 33-31-
20 206 of the code, "Bylaws," says, "The
21 incorporator or Board of Directors of a
22 corporation shall adopt bylaws for the
23 corporation."
24 Ken Grover was not the
25 incorporator or a member of the Board of

1 directors. R. Scott Pyle was not the
2 declarant or the incorporator or -- and
3 never at the time a member of the Board of
4 Directors. So I would argue that although
5 R. Scott Pyle was free to record anything
6 with the Recorder of Deeds he wanted, that
7 didn't make it a legal set of bylaws for a
8 corporation which did not exist at the time
9 and was not incorporated by somebody else
10 half a year later.

11 Ken Grover, as the
12 initial incorporator, had the obligation,
13 the duty to declare bylaws or, at the first
14 meeting of the Board, for the Board to
15 declare the bylaws. My inspection of every
16 minutes of every meeting of the Board of
17 Directors, of the Defendant, which, by the
18 way, until 2008, said International Club
19 Property Owners Association, not homeowners
20 association, never showed a adoption of the
21 existing putative bylaws or declaring any
22 others. They never recorded or indexed any
23 bylaws in the name of the International Club
24 Homeowners Association. So if someone was
25 to say, "I want to find out via notice what

1 the bylaws are of International Club
2 Homeowners Association," he'll go look in
3 the index, and he would not find any bylaws
4 recorded there today. So I would argue and
5 ask The Court to declare that there are no
6 bylaws for the ICHOA, the Defendant.

7 Now, we have a conceptual
8 issue here. We have land. Land is
9 controlled by the covenants. We have a
10 corporation. The corporation's controlled
11 by its bylaws. Covenants, which touch and
12 run with the land, I'd argue can't control
13 what a corporation does. The only thing
14 that can control a corporation is the bylaws
15 and the articles filed with the Secretary of
16 State or declared later or adopted and
17 nothing else.

18 I can't file a document
19 with the Recorder of Deeds that says that
20 the Jones Manufacturing Company in the
21 future will be subject to these following
22 bylaws or the Pepsi Corporation, if it
23 hadn't been formed, will have to live under
24 the following bylaws. I can't burden a
25 future corporation with any restrictions,

1 obligations, or rights. That's exactly what
2 the bylaws in Exhibit C of the covenants try
3 to do.

4 Also, there's another
5 issue. The covenants, which are supposed to
6 only have effective provisions which touch
7 and run with the land, I'd argue, can't
8 control the association, because the
9 association is not the land. Until 2007,
10 they really didn't own any units. Even
11 today, they don't own any units. How can a
12 covenant of land tell a corporation how the
13 voting will be?

14 There are provisions in
15 the covenants I'm addressing. These are the
16 covenants, Section 3.4, "Voting Rights."
17 And in Section 3.4, the covenants try to
18 tell what the voting rights of the
19 association will be, the association which
20 has not come into being, and I argue that
21 through the bylaws of the association, it
22 and only it will decide how voting rights
23 will be cast, how votes will be taken,
24 whether there'll be weighted votes or not.

25 So I'd argue, ask The

1 Court to set aside and void all the
2 provisions in the covenants which purport to
3 control voting rights of the association,
4 and this is independent of the question of
5 the IHOA and advice of any association which
6 says is influenced by the covenants. MIGPA,
7 which says it's the successor, the IHOA,
8 whether or not it's the association, it
9 still tries to control its operation by the,
10 by the covenants, and if you were to say
11 they were not the association, they still
12 exist, and The Court needs to say is the
13 IHOA's voting rights controlled by those
14 covenants over there, which may not apply to
15 them, or is it by its bylaws, and then where
16 are the bylaws? By the way, Your Honor, The
17 Court is free to inspect the statutes that
18 say if the bylaws don't exist on a
19 particular topic, the statutes step in and
20 say how the particular topic will be
21 handled, so it doesn't leave the IHOA in
22 limbo.

23 Now, the statute, 33-31-
24 610, "Differences in rights and obligations
25 of members," say, "All members have the same

1 rights and obligations with respect to
2 voting, dissolution, redemption, and
3 transfer, unless the articles or bylaws
4 establish classes of membership," and if the
5 bylaws don't exist, and you know, looking at
6 it, the articles say nothing about voting,
7 if that's the case, the golf course can't
8 have 55 votes in the association. So this
9 is an important question. Do they have one
10 vote as an owner of property or 55?

11 Now we go to Section 3.3,
12 "Membership." The covenants read, "Every
13 person or entity who is an Owner of any Unit
14 shall be a member of the Association."

15 First of all, I notice that the golf course
16 is not a unit. So I would ask The Court to
17 declare that, on its face, membership in the
18 association is not a burden imposed on the
19 golf course and by its name, although the
20 golf course may be subject to the use
21 restrictions of the covenants, it is not a
22 member of whoever the association is, was
23 not the owner of a unit in the, in the PUD.
24 It says, "Membership shall be appurtenant to
25 and may not be separated from ownership of

1 their Unit." Furthermore, the covenants
2 have no provision for resignation. I go
3 back to the law. The law preempts
4 contracts. So we have a contradiction
5 between the laws, that no one can be forced
6 to be a member and anybody can resign, and
7 the covenants, which say everybody must be a
8 member and no one can resign, and I ask The
9 Court to void Section 3.5, inasmuch as it
10 says everybody must be a member and it
11 leaves out the resignation, and say that the
12 statutes prevail, which say you can be a
13 member and you can resign, and then the
14 portion of the covenants which says you've
15 got to be an owner and a member should limit
16 the domain of people who can join and quit,
17 which would then leave out the golf course.

18 Now, I'm going to turn to
19 Exhibit C of the covenants, 548. On its
20 face, again, recorded by R. Scott Pyle,
21 nothing to do with the corporation, just on
22 that property, he said that the purpose of
23 the bylaws of the Murrells Inlet Golf
24 Plantation Association shall be, and it's
25 titled By-Laws of the Association,

1 association defined as Murrells Inlet Golf
2 Plantation Association, not indexed to
3 Murrells Inlet Golf Plantation Association,
4 not indexed to any HOA, and very
5 importantly, if you look at Exhibit C, the
6 bylaws themselves, they're not separately
7 signed or verified or notarized by anybody.
8 There's just a document of them, never
9 adopted by the membership or the Board of
10 any HOA.

11 Now, I'd like to address
12 the question, which is reasonable, of if
13 there is no ARB Board, because 7.2,
14 Architectural Review Board, has been waived
15 or deleted, who then can enforce the
16 covenants, fair question. Under the
17 covenants, any homeowner, as well as the
18 association itself, can demand that a
19 homeowner or the golf course, the bodies
20 that governs remedy it. You don't need an
21 ARB to do it, and any, either the
22 association or the homeowners can enforce it
23 by filing suit in The Court, and you get
24 back your legal fees and any attorney fees,
25 as well.

1 Ultimately, this is the
2 same enforcement mechanism the covenants
3 provide without reading 7.2, because with
4 7.2, if you didn't apply to the ARB, the
5 ARB, through the IHOA, actually the ARB has
6 no rights on its own, the HOA still would be
7 required to sue for a injunctive relief or
8 an order requiring conformance with the
9 covenants. So 7.2 is not necessary to
10 enforce the covenants. It's just a burden
11 on people, which the developer decided is
12 not needed, "Let's get rid of it."

13 By the way, Your Honor,
14 if The Court chooses to declare or waive
15 deeds, I ask for an injunctive order barring
16 any association from attempting to enforce
17 deleted provisions so we're not back and
18 forth. It would be in contempt. 7.4,
19 fences, very important, 'cause I'm being
20 countersued for building a fence or a wall.

21 Now, in Arcadian Shores
22 v. Cromer, The Court of appeals held
23 specifically relating offenses in IHOA that
24 they sought to control, however, extensive
25 omissions or variations tend to show that no

1 scheme exists and that the restrictions are
2 only personal contracts, associations
3 inconsistently enforcing this requirement,
4 "Moreover, pictures of property throughout
5 the neighborhood show the absence of any
6 scheme with respect to fencing or other
7 structures," upheld that the association
8 thus waived its right to review or approve,
9 and I'll bring in evidence of that at a
10 later point.

11 Section 7.25, which
12 relates to parking, was waived to help --
13 There's an issue here because if someone
14 from the general public comes into the
15 community, which he can, there's no gates,
16 no signs, doesn't say private property,
17 private area, he can park his car. The
18 attorney for the Planning Commission has
19 told me there's nothing to prevent anybody
20 from coming in and parking so long as they
21 obey the state law, since we're out in the
22 county, which says you can't block the view
23 of intersection, you can't block the view
24 beyond, and you can't obstruct the road, yet
25 the HOA is saying, if I park on the road,

1 they can cite me for parking exactly the way
2 as someone in the general public. I can't
3 do it, but the public can. It seems to me,
4 such an application where some people can
5 and some people can't is not a proper
6 covenant.

7 Furthermore, since the
8 roads never belonged to the HOA and belong
9 to the County, it doesn't touch and run with
10 the land. So I believe that, although -- In
11 addition to 7.25 having been waived or
12 deleted, it should've been thrown out anyway
13 because it conflicts, it's ridiculous. It
14 would, that'd be selective enforcement,
15 unequal enforcement, and the HOA, in trying
16 to enforce it, has no way of knowing whether
17 the car belongs to me or somebody else, and
18 this goes also to control of the shoulders,
19 who controls the shoulders?

20 For example, I own up to
21 between seven and 12 feet from the curb.
22 The County owns the road or if they don't,
23 the HOA certainly doesn't own or control it.
24 I applied to the post office for a license
25 to put in a locking mailbox, because I had

1 an issue of people stuffing things in and
2 they were taking things out, and the United
3 States Postal Service, which ultimately
4 controls mailboxes, granted me in writing,
5 it's in an exhibit, Defendant has it,
6 permission to put in a locking mailbox, but
7 they're saying I can't. They're saying
8 their control, through the covenants,
9 supersedes the preemptive right of the post
10 office to control land they don't own, never
11 owned, and going back to the covenants,
12 Horton, in the covenants, say he could have
13 conveyed that land, the roads to the HOA,
14 says he doesn't have to, and he chose not
15 to.

16 Now, if the covenants
17 have been waived or deleted, Hardy v. Aiken,
18 631 Southeast 2nd 539, 369 says specifically
19 it held the ARB rules -- Oh, that, it's
20 another issue there. The Court in Hardy V.
21 Aiken addressed rules. It particularly
22 addressed ARB rules on parking, because the
23 ARB rules, actually the ARB guidelines, and
24 that's an issue for The Court, too. The ARB
25 guidelines, it never said it's rules, and

1 they says they can mean anything you want,
2 these are just guidelines to use, and in
3 them, they have provisions on parking, and
4 the provisions on parking go far beyond the
5 provisions in the covenants. In Hardy v.
6 Aiken, 631 Southeast 2nd 539, 369, South
7 Carolina 160 of the Supreme Court, 2006,
8 says that rules, particularly ARB rules
9 which attempt to impose parking controls
10 which go beyond those explicitly stated in
11 the covenants or it was supplemented, saying
12 are legal and void supporting the lower
13 court's decision affording the free use of
14 your property. So I would ask The Court to
15 declare that any ARB rule or guideline which
16 purports to control parking has been
17 explicitly voided by the Supreme Court's
18 earlier decision in case law, because rules
19 can't extend or supplement or supplant
20 covenants, and the covenants explicitly said
21 these are the rules, and then when it was
22 deleted it said, "We thought about rules,"
23 they were taken away. When you take away
24 something you explicitly provide for, it's a
25 clear indication the declarant meant that

1 that would be no rules, no guidelines, no
2 control as to the parking. So I suggest
3 that the successive changes to the ARB
4 guidelines, 2008, 2010, and 2011, which have
5 parking provisions, overreach beyond the
6 authority of the IHOA. It's an ultra vires
7 act because they have no right to apply
8 parking rules, and per Hardy v. Aiken, they
9 can't extend, apply guidelines where there
10 are none. I'll ask The Court to depend on
11 my elaboration and statement -- waive and
12 read the sections on them. I'm not going to
13 go into them. Of course, The Court can read
14 it for themselves and remember which ones
15 were deleted or waived, and I'm done, Your
16 Honor, with that.

17 THE COURT: ALL RIGHT. THANK YOU.

18 MAYBE IT WOULD BE A GOOD
19 TIME TO BREAK. LET'S BREAK
20 FOR LUNCH. WE'LL COME BACK
21 IN AN HOUR. IT'S TWENTY
22 TILL. WE'LL COME BACK AT
23 TWENTY TILL AGAIN.

24 *****OFF THE RECORD*****

25 (ON THE RECORD)

1 THE COURT: GOOD AFTERNOON.

2 MS. GOLDING: YOUR HONOR, MAY I MAKE A

3 REQUEST, YOUR HONOR?

4 THE COURT: YES, SURE. GO AHEAD.

5 MS. GOLDING: WE HAVE A WITNESS. THE

6 DEFENDANTS HAVE A WITNESS,

7 MR. SULLIVAN, AND HE IS IN

8 IRRIGATION, AND HE DRILLS

9 WELLS AND THINGS LIKE THAT,

10 AND WE HAVE HIM LISTED AS A

11 WITNESS AND SUBPOENAED, BUT

12 HE HAD LONG TIME PLANS TO

13 BE OUT OF THE COUNTRY.

14 THE COURT: YOU WANT TO TAKE HIM OUT OF

15 ORDER?

16 MS. GOLDING: PLEASE. I CAN TAKE HIM

17 LATE THIS AFTERNOON OR

18 FIRST TOMORROW MORNING.

19 THE COURT: LET'S GO AHEAD AND GET HIM

20 OUT AND THEN YOU CAN CROSS

21 WHEN YOU GET THROUGH WITH

22 HIM, OKAY?

23 MS. GOLDING: OKAY.

24 MR. JARMUTH: YOUR HONOR, I'D LIKE TO

25 OBJECT TO THAT.

1 THE COURT: I WILL OVERRULE THAT
2 OBJECTION. I DON'T EVEN
3 WANT TO HEAR THAT.

4 MR. JARMUTH: BUT, YOUR HONOR, THIS IS
5 THE ---

6 THE COURT: IT'S A MATTER OF COURTESY
7 TO LET HIM TESTIFY, OKAY?
8 IT'S A MATTER OF COURTESY.
9 I DON'T KNOW WHAT HE'S
10 GOING TO SAY, BUT YOU CAN
11 CROSS-EXAMINE HIM.

12 MS. GOLDING: HE'S NOT HERE NOW, BUT WE
13 CAN BRING HIM HERE.

14 THE COURT: I THOUGHT HE WAS HERE.
15 COME ON BACK UP. AND YOU
16 ALWAYS DO THAT, SIR, I
17 MEAN, IT'S JUST A MATTER OF
18 COURTESY TO WITNESSES.

19 NOBODY WANTS TO GET DRUG UP
20 HERE.

21 MS. GOLDING: I HAD ASKED MR. JARMUTH
22 EARLIER, BUT HE DECLINED,
23 AND THAT'S WHY ---

24 THE COURT: OKAY. WELL, WHEN HE COMES
25 IN, LET ME KNOW, AND WE'LL

1 LET HIM TESTIFY AND LEAVE.

2 YOU'LL HAVE THE RIGHT, SIR,

3 TO CROSS-EXAMINE HIM, DO

4 WHATEVER YOU NEED TO DO.

5 (MR. JARMUTH CONTINUES TESTIFYING.)

6 Mr. Jarmuth: Thank you, Your Honor.

7 In conclusion on the issue of covenant
8 waivers and controls, I just want to repeat
9 that Hardy v. Aiken apply to all ARB rules,
10 where it said ARB rules which purported to
11 impose controls and then explicitly, not
12 explicitly contained in covenants or as a
13 supplement saying were legal and void
14 supported the lower court's decision
15 affording the free use of property. When
16 The Court forms a decision, I'd like them to
17 say nothing wrong with guidelines but, which
18 is what it says, but nothing in the ARB
19 should be taken to have the force of a
20 covenant and should impose no obligation on
21 a homeowner, no homeowner should be given a
22 fine for failing to do something which is in
23 an ARB guideline but is not explicitly
24 prohibited in a covenant, which is exactly
25 what the South Carolina Supreme Court said

1 regarding ARB rules in that case.

2 THE COURT: OKAY.

3 MS. GOLDING: I HAVE NO QUESTIONS, YOUR
4 HONOR.

5 THE COURT: YOU MIGHT COME DOWN. SO
6 YOU HAVE YOUR OUT OF
7 SEQUENCE WITNESS ON THE
8 WAY?

9 MS. GOLDING: YES, SIR. WE'RE GIVING HIM
10 A CALL RIGHT NOW.

11 THE COURT: THANK YOU.

12 (MR. JARMUTH CONTINUES TESTIFYING.)

13 Mr. Jarmuth: Your Honor, in my
14 Complaint, I have asserted that the acts of
15 the IHOA Board prior to the seating of a
16 properly elected Board are ultra vires
17 because they were not properly elected and
18 their seating and the changes of them are
19 completely -- is violation of the Non-profit
20 Corporation Act and the covenants and the
21 bylaws, and I'd like The Court, if it agrees
22 with me, to declare all the acts of such a,
23 such earlier Boards to be ultra vires, which
24 goes also to their contracts they signed.

25 MS. GOLDING: YOUR HONOR, I ASSUME THIS

1 IS -- I'M NOT QUITE SURE
2 WHERE MR. JARMUTH IS
3 HEADED, BUT HE HAD AGREED
4 AND HE HAD SENT US AN EMAIL
5 TO THE EFFECT THAT THE
6 ELECTIONS RESULTING IN THE
7 BOARDS OF 2007, 2008 AND
8 THE ELECTIONS ASSOCIATED
9 THEREWITH IN 2009, THAT
10 THOSE ISSUES WERE MOOT
11 BECAUSE THERE HAVE BEEN NEW
12 ELECTIONS, SO HE WAS
13 WITHDRAWING THOSE CLAIMS,
14 AND I ASSUME THAT IF THAT'S
15 -- I JUST WANT TO RECEIVE
16 CLARIFICATION FROM MR.
17 JARMUTH THAT THAT'S NOT
18 WHAT HE'S DISCUSSING.
19 MR. JARMUTH: I SAID THAT THE 2008
20 ELECTION IS MOOT BECAUSE
21 ALL THE PEOPLE ELECTED FOR
22 AS MUCH AS A THREE YEAR
23 TERM, THEIR TERM OF OFFICE
24 IS GONE, SO THERE'S NO
25 QUESTION TO CHALLENGE

1 WHETHER THEY SHOULD BE
2 PROPERLY IN OFFICE. AND
3 THE PEOPLE IN 2007, THE
4 QUESTION OF WHETHER
5 PARTICULAR PEOPLE WERE
6 PROPERLY ELECTED IS MOOT
7 BECAUSE THEIR TERMS EXPIRED
8 IN 2010, BUT IN HERE, I'M
9 LOOKING AT PEOPLE WHO HELD
10 OFFICE FROM 2002 THROUGH
11 2007 AND A SEPARATE ISSUE
12 FOR 2007 ELECTIONS AS TO
13 WHETHER THESE PEOPLE,
14 WHETHER IT WAS ACTUALLY,
15 WHETHER THE PEOPLE ENTERED
16 THE BOARD BECAUSE OF BEING
17 ELECTED OR WHETHER THEY
18 WERE APPOINTED, PLUS,
19 THERE'S AN ANCILLARY ISSUE
20 WHICH ASKS THE QUESTION,
21 WHEN DOES THE TERM OF
22 OFFICE FOR A BOARD MEMBER
23 BEGIN?
24 THE COURT: WAIT JUST A MINUTE. DOES
25 THAT ANSWER WHAT YOU WANT?

1 MS. GOLDING: NOT QUITE, BUT I UNDERSTAND
2 WHAT HE'S SAYING NOW. HE'S
3 ESSENTIALLY WITHDRAWING HIS
4 AGREEMENT THAT THE ISSUES
5 WERE MOOT AT THIS POINT IN
6 TIME.
7 THE COURT: IS THAT CORRECT?
8 MR. JARMUTH: NO. I'M NOT CHALLENGING
9 THAT ANY OFFICER WAS
10 ELECTED IN 2008 PROPERLY,
11 AND I'M NOT CHALLENGING THE
12 CONDUCT OF THE ELECTION IN
13 2007, THAT'S MOOT, BUT
14 THERE IS ONE REMAINING
15 ISSUE, WHICH IS,
16 IRRESPECTIVE OF WHO
17 RECEIVED A MAJORITY OF
18 VOTES IN 2007, WHETHER THEY
19 WERE IN FACT APPOINTED BY
20 THE DEVELOPER, IRRESPECTIVE
21 OF VOTES, OR NOT, BECAUSE
22 WE HAVE DOCUMENTATION WHICH
23 SAYS THEY WERE,
24 IRRESPECTIVE OF ELECTION
25 VOTES, THEY WERE APPOINTED

1 BY THE DEVELOPER, WHO
2 RETAINED CONTROL OF THE
3 BOARD THROUGH 2008.

4 MS. GOLDING: HE HAD ALREADY WITHDRAWN
5 THOSE, NOT ONLY IN AN
6 EMAIL, YOUR HONOR, WE HAVE
7 NOT RECEIVED TO THAT
8 EFFECT.

9 THE COURT: ALL RIGHT. WELL, I'M GOING
10 TO LET HIM CONTINUE.

11 MS. GOLDING: OKAY, THANK YOU.

12 THE COURT: GO AHEAD, SIR.

13 Mr. Jarmuth: Although the Defendant,
14 IHOA, was incorporated on March 1st, 2001,
15 as a non-profit corporation with members
16 entitled to vote, no election for members of
17 the Board was held until September 29th,
18 2007, and the term of office for that Board
19 did not properly commence until March of
20 2008.

21 I'm arguing that,
22 applicable law in relationship with the
23 covenants' and bylaws' provisions. First of
24 all, I want to recall my argument that there
25 are no legally effective bylaws of the IHOA,

1 thus making moot exceptions in laws which
2 consider the charges under the bylaws.

3 For example, the South
4 Carolina Non-profit Act says that elections
5 can be held at some other time if so
6 provided in the bylaws. The IHOA was
7 incorporated March 1st, 2001, my 552. South
8 Carolina code 33-31-701, "Annual and regular
9 meetings," my 223. "A corporation with
10 members shall hold a membership meeting
11 annually at a time stated in or fixed in
12 accordance with the bylaws," if the bylaws
13 are valid, it says, "The Annual" -- bylaws
14 three, which is 548, says, "Annual and
15 Special Meetings of Membership. The annual
16 members' meeting shall be held on the second
17 Saturday in March of each year (or such
18 other date as may be designated by the Board
19 of Directors)."

20 Well, there were no
21 elections until 2007, and if the bylaws
22 didn't occur, then -- well, I'm asserting
23 that the first annual meeting of the
24 members, going by what they're saying in the
25 bylaws, should've occurred on March 10th of

1 2001, and I've got an exhibit at 116 of the
2 calendar for 2001, and certainly they
3 should've had an election sometime after
4 they were incorporated on March 1st,
5 should've been sometime, I'm presuming, in
6 March.

7 MS. GOLDING: YOUR HONOR, I'M JUST GOING
8 TO MAKE AN OBJECTION THAT
9 MR. JARMUTH DOES NOT HAVE
10 STANDING TO ASSERT ANY KIND
11 OF ILLEGALITY OF ACTIVITIES
12 WITH RESPECT TO THE HOA
13 PRIOR TO HIM BECOMING A
14 PROPERTY OWNER IN OCTOBER
15 OF 2006.

16 THE COURT: SIX?

17 MS. GOLDING: THANK YOU.

18 THE COURT: ALL RIGHT.

19 MR. JARMUTH: MY RETORT TO THAT WOULD BE
20 I AM THE SUCCESSOR IN
21 INTEREST OF THE PERSON
22 WHO BOUGHT THE PROPERTY,
23 AND THE PROPERTY I LIVE IN
24 WAS BOUGHT IN 2001.

25 THE COURT: I'M GOING TO TAKE IT

1 SUBJECT TO HER OBJECTION.

2 GO AHEAD.

3 Mr. Jarmuth: Now, according to the
4 bylaws, two directors were to be appointed
5 by the developer, Plantation A.D., until the
6 March 10th, 2001, annual meeting, but the
7 code 33-31-804 says, "Elections," my 230,
8 "If the corporation has members entitled to
9 vote for directors," and this controls if
10 there are no bylaws, "all the directors,
11 except the initial directors, must be
12 elected at each annual meeting thereafter,
13 unless the articles or bylaws provide some
14 other method of election, or provide that
15 some of the directors are appointed by some
16 other person or designated."

17 So if the bylaws are
18 effective March 10th in the election and if
19 they're not effective, they have to have an
20 annual meeting for all of them, and if
21 they're effective, then in -- if they sat
22 one director for one year, one for two, one
23 for three, in three years, you'd have total
24 homeowner control.

25 Then paragraph four of

1 the bylaws, "Section 1, Number" says, 248
2 Plaintiff, "Until the first annual meeting
3 of the members, the affairs of the
4 Association shall be managed by a Board of
5 two directors selected by the Developers."
6 Let me repeat, "Until the first annual
7 meeting," but there wasn't an annual
8 meeting. At the March 10th, 2001, annual
9 meeting, assuming it took place, three
10 directors to be appointed, I've already
11 talked about that. And it says, bylaws,
12 after the first annual meeting, the affairs
13 will be managed by a Board of not less than
14 three directors.

15 Then we go to bylaws,
16 part four, Section 2, "Term of Office," my
17 248 (558), that says, in the bylaws, "At the
18 first annual meeting the Developer shall
19 select approximately one-third of the
20 directors for terms of one year each,
21 approximately one-third of the directors for
22 terms of two years each and approximately
23 one-third of the directors for terms of
24 three years each."

25 So going by that, again,

1 going by the statute, they all get elected,
2 going by the bylaws, March 2001, all three
3 appointed. March 2002, director one gets
4 elected, March 2003, director three gets
5 elected, and March 2004, director, the third
6 remaining one gets elected. So by March
7 2003, there'd be total homeowner control,
8 because you have two of the three elected,
9 and by March 2004, there'd be no appointed
10 directors at all. But until September 2007,
11 every director was appointed and there were
12 no elections.

13 Now, I ask The Court's
14 direction to the statute that said some, if
15 the bylaws provide otherwise, some of the
16 directors may be appointed by some other
17 method. The law doesn't say all of them may
18 be. So I question whether the bylaws, if
19 they exist, are effectively allowing all of
20 them to be appointed in 2001.

21 Now, the so called first
22 annual members meeting was held on July
23 30th, 2004, three years after it should've
24 been, which was not in March nor the
25 anniversary of the Board's appointment on

1 September 3rd, 2003. This question brings
2 the question up, did the term of office
3 begin, each new term, on September 3rd or
4 does it begin on the first Tuesday?

5 I point to elections in
6 the federal system where people get elected
7 in November but the term of office always
8 begins in February. So I would suggest that
9 because the bylaws provide for the first
10 annual meeting to be the second Saturday of
11 March, although it says meetings may be held
12 at other times, it doesn't say the term of
13 office will begin at some other time. The
14 shifting back and forth of annual meetings
15 and appointments means that some terms may
16 be extended beyond the term, some terms may
17 be foreshortened.

18 I argue that irrespective
19 of when an appointment election begins, the
20 term of office always begins the second
21 Saturday of March or if the first
22 appointment was in September 3rd, it should
23 be annually from September 3rd, by favor of
24 the first theory, because that's what the
25 bylaws say. You need to have a firm date

1 when the terms always begin, and it's given
2 to us as the second Saturday in March.
3 Now, I will repeat that
4 beginning in 2001, there were homeowners
5 eligible to vote. On September 27th, 2001,
6 the house I live in was sold by Sunbelt. So
7 way back then, there was at least one
8 homeowner eligible to vote, and others were
9 sold at the same time. It was sold to
10 Cheryl Tucker Essex, Deed Book 2412 at Page
11 46, one of many such sellers.
12 Now, since 2003, when
13 Plantation A.D. sold the remaining portions
14 of the property to D.R. Horton, there were
15 still even more homeowners beyond Pebble
16 Creek who were eligible to vote. Back in
17 2006, almost all 700 of the houses, which is
18 still -- that's out there now, were sold.
19 So there were 700 or so homeowners eligible
20 to vote as far back as 2006 or earlier. The
21 222 houses in Pebble Creek were sold out
22 years before that. The second annual
23 membership meeting of members was held on
24 March 9th, 2002, or should've been held if
25 it wasn't.

1 Now, I looked into the
2 Board of Directors' minutes, which were
3 given to me by the Defendant, and it shows
4 what happened at the various Board of
5 Directors' meetings. Well, let's look at
6 who was appointed and who was removed. By
7 the way, the developer never had the
8 authority anywhere to remove anyone from
9 office. Officers were able to resign, but
10 no officer resigned.

11 September 10th, 2002, Ken
12 Grover, from Suntec, appointed, Charles
13 Flynn, from Sunbelt, appointed, two Board
14 members, September 3rd, 2003, Doug Brown
15 from Horton, he's appointed. Charles Flynn,
16 November 20th, 2003, he's appointed from
17 Sunbelt. January 13th, 2004, Rick Ryan, Ron
18 Peoples, and Russ Carson from Horton,
19 they're appointed. July 30th, 2004, Doug
20 Brown from Horton is back on the Board.

21 At the first annual
22 members' meeting, Charles Flynn from Sunbelt
23 and Scott Floyd from Sunbelt, they're on the
24 Board. January 18th, 2005, Doug Brown from
25 Horton is still on the Board. Ed Jerdon,

1 from the golf course, he's somehow appointed
2 to the Board. Charles Flynn from Sunbelt,
3 he's still on the Board, and Scott Floyd
4 from Horton is still on the Board. June
5 10th, 2005 --

6 These are dates, by the
7 way, when changes of the Board membership
8 were made from the Board of Directors'
9 minutes, which are in the evidence. There's
10 a list of them. June 10th, 2005, Brad
11 Brundage from Horton, he's now appointed by
12 Horton to the Board. And by the way, Your
13 Honor, the minutes clearly say that the
14 developer appointed these people or said,
15 "I'm replacing this other person with this
16 other person." They never said anyone
17 resigned from office. It's always the
18 developer running an improper corporation in
19 violation of the statute. Chris Wallace from
20 Horton in 2005, he's put in. Charles Flynn
21 from Sunbelt, he's still there, and Ed
22 Jerdon from the golf course is still there,
23 but Mark Graham is added from Horton.
24 August 10th -- 19th,
25 2005, through August -- In August 19th,

1 2005, the six people on the Board are
2 reduced to four. They're now being Mark
3 Graham, Brad Brundage, Charles Flynn, and
4 Jim. The other people were removed by one.
5 November 14th, 2005, Horton reappoints the
6 people. March 9th, 2006, Pat Walsh from
7 Horton is appointed by Horton. November
8 16th, 2006, Jim Knaffle, representing the
9 golf course, is appointed by the minutes of
10 the Board, as the representative of the golf
11 course, not as a homeowner representative.

12 Now, the Board minutes
13 speak of annual elections from 2003 -- no,
14 annual meetings, excuse me, through 2006.
15 The statutes require that the members of the
16 non-profit corporation be given at least 30
17 day notice of the annual meeting. No notice
18 of the annual meeting was actually sent out
19 to homeowners, and again, no election was
20 held, and that's in South Carolina code 33-
21 31-705, "Notice of meeting," which I have at
22 225. "A corporation shall give notice
23 consistent with its bylaws of meetings of
24 members in a fair and reasonable manner,"
25 which fair and reasonable is notice, at

1 least.

2 Looking at the minutes of
3 the meeting July 30th, 2004, it says, "The
4 Developer lectured the homeowners to be meek
5 and not question the Developer Board." He
6 also -- At that meeting, the question was,
7 who owns the front entrance, International
8 Club Drive, which is owned by Horton, but
9 the answer from the Board was that, and Doug
10 Brown said it, from the records, that "The
11 HOA owns that road and that's why we're
12 spending money on maintaining it," Doug
13 Brown, and here's the word, "Several members
14 questioned the main entrance road condition
15 and ownership. Chairman Brown stated that
16 at this time the roadway area is owned and
17 maintained by the Association."

18 I want to point out in
19 2011, D.R. Horton, the developer, was fined
20 75 million dollars for homeowner fraud in
21 North Carolina. That's a matter of public
22 record. The second annual meeting was held
23 August 19th, 2005. No election was held.
24 The third annual members' meeting was held
25 on August 16th, 2006. No election was held.

1 These minutes are in the evidence.

2 Now, turning to the
3 election in 2007, on August 8th, 2007,
4 notice of election to be held was mailed to
5 all homeowners, including myself. It said
6 that the Board, the 2007 Board was to be
7 appointed by the developer to act as the
8 Board of Directors, appointed by the
9 developer. After the 2007 election, I asked
10 the Horton representative, Pat Walsh, the
11 employee who was on the Board, about seeing
12 the votes. I wanted to question the tally,
13 and Pat Walsh told me, and he was officially
14 a member of the Board of the Defendant, so
15 it's a statement against interest and
16 exception to hearsay, that it didn't matter
17 who got the votes, that he had appointed and
18 he was appointing the people he wanted to
19 appoint to the Board.

20 Now, on November 12th, 2007, and
21 it's in the evidence, the Board sent a
22 letter to the homeowners. In the second
23 paragraph, it told the homeowners that the
24 new Board had been, quote, "Appointed," and
25 said, "Although this was based on member

1 votes," quote, end quote. This is
2 consistent with the August 8th announcement
3 which I had read from before. I would ask
4 The Court to declare that certainly all the
5 Board members prior to 2007 were improperly
6 in office and, if they were improperly in
7 office, all the acts were ultra vires and to
8 so state, that they were illegally in office
9 for the various reasons I stated and, thus,
10 their acts were ultra vires. And for the
11 2007, I'll leave it to the judge to decide
12 what to do. I believe that what Pat Walsh
13 said was true, consistent with the
14 announcement and the before and after pieces
15 of correspondence that they were in fact
16 appointed. Although a vote was taken, it
17 was, I'd say it was a advisory vote and
18 therefore, since they were not elected,
19 appointed, their acts were ultra vires, as
20 well. Thank you.

21 MS. GOLDING: NO QUESTIONS.

22 THE COURT: YOU MIGHT COME DOWN.

23 MS. GOLDING: MR. SULLIVAN IS NOT HERE,

24 YET. HE'S ON HIS WAY.

25 THE COURT: OKAY.

1 MR. JARMUTH: YOUR HONOR, CAN I TAKE A
2 FIFTEEN MINUTE BREAK? MY
3 VOICE IS CRACKING.

4 THE COURT: SURE. LET'S TAKE ABOUT A
5 TEN MINUTE BREAK AND COME
6 BACK.

7 MR. JARMUTH: YES, SIR. THANK YOU.

8 *****OFF THE RECORD*****
9 ON THE RECORD.

10 THE COURT: ARE YOU READY?

11 (MR. JARMUTH CONTINUES TESTIFYING.)

12 Mr. Jarmuth: In my original Complaint
13 among the other things I asked The Court to
14 declare on was the rights and obligations
15 from the South Carolina Non-profit Act as it
16 applies to the rights and obligations and
17 duties of the homeowners and the Board, so
18 there's some particular statutes I'm asking
19 The Court to interpret as it applies to the
20 Board. The first one is Section 33-31-205,
21 "Organization of Corporation", Subsection
22 (a). It says, "After Incorporation: If
23 initial directors are not named in the
24 articles," and the Articles of Incorporation
25 of the IHOA did not name any directors, just

1 named the incorporator, it says, "The
2 incorporator or incorporators shall hold an
3 organizational meeting at a call of a
4 majority of the incorporators," and it says,
5 "to elect directors and complete the
6 organization of the corporation; or to elect
7 a Board of Directors who shall complete the
8 organization of the corporation." And the
9 word, "Elect," is right there in the
10 statute, so this is another reason, another
11 problem I'm having, and the question is, for
12 declaration, does 33-31-205 invalidate the
13 acts of the Board through 2006 or through
14 2007? To complete the organization of the
15 corporation means to adopt bylaws. The law
16 makes it clear that the bylaws be agreed
17 upon prior to or at the initial meeting or
18 by the members.

19 Section 33-31-206, what
20 is the meaning of the statute? It says,
21 "The incorporator or Board of Directors of a
22 corporation shall adopt bylaws for the
23 corporation." And that clearly excludes R.
24 Scott Pyle in the covenants, 'cause he was
25 not the incorporator or a member of the

1 Board.

2 Now, 33-31-304, ultra
3 vires, says that, "A corporation's power to
4 act may be challenged by a proceeding
5 against an incumbent or former directors,
6 officers, employees, or agents of the
7 corporation. The proceeding may be brought
8 by -- derivatively." And my complaint says
9 this is a derivative action.

10 Now, regarding the
11 requirements of distinct names in the South
12 Carolina Non-profit Corporation Act, The
13 Court is asked to declare that distinctions
14 of names between alternative candidates for
15 identification in a contract is significant,
16 legally significant, even down to the Inc.
17 versus LLC, because the Secretary of State
18 records many, many corporations who are
19 distinct only between LLC or Inc. or other
20 alternatives or the word, "Company," many of
21 them. And that's in section 33-31-401,
22 "Corporate Name." The corporate name must
23 be distinguishable upon the records of the
24 Secretary of State from the name of any
25 other corporation or partnership doing

1 business in South Carolina. A corporation
2 may use a name that is not distinguishable
3 only if the other corporation consents to
4 its use in writing."

5 Section 33-31-701 reads
6 about annual and regular meetings, "That a
7 corporation with members shall hold a
8 membership meeting annually at a time stated
9 in or fixed in accordance with the bylaws."
10 And secondly, it says, "An election shall be
11 held." And The Court is asked to declare
12 whether this statute voids the acts of the
13 prior Boards and voids their status as
14 elections, as Board members, and whether the
15 IHOA was in defiance of the law as an entity
16 up until 2007.

17 Now, section 33-31-804,
18 "Terms of directors generally," it says,
19 "The term of a director filling a vacancy in
20 the office of a director elected by members
21 expires at the next election of directors by
22 members." This is significant, because
23 since 2007, we've had a plague of people
24 elected and then they resign a week, two
25 weeks, a month later, someone is appointed

1 to replace them, and then they serve for
2 three years, but the statute seems to read
3 that within a year from now when there's a
4 next meeting of the members, they no longer
5 serve. That vacancy must be held by
6 election, meaning an interim director can be
7 appointed, but only until the members have
8 the next opportunity to elect the
9 replacement and to serve the duration of the
10 term. And The Court is asked to declare
11 that any officer of the Board, any member of
12 the Board of Directors since 2007, who
13 served beyond the following election, was in
14 office illegally and any action involving
15 him was ultra vires, any action which
16 depended on his vote was ultra vires, as
17 well, and The Court is asked to enter an
18 order directing that if a member resigns,
19 his replacement must be elected at the next
20 annual meeting.

21 Now, I read a list of
22 directors who appeared and were removed by
23 the, by the developer. The bylaws, Section
24 III says, "Removal: Any director may be
25 removed from the Board by a majority vote of

1 the members of the Association." That's the
2 only condition of removal. "In the event of
3 death or resignation or removal, such
4 director's successor shall be elected --
5 selected by the remaining members of the
6 Board and shall serve for the unexpired term
7 of such director's predecessor," but that
8 conflicts with the statute, which says the
9 successor must be elected at the next
10 election, so I would ask The Court to
11 declare that part of Section III of the
12 bylaws allowing to serve the remaining term
13 is invalid because it's preempted by the
14 statute; and furthermore, that the removal
15 of directors by the developer was an illegal
16 act, they were improperly removed from
17 office.

18 List of voters. In the
19 evidence are at least three letters I wrote
20 to the IHOA asking for the list of voters so
21 I could communicate with the other
22 homeowners regarding homeowner matters and
23 particularly regarding forthcoming
24 elections. The IHOA Board refused to give
25 me the list of voters. This is an explicit

1 provision and I minced it out in my
2 Complaint, and Section 33-31-720, "Members'
3 list for voting", provides otherwise. And
4 in considering this, I ask The Court to
5 think about how to handle this, because they
6 had counsel available, and I hold that the
7 refusal to provide me the list of owners is
8 not only illegal, it was done for a
9 malicious and improper purpose, and it
10 violates the implied covenant of good faith
11 and fair dealing, and I mentioned the
12 covenant, a violation of the covenant of
13 good faith and fair dealing in my Complaint
14 as a cause of action. It says, "The
15 corporation shall prepare an alphabetical
16 list of the names of all of its members who
17 are entitled to notice of the meeting with
18 addresses and other contact information,"
19 and refusal to provide it has provided an
20 unfair situation, because the Board gets to
21 communicate with the members, but anyone who
22 disagrees is disallowed, and I'd like The
23 Court to put in the order that on contempt
24 of Court the, the Board, whichever HOA --
25 the Association shall liberally provide the

1 list of voting and the IHOA itself, since
2 it's a non-profit corporation, shall also
3 liberally construe the statute and provide a
4 list of members for voting. The statute
5 says, among other things, "The list of
6 members must be available for inspection by
7 any member for the purpose of communicating
8 with other members concerning meetings."
9 And I was prevented from doing so.

10 In discovery, I asked for
11 that list and I was never provided a list in
12 discovery, either, so I have a alternative
13 reason, bases, to get the list both as a
14 supposed IHOA member and as a Plaintiff.
15 These demands were made July 24th, 2008,
16 April 28th, 2009, December 3rd, 2009,
17 Plaintiff's 333, 358 and 361, plus the
18 discovery demand.

19 By the way, Your Honor,
20 at a hearing in 2009, I believe it was March
21 2009 or maybe April, I believe this issue
22 was a motion to compel before The Court, and
23 the counsel for the other side said ---
24 MS. GOLDING: YOUR HONOR, I THINK THAT'S
25 COMPLETELY IMPROPER. IF

1 THERE'S A WRITTEN ORDER OF
2 THE COURT, THAT'S SOMETHING
3 ELSE, BUT NOT ---

4 THE COURT: I AGREE. I'M GOING TO
5 OVERRULE YOU ON THAT ONE.
6 GO ON TO SOMETHING ELSE.

7 (MR. JARMUTH CONTINUES TESTIFYING).

8 Mr. Jarmuth: Okay. The next issue is
9 Board approval of contracts and other
10 decisions made in secret with no record of
11 an approving vote. In examining the minutes
12 of the Board of Directors, there isn't a
13 single instance before 2007, and I believe
14 probably before 2008 -- well, actually, I
15 think Bill Freiboth, to his credit, I saw
16 plenty of decisions about contracts in the
17 minutes of the Board before that. I failed
18 to find any under the period when Rosemary
19 Toth, the Defendant, was president of the
20 Board, that and back before 2007 where any
21 contract was approved and reflected in the
22 minutes of the Board of Directors, and the
23 statutes are very clear that decisions of
24 the Board has to be made openly and
25 reflected in the minutes of the Board of

1 Directors. It's -- I note that in the
2 statutes and in the bylaws the president of
3 the Association has no more power than any
4 Board member at large. His duties are
5 described as sharing the meetings and
6 setting agendas, period.

7 In many of the minutes,
8 and The Court is free to read them, it says,
9 "The President, Toth, made this decision,
10 made that decision," never says the Board
11 voted on it or it was presented to the Board
12 for decision, and this particularly goes to
13 the contracts with Defendant K.A. Diehl as
14 management, the contracts with the cable
15 company, the contracts for grounds and
16 maintenance, the Waste Management contract;
17 matter-of-fact, many other contracts. Those
18 are the ones which particularly come to
19 mind, and the majority of the money. In
20 particular, there's the golf course
21 contract, the golf course agreement. That
22 contract, according to minutes, was never
23 submitted to the Board for a vote.

24 Coming to this Complaint,
25 I deposed Defendant Toth, and I asked her to

1 explain why I was unable to find in the
2 minutes the approval to spend the money to
3 have ---

4 MS. GOLDING: YOUR HONOR, IF HE'S GOING
5 TO TESTIFY AS TO WHAT'S IN
6 A DEPOSITION, HE NEEDS TO
7 JUST INTRODUCE THE
8 DEPOSITION.

9 THE COURT DO YOU HAVE THE DEPOSITION
10 WITH YOU?

11 MR. JARMUTH: THE DEPOSITION HAS BEEN
12 FILED WITH THE COURT.

13 THE COURT: I'LL READ THOSE. I TOLD
14 YOU THAT EARLIER.

15 MR. JARMUTH: OKAY. I'D ASK THE COURT TO
16 LOOK AT MY QUESTION
17 REGARDING THE APPROVAL OF
18 EXPENDING MONEY FOR THE
19 CORRESPONDENCE RELATING TO
20 ME IN 2009, WITH BUILDING
21 THE WEBSITE RELATING TO ME
22 AND SHARING THE CONTENTS OF
23 EMAIL RELATING TO ME, AND
24 LOOK PARTICULARLY AT
25 DEFENDANT TOTH'S ANSWER TO

1 THAT.

2 THE COURT: ALL RIGHT. I'LL DO THAT.

3 (MR. JARMUTH CONTINUES TESTIFYING).

4 Mr. Jarmuth: The law, Section 33-31-

5 821, "Action Without Meeting." And again,

6 to Mr. Freiboth's benefit, I started seeing

7 action without meeting notices in the

8 minutes of the Board of Directors. It says,

9 "Unless the articles or bylaws provide

10 otherwise," and they don't in this case,

11 "action should be taken at a Board of

12 Directors meeting, may be taken without a

13 meeting if the action is taken by all

14 members of the Board. It must evidenced by

15 everybody signing off, consenting to the

16 action, signed by every director and

17 included in the minutes, filed with the

18 corporate records reflecting the action

19 taken." And it says furthermore, (b), and

20 this is very important, that, "Action taken

21 under this section is effective only when

22 the last director signs the consent." And

23 prior to 2007, every action was taken

24 outside the minutes, and there's no record

25 in the minutes of any directors signing a

1 consent, let alone all of them signing a
2 consent. And in 2000 -- 2008, '7, '8, there
3 were many more actions taken, like every
4 contract, and there's nothing in the minutes
5 saying that the directors consented to that.

6 "Committees." One
7 question is, is the ARB a committee of the
8 HOA, whether committees must have Board
9 members on them, whether their meetings and
10 deliberations must be open, especially
11 absent, a demand from a effected homeowner
12 for privacy, and what, what requirements
13 apply as far as creating, maintaining, and
14 making available minutes of committee
15 meetings and actions? The HOA has told me
16 and put out in writing that the ARB is not a
17 committee of the HOA even though the ARB
18 gets all its resources, money, use of
19 facilities bought by the HOA, contracted, to
20 include attendance by K.A. Diehl employees
21 at ARB meetings paid by the HOA. And the
22 meetings, I attended three of them, at
23 least, on ARB issues, at least two of them
24 were attended by Julie Case, and the third
25 one was attended by another K.A. Diehl

1 employee, paid for by the IHOA under its
2 contract. The ARB has no other source of
3 money. None of the committees, including
4 the ARB, have a Board member as a voting
5 member of the committee. The bylaws say the
6 homeowner may be a Board member or a
7 committee member but not vote, and every
8 committee deliberates in secret, they do not
9 allow homeowners to attend, observe, or
10 come. I, personally, asked to attend ARB
11 meetings and I wasn't even allowed to
12 observe or listen in when they deliberated
13 about my applications. I was told to leave
14 the room and told I could not attend to
15 listen in on ARB decision-making, which
16 presumably, I have a personal interest in,
17 because I have a right to state whether such
18 an application was a violation of the
19 covenants and provide input, and I have a
20 right to sue out a violation of the
21 covenants, but I was excluded, as every
22 other homeowner from meetings, at least of
23 the ARB, and it looks like from all the
24 other committees, which were probably held
25 in private, and none of the committees seem

1 to keep permanent minutes, and so I asked
2 for them. I have found the actual minutes.
3 There's a partial record of ARB decisions,
4 but nothing about votes or what went on.
5 Now, Bob German at my ARB
6 meeting for my play set was, at the same
7 time, an ARB member and a Board of Director
8 member recently appointed, I can't remember
9 appointed or voted. But the bylaws say, "In
10 no event shall more than one office be held
11 by each unit." So he probably was violating
12 the bylaws, but that's contradicted by
13 another problem, 'cause the statute is
14 contradictory. 33-31-825, "Committees:
15 Unless prohibited or limited by the articles
16 or bylaws," and it seems to be a problem, "a
17 Board of Directors may create one or more
18 committees of the Board and appoint members
19 of the Board to serve on them." And here is
20 the payload: "Each committee shall have two
21 or more members of the Board of Directors to
22 serve at the pleasure of the Board." So it
23 appears to me no committee is properly
24 constituted, unless it includes at least two
25 members of the Board, and no committee, even

1 to today, has even one member of the Board
2 as a voting member, and The Court is asked
3 to resolve the conflict between the bylaws
4 and the statute. I think the statute
5 preempts.

6 Now, I have been, I have
7 been, as a homeowner, refused permission to
8 see ARB minutes and material, and again,
9 observe, prevented from observing. "Section
10 33-31-820 through 824, which govern
11 meetings, actions without meetings, notice
12 and waiver of notice, and quorum and voting
13 requirements of the Board, apply to
14 committees of the Board and their members as
15 well." So I believe that statute which I
16 read forces the committees of the
17 association, in general and the IHOA in
18 particular, to have open meetings, to have
19 permanent records and allow members to
20 examine those, those minutes and to sit in
21 on deliberations, because the only occasion
22 which seems to me to allow closed meeting is
23 when you have a court recognize an occasion
24 of privilege, and since these meetings are
25 held among homeowners without a priest or

1 attorney present, I don't see the privilege
2 existing, especially when the homeowner like
3 me says, "I don't see -- the privilege
4 belongs to me if it's privacy matters and
5 I'd like to attend."

6 The statutes regarding
7 the Board says that meetings must be
8 announced, records be kept and actions
9 perpetuating minutes, which would be
10 retained and made public. These standards
11 by this other statute apply to committees,
12 but they're not being followed, and I'm
13 asking The Court for a declaratory judgment
14 that they must be followed and an order
15 compelling them be followed.

16 Now, in talking about the
17 ARB thing, the answer given was that the
18 material in the submission is secret and
19 privileged, but if we look at the ARB
20 application, it has a plat of a lot, which
21 is a matter of public record in the deed
22 book or the plat book. It has a statement
23 of what they want to build, which has to be
24 constant with the covenants. There's
25 nothing secret about that. When they build

1 it, I can look at it, see it. I don't see
2 anything which talks about privacy. There's
3 nothing in an ARB application which is
4 secret. It has the homeowner's address,
5 which I can get from the Recorder of Deeds
6 or the tax records, and supposedly from the
7 list of voters if they gave it to me.

8 Your Honor, as a
9 practical matter, I say I don't see why
10 committees shouldn't allow homeowners to be
11 there to lend their particular opinions,
12 expertise and knowledge to the proceedings,
13 because in appointing members to the Board
14 or the committees, I am not aware of any of
15 them being asked to declare their special
16 expertise or any special expertise being
17 actually held by the homeowners other than
18 them wanting to serve. So there's a lot of
19 room for homeowners, in general, to come and
20 lend expertise and approve the decision-
21 making quality of these committees.

22 Regarding the ARB
23 meetings, since the ARB has not kept minutes
24 available to members of decisions,
25 homeowners who have a right to enforce the

1 covenants have no way of knowing whether
2 something is put in was put in by a
3 homeowner without approval of the ARB or
4 with approval, so it's interfering with our
5 right to, to enforce the covenants.
6 Question: is the ARB a committee of the HOA?
7 On May 5th, 2010, my 370 on page two,
8 paragraph four, the Board minutes stated it
9 listened to reports of its committees, the
10 first of which was the ARB. Again, the IHOA
11 Board called the ARB a committee of the
12 Board. On page three, paragraph, VI(b),
13 Defendant Toth as President of the IHOA
14 announced that she, as President of the HOA
15 without action in the minutes, had appointed
16 Jane Bowers to the ARB and was asking for
17 more volunteers for her to appoint. Again,
18 the appointment was not reflected in the
19 minutes of the Board. It was, by her own
20 statement in the minutes, done by her on her
21 own, and it said the Board was appointing
22 ARB members, leading you to conclude that
23 clearly it's a committee of the Board.
24 On June 10th, 2008, my
25 329, page three, Diehl's employee, Beckie

1 Abel, reported to the HOA Board on behalf of
2 the ARB and has asked the HOA Board to
3 appoint two ARB members. The minutes noted
4 the HOA Board was considering reviewing
5 appointing every ARB violation -- let me
6 rephrase that. The minutes of the June
7 10th, 2008 Board of Directors meeting said
8 that the Board policy was now going to be to
9 review and approve every ARB violation
10 letter prior to Defendant K.A. Diehl mailing
11 them on behalf of the ARB. If the ARB is
12 not a committee of the Board, how can the
13 Board tell the ARB, "You can't send a
14 violation letter out, we'll send it out,
15 we'll approve or disapprove those letters?"
16 And The Court is asked, is invited to look
17 at the many IHOA Board minutes and you see
18 consistently, over and over, ARB's appearing
19 and talking under the category, committees,
20 committee reports.
21 My September 2010 fence
22 request hearing was heard by the ARB in the
23 HOA amenity center which is common property
24 and belongs to the IHOA, as was the 2011
25 palm tree bed extension. So the proceedings

1 of the ARB are in IHOA property.

2 The Court is also asked
3 to inspect the covenants and come to the
4 same conclusion I did that there's nothing
5 in the covenants, and if it was, I'd cite
6 it, that gives the ARB the right to act on
7 its own, to compel obedience to the
8 provisions of the covenants. The ARB does
9 not own any property in the PUD, and the
10 covenants are not indexed to the ARB, and
11 the enforcement rights of the covenants say
12 only homeowners or the Association may
13 enforce the covenants, never mentioned the
14 ARB.

15 Now, reviewing a
16 multitude of court decisions, I have never
17 found a single case where a court has
18 allowed an ARB to come in as a Plaintiff to
19 enforce covenants, and in no case found a
20 court enforcing an ARB rule or guideline.
21 It's always been, "What do the covenants
22 say?" In every instance, the Association
23 Board has been the Plaintiff acting in the
24 name of the Association.

25 Going back to Arcadian

1 Shores HOA v. Cromer which I cited before,
2 The Court of appeals held that ARB
3 regulations could not independently restrict
4 the free use of property and has only
5 explicit provisions in the covenants, not
6 regulations, which control, implied that
7 ARBs have no independent authority to
8 control homeowner behavior in areas subject
9 to covenants.

10 Moving on to a different
11 area of law, "Standards for directors." The
12 question is, Section 33-31-830, general
13 standards for directors says what
14 constitutes good faith and the proper
15 standards of behavior for directors, and I
16 would ask The Court as I'm going through
17 these to say that if a act of a director
18 violated it, the acts of the Board was ultra
19 vires. It says, "That the acts of the
20 directors must be done in good faith, with
21 the care an ordinary prudent person in a
22 like position would exercise under similar
23 circumstances; and in discharging his other
24 duties, he can rely on officers or employees
25 who the director reasonably believes is

1 reliable and competent in the matters
2 presented." Well, if the committee
3 appointed by the Board, based upon their
4 expertise, makes a recommendation to the
5 contrary, I would ask The Court to declare
6 that he is not the -- the Board and the
7 member is not acting in good faith, because
8 he's acting contrary to what the statute
9 says. He can depend on the opinion offered
10 by his expert Board, and if the expert
11 committee, rather, gives a contrary opinion
12 to relate the director is not acting in good
13 faith or as a prudent person, and it
14 explicitly includes advice from a committee
15 of the Board of which the director is not a
16 member and as to matters within the
17 jurisdiction of the committee, particularly
18 grounds and maintenance committees, and I
19 plan to bring in buildings and grounds or
20 former buildings and grounds members to
21 testify as witnesses.

22 I'd also ask The Court to
23 declare that a Board member or a Board is
24 not acting in good faith but makes a
25 decision which the bylaws, covenants, or the

1 Non-profit Corporation Act prohibit, which
2 is not documented as a decision within the
3 minutes of the Board or which is a
4 disbursement of money for purposes not
5 specified in the covenants as purposes of
6 the assessments.

7 Now, we get to a really
8 important one, "Conflict of interest," 33-
9 31-831. "A conflict of interest transaction
10 is a transaction with the corporation in
11 which a director of the corporation has a
12 direct or indirect interest." For purposes
13 of this section, a director of the
14 corporation has a indirect interest in a
15 transaction if another entity in which the
16 director has a material interest is a party
17 to the transaction. Why is this important?
18 Well, first of all, I noted that every
19 director until 2007 was an employee of a
20 developer/builder or the golf course. There
21 is before us a golf course agreement. At
22 the time, and we'll go into this later, R.
23 Doug Brown, Doug, Doug Brown, excuse me, was
24 a employee of Horton and he was doing
25 various functions for them, and then the

1 golf course director, obviously he was an
2 employee of the golf course, and in that
3 transaction, as I'll explain further, Doug
4 Brown got a, got a free golf course
5 membership as a consequence of him agreeing
6 to that agreement. Horton got tens of
7 thousands of dollars of free golf course
8 memberships. The golf course got a
9 reduction of assessments valued at hundreds
10 of thousands of dollars, and the -- and in
11 exchange, the IHOA got a piece of property
12 which its declarations to Horry County said
13 it was worth five thousand dollars,
14 forgiving at that time, maybe fifty-five
15 thousand dollars of debt from the golf
16 course. I'll go into the parking lot, I'd
17 like to talk about parking lots, but this is
18 an example of a conflict of interest, the
19 conflict of interest in which the developer
20 appointed Board gave itself money or gave
21 its employee money for making decisions
22 which actually cost the HOA hundreds of
23 thousands of dollars, and not looking up to
24 the transaction, I would like The Court to
25 declare that any decision of the Board where

1 the director got personal benefit or its
2 employee got benefit is, by itself on its
3 face, a conflict of interest by the statute
4 and void.

5 There is a decision of
6 the Board which is in the minutes. It's
7 called distribution of Central Electric
8 assets. Central Electric -- first of all, I
9 should say that the covenants require that
10 all utilities be underground, has no
11 exceptions, and presumably, the Board of
12 Directors of the HOA is supposed to act in
13 case a developer or a builder in building
14 additional houses within the PUD or the area
15 at least controlled by the covenants tries
16 to have utilities above ground. I would
17 suggest that any action by the Board of
18 Directors which authorizes above ground
19 utilities is by direct application of the
20 covenants ultra vires on its face.

21 In 2010, the Board,
22 including the Defendant Rosemary Toth,
23 negotiated with Central Electric. Central
24 Electric threatened to use eminent domain to
25 acquire the area which is not even in the

1 PUD. It was the front entrance, but it
2 become owned by the HOA.
3 MS. GOLDING: YOUR HONOR, I'M GOING TO
4 MAKE AN OBJECTION. THAT'S
5 HEARSAY. THERE'S
6 ABSOLUTELY NO BASIS THAT
7 THERE WAS ANY THREAT OF
8 CONDEMNATION.
9 MR. JARMUTH: YOUR HONOR, ---
10 THE COURT: WAIT JUST A MINUTE.
11 MR. JARMUTH: --- I WENT THROUGH THESE
12 MINUTES ---
13 THE COURT: WAIT JUST A MINUTE.
14 MR. JARMUTH: I WENT THROUGH THESE
15 MINUTES ---
16 THE COURT: WAIT JUST A MINUTE.
17 MR. JARMUTH: YES, YOUR HONOR.
18 THE COURT: MS. GOLDING, I'M GOING TO
19 LET HIM CONTINUE. I THINK
20 YOU'RE PROBABLY RIGHT, BUT
21 ---
22 MS. GOLDING: YES, SIR.
23 THE COURT: --- TRY TO WIND IT UP,
24 PLEASE, BECAUSE YOU ARE
25 GETTING ON PRETTY THIN ICE.

1 (MR. JARMUTH CONTINUES TESTIFYING) .

2 Mr. Jarmuth: I'll, later on, introduce
3 evidence. It's right there in the evidence
4 book that says a meeting of the Board --
5 actually, a special meeting of the
6 membership was called in 2010 to hear the
7 Board of Directors announce their decision
8 to approve Central Electric run utilities
9 above the road, above ground, and in
10 exchange for this, they're going to collect
11 eighty-three thousand dollars, which the
12 minutes of the Board said every member of
13 the Board agreed to in a vote, and it said
14 they also agreed to make a distribution.

15 Section 33-31-1301

16 addresses prohibited distributions. It
17 says, "Except as authorized by 33-31-1302, a
18 non-profit corporation may make no
19 distributions." The IHOA, in the minutes of
20 that meeting, said they were distributing
21 seventy-five thousand dollars, and they did,
22 in fact, do that to the members. The
23 covenants further say that no homeowner has
24 an equitable interest or any property
25 interest at all in a homeowner property, an

1 HOA property, rather, or in common areas, so
2 they were not giving anything up, was
3 selling anything for which they were
4 entitled to get a payment of money. The
5 HOA, in its name, owned title at the time to
6 the area over which Central Electric built
7 its utility lines. Central Electric did not
8 condemn the area. This was a, maybe threat
9 -- I don't know if it was a threat of
10 condemnation, but no condemnation actually
11 occurred.

12 MS. GOLDING: YOUR HONOR, I'M GOING TO
13 MAKE AN OBJECTION AGAIN.
14 THERE WAS NEVER A THREAT OF
15 CONDEMNATION. THAT'S JUST
16 PLAINLY HEARSAY.

17 THE COURT: WELL, THAT'S SPECULATIVE.
18 GO AHEAD AND FINISH IT UP,
19 THOUGH.

20 (MR. JARMUTH CONTINUES TESTIFYING).

21 Mr. Jarmuth: Your Honor, the evidence
22 there has letters from the Central Electric
23 where they threatened condemnation, and Mike
24 Butryn back there can testify and I'll
25 testify, I'm testifying now that on the

1 exact -- at a special meeting when people
2 asked what the alternatives are and.
3 Defendant Toth said that if we didn't do it,
4 they were going to condemn the land and get
5 it, anyway, and the correspondence they put
6 out, which is in the evidence, said if they
7 didn't do it, it was going to be condemned.

8 1302, "Authorized
9 distributions: A corporation is allowed to
10 distribute money if the corporation is
11 dissolved or if it sells things. Now, if
12 it's a mutual benefit corporation which
13 allows purchase of memberships after the
14 purchase is completed, but it's irrelevant,
15 it's not a mutual benefit corporation which
16 sells memberships, so the only provision for
17 distributing money is if the corporation is
18 dissolved, and it wasn't.

19 Now, section 33-31-833
20 says, "Liability for unlawful distribution,"
21 and the corporation has not been dissolved,
22 no one had equitable rights for that.
23 Liability for unlawful distribution, "A
24 director who votes for or assents to a
25 distribution made in violation of this

1 chapter is personally liable to the
2 corporation for the amount of the
3 distribution that exceeds what could have
4 been distributed without violating the
5 chapter." And this chapter says nothing
6 could be distributed, and the minutes of the
7 special meeting of the members said every
8 director assented to it and every director
9 that had them by name agreed to the
10 distribution of seventy-five thousand
11 dollars. And The Court is asked to declare
12 that any director who it could be showed to
13 have voted for distribution prohibited by
14 33-31-1301 is liable as a matter of law
15 under that statute, which means by the
16 minutes of that meeting every director of
17 the Board is collectively liable for that
18 seventy-five thousand dollars.

19 Now, there's a problem of
20 ambiguity in the statutes and the bylaws I'm
21 asking The Court to resolve. The statutes
22 talk about the dues of the Association and
23 the bylaws talk about the assessments. They
24 come to the same thing. It's both -- in
25 talking about the dues, the statutes

1 uniformly talk about this being the money to
2 be used by the non-profit corporation to run
3 its operations, and the bylaws say the
4 assessments are used to run the operations
5 of the Association, and I ask The Court to
6 declare that the use of the word, "dues," in
7 the statutes and assessments and the bylaws
8 are one and the same, and therefore the
9 provisions in the statutes relating to dues
10 also apply to the use of assessments by a
11 non-profit corporation.

12 In 2003, getting back to
13 the golf course thing, Doug Brown at the
14 time altered the assessment for the golf
15 course. The covenants say the golf course
16 is assessed the same amount as fifty units,
17 as fifty times the assessment of those on a
18 single-family homeowner, such as myself.
19 That clearly is an assessment. It says,
20 furthermore, that the controlling amount is
21 the amount which is imposed on a single-
22 family homeowner, because the golf course
23 then multiplied by fifty, so you get to the
24 amount owed by the golf course by looking at
25 the amount owed by the single-family

1 homeowner. Clearly, if the golf course pays
2 less and the outlay of the association is
3 unchanged, or to put it differently, when
4 you have an association budget, they first
5 come up with how much money they want to
6 spend and then they divide that by the
7 number of units, then bingo, that comes out
8 to that users' assessments. Well, if the
9 golf course is paying less, my burden will
10 be increased, the burden on the use of my
11 property, and the covenants say the burden
12 -- nothing will be done which increases the
13 burden on the use of my property without a
14 consent of the homeowners. And the statutes
15 say -- well, actually, the uniform case law
16 says covenants may not be changed to
17 increase the burden on homeowners without
18 their consent. Well, here we go, that
19 section 33-31-1021, "Amendment of the bylaws
20 by directors and members. An amendment to
21 the bylaws which relates to the dues
22 required for membership and which
23 establishes or changes an amount for, or
24 method of computation of, dues, must be
25 approved by the members." The members were

1 never asked to change the method of
2 computation of dues for the golf course or
3 the method of computation of dues for the
4 homeowners. So here we have, not an
5 amendment to the covenants, but a contract
6 outside the covenants which was not in the
7 minutes of the Board which changed the
8 method of assessing the golf course, and I'd
9 like The Court to declare that no provision
10 in the covenants which talks about how much
11 an entity subject to the covenants will pay
12 is valid unless it was agreed to by the
13 members, just like the statute says.

14 Getting back to that
15 Capital Electric thing, section 33-31-1202
16 says that the only thing which may be sold
17 is assets used in the normal course of
18 business; for example, like running a gift
19 shop, that's the normal course of business.
20 It says, "Assets not used in the normal
21 course of business can be approved if the
22 proposed transaction is authorized by
23 Subsection (b)," and the statutes of Section
24 (b) says this requires a greater vote -- it
25 requires a vote by the Board and by the

1 membership by two-thirds of the votes cast
2 or a majority of the voting power, whichever
3 is less, unless the bylaws says it needs
4 more, and no vote of the membership was
5 taken. So the sale of whatever the Central
6 Electric money was for, the rights to run
7 power lines over there violates 33-31-1202,
8 because whatever that was, was sold without
9 vote of the membership, and I sat there in
10 that meeting and various people asked for a
11 vote, and Director Toth refused to hold a
12 vote.

13 Now, let's talk about
14 "Permanent records," 33-31-1601(a).
15 Included in the permanent records of the
16 corporation are the minutes of meetings, all
17 -- excuse me, the minutes of all meetings,
18 and we've seen elsewhere that this also
19 applies to committees, but there aren't any
20 minutes of committees, and it says that,
21 under permanent records, you must have a
22 record of all actions taken by committees,
23 and that's explicitly in the statute, and
24 I'd like The Court to declare an order that
25 in the future that statute will be strictly

1 followed. I think it's a waste of time to
2 question the actions of any committee,
3 except for the ARB. I'd like to challenge
4 the action, the actions all the way back of
5 the ARB, if there is an ARB, because there
6 is no record of actions taken by that
7 committee in violation of 33-31-1601(a),
8 permanent records. I'm done with that, your
9 honor.

10 MS. GOLDING: NO QUESTIONS.

11 THE COURT: ALL RIGHT.

12 MS. GOLDING: I CALL MR. SULLIVAN,
13 CHRISTOPHER SULLIVAN, TO
14 THE STAND.

15 THE COURT: IS THIS YOUR OUT OF
16 SEQUENCE WITNESS?

17 MS. GOLDING: YES, SIR, YOUR HONOR.

18 THE COURT: ALL RIGHT. COME DOWN,
19 PLEASE, SIR, AND WE'LL TAKE
20 THIS WITNESS OUT OF
21 SEQUENCE.

22 ****OFF THE RECORD****

23 (ON THE RECORD.)

24 MR. JARMUTH: THE STATEMENT IN THE
25 MATERIAL PROVIDED TO ME BY

1 THE IHOA LEADS ME TO
2 BELIEVE THAT MR. SULLIVAN
3 IS BEING ASKED TO TESTIFY
4 AS AN EXPERT WITNESS, NOT
5 AS A FACT WITNESS, AND IT'S
6 MY BELIEF THAT EXPERT
7 WITNESSES SHOULD BE USED IF
8 IT'S NOT A CAUSE OF ACTION
9 BROUGHT BY THE DEFENDANT,
10 BECAUSE THEY HAVE NOTHING
11 STATED IN THE COMPLAINT
12 SAYING THEY'RE TRYING TO
13 GET ANYTHING DONE BY
14 BUILDINGS AND GROUNDS. THE
15 ONLY CAUSE OF ACTION IS MY
16 CAUSE OF ACTION RELATING TO
17 BUILDING AND GROUNDS AND
18 SPENDING MONEY, THEREFORE
19 IT'S MY BELIEF THAT THE
20 EXPERT WITNESS PROBABLY
21 SHOULD BE USED KIND OF LIKE
22 AS A REBUTTAL TO MATTERS I
23 AM PRESENTING. I'M NOT
24 HAVING A CHANCE TO DEVELOP
25 MY CASE AND PRESENT BEFORE

1 HIM MY WITNESSES WHICH WILL
2 TALK ABOUT BUILDINGS AND
3 GROUNDS AND THE MAINTENANCE
4 OF A PROPERTY. I BELIEVE
5 IT'S IMPORTANT BEFORE THE
6 COURT LISTENS TO INTERPRETS
7 WHAT HE SAID THAT THE
8 MATTER BE PROPERLY
9 DEVELOPED, PLUS THE OTHER
10 THINGS. MR. SULLIVAN WAS
11 SERVED A SUBPOENA ONLY, I
12 BELIEVE, A DAY OR TWO AGO,
13 AND SO, AGAIN, JUDGE JOHN
14 HAD TOLD EVERYBODY,
15 UNAMBIGUOUSLY, IN JANUARY,
16 "IF YOU HAVE ANY PROBLEM
17 WITH THE SCHEDULING OF YOUR
18 WITNESS OR THE PRESENTATION
19 OF YOUR WITNESS, HIS
20 ATTENDANCE, INCLUDING
21 VACATIONS OR ILLNESS," HE
22 TOLD US, "YOU MUST DEPOSE
23 THEM OR THE PROBLEM IS
24 YOURS." SO BRINGING HIM AT
25 A DIFFERENT TIME IS

1 CONTRARY TO THE CLEAR
2 MEANING THAT JUDGE JOHN
3 SAID, AND AS A RESULT OF
4 THAT, I DEPOSED MANY, MANY
5 PEOPLE. I THINK I HELD
6 ABOUT TEN DEPOSITIONS, SO I
7 WAS NOT GOING TO FALL -- OF
8 JOHN JUDGE JOHN'S ORDER;
9 FOR EXAMPLE, TODAY AND
10 TOMORROW, I'M HAVING AN
11 ISSUE WITH MR. ASTORINO
12 WHO, THE LAST I HEARD, WAS
13 UP IN SLOAN-KETTERING IN
14 NEW YORK BEING TREATED FOR
15 CANCER AND OTHER ISSUES,
16 AND I'VE GOT ANOTHER
17 WITNESS WHO'S AT WORK TODAY
18 AND IT'S MY PROBLEM IF I
19 WON'T GET HIM, BECAUSE I
20 DIDN'T MANAGE TO GET HIM
21 DEPOSED. SO I BELIEVE THAT
22 MCNAIR WAS ON FAIR WARNING
23 FROM JUDGE JOHN TO DEPOSE,
24 HAVE AMPLE OPPORTUNITY TO
25 DEPOSE HIM AND THEY CHOSE

1 NOT TO DEPOSE HIM AND THEY
2 HAD OPPORTUNITY TO TALK TO
3 HIM WELL IN ADVANCE TO TELL
4 HIM WHEN THE TRIAL HAD
5 MOVED TO AND APPARENTLY
6 ONLY CONTACTED HIM WITHIN
7 THE LAST WEEK TO DISCOVER
8 THE PROBLEM, SO THIS IS A
9 PROBLEM THEY BROUGHT ON
10 THEIR-SELVES.
11 THE COURT: ALL RIGHT. THANK YOU FOR
12 YOUR OBJECTION. I'LL NOTE
13 THAT. SINCE WE DON'T HAVE
14 A JURY PRESENT, I HOPE I'M
15 SMART ENOUGH TO KEEP IT ALL
16 STRAIGHT. GO AHEAD.
17 MS. GOLDING: THANK YOU.
18 DIRECT EXAMINATION
19 BY MS. GOLDING:
20 Q: Mr. Sullivan, would you please give us your
21 full name?
22 THE COURT: HOLD, WAIT, WAIT, WAIT.
23 MS. GOLDING: I'M SORRY.
24 CHRISTOPHER SULLIVAN, AFTER HAVING BEEN CALLED TO
25 THE STAND AND DULY SWORN, TESTIFIED AS FOLLOWS:

1 COURT REPORTER: WOULD YOU STATE YOUR NAME
2 AND SPELL YOUR LAST?
3 MR. SULLIVAN: MY NAME IS CHRIS SULLIVAN.
4 THE LAST NAME IS S-U-L-L-I-
5 V-A-N.
6 MS. GOLDING CONTINUES:
7 Q: Mr. Sullivan, you've already stated your name.
8 Can you tell us where you live, Mr. Sullivan?
9 A: I live in Socastee area.
10 Q: And how long have you lived in the Horry
11 County area?
12 A: We've been here for over twenty-five years
13 now.
14 Q: And what is your occupation?
15 A: I own and operate an irrigation installation
16 and repair maintenance ---
17 MR. JARMUTH: EXCUSE ME, YOUR HONOR. IF
18 MR. SULLIVAN IS TESTIFYING
19 AS AN EXPERT WITNESS,
20 SHOULDN'T WE BE QUALIFYING
21 HIM AS AN EXPERT WITNESS
22 FIRST?
23 THE COURT: WELL, I PRESUME SHE'LL GET
24 AROUND TO DOING IT AFTER
25 HIS NAME.

1 MS. GOLDING: THAT'S WHAT I'M TRYING TO
2 DO.

3 THE COURT: OKAY.

4 Q: What is the name of your company, Mr.
5 Sullivan?

6 A: The name of the company is Sullivan
7 Irrigation.

8 Q: Okay. And is that a South Carolina
9 corporation?

10 A: Yes, it is.

11 Q: And what is the business purpose of your
12 company?

13 A: The purpose is to install irrigation systems
14 and to maintain irrigation systems.

15 Q: Can you give us the benefit of your
16 educational background?

17 A: Yes. I have a, a degree in mathematics
18 education from the Citadel. As far as the
19 irrigation side of it, I am a certified
20 irrigation contractor, a certified irrigation
21 designer, and a certified landscape irrigation
22 auditor. All of these are certifications by
23 the International Irrigation Association.

24 Q: And how long have you personally been in the
25 irrigation business?

1 A: Since I've been down here. It's been over
2 twenty-five years now.

3 Q: And when I say irrigation business, have you
4 been a contractor in the irrigation business?

5 A: Yes, I have been a contractor over twenty-five
6 years.

7 MS. GOLDING: YOUR HONOR, WE WOULD OFFER
8 MR. SULLIVAN AS A EXPERT IN
9 IRRIGATION, AS AN
10 IRRIGATION CONTRACTOR.

11 THE COURT: YES, SIR.

12 MR. JARMUTH: CAN I -- WILL THE COURT
13 PERMIT ME TO RESERVE MY
14 QUESTIONS AND CHALLENGES
15 STANDING AS AN EXPERT
16 WITNESS AT THE END OR DO
17 YOU WANT ME TO ---

18 THE COURT: TELL ME AGAIN. I'M HAVING
19 DIFFICULTY.

20 MR. JARMUTH: I'VE GOT SOME QUESTIONS
21 REGARDING HIS STANDING AS
22 AN EXPERT AS AGAINST
23 SOMEONE WHO ACTUALLY WORKS
24 IN THE COURSE OF BUSINESS,
25 IF THE COURT WILL PERMIT

1 ME.

2 VOIR DIRE EXAMINATION

3 BY MR. JARMUTH:

4 Q: Have you ever written any learned articles?

5 MS. GOLDING: STAND UP, PLEASE.

6 THE COURT: YES, YOU NEED TO STAND UP

7 AND APPROACH THE WITNESS,

8 PLEASE.

9 Q: Mr. Sullivan, have you ever written any
10 learned articles on irrigation?

11 A: No, sir, I have not.

12 Q: Have you ever taught a class in irrigation?

13 A: That, that would kind of depend on what you're
14 thinking of here.

15 Q: Have you ever taught a class in irrigation
16 within a technical college or university ---

17 A: No, I have not.

18 Q: --- or offered by an extension school?

19 A: No, I have not.

20 Q: Have you ever installed a well?

21 A: Yes, I have.

22 Q: How many wells have you installed?

23 A: Probably, I guess, less than, less than fifty.

24 Q: Are you licensed by a state agency?

25 A: Yes. I am licensed by the State of North

1 Carolina as a certified irrigation contractor.

2 Q: Do I hear that as a statement that you're not
3 licensed by any South Carolina agency?

4 A: There are no licensing procedures in the State
5 of South Carolina for irrigation contractors.

6 Q: Does GSWSA use you as part of its irrigation
7 program?

8 A: No.

9 MS. GOLDING: IS THAT GS -- GRAND STRAND
10 WATER?

11 MR. JARMUTH: GRAND STRAND WATER & SEWAGE
12 AUTHORITY.

13 A: I'm a licensed back-flow inspector for the
14 State of South Carolina, which includes Grand
15 Strand Water & Sewer, but I don't do any
16 particular educational training for Grand
17 Strand.

18 Q: That wasn't my question. My question, does
19 GSWSA use you as part of their program to use
20 treated water to irrigate golf courses in
21 other areas?

22 A: No.

23 Q: Do any golf course employee irrigate their
24 lawns?

25 A: Do any -- if you're, if you're speaking about

1 fairways, no. If you're talking about the,
2 the common areas associated with golf courses,
3 yes, we have done several of those.

4 Q: Did I hear that as you are not actually used
5 to irrigate golf course fairways?

6 A: Correct.

7 Q: What's your experience in pumping water from
8 ponds for irrigation?

9 A: We've been doing that for a long time, I guess
10 at least since we've been started, twenty-five
11 years.

12 Q: What prior contact have you had with the
13 Defendant prior to your testimony today?

14 A: As far as conversations or you're talking
15 about how long have I worked for them?

16 Q: No. Have you had any prior contact with the
17 counsel for the Defendants prior to your
18 testimony, if so, what have they told you?

19 A: They have told me what was going to happen in
20 the courtroom, and let's see if there was
21 anything else. They asked my expert advice or
22 -- on the situations concerning the irrigation
23 system.

24 Q: If The Court will permit me, what are you
25 getting paid for your testimony?

1 A: So far, I have received a check for forty-one
2 dollars for mileage.

3 Q: Well, I take that as you've gotten paid a fact
4 witness fee?

5 A: I think that's what that's called. I'm not
6 sure. I know there's a check that I have in
7 an envelope.

8 Q: What physical inspections have you done to the
9 property to which you're about to testify?

10 A: We were the company that maintained the
11 irrigation system for the HOA previously. For
12 about two years, we were the company that did
13 the maintenance.

14 Q: Which years is that?

15 A: 2009 and 2010. Yeah, I think that's right.

16 Q: Have you ever done any work in computing the
17 actual cost of use of power for the various
18 alternatives?

19 A: Yes, I have.

20 Q: Would you describe them?

21 A: How we would calculate the power usage?

22 Q: Actual studies you've done involving the cost
23 of, the cost of power to perform alternative
24 methods of acquiring the water used for
25 irrigation?

1 A: Okay. Well, there are formulas that we use
2 that are in the manuals that we have, and I
3 would go by those formulas in order to compute
4 the electrical cost. I don't know that I can
5 spit those out for you.

6 Q: Have you ever actually performed any studies
7 comparing the power consumption cost of
8 alternatives for providing irrigation?

9 A: I have had to determine how much the
10 electrical usage was going to be for a
11 project, if that answers your question. I've
12 ---

13 Q: Have you actually, not kilowatts, compared the
14 cost of alternatives to do -- to pump water;
15 for example, the cost of the pumping from the
16 pond, the cost of the power of the pump to run
17 the well, the cost of getting water from
18 GSWSA?

19 A: Okay. Well, the -- pumping the water from a
20 pond or pumping water from a well is -- the
21 cost of the power is related to the
22 horsepower, so either one, they're one and the
23 same. It wouldn't make any difference either
24 way; and, of course, Grand Strand Water &
25 Sewer, you wouldn't have any electricity

1 associated with that.

2 Q: And how about the cost of the deep water pump
3 as against the cost of just -- let me revise
4 that. Have your cost studies considered the
5 different horsepower, the cost of different
6 horsepower required to be consumed to pump
7 water from a pond at ground level versus the
8 cost of pumping water from a deep well?

9 A: Once again, a five horsepower pump is a five
10 horsepower pump. It doesn't matter whether
11 the motor is above ground or underground, it's
12 still going to use the same amount of
13 electricity.

14 Q: You're missing my point, sir.

15 A: I'm, I'm trying to explain. There's no
16 difference in your point that you're trying to
17 make. That's what I'm trying to explain.

18 Q: What size pump -- well, that's ---

19 A: Okay.

20 Q: This is not an expert ---

21 MR. JARMUTH: YOUR HONOR, I'LL LEAVE
22 THESE QUESTIONS FOR THE
23 END, THESE OTHER QUESTIONS,
24 THEY'RE NOT QUALIFICATION
25 QUESTIONS.

1 MS. GOLDING: YOUR HONOR, WE WOULD OFFER
2 THE WITNESS AS AN EXPERT IN
3 IRRIGATION.

4 THE COURT: I'M GOING TO FIND THAT HE'S
5 QUALIFIED TO TESTIFY AS TO
6 AN IRRIGATION SYSTEM.

7 MS. GOLDING: THANK YOU.

8 MS. GOLDING CONTINUES:

9 Q: Mr. Sullivan, with respect to the
10 International Club community, what has been
11 your prior experience in that community with
12 respect to the irrigation system?

13 A: We have -- of course, we maintain the
14 irrigation system. If I'm not mistaken, it
15 was in 2009 and 2010, we were employed to
16 maintain the irrigation systems there, which
17 at that time, we were to map the irrigation
18 systems, go through, check all of the heads,
19 all of the valves, locate the clocks,
20 coordinate the irrigation, the timing on the
21 clocks, and get everything up to full speed.

22 Q: And if you would describe to The Court the
23 type of irrigation system that the community
24 has.

25 A: Okay. The irrigation system on this community

1 has several different irrigation controllers
2 located in various locations throughout the
3 neighborhood. There are -- there is a single
4 controller at the front entrance. There is an
5 additional controller that was added for the
6 berm close to the front entrance. There's an
7 irrigation controller at the pump house that,
8 I guess that was the, the golf course's pump
9 house. There's an additional controller
10 there. There's an additional controller at
11 the end of that street. I don't know the
12 names of those streets. There's also an
13 additional controller at the pool or amenity
14 center and another one on Marbella as well as
15 battery operated systems, one in a island in
16 the D.R. Horton section, two on the main
17 entrance road, and then a separate irrigation
18 system at Pebble Creek entrance.

19 Q: From what area, from what pump area does the
20 most of the water for the irrigation system at
21 International Club community, where does that
22 come from?

23 A: All of the water for the HOA's system comes
24 from the golf course, with the exception of
25 Pebble Creek.

1 Q: And with respect to the golf course, the pump
2 that is there, how do you classify the type of
3 pump that's at the golf course?

4 A: Those are vertical turbans, are, are those
5 kinds of pumps.

6 Q: And those vertical turbans that are at that --
7 your understanding, those are maintained by
8 the golf course; is that correct?

9 A: Yes, that's correct.

10 Q: In your experience in the business, these
11 vertical turbans, are those expensive pieces
12 of equipment?

13 A: Yes, they are very expensive.

14 Q: And with respect to those vertical turbans
15 that are at the golf course pump house, can
16 you approximate the number of, the amount of
17 water that goes through there?

18 A: A very conservative estimate would be about
19 four hundred gallons per minute.

20 Q: And where does the water come from that goes
21 through the golf course turban pumps?

22 A: The golf course uses water from a nearby pond.

23 Q: And that is on the golf course, the pond area?

24 A: It's across the street from where the pump
25 house is.

1 Q: And the water that comes out of the turbans,
2 then does it flow into areas that the
3 International Club Homeowners Association
4 maintains?

5 A: Yes, it does.

6 Q: And through piping that's throughout the
7 system; is that correct?

8 A: Exactly, yes.

9 Q: And some of the piping goes along the sides of
10 the roads?

11 A: Yes. Some of it goes along the sides of the
12 roads, and some of it actually goes underneath
13 the roads through sleeving.

14 Q: Now, if the turban pumps that are on the golf
15 course and owned by the golf course, if those
16 turban pumps could not be utilized by the
17 Homeowners Association, what would the
18 Homeowners Association have to do as an
19 alternative source of water?

20 A: The HOA would have to -- of course, they'd
21 have to provide their own water source. We
22 have assumed that we would use deep wells to
23 provide that water, and, and I said wells. We
24 have a minimum of one for the entrance road
25 and one for the amenity center, and I'm saying

1 that because there are two separate shutoffs,
2 that I am aware of, that isolate the golf
3 course's water from the actual irrigation
4 systems for the common areas. So short of
5 boring the roads in areas we weren't really
6 sure of, the use of two wells would be what
7 we'd use. Also, you got to remember that a
8 deep well is going to provide about fifty
9 gallons per minute, a standard deep well, and
10 the golf course's water is, like I said, at a
11 minimum of four hundred gallons per minute, so
12 we would need at least two to keep -- to
13 operate or maintain those systems.

14 Q: And when you say a deep well, what would be
15 the depth of one deep well?

16 A: Deep wells in this area go down to the Black
17 Creek aquifer, which is about -- between five
18 and six hundred feet deep.

19 Q: Now, in addition to digging the two deep
20 wells, what type of equipment would be needed
21 then?

22 A: Well, once we had the deep wells installed,
23 then we'll, of course, have to have those
24 attached to the existing waterlines that are
25 in the roads. This is where we run into

1 trouble if, if we have multiple connections,
2 because we would have to find a way to get
3 water from one part of the irrigation system
4 to a separate or to another part of the
5 irrigation system.

6 **Q: Would there be any type of power source that**
7 **would be needed with respect to each deep**
8 **well?**

9 A: Yes, of course, there would. You'd have to
10 have a building permit pulled and a power pole
11 set to provide power for each of those, each
12 of those wells.

13 **Q: Have you determined the approximate cost that**
14 **the Association, the Defendant, would have to**
15 **pay to install the two deep wells with the**
16 **necessary equipment?**

17 A: Yes. We've come up with an estimate of about
18 thirty-four thousand, thirty-four thousand
19 dollars.

20 **Q: Does that estimate include the electric, the**
21 **continuing maintenance and electrical that**
22 **needed to be done in the future or is that**
23 **just the construction estimate?**

24 A: That -- that's just the initial construction
25 estimate.

1 Q: So based upon what you're telling me, then, if
2 the golf course said, "You can't use our water
3 anymore," then it's your opinion that the only
4 source would be the construction of two deep
5 wells?

6 A: That would be the best option, yes. You, you
7 do have an option of pulling water out of a
8 pond, and, and the problem with doing that,
9 and it's, it's the same problem that the golf
10 course has, you've got to replenish the water
11 in the ponds. The golf course has an eight
12 inch deep well that actually, pretty much,
13 continually fills that pond across the street
14 from the wells, so that they can use that
15 water to pump for the irrigation system for
16 the golf course. Yeah, you could pull water
17 out of a pond, but you're going to have to
18 have a deep well in order to fill it back up,
19 so rather than having the maintenance of two
20 pumps, the best option would be just to pull
21 water out of the ground to begin with, with a
22 deep well and just use the one.

23 Q: And therefore, do you have an opinion, based
24 upon a reasonable degree of certainty as an
25 irrigation contractor, that if the golf course

1 would say, "You can't use our water anymore,"
2 what would the International Club Homeowners
3 Association have to do to continue irrigation?

4 A: We would have to install deep wells, one, one
5 that would operate the main entry road and
6 then another that would operate the amenity
7 center, and then at that point, we would have
8 to determine if there are any loopholes that
9 we haven't foreseen, if there are any areas
10 that are not actually connected to those
11 waterlines. There may be more shutoffs that
12 we aren't aware of that supply water to the
13 irrigation systems and we would have to, at
14 that time, reassess whether we would have to
15 do any boring under roads to connect the main
16 lines so that all the systems would operate.

17 Q: Thank you very much, Mr. Sullivan.

18 A: Okay.

19 CROSS EXAMINATION

20 BY MR. JARMUTH:

21 Q: Mr. Sullivan, did I hear you say that the golf
22 course uses water from the ponds to irrigate
23 the golf course?

24 A: They have two vertical turbans that use water
25 from the ponds and they have a deep well that

1 fills the pond up.

2 Q: What is the volume of water which is required
3 to irrigate HOA only property?

4 A: What is the volume? You're asking what is the
5 volume of water?

6 Q: Gallons of water?

7 A: I could calculate that. It may take a few
8 minutes here.

9 Q: What documents have you relied upon in giving
10 this testimony?

11 A: Okay. We have -- of course, there's the
12 irrigation controller at the front entrance,
13 which is a twelve station controller, so we've
14 got ---

15 Q: Excuse me.

16 A: I'm getting there, if you'll give me a chance.
17 So we've got that controller, which has twelve
18 stations, each one of those operating at about
19 fifty gallons per minute. We've got the berm,
20 which has four stations attached to it. It's
21 operating at four -- fifty gallons per minute,
22 so we're up to sixteen, then you have the
23 controller at the pump house which, I believe,
24 has eight, so -- I'm, I'm losing count here,
25 but you can see that we probably have

1 somewhere in the neighborhood of, somewhere in
2 the neighborhood of about thirty different
3 zones throughout the subdivision, each
4 operating at close to fifty gallons a minute.

5 Q: Did you calculate the gallons required to
6 irrigate the HOA common areas?

7 A: I don't think that I have actually calculated
8 exactly the volume, but I know from my
9 experience that it would take at least two
10 deep wells to operate the system.

11 Q: That wasn't my question. Do I take that as a
12 no, you have not calculated ---

13 MS. GOLDING: YOUR HONOR, HE ANSWERED THE
14 QUESTION THAT HE WAS ASKED.
15 HE SAID HE HAD NOT
16 CALCULATED IT, BUT THEN HE
17 EXPLAINED.

18 THE COURT: REPHRASE YOUR QUESTION,
19 PLEASE.

20 Q: Can you estimate at this time how many
21 gallons, not the mechanism to supply it, the
22 water requirement, in gallons, to satisfy the
23 irrigation requirements of HOA only property?

24 A: Based on about thirty zones at fifty gallons a
25 minute, that would be about three thousand

1 gallons per minute.

2 Q: How many gallons today?

3 A: If you're running each one at approximately --
4 let's just say we're running each one at ten
5 minutes, that would be three hundred thousand
6 gallons.

7 Q: How many days of the week would you have to
8 irrigate?

9 A: You're testing my math skills here. Probably
10 three days a week, so we're up to nine hundred
11 thousand gallons.

12 Q: How much water do you estimate is in, in
13 gallons, is in the ponds, all of them?

14 A: I have no idea in the ponds, none at all.

15 Q: Do you believe it's more or less than the
16 number you quoted?

17 A: Much less.

18 Q: Say again.

19 A: Much less.

20 Q: By what order of magnitude, half, more?

21 A: More than -- say, repeat the question.

22 Q: By what order of magnitude is the shortfall
23 between the irrigation requirements of the HOA
24 common area versus what is available in the
25 ponds, fifty percent, seventy-five percent?

1 A: Well, it, it depends on the ponds that you're
2 talking about. If you're talking about the
3 ponds that are close to the irrigation system,
4 which is the small one that the golf course
5 uses across the street from the pump -- from
6 the pump house, that pond isn't much larger
7 than this room, so it, it -- they, they keep
8 pumping in that constantly. There's also a
9 pond that's at the amenity center and that
10 pond is maybe not much bigger than this
11 building, if that.

12 Q: Are you familiar ---

13 A: I don't know -- I can't tell you how many
14 gallons is in those ponds, but I do know that
15 it's going to take -- you'd have to pump water
16 back into those ponds in order to operate.

17 Q: Are you familiar with the substantially sized
18 lake which is alongside The Villas, The
19 Villas?

20 A: Can you show me where The Villas are or tell
21 me where that would be?

22 Q: Coming up International Club Drive from
23 Tournament, you go past the big condos, when
24 you approach The Glens and on the right
25 there's a big lake. Are you familiar with

1 that lake?

2 A: Okay. I know which one you're talking about
3 now, yes.

4 Q: Did you irrigate along -- when you were
5 employed by the HOA, did you irrigate along
6 that road?

7 A: There is irrigation existing there, yes.

8 Q: Did you irrigate that other area?

9 A: The -- when you -- yes, there's irrigation
10 along the side of that road there.

11 MS. GOLDING: MAYBE THIS'LL HELP.

12 MR. SULLIVAN: YEAH.

13 MS. GOLDING: HERE'S THE IRRIGATION
14 PLATS. THOSE ARE
15 DEFENDANT'S EXHIBIT "J".

16 I'LL GIVE THOSE TO THE
17 WITNESS.

18 MR. JARMUTH: COULD I SEE THAT, PLEASE,
19 BEFORE YOU PASS IT UP?

20 MS. GOLDING: SURE.

21 Q: This large lake is the one I'm talking about.

22 A: Okay, uh-huh (affirmative response).

23 Q: And the other large lake I'll be asking you
24 about is this large lake.

25 A: You want me to look on your map?

1 Q: Yeah. Going to Pebble Creek there's a very
2 large lake just as you get to Pebble Creek,
3 ---

4 A: Uh-huh (affirmative response).

5 Q: --- a very large lake.

6 A: Uh-huh (affirmative response).

7 Q: So I'm talking about this large lake and that
8 large lake alongside The Villas.

9 A: Uh-huh (affirmative response). Okay.

10 Q: Now, looking at those two lakes, if the golf
11 course was not allowed to use that water and
12 that water is only available for the HOA,
13 would those two large lakes have enough water
14 to irrigate commons areas owned by the HOA?

15 A: They would have enough water to irrigate at
16 least one time. I do not know if they would
17 have -- let's put it this way. I doubt they
18 would have enough water to continually water
19 the irrigation for the entire neighborhood
20 without having additional wells installed to
21 maintain their depth, especially during
22 drought conditions.

23 Q: Is it a fact that you didn't actually do a
24 calculation of how many gallons are in either
25 lake?

1 A: No, I certainly have not.

2 Q: And in your study preparing for this
3 presentation, you didn't do a study which
4 calculated the actual gallons required to
5 irrigate HOA area, common areas?

6 A: I, I was asked to provide an estimate for the
7 deep wells and to describe the irrigation
8 system, so if you're asking me for a study, I
9 have not prepared any study for this
10 testimony.

11 Q: Mr. Sullivan, you've described the big wells,
12 deep well pumps for ---

13 A: Uh-huh (affirmative response).

14 Q: --- a deep well. Can you describe the kind of
15 pumps you'd need if all you had to do was pump
16 water from the pond into the pipes which -- on
17 there, which are used to irrigate?

18 A: Okay. In this situation, we probably would
19 use five horsepower pumps, centrifugal, above
20 ground centrifugal pumps. They would be
21 capable above ground of pumping the same
22 volume of water, and you're asking about the
23 cost?

24 Q: Yeah, what is the -- the next question, what's
25 the cost, approximately, of any such pump?

1 A: The cost of those is probably in the
2 neighborhood of four thousand dollars each,
3 somewhere in that range, just for the pump
4 itself.

5 Q: Are they easier to maintain than the deep
6 water pumps?

7 A: No.

8 Q: Could you explain -- are they more complex
9 than the deep water pumps?

10 A: The -- they require much more maintenance; of
11 course, you obviously have to protect those
12 from freezing during the winter. Normally,
13 what happens is you'll drain those pumps
14 during the winter or during the fall, and then
15 you'll come back and prime them back up in the
16 spring. Those pumps require bearings to be
17 greased. Being above ground, they're subject
18 to the weather. There's quite a bit more --
19 it's much, much easier to deal with deep wells
20 than it is with above ground.

21 Q: Can you put those pumps in a vault protected
22 from the weather?

23 A: Sure, you can, uh-huh (affirmative response).

24 Q: What's the relative cost of the power running
25 a pond, pond pump which only has to raise

1 water a couple of feet versus one that has to
2 raise water all that distance from the deep
3 well?

4 A: Well, you're kind of missing the point. The,
5 the deep well is already in the ground, so
6 it's not having to pump water, it's not having
7 to draw water from any difference than what
8 you would on an above ground well. It is, of
9 course, pushing the water up, but it's not
10 having to pull it. They both would be five
11 horsepower pumps, so the cost of operating
12 would be the same.

13 Q: Now, in making your estimates about how much
14 water is required, what areas are you
15 considering as requiring irrigation by the
16 HOA?

17 A: Repeat that one more time, please.

18 Q: Okay. There are roads, there are ponds,
19 they're lawns around the amenity center, ---

20 A: Uh-huh (affirmative response).

21 Q: --- there are some undeveloped areas which
22 don't have ponds around the HOA. You said
23 that you provided maintenance services for at
24 least two years?

25 A: Yes, sir.

1 Q: Does that mean that you are familiar with all
2 the area in the PUD?

3 A: I am familiar with the areas that we have,
4 that have the irrigation, yes.

5 Q: What percentage of that area is not along the
6 sides of the roads?

7 A: Not along the sides of the road? Let's see,
8 that's a -- I don't know that I can give you
9 an exact percentage.

10 Q: Could you identify, by description of the
11 areas, which irrigation which is not along
12 side of the road? Let's do it that way?

13 A: I guess most of it would be the area around
14 the amenity center is ---

15 Q: And what percentage of the water requirement
16 would that be versus the total amount?

17 A: Probably, maybe, maybe ten to twenty percent,
18 at the most. It's not, not a great deal.

19 Q: Would the water from the ponds suffice to
20 irrigate that area, from those two big lakes?

21 A: It, it probably would, but you'd have to get
22 the water there.

23 Q: About how much would it cost to run some pipes
24 from The Villas lake and the Pebble Creek lake
25 over to the amenity center?

1 A: Well, that would be a, a substantial amount,
2 'cause you -- you've obviously got those roads
3 that you got to cross. You got the, the golf
4 course area that you'd have to cross if you're
5 pulling water from Pebble Creek, yeah. I
6 guess you could go back around the road. You
7 -- you've got the, the parking areas that
8 you'd have to get around. It would, it would
9 be in the tens of thousands of dollars to get
10 that done.

11 Q: Do you have any knowledge whether the golf
12 course is actually paying the HOA for the use
13 of that pond of water?

14 A: I, I don't have any idea what they do. All I
15 did was take care of the irrigation system.

16 Q: Are you familiar with what the Indian Wells
17 Golf Course does regarding irrigating and
18 putting water on the golf course there at
19 Indian Wells?

20 A: No, sir, I don't have any knowledge of Indian
21 Wells.

22 Q: Are you aware of anything that GSWSA puts out
23 regarding using recycled water from GSWSA to
24 irrigate large areas, such as the whole common
25 area?

1 A: I'm not aware of any programs that Grand
2 Strand Water & Sewer has.

3 Q: So you haven't heard they provide water for
4 free?

5 A: No.

6 Q: Are you aware of any literature Clemson
7 University puts out regarding use of pond
8 water for maintaining golf course areas or
9 people's lawns or areas such as around this?

10 A: No.

11 Q: What scholarly journals do you subscribe to to
12 keep you up-to-date on what's happening in the
13 area of irrigation and innovation?

14 A: There's -- we receive the Landscape Management
15 periodical as well as various other irrigation
16 and landscape periodicals.

17 Q: Do you get anything which is specially
18 oriented towards irrigation on the Grand
19 Strand in this area?

20 A: Nothing specifically to it, no.

21 Q: Do you obtain any material from Clemson
22 regarding irrigation?

23 A: No.

24 Q: Do you obtain any material from GSWSA
25 regarding irrigation of ground areas?

1 A: No.

2 Q: Now, Mr. Sullivan, you've cited various
3 figures in answer to questions from Ms.
4 Golding, answering my questions. Have you put
5 them together in a formal study to which you
6 are talking?

7 A: No. I have not done any studies for this
8 testimony.

9 Q: And I take it, that you said you actually did
10 not do a formal analysis of the alternative of
11 pumping from ponds?

12 A: Nothing more than my personal knowledge that
13 the ponds would have to be replenished if we
14 were to use those ponds to irrigate this
15 amount of area.

16 Q: And no actual calculation and actual fact
17 gathering to determine what the actual gallons
18 of those lakes are?

19 A: No, sir, I have not done any studies.

20 Q: And have you measured -- in doing the two
21 years of work around the HOA, have you
22 actually taken measurements of and put them
23 down of how much water is actually being used
24 to irrigate on behalf of the HOA?

25 A: No, I have not.

1 Q: Have you had access to the power bills to any
2 of these pumps?

3 A: No, sir, I sure have not.

4 Q: Have you made an actual -- prepared a
5 specification for what it would take for the
6 HOA to actually do its own well?

7 A: Have I prepared ---

8 Q: Have you prepared actual documents that says,
9 "Buy this, buy this, buy this, spend money on
10 that," the cost pertaining to each?

11 A: I gave them a preliminary estimate of what it
12 would cost to have two deep wells installed
13 and attached to the systems, but as a formal
14 document, no, I have not.

15 Q: How did you size those wells? What did you
16 use as your basis?

17 A: That the irrigation systems based on a number
18 of heads that each zone operate off of was
19 operating under about fifty gallons per
20 minute.

21 Q: And if you didn't need that number of heads,
22 what would that do to your estimate; for
23 example, if all you had to do was irrigate
24 around the amenity center, what would the
25 impact of that be on your recommendation?

1 A: You'd still need fifty gallons a minute to
2 operate that system, because that system
3 operates off of fifty gallons per minute.

4 Q: But is it correct that that would be a far
5 reduced requirement for water?

6 A: If we were just doing the amenity center, yes,
7 you would not need as much water as you would
8 need to do the entire subdivision.

9 Q: Did I hear you say the number ten percent
10 versus with doing everything?

11 A: You asked was that area about ten percent of
12 the area irrigated? Probably about ten
13 percent.

14 Q: Thank you.

15 A: Thank you.

16 RE-DIRECT

17 BY MS. GOLDING:

18 Q: Mr. Sullivan, with ---

19 A: Yes, ma'am.

20 Q: --- respect to Defendant's Exhibit "J", can
21 you explain to The Court what this exhibit
22 shows?

23 A: Okay. This exhibit, of course, shows the, the
24 different properties, the, the road coming in.
25 It shows the areas where the irrigation along

1 the edges of the roads are located.

2 Q: What is the orange and then the pink print?

3 A: Oh, I'm -- well, those are the areas that are
4 maintained by the HOA.

5 Q: Okay. And is that true also on the second and
6 third page?

7 A: Yes. There are certain areas that are
8 irrigated and certain areas that are simply
9 maintained.

10 Q: Okay. Thank you very much, Mr. Sullivan.

11 THE COURT: WHAT'S THE EXHIBIT NUMBER
12 ON THAT, PLEASE?

13 MS. GOLDING: IT'S EXHIBIT ---

14 MR. JARMUTH: IF YOU'D GIVE ME THAT
15 EXHIBIT, MR. SULLIVAN, I
16 WANT TO TALK ABOUT IT.

17 THE COURT: SIR, JUST A MINUTE. WHAT'S
18 THE EXHIBIT NUMBER ON THAT?

19 MS. GOLDING: "J", DEFENDANT'S "J" YOUR
20 HONOR.

21 THE COURT: AND ON YOURS, SIR, WHAT'S
22 YOUR EXHIBIT ---

23 MR. JARMUTH: OH, THIS IS HERS. IT'S MY
24 COPY OF IT.

25 THE COURT: OKAY, THE SAME THING? YOU

1 HAD THE SAME MAP?

2 MR. JARMUTH: YES.

3 THE COURT: OKAY. ALL RIGHT.

4 MR. JARMUTH: THIS IS WHAT SHE GAVE ME.

5 THE COURT: OKAY.

6 RE-CROSS

7 BY MR. JARMUTH:

8 Q: Okay. Looking at what I believe The Court has
9 over here, the area that says Grand Vistas,
10 what are you doing in the Grand Vistas?

11 A: We don't do anything at Grand Vistas other
12 than the road right in front of it.

13 Q: You said that you were doing the work -- what
14 were the years you were doing the work for the
15 HOA?

16 A: 2009 and 2010.

17 Q: Did you have any contact with D.R. Horton
18 employees during the period of 2009 and 2010?

19 A: No, sir.

20 Q: Looking at this chart, can you identify for me
21 the areas north of the Grand Vistas which you
22 are saying irrigation should be required for?

23 A: North of the Grand Vistas? We have both sides
24 of the main entrance road all the way down and
25 all the way up to the intersection of

1 Pickering Drive and International Club
2 Boulevard, does that answer your question,
3 over to here?

4 Q: So the only areas which you're talking about
5 irrigating are roadways plus the amenity
6 center?

7 A: Roadways and the amenity center; and, of
8 course, this roadway as well on Marbella.

9 Q: That's a roadway?

10 A: Yes, it's a roadway, uh-huh (affirmative
11 response). This little section, too, but
12 that's close enough to the road to be called a
13 road.

14 Q: Thank you.

15 MS. GOLDING: NO FURTHER QUESTIONS, YOUR
16 HONOR.

17 THE COURT: THANK YOU. YOU MIGHT COME
18 DOWN.

19 MS. GOLDING: MAY THIS WITNESS BE
20 EXCUSED, YOUR HONOR?

21 THE COURT: YES. LET ME SAY THIS.

22 IT'S RIGHT AT FOUR O'CLOCK.

23 LET'S TAKE ABOUT A FIFTEEN

24 MINUTE BREAK BEFORE WE

25 START BACK, AND HE'S OUT OF

1 SEQUENCE, SO YOU STILL HAVE
2 ---
3 MR. JARMUTH: YOUR HONOR, BEFORE WE
4 BREAK, I'D LIKE TO PRESERVE
5 MY RIGHT TO BRING IN
6 IMPEACHMENT MATERIAL FROM
7 CLEMSON UNIVERSITY, GSWA,
8 AND REGARDING THE INDIAN
9 WELLS IRRIGATION SYSTEM,
10 WHICH IS RELEVANT TO
11 STRATEGIES FOR IRRIGATING
12 THESE AREAS, WHICH
13 OBVIOUSLY I DON'T HAVE IT
14 HERE, BECAUSE I DIDN'T
15 EXPECT TO BRING THAT MATTER
16 TODAY.
17 THE COURT: WELL, WE'VE GOT A COUPLE
18 MORE DAYS, IT LOOKS LIKE.
19 MR. JARMUTH: YES, YOUR HONOR.
20 THE COURT: ALL RIGHT. LET'S TAKE A
21 BREAK FOR ABOUT FIFTEEN
22 MINUTES.
23 MS. GOLDING: THANK YOU, YOUR HONOR.
24 THE COURT: ALL RIGHT. THANK YOU, SIR,
25 FOR COMING.

1 MR. SULLIVAN: YES, SIR.

2 *****OFF THE RECORD*****

3 ON THE RECORD.

4 THE COURT: ARE YOU READY? I'LL REMIND

5 YOU YOU'RE STILL UNDER

6 OATH.

7 MR. JARMUTH: THANK YOU, YOUR HONOR.

8 THE COURT: OKAY.

9 (MR. JARMUTH CONTINUES TESTIFYING).

10 Mr. Jarmuth: Towards the conclusion of
11 that, the defense counsel challenged me
12 regarding documents relative to Central
13 Electric. First of all, 547, of course, is
14 the covenants ---

15 MS. GOLDING: YOUR HONOR, HE'S ALREADY
16 ADDRESSED ALL ABOUT CENTRAL
17 -- THAT'S A TOPIC THAT WAS
18 ALREADY DISCUSSED, SO I'D
19 ---

20 MR. JARMUTH: ACTUALLY, YOUR HONOR ---

21 MS. GOLDING: YOUR HONOR, I WOULD ASK
22 THAT THE WITNESS NOT
23 INTERRUPT ME. IT WAS MY
24 UNDERSTANDING HE IS TAKING
25 HIS AREAS AND ONCE HE'S

1 DONE WITH THOSE AREAS, HE
2 GOES ON TO SOMETHING NEW.
3 HE'S ADDRESSED CENTRAL
4 ELECTRIC & POWER, SO WE
5 DON'T NEED TO REHASH
6 ANYTHING THAT'S ALREADY
7 BEEN GONE THROUGH.
8 THE COURT: IS THAT WHAT YOU'RE GOING
9 TO DO?
10 MR. JARMUTH: ACTUALLY, I ONLY TALKED
11 ABOUT THE STATUES THAT
12 APPLY. I WANTED TO BRING
13 IN THE DOCUMENTS, THE FACTS
14 DOCUMENTS BEHIND IT, SO IT
15 CAN BE APPLIED TO STATUTES,
16 TO THE DOCUMENTS. I'D ASK
17 THE COURT TO MAKE
18 DECLARATIONS REGARDING THE
19 MEANING OF THE STATUTES,
20 BUT NOT WHAT THE FACTS
21 WERE, DETERMINING THE FACTS
22 TO APPLY WITH IT. I JUST
23 WANT, I WANTED TO APPLY THE
24 FACTS.
25 THE COURT: ALL RIGHT. WELL, LET ME

1 ASK YOU THIS. ARE THEY
2 MARKED AS EXHIBITS?
3 MR. JARMUTH: YES, THEY ARE.
4 THE COURT: WELL, GO AHEAD AND
5 INTRODUCE THEM AND I'LL
6 READ THOSE WHEN I -- WHEN I
7 RE-READ YOUR TESTIMONY ON
8 THIS SPECIFIC AREA, I'LL
9 READ THOSE, OKAY? YOU
10 DON'T NEED TO READ THEM TO
11 ME.
12 (MR. JARMUTH CONTINUES TESTIFYING).
13 Mr. Jarmuth: At Plaintiff's 395, at
14 the top, it's got where it's from a ledger
15 that the Defendant used ten thousand dollars
16 of restricted money which would've been
17 collected from Central Electric to restore
18 landscaping ---
19 MS. GOLDING: YOUR HONOR, HE'S ---
20 THE COURT: HOLD JUST A MINUTE, SIR.
21 GO AHEAD.
22 MS. GOLDING: HE'S NOT READING, I MEAN,
23 HE'S READING. IF HE WANTS
24 TO JUST REFERENCE THE
25 DEPOSITION NUMBER, HE'S

1 ALREADY TESTIFIED ABOUT THE
2 MEETING. HE ALREADY
3 TESTIFIED ABOUT THE
4 CONSIDERATION. HE'S GONE
5 THROUGH THE EASEMENT
6 TESTIMONY. SO ALL HE'S
7 TRYING TO DO IS GO INTO
8 MORE DEPTH AND TO REHASH
9 THIS MATTER.
10 THE COURT: YES. LET ME GET YOU TO DO
11 THIS, AND I WANT YOU TO
12 HAVE EVERY OPPORTUNITY TO
13 TELL ME ANYTHING YOU WANT
14 TO, MORE OR LESS. WHY
15 DON'T YOU, AS I SAID,
16 SUBMIT THOSE AND WE'LL HAVE
17 THE COURT REPORTER ATTACH
18 THEM TO YOUR LAST SUBJECT
19 MATTER WHICH IS WHAT YOU
20 JUST GOT THROUGH TESTIFYING
21 TO, AND I WILL READ THOSE
22 VERY THOROUGHLY WHEN I READ
23 THE OTHER? I'LL HAVE YOUR
24 TESTIMONY AND I'M MAKING
25 NOTES AS I GO, SO I WON'T

1 HAVE ANY TROUBLE GETTING
2 BACK INTO IT. THERE'S NO
3 USE FOR YOU TO RE-READ
4 EVERYTHING, OKAY?
5 MR. JARMUTH: OKAY. WELL, I HAVEN'T READ
6 THIS BEFORE, BUT FOR THE
7 RECORD, I'LL IDENTIFY IT.
8 NUMBER 395 ---
9 THE COURT: OKAY.
10 MR. JARMUTH: --- IS A LEDGER PROVIDED
11 ME. IT'S DEFENDANT'S BATES
12 NUMBER 002936.
13 THE COURT: OKAY.
14 MR. JARMUTH: AND IN IT, IT SHOWS THE
15 DISBURSEMENT OF TEN
16 THOUSAND DOLLARS OF, "FUNDS
17 TO BE TRANSFERRED FROM THE
18 EASEMENT ACCOUNT TO THE
19 OPERATING ACCOUNT TO PAY
20 THE VILLAS LAWSUIT OFF."
21 THE COURT: OKAY.
22 MR. JARMUTH: THAT'S THE FIRST ONE.
23 THE COURT: ALL RIGHT.
24 MR. JARMUTH: AND IT'S ALSO IN THE BOOK.
25 AT 369 IS THE MINUTES OF

1 THE APRIL 19TH, 2010
2 SPECIAL MEMBERS MEETING,
3 AND I'D LIKE THE COURT,
4 WHEN THEY'RE READING IT, TO
5 PAY ATTENTION TO THE ISSUES
6 I RAISED ABOUT SEVENTY-FIVE
7 THOUSAND DOLLARS BEING
8 DISBURSED AND NO VOTE BEING
9 TAKEN AND HOMEOWNERS ASKING
10 FOR VOTES, ALL DOCUMENTED
11 THERE IN THE ---
12 THE COURT: ALL RIGHT. AND WHAT NUMBER
13 IS THAT?
14 MR. JARMUTH: NUMBER 369. I'M GOING TO
15 KEEP THAT AND ASK YOU TO
16 USE YOUR OWN.
17 THE COURT: ALL RIGHT.
18 (MR. JARMUTH CONTINUES TESTIFYING).
19 Mr. Jarmuth: Then in the statement by
20 the defense counsel, they talked about there
21 was no document to say what the Board was
22 intending to do. There's a document that I
23 provided them in discovery which I'd gotten,
24 actually, from them, mailed to me, which is
25 titled, "Notice of special meeting." And

1 though it's not an exhibit, I was challenged
2 by the Defendant to provide documents. I
3 have a copy for the Defendant and a copy for
4 The Court, which talks about ---

5 MS. GOLDING: YOUR HONOR, I'VE NEVER
6 CHALLENGED HIM. HE USED --

7 -

8 MR. JARMUTH: YOU SAID THERE WERE NO FACT
9 DOCUMENTS.

10 MS. GOLDING: YOUR HONOR, HE USED THE
11 WORD, "CONDEMNATION." I
12 SAID THAT'S NOT -- HE WAS
13 TESTIFYING THAT THERE WAS A
14 CONDEMNATION.

15 THE COURT: YES, I REMEMBER.

16 MS. GOLDING: SO I JUST WANTED TO CLEAR
17 UP TO THE COURT THAT THERE
18 NEVER WAS.

19 THE COURT: ALL RIGHT. NOW, WHAT'S THAT
20 NUMBER?

21 MR. JARMUTH: THIS WAS NOT NUMBERED.

22 THIS WAS A -- THIS IS THE
23 DEFENDANT SAYING ON APRIL
24 6TH, 2010, "THIS IS NOT A
25 VOTING MEETING OF THE

1 MEMBERSHIP, " AND THAT IS
2 SALIENT, BECAUSE IT
3 DOCUMENTS THAT EXACT THING,
4 AND THERE'S A COPY FOR MS.
5 GOLDING THERE.
6 THE COURT: ALL RIGHT.
7 MR. JARMUTH: AND THAT'S ALL THE
8 ADDITIONAL MATERIAL I'LL
9 PRESENT ON CENTRAL
10 ELECTRIC. IT SPEAKS FOR
11 ITSELF.
12 THE COURT: PUT IT WITH THE LAST
13 NOTEBOOK. SHOW HER WHERE
14 YOU WANT IT, SO I'LL BE
15 SURE AND GET IT IN ORDER,
16 OKAY? IS THAT THE BOOK YOU
17 WANT IT IN?
18 MR. JARMUTH: WITH -- YEAH, NEXT TO 395.
19 I'M GOING TO COME TO THE
20 TOPIC OF THE AMENITY CENTER
21 PARKING LOT WHEN I CALL MS.
22 TOTH AS A WITNESS. SHE'S A
23 NAMED WITNESS WHO WAS
24 SUBPOENAED FOR THE ORIGINAL
25 TRIAL WHICH WAS CONTINUED,

1 SO I BELIEVE THE SUBPOENA
2 IS STILL VALID, AND SHE'S
3 IN THE ROOM, THE NEXT ONE.

4 THE COURT: ALL RIGHT. NOW, WHICH AREA
5 ARE YOU IN NOW?

6 MR. JARMUTH: WELL, I'M NOT GOING TO
7 PRESENT ANYTHING ON THE
8 AMENITY CENTER PARKING LOT
9 `TIL I BRING ON MS. TOTH AS
10 A WITNESS.

11 THE COURT: ALL RIGHT. AND WHAT'S YOUR
12 WITNESS' NAME?

13 MR. JARMUTH: ROSEMARY TOTH, A NAMED
14 DEFENDANT.

15 THE COURT: OKAY.

16 MR. JARMUTH: I'M NOT GOING TO DO IT
17 RIGHT NOW. NOW, I TALKED
18 IN GENERAL TERMS ABOUT
19 MULTI-FAMILIES. I'D LIKE
20 TO TALK SPECIFICALLY ABOUT
21 THE EVIDENCE APPLICABLE TO
22 THE GLENS.

23 MS. GOLDING: YOUR HONOR, HE'S ALREADY
24 COVERED THAT IN DEPTH.

25 MR. JARMUTH: NO, I HAVEN'T.

1 MS. GOLDING: HE'S REFERRED TO THE GLENS
2 IN DEPTH, TALKED ABOUT
3 MULTI-FAMILY, REFERRED TO
4 THE DECLARATION PROVISIONS,
5 REFERRED TO THE
6 ADVERTISEMENTS PUT OUT BY
7 THE DEVELOPER. HE'S GONE
8 COMPLETELY IN DEPTH INTO
9 THOSE ITEMS, INTO THE GLENS
10 MATTER.
11 THE COURT: ALL RIGHT. I DON'T KNOW
12 WHAT HE'S GOT, BUT LET ME
13 ASK YOU, SIR, IF YOU WOULD
14 PLEASE NOT GO BACK OVER
15 ANYTHING YOU'VE BEEN OVER
16 BEFORE. IF YOU GOT NEW
17 MATERIAL, I WANT TO HEAR
18 IT; OTHERWISE, WE'LL TAKE
19 IT AS EXHIBITS, OKAY?
20 MR. JARMUTH: JUST GIVE ME A MOMENT, YOUR
21 HONOR, PLEASE.
22 THE COURT: SURE.
23 MR. JARMUTH: WHEN THE COURT REVIEWS THE
24 DOCUMENTS FOR THE PLATS,
25 INCLUDING THE ONES I'VE

1 MENTIONED, PLUS WHAT'S IN
2 EVIDENCE ALREADY, THERE'S A
3 PLAT FOR THE GLENS AND I'LL
4 PUT IT UP THERE. IT'S
5 ALREADY IN THE EVIDENCE
6 BOOK. I'D LIKE THE COURT
7 TO SPECIFICALLY LOOK AT THE
8 NOTES ON THE PLATS.
9 THE COURT: IS THAT A LARGE MAP, ALSO?
10 MR. JARMUTH: YOUR HONOR?
11 THE COURT: IS THAT A LARGE MAP LIKE
12 THIS ONE, ALSO?
13 MR. JARMUTH: THERE'S ANOTHER ONE, BUT
14 IT'S A LITTLE ONE AS WELL,
15 AND RATHER THAN READ THEM
16 ONE BY ONE, I'D LIKE THE
17 COURT MERELY, ON ITS OWN,
18 TO READ THE NOTES ABOUT
19 DENSITIES, WHAT'S A MULTI-
20 FAMILY AND THE LIMITS,
21 CONTROLS, PUT ON, PUT FROM
22 HORTON TO THE COUNTY, AND
23 THE CONDITIONS THE COUNTY
24 APPROVED IT AND WHAT
25 EVERYBODY AGREED,

1 PARTICULARLY ON THE GLENS
2 PLATS, IS THE GLENS AND THE
3 DENSITIES REQUIRED, IF I
4 CAN GO OVER THAT ONE.
5 THE COURT: OKAY. WELL, THE COURT
6 REPORTER WILL BRING THOSE
7 ALONG WITH THE OTHER. MAKE
8 SURE YOU HAVE THEM ALL IN
9 ONE PILE FOR HER, OKAY?
10 GIVE US THE NUMBERS ON
11 THOSE, TOO, PLEASE, SIR.
12 MR. JARMUTH: THIS IS THE 197 AT 171,
13 WHICH IS -- OKAY. AT 465
14 -- THESE ARE BOTH FROM 465.
15 ONE IS A BLOWUP OF A
16 SECTION OF THE BIG ONE,
17 BECAUSE -- YEAH, 466 IS A
18 BLOWUP OF ALSO 1 -- THEY'RE
19 BOTH 197 AT 171. THEY'RE
20 BOTH 466, ONE STAPLED TO
21 THE OTHER IN THE BOOK. ONE
22 IS REALLY A VERY LARGE
23 BLOWUP OF WHAT YOU FIND IN
24 THERE, BECAUSE IT'S
25 IMPOSSIBLE TO READ IT.

1 THE COURT: OKAY. DON'T PUT ANYTHING
2 UP THERE YOU DON'T WANT TO
3 LEAVE, BECAUSE SHE'S GOING
4 TO TAKE IT.
5 MR. JARMUTH: YES, YOUR HONOR. YOUR
6 HONOR, WE TALKED IN GENERAL
7 TERMS ABOUT WHAT IS CALLED
8 A PUD. I WANT TO ADDRESS
9 SPECIFIC DEDICATIONS BY THE
10 COUNTY OF THE ROADS AND
11 ACCEPTANCE AND INTRODUCE
12 INTO EVIDENCE THE
13 DEDICATIONS THEMSELVES.
14 THE COURT: ARE THE DEDICATIONS MARKED,
15 ALSO?
16 MR. JARMUTH: THEY'RE AN EXHIBIT THAT'S
17 IN.
18 THE COURT: WELL, DON'T READ THOSE TO
19 ME. I CAN READ THOSE, BUT
20 TELL ME ABOUT WHATEVER YOU
21 WANT TO. JUST IDENTIFY
22 THEM AND TELL ME WHAT THEY
23 ARE, AND WHEN I GET INTO
24 IT, I'LL READ ALL OF THEM.
25 I'M NOT DOING THAT TO TRY

1 TO CUT YOU SHORT.

2 MR. JARMUTH: I KNOW THAT, YOUR HONOR.

3 THE COURT: BUT THERE'S NO USE TO MAKE

4 PEOPLE LISTEN TO IT THAT'S

5 ALREADY SEEN IT AND READ

6 IT.

7 MR. JARMUTH: WE HAVEN'T DISCUSSED THE

8 DOCUMENT OF EMINENT DOMAIN

9 WHICH APPLIES TO THAT ---

10 THE COURT: ALL RIGHT.

11 MR. JARMUTH: --- AND THE CASE LAW WHICH

12 APPLIES TO WHETHER ROADS OR

13 EASEMENTS ARE OWNED BY THE

14 COUNTY. I WANT TO DO THAT

15 NOW AND ADDRESS THE CASE

16 LAW.

17 THE COURT: HAVE YOU GOT THE CASES

18 PHOTOSTATIC OR YOU JUST GOT

19 CITATIONS?

20 MR. JARMUTH: I GOT CITATIONS.

21 THE COURT: OKAY. WELL, THEN, COME ON

22 UP AND TELL ME. WHEN I

23 STARTED, WE HAD WHOLE ROOMS

24 OF BOOKS, AND NOW THEY'RE

25 ALL ON DISKS. MUCH BETTER

1 WITH THE DISK.

2 (MR. JARMUTH CONTINUES TESTIFYING.)

3 Mr. Jarmuth: Your Honor, rather than
4 go into each one by themselves, I'd like to
5 put into evidence specifically my exhibits
6 400 to 414, which are starting off the Horry
7 County FOIA correspondence, which
8 authenticates that these actually came from
9 Horry County, the dedications of the County
10 Council, and the others are the dedications
11 of every road in the PUD, plus number 409,
12 Tournament Drive, which is the Highway 17
13 Connector, which I'll address earlier, but I
14 want to get it into evidence now. I guess
15 I'm going to be addressing that separately.
16 I haven't addressed that, yet. So Your Honor
17 is free to read those itself.

18 Black's Legal Dictionary,
19 First Edition, page 425, which I have in
20 evidence, talks about eminent domain.

21 MS. GOLDING: YOUR HONOR, JUST FOR THE
22 RECORD, WE HADN'T GOT TO
23 THAT POINT, BUT HE SAID HE
24 HAD BLACK'S LEGAL
25 DICTIONARY IN EVIDENCE.

1 JUST FOR THE RECORD, I'M
2 GOING TO OBJECT TO ANY
3 INCLUSION IN THE EVIDENCE
4 OF ANY LEGAL OR STATUTORY
5 AUTHORITIES, AND FOR YOUR
6 EDIFICATION, YOUR HONOR,
7 AND I JUST WANT TO PROTECT
8 MYSELF ON THE RECORD, I'M
9 OBJECTING TO PLAINTIFF'S
10 EXHIBITS 200 THROUGH 267,
11 WHICH ARE ALL JUST STATUTES
12 AND REFERENCES TO LEGAL
13 AUTHORITIES. I'M ALSO
14 OBJECTING TO PLAINTIFF'S
15 EXHIBITS 351, 352, 353,
16 354.
17 MR. JARMUTH: YOUR HONOR ---
18 MS. GOLDING: I HAD NOT FINISHED.
19 THE COURT: JUST A MINUTE. JUST A
20 MINUTE. JUST A MINUTE.
21 MS. GOLDING: I HAD NOT FINISHED, YOUR
22 HONOR -- 511, 513, 514,
23 515, 517, 518, 519, 525,
24 527, 528, 530, 531, 533,
25 534, 539, EXHIBITS 620

1 THROUGH 626, AND EXHIBITS
2 647 THROUGH 649. THANK
3 YOU, YOUR HONOR.
4 THE COURT: I NOTE YOUR OBJECTION FOR
5 THE RECORD, AND WE'RE GOING
6 TO PROCEED.
7 MS. GOLDING: THANK YOU.
8 THE COURT: I'LL TAKE THEM SUBJECT TO
9 THE OBJECTION. THANK YOU
10 VERY MUCH. ALL RIGHT, GO
11 AHEAD.
12 MR. JARMUTH: YOUR HONOR, I'VE LOST TRACK
13 OF ALL THESE THINGS, BUT I
14 WANT TO ADDRESS AN ISSUE
15 THERE. MS. GOLDING FILED
16 OBJECTIONS ABOUT THOSE
17 LETTERS FROM ATTORNEYS AND
18 I ANSWERED THEM, AND THE
19 COURT DENIED HER A
20 PROTECTIVE ORDER REGARDING
21 THOSE THINGS, BECAUSE THE
22 LETTERS FROM ATTORNEYS
23 SHE'S OBJECTING TO WERE NOT
24 ATTORNEY-CLIENT PRIVILEGE,
25 THEY WERE BETWEEN ATTORNEYS

1 AND OTHER ATTORNEYS WHO
2 WERE NOT, EVERY ONE OF
3 THEM, THE ATTORNEYS FOR THE
4 ASSOCIATION, AND I CAME
5 INTO POSSESSION OF THESE
6 LEGALLY, SO THEY LOST THE
7 PRIVILEGE, IF THEY WERE
8 PRIVILEGED, IN THE FIRST
9 PLACE. SO LOOKING AT ANY
10 OF THESE ATTORNEY LETTERS
11 SHE'S LOOKING AT, THE COURT
12 IS ASKED TO BE VERY CAREFUL
13 TO SEE IN WHAT CAPACITY
14 EVERY ONE OF THE PEOPLE WHO
15 GOT A COPY OF THAT WAS,
16 BECAUSE IN NONE OF THOSE
17 LETTERS WAS EVERY SIDE OF
18 THE COUNSEL THE ATTORNEY
19 FOR THE IHOA; AS A MATTER-
20 OF-FACT, IN, I THINK, EVERY
21 ONE OF THEM, ONE OF THE
22 CORRESPONDENCE WAS AN
23 ATTORNEY FOR ANOTHER SIDE
24 WHO'S CONTESTING AND
25 QUESTIONING WHAT WAS DONE.

1 FOR EXAMPLE, I BELIEVE MOST
2 OF THESE LETTERS WERE
3 BETWEEN THE ATTORNEYS FOR
4 HORTON OR SUNBELT AND THE
5 IHOA ATTORNEY OR OTHER
6 PEOPLE REGARDING CAPITAL
7 CONTRIBUTIONS OR OTHER
8 MONEY ISSUES, SO.
9 THE COURT: WELL, I'LL BE ABLE TO READ
10 THOSE, OKAY?
11 MR. JARMUTH: BUT I'M SAYING THAT WAS
12 ALREADY ADDRESSED BY THE
13 COURT AND SHE DIDN'T WIN ON
14 THAT ONE.
15 MS. GOLDING: YOUR HONOR, THAT'S
16 COMPLETELY INCORRECT. I'M
17 SORRY, I KNOW YOU OVERRULED
18 THAT, AND I HAVE NO PROBLEM
19 WITH THE RULE, BUT MR.
20 JARMUTH JUST MADE A
21 STATEMENT THAT HAS NO
22 VALIDITY WHATSOEVER.
23 THE COURT: ALL RIGHT. I'LL NOTE THAT,
24 ALSO.
25 MS. GOLDING: THANK YOU, YOUR HONOR.

1 THE COURT: ALL RIGHT. GO BACK TO
2 WHERE YOU WERE IN YOUR
3 PRESENTATION ON THE SUBJECT
4 AT-HAND.

5 (MR. JARMUTH CONTINUES TESTIFYING).

6 Mr. Jarmuth: The Court is asked to
7 refer to Black's Legal Dictionary, First
8 Edition, page 426, which is an exhibit in
9 the, in the material there to make it easier
10 to refer to, and see what it says about
11 eminent domain, because I believe if The
12 Court looks at that, it'll conclude, I'm
13 asking The Court to conclude, that per
14 Article 4, Section 2 of the South Carolina
15 Constitution, which The Court is asked to
16 take judicial notice, it says that, "Title
17 to all lands and other property may vest in
18 a state by a grant or a gift as well as
19 purchase or otherwise." And I believe that
20 the action of Horry County in accepting
21 roads into the County system is identical to
22 action of the state in accepting roads into
23 the, into the state system.

24 Recently, there was a
25 bridge going west of Conway. There was an

1 issue regarding who owned those roads and
2 the case issue came down to, by eminent
3 domain, the road was not an easement and it
4 was actually owned by the State, was
5 Department of Highways, South Carolina DOT,
6 Department of Transportation. In moving
7 that bridge abutment, a number of people
8 lost their homes because they assumed it was
9 an abandoned easement; but, in fact, The
10 Courts ruled, this court, as a matter-of-
11 fact, that title to the road was not an
12 easement, it was actually owned by the
13 State, the DOT.

14 In United States v.
15 194.08 Acres of Land, 135 F.3rd, 1025, 1029
16 5th Circuit LA 1998, The Court ruled the
17 default rule in eminent domain is that a
18 taking in fee simple establishes a new title
19 and extinguishes all distinct possession --
20 possesses and ownership interest not
21 specifically exempted. And if you look at
22 the taking documents by County Council, they
23 did not exempt anything. Then it says when
24 the Government takes fee simple title, it
25 takes all interest specified as well as

1 unspecified, and if the Government intends
2 to take less than fee simple title, the
3 excluded interest shall be specifically
4 mentioned, and no interest was excluded,
5 explicitly mentioned in any Horry County
6 Council resolution. This is also stated in
7 DOT and Area Chamber of Commerce v. Shealey
8 561 South 2nd 515, Alabama, 1990 where it
9 says, "Land that is subject to an
10 enforceable covenant, such as acquisition,
11 extinguishes all existing possession, the
12 ownership interest and covenants not
13 specifically exempted in the acquisition.
14 Authority requires free simple, free from
15 the burdens of the covenants," Newberry
16 versus A-N-D-A-L USIA 257 Alabama 49,
17 Alabama 1952," and another case, United
18 States v. Carmack 329 U.S. 230 West 1946
19 says, "The Government's rights in a
20 condemnation are distinct from those of an
21 ordinary purchaser of property securing bad
22 title against the entire world and may be
23 obtained by voluntary conveyance." And the
24 South Carolina constitution says that the
25 State or its acquires title by many

1 different ways, and The Courts have held
2 this could be by gift, deed, taking,
3 purchase, or any other way it acquires. And
4 here's the one I was looking for, South
5 Carolina Department of Transportation,
6 Respondent v. Horry County, Burroughs &
7 Chapin, et al, appealed from Horry County,
8 opinion number 26911, January 18th, 2011,
9 South Carolina Supreme Court where they
10 said, "The granting of an easement for a
11 highway conveys title to the roadway. Horry
12 County's conveyance to title back to
13 Burroughs & Chapin was effective because it
14 remained with South Carolina DOT." Implied
15 unless otherwise stated in the document, the
16 granting of a road easement, the State
17 brings title with it, and the same thing, I
18 believe, applies to the county.

19 Van B-L-A-R-C-U-M v. City
20 of North Myrtle Beach, 523 Southeast 2nd,
21 486, South Carolina Court of Appeals 1999,
22 found that when Myrtle Beach accepted a
23 dedication, it gained, "Title to the two,
24 five foot rights-of-way that extend to the
25 Atlantic Ocean along east and west

1 boundaries of the two lots on which the
2 motel sits." I will point out that at no
3 time has either the developer or the IHOA
4 ever paid taxes on these roads, and in the
5 case of Anderson v. Hemingway, 269 South
6 Carolina 351, 237 Southeast 2nd 49, 1977
7 says that, "The payment of taxes on disputed
8 property is evidence contrary to the intent
9 to dedicate property to the public," and if
10 taxes have not been paid the inference
11 obviously is applied.

12 There is to the north --
13 actually, to the east of Pebble Creek
14 another subdivision which lies between the
15 McDowell Shortcut Road and 17 Bypass. That
16 subdivision pays taxes on the roads and it
17 gives it the right to put a gate off of
18 McDowell Shortcut Road.

19 And then in Van Blancum
20 337 South Carolina at 452, 523 Southeast 2nd
21 at 49 says taxes are not assessed on a road.
22 This is support of that. The County has
23 more than a mere easement that owns the
24 roads.

25 MS. GOLDING: YOUR HONOR, WE'RE NOT

1 DISPUTING THAT THESE ROADS
2 ARE DEDICATED, THAT THE
3 COUNTY MAINTAINS THE ROADS
4 IN THE INTERNATIONAL CLUB,
5 SO.

6 MR. JARMUTH: THE ISSUE IS THE IHOA
7 PREPARED THE PROBLEM, THAT
8 THE COUNTY HAS MORE THAN AN
9 EASEMENT THAT ACTUALLY IS
10 TITLE TO THE ROADS.

11 MS. GOLDING: YOUR HONOR, WE'RE NOT
12 DISPUTING THAT THE ROADS
13 ARE DEDICATED, THAT THE
14 DEDICATIONS ARE RECORDED,
15 AND THAT WE HAVE THE
16 DEDICATIONS IN EVIDENCE IN
17 TWO EXHIBITS.

18 MR. JARMUTH: THE QUESTION I'M RAISING IS
19 THAT THE IHOA HAS TOLD ME
20 THAT THE COUNTY JUST HAS AN
21 EASEMENT OF THE ROAD AND
22 THEY CAN, THEY CAN EXERCISE
23 DOMAIN OVER IT THROUGH THE
24 COVENANTS.

25 THE COURT: WELL, SHE'S CONCEDING THAT

1 IT'S DEDICATED; ARE YOU

2 NOT?

3 MS. GOLDING: THAT THEY'RE DEDICATED,
4 YOUR HONOR.

5 THE COURT: THEY'RE DEDICATED.

6 MS. GOLDING: THEY'RE DEDICATED. THE
7 ISSUE HE'S TRYING TO RAISE
8 IS THAT WE CANNOT, THE
9 ASSOCIATION CANNOT DICTATE
10 PARKING ON THE ROADS, WHICH
11 WE CAN, BECAUSE THE
12 RESTRICTIVE COVENANTS WERE
13 IN EXISTENCE SUBJECT ON ALL
14 THE LAND, ALL THAT LAND
15 PRIOR TO ANY DEDICATION.

16 THE COURT: WELL, ON THE NARROW POINT
17 OF THE DEDICATION OF ROADS,
18 I'M GOING TO HOLD, AS A
19 MATTER OF LAW, THAT THEY
20 WERE DEDICATED.

21 MS. GOLDING: ABSOLUTELY. THANK YOU,
22 YOUR HONOR.

23 MR. JARMUTH: OKAY. THE QUESTION IS ---

24 THE COURT: I UNDERSTAND WHAT THE
25 QUESTION IS, BUT DO YOU

1 UNDERSTAND WHAT I JUST

2 SAID?

3 MR. JARMUTH: YES, I AM.

4 THE COURT: OKAY.

5 MR. JARMUTH: AND THE QUESTION I HAVE IS,

6 DO THE COVENANTS STILL

7 APPLY TO THE ROADS OR ---

8 THE COURT: WELL, I ---

9 MR. JARMUTH: --- DOES THE CASES I'VE

10 CITED SAY THE COVENANTS ARE

11 EXTINGUISHED WHEN THE ROADS

12 BECOME DEDICATED TO THE

13 COUNTY AND THE STATE AND

14 THE STATE GETS MORE THAN AN

15 EASEMENT AND THE DEDICATION

16 EQUATES TO TITLE TO THE

17 ROADS WITHOUT ANY

18 RESTRICTIONS?

19 THE COURT: I'M WITH YOU, I JUST HADN'T

20 DECIDED THAT PART OF IT,

21 YET, OKAY?

22 MR. JARMUTH: SAY AGAIN, YOUR HONOR.

23 THE COURT: I'M WITH YOU, BUT I JUST

24 HADN'T DECIDED THAT PART OF

25 IT, YET, OKAY?

1 (MR. JARMUTH CONTINUES TESTIFYING) .

2 Mr. Jarmuth: The Court is asked to
3 look at Black's Legal Dictionary, First
4 Edition, 343, which defines dedication as an
5 appropriation of land, and an appropriation
6 of land, I believe, falls within what the
7 South Carolina State Constitution is saying
8 regarding taking, because it's just another
9 means of being entitled to land.

10 I previously cited the
11 cases that hold that in South Carolina we
12 respect the decisions of Appellate Courts in
13 other states, and courts have held that
14 title to roads can vest in a government
15 without the formal exercise of eminent
16 domain, specifically by continuous adverse
17 use by the public accompanied by some
18 official recognition thereon as a public
19 road by the County or by the owner's
20 dedication of the road's public use. And in
21 Ryan v. Monongalia County Court, 86 West
22 Virginia, 40, 102 Southeast 7th, 31, 1920,
23 and State Ex Rel. Riddle versus The Public
24 Highways, 154 West Virginia, 722, 725, 179
25 and Ford, et al, Dickinson, et al, it held

1 that, again, continuous and adverse use by
2 the public gives title to the Government.
3 And we can see that at least since 2001, the
4 public has had free use of the road and
5 there's been no gates and no restrictions on
6 the public use of the road. I want to point
7 out, Your Honor, that Horry County has been
8 maintaining these roads to include striping,
9 flood clearing, et cetera.

10 Now, turning to the
11 question of privity, I seem to hear the
12 counsel for the Defendants say that somehow
13 the HOA can exercise some rights over the
14 roads and obligations by homeowners, but to
15 exercise a right and obligation of the
16 covenant, the obligor who has to do
17 something has to have some sort of privity
18 in the property over which, or equity
19 interest, to which his -- he must do an act
20 or restrain, refrain from doing an act, and
21 that person insisting on the performance of
22 an act or failing to or not performing an
23 act also must have some sort of privity to
24 that property, and at no time has any
25 homeowner had any equitable privity to the

1 roads, nor has the IHOA ever had equitable
2 privity in the, in the roads, so they have
3 no standing to try to enforce any provision
4 of the covenant, because of lack of privity
5 by anyone at issue, anyone here, over the
6 roads, and clearly, there's another matter
7 which is changed circumstances. The
8 dedication, all else failing, the dedication
9 of the roads, the County has to change
10 circumstances, because the covenants were
11 written, and Your Honor is invited to read
12 them, to say that before dedicating of the
13 roads to the county, the Association has the
14 required obligation to maintain the roads,
15 it owns them, or the developer, but that
16 obligation of the HOA is terminated because
17 the developer never gave them to the HOA.
18 He used his option to give them to somebody
19 else. So all these things regarding acts to
20 be performed, not performed, the roads, are
21 read in the Association with the HOA
22 ultimately getting ownership of the roads or
23 the developer keeping title to the roads
24 'cause he was a party to the covenants since
25 he still owned property, of course, he no

1 longer does, and that's all I want to say
2 about roads.

3 THE COURT: ALL RIGHT. MS. GOLDING,
4 YOU ---

5 MS. GOLDING: NO QUESTIONS, YOUR HONOR.

6 THE COURT: ALL RIGHT. GO AHEAD.

7 MR. JARMUTH: YOUR HONOR, HOW MUCH TIME
8 ARE YOU ALLOWING UNTIL THE
9 CLOSE OF THE DAY?

10 THE COURT: I HAVE NO IDEA. HOW MUCH
11 WIND YOU GOT LEFT?

12 MR. JARMUTH: OH, A LOT, YOUR HONOR.

13 MS. JARMUTH: NO, YOU DON'T.

14 MR. JARMUTH: YES, I DO.

15 THE COURT: WELL, HOP ON UP HERE, THEN.

16 MR. JARMUTH: WHAT?

17 THE COURT: LET'S MOVE ON.

18 MR. JARMUTH: I THINK EVERYTHING ELSE CAN

19 BE FINISHED TOMORROW OR THE

20 DAY AFTER, `CAUSE I PLAN TO

21 CALL WITNESSES TOMORROW.

22 (MR. JARMUTH CONTINUES TESTIFYING.)

23 Mr. Jarmuth: One of the counts of my

24 Complaint specifically address the issue that

25 the IHOA was forcibly collecting, through its

1 assessments, dues on behalf of the Highway 17
2 Association. I asked in my Complaint that The
3 court declare that, among other things, that
4 the IHOA had no authority to do so, that this
5 was many problems with that.

6 I'd like to draw The
7 Court's attention to the Hidden Woods
8 Subdivision of Horry County where the Horry
9 County Council formed, at their request, a
10 special tax district to repair roads like
11 Ashwood Lane and the drainage system in the
12 community and that was by petition of the
13 homeowners to the County and the official
14 declaration of the county that they created a
15 special tax district. The money for that was
16 collected as part of the tax assessments
17 collected by the Horry County tax assessor as
18 part of the overall taxes.

19 THE COURT: WHAT EXHIBIT IS THAT?

20 MR. JARMUTH: I'M NOT SUBMITTING THE
21 EXHIBIT. I'M ASKING THE
22 COURT TO TAKE JUDICIAL
23 NOTICE OF THE ACT OF THE
24 HORRY COUNTY COUNCIL.

25 MS. GOLDING: THAT HAS NOTHING TO DO WITH

1 THIS LAWSUIT.
2 THE COURT: I MEAN, YOU KNOW, IF YOU
3 WANT TO MARK IT AND
4 INTRODUCE IT, I'LL BE GLAD
5 TO LOOK AT IT, BUT I CAN'T
6 LOOK AT IT, OTHERWISE,
7 OKAY?
8 MR. JARMUTH: YES, I HAVE A COPY FOR THE
9 DEFENDANT AND THE COURT.
10 THE COURT: WELL, LET THE COURT
11 REPORTER MARK IT.
12 MR. JARMUTH: YES.
13 THE COURT: WHAT ARE YOU GOING TO MARK
14 IT AS?
15 COURT REPORTER: 751?
16 MR. JARMUTH: THE NEXT, THE LAST -- THE
17 NEXT UNUSED NUMBER AT THE
18 END.
19 COURT REPORTER: 751?
20 MR. JARMUTH: LET ME GIVE YOU A NUMBER.
21 COURT REPORTER: IS THAT WHAT YOU WANT?
22 MR. JARMUTH: YES. YES, MA'AM.
23 COURT REPORTER: 751?
24 THE COURT: 751.
25 MR. JARMUTH: YES.

1 THE COURT: I'M GOING TO TAKE IT

2 SUBJECT TO YOUR OBJECTION.

3 MS. GOLDING: THANK YOU, YOUR HONOR.

4 THE COURT: OKAY.

5 PLAINTIFF'S EXHIBIT NUMBER 751

6 ADMITTED INTO EVIDENCE.

7 (MR. JARMUTH CONTINUES TESTIFYING.)

8 Mr. Jarmuth: On December 29th, 1998, a
9 group of developers recorded a document titled,

10 "The declaration of special covenants for the
11 Highway 17 Connector Road Maintenance District
12 Association, Inc.," Plaintiff's number 547,

13 Deed Book 2105 at Page 607. I am arguing that
14 in South Carolina and Horry County there is no
15 such thing as a road maintenance district.

16 There are special purpose districts which have
17 been created by ordinance of Horry County for
18 special purposes, for example, the one I just
19 referred to for Hidden Woods.

20 THE COURT: WHICH EXHIBIT ARE YOU ON
21 NOW?

22 MR. JARMUTH: I'M TALKING ABOUT 547.

23 THE COURT: 547, OKAY.

24 MS. GOLDING: YOUR HONOR, WE HAVE THAT
25 MARKED. THAT IS

1 DEFENDANT'S EXHIBIT NUMBER
2 2. THAT'S THE DECLARATION
3 OF SPECIAL COVENANTS FOR
4 THE HIGHWAY 17 CONNECTOR
5 ROAD MAINTENANCE DISTRICT
6 ASSOCIATION, INC.
7 THE COURT: WELL, LET'S GET STRAIGHT ON
8 WHAT WE'RE ---
9 MR. JARMUTH: YEAH.
10 THE COURT: --- GOING TO CALL IT, SO WE
11 CAN FIND IT AGAIN.
12 MR. JARMUTH: WELL, I'M SUBMITTING IT, SO
13 I'M GOING TO USE MY NUMBER,
14 YOUR HONOR.
15 THE COURT: YOU MARK IT OFF, SO IT'S
16 PART OF YOURS?
17 MS. GOLDING: RIGHT, IT'S EXHIBIT 2. I
18 JUST WANTED TO GET THE NAME
19 CORRECT.
20 THE COURT: ALL RIGHT. I THOUGHT YOU
21 HAD THE SAME THING. YOU'RE
22 FINE WITH YOUR NUMBER, SIR.
23 (MR. JARMUTH CONTINUES TESTIFYING).
24 Mr. Jarmuth: There are special purpose
25 districts which have been created by ordinance

1 of Horry County for special purposes; for
2 example, the Murrells Inlet Fire Department,
3 for which all the homeowners here pay taxes to
4 support. There are similar special purpose
5 districts in Myrtle Beach, similarly created by
6 ordinance with revenues and taxes, for example,
7 for the special events around the Boardwalk.

8 MS. GOLDING: YOUR HONOR, WE'VE NEVER
9 CONTENTED THAT THIS IS A
10 SPECIAL PURPOSE DISTRICT.
11 JUST FOR YOUR INFORMATION,
12 IN DEFENDANT'S EXHIBIT
13 NUMBER 2, IT'S IDENTIFIED.
14 IT IS A SOUTH CAROLINA NON-
15 PROFIT CORPORATION IN WHICH
16 A NUMBER OF DEVELOPMENT
17 CORPORATIONS CAME TOGETHER.
18 THERE IS NO LEGISLATIVE
19 AUTHORITY, WHETHER IT BE
20 THE COUNTY OR THE STATE,
21 THAT WAS INVOLVED IN THE
22 FORMATION OF THE
23 ASSOCIATION.

24 MR. JARMUTH: I ABSOLUTELY AGREE, YOUR
25 HONOR.

1 THE COURT: IT'S A NON-PROFIT
2 CORPORATION?
3 MS. GOLDING: IT'S A NON-PROFIT
4 CORPORATION, YOUR HONOR.
5 THE COURT: DO YOU DISPUTE THAT OR IS
6 THAT RIGHT?
7 MR. JARMUTH: YES, YOUR HONOR.
8 THE COURT: WHICH ONE IS IT? IS IT A
9 NON-PROFIT ---
10 MR. JARMUTH: IT'S A NON-PROFIT
11 CORPORATION ---
12 THE COURT: ALL RIGHT. THANK YOU.
13 MR. JARMUTH: --- ORGANIZED UNDER THE
14 SOUTH CAROLINA NON-PROFIT
15 CORPORATION ACT.
16 THE COURT: ALL RIGHT.
17 (MR. JARMUTH CONTINUES TESTIFYING).
18 Mr. Jarmuth: The gist of this is so
19 far as it pertains to us homeowners in the
20 PUD, particularly this homeowner, is that
21 the covenants state an obligation for the
22 PUD property owners to do something on
23 property they -- the covenants for the
24 Highway 17 Non-profit Corporation, them,
25 state an obligation for people in the PUD to

1 do something on property they don't own and
2 never had an interest in, and covenants,
3 seems to me, must touch and concern the
4 land, and as we can see from the various
5 maps we've put up there, there is no area in
6 the PUD which is contiguous to the Highway
7 17 Connector Road now called Tournament
8 Drive. And no property owner, rather,
9 developer during the time this covenant was
10 filed owned property contiguous, either, or
11 owned property then or later which became
12 the property for which the covenants are,
13 were stated. As a matter-of-fact, Your
14 Honor, we have put in evidence the
15 dedication for Tournament Drive, so
16 Tournament Drive itself is owned by the
17 County and has been since, I believe, a year
18 after the Highway 17 Connector Association
19 was formed, which would be, I believe, 1999.

20 There is no vertical
21 privity among all the homeowners of the PUD,
22 anybody with horizontal privity with
23 property for which the covenants were
24 declared, now Tournament Drive, and
25 therefore, I argue that we can't have an

1 obligation as homeowners to those covenants,
2 because there is -- it's titled vertical
3 privity instead of horizontal privity. And
4 the property which benefits from the funds
5 collected is Tournament Drive. And I repeat
6 what I pointed out earlier, that in the
7 development of Pebble Creek, the only road
8 of access was the one to McDowell Shortcut.
9 We did not depend on nor have the use of any
10 road which went south to Tournament Drive,
11 although we were promised in our deeds that
12 if such a road was created, we'd have an
13 easement over that road. A promise to do
14 something on someone else's property is a
15 personal servitude, personal services
16 contract. If written into a deed or a
17 covenant, it's still a personal services
18 contract. It does not survive the sale of
19 the property from the person who signed, the
20 company who bought it. So for example, if
21 as a consideration to buy my house, the
22 seller says, "You also" -- and he writes it
23 into the deed or puts a covenant down, "You
24 agree that you and the future persons of the
25 house buy your chickens from my chicken

1 market," that's a personal services contract
2 even though it's written into the, into the
3 deed and formed as a covenant. And here, we
4 have -- if I have a thing that says, "You
5 promise to go and irrigate a plot I own as
6 the seller up in North Myrtle Beach," it's
7 still a personal services contract, and
8 here, it's a promise to pay money to
9 irrigate and maintain some land which no one
10 currently owns in a personal capacity, which
11 is distinct from the PUD and which no PUD
12 owner ever owned. So it's not much
13 different from buying chickens from a
14 chicken market, paying money to maintain
15 Tournament Drive.

16 I point out that in a
17 similar vein is a obligation in a covenant
18 to join a club, such as a VFW or a church or
19 any other association. If I sell my house,
20 that obligation is not transferred, it did
21 not survive the transfer. It did not touch
22 and run with the land, because it did not
23 control something I do on my land. So this
24 implies to membership in the Highway 17
25 Association, which by the way, I come back

1 to the point that the South Carolina Non-
2 Profit Act says I can't be forced to join
3 and I can resign from it at any time, and I
4 can't be forced to pay expense.

5 Let's look at the Highway
6 17 covenants, page three, Deed Book Page
7 609, and that's in evidence. It says, "An
8 owner shall" -- this is highway 17 -- "shall
9 mean and refer to the record owner,
10 (including the declarant) as shown by the
11 real estate records situated within the
12 property." The covenant on page four, Deed
13 Book Page 610 says, "The property shall mean
14 and refer to all the property which is
15 subject to the declaration for the Highway
16 17." The Plantation Tract is shown at
17 Exhibit "F", but there's no horizontal
18 privity even if it says it, and at the time,
19 Plantation A.D. did not own any property
20 adjacent to Tournament Drive and never owned
21 that land or wasn't -- and the PUD, the
22 property owned by Plantation A.D. was not
23 contiguous to that road, either, so it
24 couldn't benefit from it. The actual
25 property subject to the covenants is the

1 connector where the PUD homeowners have a
2 putative duty to do something as described
3 in Book Page 608, page two, as stated in
4 Exhibit "C" to the Highway 17 covenants.
5 The Highway 17 covenants do not impose an
6 obligation on anyone to perform anything
7 except on the connector where they
8 supposedly have an obligation to perform
9 maintenance on someone else's property, and
10 I allege maintenance on someone else's
11 property is a personal services contract,
12 again, changed circumstances belonging to
13 the County.

14 On page seven, Article
15 8.5, Section 1 of the Highway 17 covenants,
16 it is asserted that no owners of the
17 covenant, of the connector property have an
18 obligation to pay for the purposes described
19 in Section 2, which are stated as the
20 improvement, maintenance, enhancement,
21 enlargement and operation of the connector,
22 but those duties reside now in the county.
23 So I argue that the purposes have
24 disappeared, you have changed circumstances
25 and no valid purpose for collecting

1 assessments for Highway 17 from
2 International Club PUD homeowners.
3 Interestingly enough, the
4 connector property, Exhibit "C", Deed Book
5 Page 651 at page 45 of their covenants
6 excludes the actual road from the property,
7 but it includes the rest of the right-of-way
8 for what is now known as some of Tournament
9 Drive, which they don't own.

10 On June 5th, 2001, the
11 entire connector, including the roadways and
12 the shoulders, were conveyed to Horry County
13 and accepted by Horry County Council
14 resolution R076-01, my 409, which I've
15 already put in evidence. As such, the
16 entire area which is benefit by the
17 covenants do not belong to any of the
18 original parties, covenants, including the
19 shoulders. The dedication of that road is
20 without reference to the Highway 17
21 covenants, and thus, they are not preserved.

22 Now, the dedication
23 documents describe the dedication as being
24 Tournament Boulevard as they're the owners
25 -- as the Horry County document, the owners

1 of the connector as being Kaminski, owner
2 and developer of Prince Creek, ETS. and Bill
3 Hattaway. The Horry County documents do not
4 describe Plantation A.D. or any of us
5 homeowners as being owners of the road back
6 in 1991 -- back in 2001.

7 When you surrender or
8 grant an easement to the County, every owner
9 of record has to be listed to assure that
10 everyone with an interest in the property
11 has surrendered whatever the interest is to
12 the County.

13 Exhibit "F", which talks
14 about the Plantation A.D. property says it
15 is the roads that develop Plantation
16 property, but that is not contiguous with
17 the connector road and shares no common
18 point. It's actually separated from the
19 connector by the southern end of Tournament
20 Drive and the Grand Vistas and other areas
21 to the right of the Tournament Drive, and
22 Horry -- or known property to the left of
23 it, that on the right being called Cypress
24 Keys. That area of Cypress Keys is
25 described in the covenants as Plat Book 160

1 at 79, my 454, which the plat describes it
2 as 9.79 acres, now Cypress Keys, which is
3 not contiguous with the Murrells Inlet Golf
4 Plantation, but it is contiguous with the
5 connector.

6 The connector covenants
7 do not describe any limitations on what PUD
8 owners can or cannot do with their property
9 nor with the connector property. Plantation
10 -- the whole matter did not involve the sale
11 or purchase of any real property by
12 Plantation.

13 On page eight of the
14 Highway 17 covenants, it states that HOAs,
15 such as the IHOA, formed in any PUD around
16 the area, they're all obligated to collect
17 assessments from the unit owners on behalf
18 of Highway 17; however, on December 29th,
19 1998, no HOA existed in the Plantation
20 properties, it wasn't incorporated. It
21 wasn't -- the covenants wasn't even written
22 for the PUD. The Highway 17 covenants
23 purport to impose a contractual obligation
24 on a non-existent corporation to which the
25 corporation -- to which it supposedly

1 imposed had not been accepted when it was
2 created. Further, the involuntary
3 collection of Highway 17 money by this IHOA
4 is not a purpose stated for assessments in
5 the PUD covenants, which are strictly for
6 the maintenance and upkeep of the HOA's
7 common property within the PUD and no other.
8 So it succeeds the authority of the IHOA to
9 collect covenants when they include that
10 assessment in it.

11 Now, on page eleven of
12 the Highway 17 covenants, Deed Book page
13 617, they're exempt from any obligation
14 under the Highway 17 covenants any property
15 in Section 11(c) owned by a non-profit
16 organization, which includes the HOA, yet
17 that's the HOA being exempt as the vertical
18 horizontal privity for the Highway 17 to
19 property it owns, plus it's exempt from the
20 covenants by the very words of the Highway
21 17 covenants, yet from the information I've
22 collected from Highway 17, which is in the
23 exhibits in the book there, the IHOA is
24 actually paying assessments for the property
25 the IHOA owns, for example, the amenity

1 center, those little ponds owned by HOA
2 deeded to it by Horton, and even the roads
3 are computed in the acreage by Highway 17
4 authority. By the way, Defendant Rosemary
5 Toth is an officer of Highway 17, and she's
6 a personal Defendant here in a personal
7 capacity, and what they do is they look at
8 the big PUD map and say, "Oh, it's 647
9 acres, how many acres in Prince Creek, how
10 many acres?" They add it all up, divide it
11 up by the total, multiply by the budget with
12 no diminution for roads, HOA property or
13 wetlands which is also excluded, and say,
14 "That's the tax which the IHOA has collected
15 from its homeowners," which they're, in
16 fact, doing without a challenge. And I
17 believe that at the least, they owe a duty
18 of -- under the South Carolina statutes to
19 check and examine and challenge the
20 computation of Highway 17, which they've
21 never done. I, in fact, gave them back in
22 2009 those computations, the material from
23 Highway 17, which the Defendants ignored.
24 Wetlands are exempted.
25 Now, there's also a

1 question of equity, because the IHOA is
2 paying the Highway 17 taxes for the area
3 occupied by the golf course, but the Highway
4 17 covenants exempts the golf course and
5 Prince Creek which happens to be much larger
6 than the International Club golf course,
7 their golf course in Prince Creek being
8 called a Tournament Players Club, so it
9 doesn't treat all golf clubs within the
10 exposed area over which they obviously have
11 seen, it asserts dominion and force to
12 collect taxes, and I believe as a fact that
13 they exempt the Prince Creek golf course,
14 not the International Club golf course,
15 means that's a basis to throw the whole
16 thing out. It doesn't have equal treatment
17 for everybody, and The Court is asked to
18 note that the Highway 17 connector, the
19 covenants were filed by Kaminski who Horry
20 County said was the owner of Highway 17
21 connector when it was dedicated, and he
22 happen to also be the owner of Prince Creek,
23 so he did have a self-interest in that
24 matter.
25 Now, there's an

1 additional matter. Highway 17 Connector
2 Association is a non-profit corporation.
3 It's subject to the same requirements of
4 voting and meetings as the HOA and the PUD,
5 but Highway 17 since 2001 has never had an
6 annual meeting of the members, never
7 provided any of the IHOA homeowners notice
8 of meetings or whether they had meetings,
9 never solicited them to vote, and when I
10 asked them, they said, "Oh, the IHOA
11 representative somehow has a proxy from the
12 property owners in the PUD to vote on their
13 behalf." The covenants of Highway 17 says
14 each homeowner is subject to their tax, is a
15 member of the HOA, based upon the percentage
16 of -- of their HOA, based upon the
17 percentage of the money that's collected.
18 The HOA is paying on behalf of the
19 individual homeowners, but the individual
20 homeowners still have that putative right to
21 vote and are putative members of IHOA, and
22 I'd ask The Court to say if they're not
23 giving the homeowners of the PUD notice of
24 meetings, not, not just appointing
25 themselves as Board members and not making

1 records available, not to do any of the
2 things that a South Carolina Non-profit
3 corporation should be doing, I can't say The
4 Court should just dissolve it, because
5 they're not a Defendant, but I could say
6 that The Court should note that based upon
7 the covenants in our HO -- in our PUD, we
8 have no obligation to the Highway 17
9 Association, at least none to pay them any
10 money. We can ignore their search with the
11 members, if that's the case. And the
12 consequent order, I'd ask to be the same,
13 because the association, whoever it is,
14 you're enjoying collecting money on behalf
15 of Highway 17 from the homeowners via your
16 assessments. If Highway 17 wants to come
17 after us, they can sue us. That's all I
18 want to say about Highway 17.

19 MS. GOLDING: NO QUESTIONS.

20 THE COURT: I THINK THIS MIGHT BE A
21 GOOD TIME TO BREAK. IT'S
22 TWENTY AFTER FIVE. WE'LL
23 START STRAIGHT UP AT NINE.

24 *****OFF THE RECORD*****

25 THURSDAY, AUGUST 9, 2012

1 ON THE RECORD.

2 THE COURT: THE BIG PLATS ARE GONE. I

3 CAME AND GOT THEM EARLY

4 THIS MORNING AND WENT

5 THROUGH THEM AND THE GIRL

6 WILL BRING THEM BACK IN A

7 LITTLE BIT, AND THEN, MS.

8 GOLDING, IF YOU HAVE NO

9 OBJECTIONS, WE'VE GOT

10 DUPLICATE SMALL ONES.

11 RATHER THAN BURDEN THE

12 COURT REPORTER -- I THOUGHT

13 ABOUT THAT COMING OVER,

14 RATHER THAN BURDEN THE

15 COURT REPORTER WITH

16 DRAGGING THEM AROUND, I'M

17 GOING TO KIND OF

18 UNINTRODUCED THOSE AND GIVE

19 THEM BACK TO YOU, SO YOU

20 CAN TAKE THEM WITH YOU,

21 OKAY? I CAME DOWN AND MADE

22 NOTES.

23 MS. GOLDING: I HAVE NO OBJECTION, YOUR

24 HONOR.

25 THE COURT: IS THAT ALL RIGHT?

1 MS. GOLDING: YES, SIR, YOUR HONOR.
2 MR. JARMUTH: YES, YOUR HONOR.
3 THE COURT: SO WE'LL DELETE THE LARGER
4 ONES. ARE YOU READY?
5 MR. JARMUTH: YES, YOUR HONOR. AS A
6 PRELIMINARY MATTER, AS THE
7 IMPEACHMENT OF THE WITNESS,
8 CHRIS SULLIVAN, I'D LIKE TO
9 INTRODUCE THE DOCUMENT FROM
10 CLEMSON REGARDING THE
11 WATERING OF NON-GOLF COURSE
12 POPULACE, LAWN AREAS, THE
13 ROAD. THE COURT IS FREE TO
14 USE ITS OWN INTELLIGENCE TO
15 READ THAT, AND WHAT I'D
16 DIRECT THE COURT'S
17 ATTENTION TO IS THAT THE
18 CLEMSON MATERIAL REPRESENTS
19 THAT YOU WATER AREAS LIKE
20 THAT ONCE A WEEK TO THE
21 DEPTH OF ONE AND A HALF
22 INCHES AS CALCULATIONS OF
23 HOW MUCH WATER THAT TAKES A
24 ACRE AND THE WATER CAPACITY
25 LAKES. I SUGGEST THAT WHEN

1 ALL THE MATH IS DONE, THE
2 COURT MAY COME TO THE
3 CONCLUSION, WHICH IS MY
4 CONCLUSION, THE COURT DO
5 ITS OWN THING, THAT THE TWO
6 LAKES BY THE VILLAS AND THE
7 PEBBLE CREEK ARE MORE THAN
8 SUFFICIENT TO PROVIDE AMPLE
9 WATER RESOURCES TO WATER
10 THE COMMON PROPERTY OF THE
11 HOA, WHICH IS MOSTLY THE
12 AMENITY CENTER, ESPECIALLY
13 IF THE COURT FINDS THAT THE
14 ASSOCIATION HAS RIPARIAN
15 RIGHTS AND THE GOLF COURSE
16 AND THE RIGHT TO DRAW WATER
17 FROM THAT.
18 THE COURT: MS. GOLDING?
19 MS. GOLDING: I WOULD OBJECT TO THE
20 EXHIBIT. THIS IS THE FIRST
21 TIME I'VE SEEN IT, AND THIS
22 IS AN IMPROPER WAY OF
23 CONDUCTING IMPEACHMENT OF
24 AN EXPERT. THANK YOU, YOUR
25 HONOR.

1 THE COURT: ALL RIGHT. WE'RE GOING TO
2 MARK IT. I'LL TAKE IT
3 SUBJECT TO THE OBJECTION.
4 SO IT WILL BE ---
5 COURT REPORTER: 752.
6 THE COURT: YOU WANT TO HAND IT UP TO
7 HER, SO SHE CAN MARK IT?
8 SUBJECT TO YOUR OBJECTION.
9 MS. GOLDING: AN OBJECTION ALSO BEING
10 HEARSAY, YOUR HONOR.
11 THE COURT: OKAY.
12 PLAINTIFF'S EXHIBIT NUMBER 752
13 MARKED FOR IDENTIFICATION.
14 MR. JARMUTH: ON THAT, I'D LIKE TO STATE
15 THAT HE PUBLISHED, A
16 PUBLISHED LEARNED ARTICLE,
17 I BELIEVE, THAT'S NOT
18 HEARSAY.
19 THE COURT: I DON'T NEED TO KEEP THIS,
20 BECAUSE I'LL HAVE THE
21 MARKED ONE, AND LET ME GIVE
22 YOU THIS COMPUTER GENERATED
23 SHEET.
24 MR. JARMUTH: THANK YOU, YOUR HONOR. THE
25 NEXT ITEM, YOUR HONOR, IS

1 THE SUNBELT DEED. I
2 INTRODUCED A COPY OF THE
3 SUNBELT DEED AND THERE WAS
4 A COMPETING COPY OF THE
5 SUNBELT DEED INTRODUCED BY
6 THE DEFENDANT. IN
7 ACQUIRING ---
8 MS. GOLDING: YOUR HONOR, CAN I
9 INTERRUPT? WHAT IS THE
10 NUMBER OF THIS EXHIBIT?
11 THE COURT: WHAT'S THE EXHIBIT NUMBER?
12 MR. JARMUTH: IT'S THEIR NUMBER 4, AND
13 IT'S MY ---
14 MS. GOLDING: NO, SIR, WHAT IS THE
15 CLEMSON EXTENSION EXHIBIT
16 NUMBER?
17 THE COURT: CLEMSON EXTENSION.
18 COURT REPORTER: 752.
19 MS. GOLDING: THANK YOU.
20 MR. JARMUTH: PARDON ME. WE'RE TALKING
21 ABOUT MY 545 AND THEIR
22 NUMBER 4. IN ACQUIRING
23 PLATS AND DEEDS RATHER THAN
24 TRUST ANY OTHER SOURCE TO
25 GIVING ME MARKED UP COPIES,

1 OBSCURED, WHATEVER, ALTER
2 THINGS, EVERY PLAT AND
3 EVERY DEED I'VE INTRODUCED
4 INTO EVIDENCE WHICH I GAVE
5 TO THE DEFENDANT AS FAR
6 BACK AS MAY OF 2009 AND
7 MORE RECENTLY NEW COPIES IN
8 DECEMBER OF 2011 WAS
9 OBTAINED DIRECTLY FROM THE
10 RECORDER OF DEEDS TO MAKE
11 SURE THEY WERE ACCURATE
12 COPIES, AND THIS IS THE
13 COPY OF THE SUNBELT DEED I
14 INTRODUCED. I SUGGEST THAT
15 THE DEFENDANTS' COPY WAS BY
16 SOMEONE INDIRECTLY, NOT
17 DIRECTLY FROM THE RECORDER
18 OF DEEDS. NOW, MY COPY,
19 WHICH I DO NOT HAVE A BOOK/
20 PAGE NUMBER ON IT, IS THE
21 EFFECTIVE ONE, AND THE
22 COURT IS FREE TO LOOK ON
23 ITS OWN TO VERIFY MY
24 REPRESENTATION THAT THE
25 DEFENDANTS' COPY OF THE

1 SUNBELT DEED WAS LATER
2 MARKED UP BY SOMEBODY ELSE.
3 I'M NOT SAYING THEY DID IT,
4 BUT SINCE THEY DIDN'T GET
5 IT DIRECTLY, I BELIEVE,
6 FROM THE RECORDER OF DEEDS,
7 MINE IS THE EFFECTIVE COPY.
8 AGAIN, I GOT IT FROM THERE
9 AND THE COURT CAN
10 INDEPENDENTLY, JUST DOWN
11 THE HALL, GET IT
12 THEMSELVES, SO I CAN
13 RESOLVE THAT ISSUE.
14 MS. GOLDING: YOUR HONOR, THE DEFENDANT
15 HAS NOT INTRODUCED NOR HAS
16 IT IN THE EXHIBIT LIST A
17 COPY OF ANY SUNBELT DEED.
18 THE ONLY COPIES I USED
19 YESTERDAY WERE THAT
20 PROVIDED BY MR. JARMUTH,
21 AND I JUST DON'T THINK THIS
22 IS APPROPRIATE AT THIS
23 TIME. ALL THIS MATTER HAS
24 BEEN PRESENTED TO THE COURT
25 YESTERDAY. MR. JARMUTH

1 SHOULD BE REQUIRED TO
2 PRESENT EVIDENCE AND
3 WITNESSES TODAY TO TESTIFY
4 AND NOT STAND HERE AND
5 ARGUE.
6 THE COURT: YES, YOU'RE REHASHING WHAT
7 WE DID YESTERDAY. I'M
8 AWARE OF THE DEED, THAT THE
9 DEED HAD A BLANK IN IT, IT
10 WASN'T FILLED OUT ON ONE,
11 WAS FILLED OUT ON THE OTHER
12 ONE. I'LL TAKE THAT UNDER
13 ADVISEMENT AS I GO DOWN.
14 MR. JARMUTH: THANK YOU, YOUR HONOR.
15 THE COURT: SO GO AHEAD AND PROCEED TO
16 YOUR NEXT POINT, PLEASE.
17 MR. JARMUTH: NOW, YESTERDAY DURING THE
18 COURSE OF THE TRIAL, THE
19 DEFENDANT OBJECTED TO A
20 WHOLE SERIES OF, OF, OF
21 EXHIBITS, BUT SINCE I WAS
22 UP ON THE STAND, I DIDN'T
23 HAVE A CHANCE TO GO LOOK
24 AND SEE WHAT THESE ARE AND
25 MAKE SOME REPRESENTATIONS

1 TO THE COURT ABOUT WHY THAT
2 MIGHT ---
3 THE COURT: WELL, THEY'RE ADMITTED
4 SUBJECT TO HER OBJECTION.
5 I ADMITTED THEM. THEY WERE
6 ALL ADMITTED.
7 MR. JARMUTH: I THINK I NEED TO HAVE AN
8 OPPORTUNITY TO SAY WHY SOME
9 OF THESE ARE NOT VALID.
10 THE COURT: I DON'T WANT TO HEAR THAT
11 THIS MORNING. GO AHEAD ON
12 TO SOMETHING ELSE. I'VE
13 ADMITTED ALL OF THEM
14 SUBJECT TO HER OBJECTIONS,
15 ---
16 MR. JARMUTH: FINE, YOUR HONOR.
17 THE COURT: --- AND I UNDERSTAND YOU
18 WANT THEM IN, AND THEY'RE
19 IN.
20 MR. JARMUTH: OKAY.
21 THE COURT: OKAY.
22 MR. JARMUTH: NOW, LAST NIGHT -- THE
23 FIRST TIME I SAW THE
24 DEFENDANTS' EXHIBITS WAS
25 WHEN SHE PUT IT IN THE

1 COURT, IN THE COURTROOM
2 HERE ON MY DESK. WE DID
3 NOT HAVE A CHANCE ACTUALLY
4 TO READ THROUGH THEM. WHEN
5 I READ THROUGH THEM LAST
6 NIGHT, I VERIFIED THAT, IN
7 FACT, I HAVE NOT SEEN MANY
8 OF THEM. I DON'T HAVE A
9 PROBLEM WITH THAT, BECAUSE
10 WHEN SHE GOES TO INTRODUCE
11 THEM AS AUTHENTIC, THE
12 COURT GO AHEAD AND USE IT,
13 IT'S EVIDENCE, BUT I DO
14 HAVE SOME PROBLEMS AND
15 ISSUES WITH SOME ---
16 MS. GOLDING: YOUR HONOR, WE HAVEN'T
17 PRESENTED ANY EXHIBITS,
18 YET, AND I THINK THAT
19 ANYTHING HE ---
20 THE COURT: NO, WAIT UNTIL SHE STARTS
21 INTRODUCING THEM, THEN YOU
22 CAN -- THEY AREN'T IN, YET,
23 RIGHT?
24 MS. GOLDING: CORRECT.
25 THE COURT: NOTHING IS IN FROM THEM AS

1 FAR AS EXHIBITS, OKAY?

2 MR. JARMUTH: THANK YOU, YOUR HONOR.

3 THE COURT: OKAY. YOU CAN GET THOSE AS

4 THEY COME BY. SHE MAY NOT

5 INTRODUCE SOME OF THEM THAT

6 YOU'RE TALKING ABOUT, I

7 MEAN, I PRESUME YOU'RE NOT

8 GOING TO PRODUCE THE WHOLE

9 LOAD OF THEM?

10 MS. GOLDING: NO, SIR, YOUR HONOR.

11 THE COURT: IF YOU DO, YOU DO, BUT I'M

12 SAYING ---

13 MS. GOLDING: THERE'LL BE SOME DUPLICATE

14 ---

15 THE COURT: --- UNTIL EXACTLY PRESENTED

16 THAT YOU DON'T HAVE TO

17 OBJECT TO SOMETHING THAT

18 MAY NOT COME UP.

19 MR. JARMUTH: THANK YOU.

20 MS. GOLDING: THANK YOU.

21 MR. JARMUTH: THE SUBJECT I'M ADDRESSING,

22 YOUR HONOR, IS CAPITAL

23 CONTRIBUTIONS MADE FROM THE

24 DEVELOPERS TO THE HOA,

25 WHICH I HAD SOME PROBLEMS

1 WITH THAT, AS I'LL EXPLAIN
2 AS SOON AS I GET THE
3 EXHIBITS..
4 MS. GOLDING: YOUR HONOR, THAT'S AN ISSUE
5 HE ADDRESSED IN DEPTH
6 YESTERDAY, THE CAPITAL
7 CONTRIBUTIONS FROM THE
8 DEVELOPER.
9 MR. JARMUTH: NO, I DIDN'T ADDRESS THE
10 DISAPPEARANCE OF THE MONEY
11 AND THE APPARENT THEFT OF A
12 HUNDRED SIXTEEN THOUSAND
13 DOLLARS OF CAPITAL
14 CONTRIBUTIONS BY DEFENDANT
15 K.A. DIEHL. I HAVE
16 EVIDENCE HERE I DID NOT
17 PRODUCE. I INTRODUCED THAT
18 SUBJECT.
19 THE COURT: WELL, GO AHEAD, I'M GOING
20 TO LET YOU TALK ABOUT THAT.
21 MS. GOLDING: COULD WE HAVE HIM SWORN IN
22 AGAIN THIS MORNING, YOUR
23 HONOR?
24 THE COURT: YES, OF COURSE.
25 MS. GOLDING: THANK YOU.

1 THE COURT: SWEAR THE WITNESS.

2 RONALD JARMUTH, AFTER HAVING BEEN DULY SWORN,
3 TESTIFIED AS FOLLOW:

4 COURT REPORTER: WOULD YOU STATE YOUR NAME
5 AND SPELL YOUR LAST?

6 MR. JARMUTH: RONALD JARMUTH, J-A-R-M-U-
7 T-H.

8 (MR. JARMUTH TESTIFIES.)

9 Mr. Jarmuth: In my Complaint, I alleged
10 that the developer, Sunbelt, and developer
11 Horton, based upon the developer agreement,
12 which is in evidence, and I'll cite to that now
13 to make sure we have the number correct. I'd
14 like to have it introduced as evidence. It's
15 my number 350, May 16th, 2003, developer
16 agreement between Sunbelt and Horton and on its
17 face, Plantation A.D., which the Plantation
18 A.D. somehow did not sign, but in that ---

19 MS. GOLDING: YOUR HONOR, I'M JUST GOING
20 TO MAKE AN OBJECTION SIMPLY
21 BECAUSE MR. JARMUTH, AS
22 SHOWN YESTERDAY, WAS NOT A
23 MEMBER OF THE ASSOCIATION,
24 NOT A PROPERTY OWNER PRIOR
25 TO OCTOBER 2006, SO HE HAS

1 NO STANDING TO ASSERT ANY
2 CLAIMS RELATING PRIOR TO
3 OCTOBER 2006.
4 THE COURT: YOUR OBJECTION, I SUSTAIN.
5 MS. GOLDING: THANK YOU, YOUR HONOR.
6 THE COURT: OKAY. THANK YOU. GO
7 AHEAD.
8 (MR. JARMUTH CONTINUES TESTIFYING).
9 Mr. Jarmuth: But in my original
10 Complaint, I stated that I examined the
11 financial documents of the HOA and I multiplied
12 a thousand dollars times two hundred and twenty
13 houses in Pebble Creek plus a thousand dollars
14 times around three hundred houses in the Horton
15 area and had expected to find a half million
16 dollars of capital contribution money and as a
17 cash reserve in the accounts of the HOA, and I
18 found not even a hundred thousand dollars
19 there, and I alleged that subject to discovery,
20 I was going to find out what happened. I
21 alleged that the Board of Director, Board of
22 Directors, itself, or someone else before them
23 had run off with it, to put it in common
24 language. Through discovery, the -- I served a
25 Subpoena, as I said yesterday, on Sunbelt and

1 Horton for their financial records, among other
2 things, and The Court, ultimately, in January
3 directed Horton to produce its records. Now,
4 as I -- my understanding of this is capital
5 contributions is for capital purposes. I
6 submitted some explanation of that, but if we
7 turn to Exhibit 701, we see what D.R. Horton
8 gave me with a copy to the Defendant, what they
9 actually gave to the IHOA as capital
10 contributions, and then Exhibit 703 and 7 --
11 703, we see what the Defendant gave me as the
12 run -- from the ledger of financial
13 contributions for the same period. There was a
14 discrepancy.

15 Now, in looking at how this
16 works, somebody such as me or someone else
17 writes a check to K.A. Diehl, my records or the
18 records of Horton show how much was paid. The
19 records of the Association, which are
20 maintained by K.A. Diehl and has been so
21 maintained since around 2002, if I recall, show
22 how much was actually booked into the account.
23 There are no checks and balances in the
24 operation of IHOA to prevent someone from
25 stealing money prior to being booked into the

1 account. K.A. Diehl has absolute authority to
2 negotiate any check presented in the name of
3 the International Club, although I note that
4 there was a problem with assessment checks made
5 out to International Club Property Owners
6 Association.

7 If we compare the Horton
8 material which was sent to me over the
9 signature of an attorney subject to Judge
10 John's Order of Court with the material
11 provided me by the Defendant, we come to my
12 calculation, which is my Exhibit 704, which is
13 an attorney worksheet. By my calculation, and
14 The Court is free to look at the actual
15 documents and my calculation ---

16 MS. GOLDING: JUST FOR CLARIFICATION, HE
17 SAYS ATTORNEY WORKSHEET. I
18 WANT TO HAVE THAT -- ARE
19 YOU THE ATTORNEY THAT
20 SUPPOSEDLY MADE THAT
21 WORKSHEET?

22 MR. JARMUTH: YES, MA'AM.

23 MS. GOLDING: OKAY. YOUR HONOR, WE'RE
24 GOING TO NOTIFY THE
25 ATTORNEY GENERAL'S OFFICE

1 THAT THIS MAN IS HOLDING
2 HIMSELF OUT AS AN ATTORNEY
3 WHEN HE HAS NEVER PRACTICED
4 LAW, NEVER ATTENDED LAW
5 SCHOOL.
6 MR. JARMUTH: MY ANSWER TO THAT IS UNDER
7 THE CIVIL RULES AND
8 ADMISSION OF EVIDENCE,
9 MATERIAL PRESENTED BY A PRO
10 SE REPRESENTING HIMSELF IS
11 SUBJECT TO THE SAME RULES
12 OF EVIDENCE THAT APPLY TO
13 ATTORNEYS. SO I'M USING
14 THAT TERM IN THE CONTEXT OF
15 THE RULES OF EVIDENCE,
16 ADMISSION OF EVIDENCE, AND
17 THE PRIVILEGE IS ALSO
18 ASSOCIATED WITH NOT HAVING
19 TO PRODUCE IN DISCOVERY
20 ATTORNEY WORK PRODUCT, AND
21 SO THIS IS CLEARLY
22 ADMISSIBLE, AND ALTHOUGH I
23 DID NOT INTRODUCE IT, I
24 HAVE PRODUCED THIS MANY
25 MONTHS AGO TO THE

1 DEFENDANTS, THEY'D HAVE A
2 CHANCE TO OPPOSE THE
3 EVIDENCE.
4 MS. GOLDING: YOUR HONOR, I JUST WANT THE
5 RECORD TO REFLECT AND THAT
6 MR. JARMUTH IS AGREEING,
7 HE'S NEVER ATTENDED LAW
8 SCHOOL, HE'S NEVER
9 SUBMITTED TO A BAR
10 EXAMINATION AND HE'S NEVER
11 BEEN AUTHORIZED TO PRACTICE
12 LAW IN ANY STATE IN THIS
13 COUNTRY.
14 MR. JARMUTH: I DISAGREE. I DID NOT MAKE
15 THAT STIPULATION.
16 MS. GOLDING: CAN YOU INQUIRE, YOUR
17 HONOR, OF HIS LEGAL
18 BACKGROUND?
19 THE COURT: YES. WOULD YOU ANSWER THE
20 QUESTION FOR US SINCE IT'S
21 COME UP, PLEASE, SIR?
22 MR. JARMUTH: YES. IN THE STATE OF
23 VIRGINIA, ONE IS ALLOWED TO
24 PREPARE FOR THE BAR BY
25 WORKING WITH A LICENSED

1 ATTORNEY AND FOLLOWING WHAT
2 HE DOES AND HELPING HIM
3 PREPARE THINGS WHILE ASKING
4 HIM QUESTIONS OR PREPARING
5 OR LOTS OF THINGS, AND
6 DURING THE COURSE OF MANY
7 YEARS WITH ATTORNEY ERN
8 RIDDLES, I STUDIED WHAT HE
9 DID, I ASKED HIM QUESTIONS,
10 AND HE EXPLAINED THE BASIS
11 FOR PREPARING VARIOUS
12 THINGS. I DID NOT, MYSELF,
13 PREPARE ANY ACTUAL DOCUMENT
14 OR SUBMIT IT FOR HIS NAME
15 OR THE NAME OF HIS LAW
16 PRACTICE, BUT I HAD THE
17 OPPORTUNITY OVER MANY YEARS
18 TO BE TAUGHT BY HIM HOW TO
19 PREPARE THINGS AND THE
20 BASIS OF WHAT APPLICABLE
21 RULES, THE STRUCTURE, AND
22 THINGS OF THAT SORT. I DID
23 NOT REPRESENT ANYONE, I DID
24 NOT FILE ANYTHING ON
25 ANYONE'S BEHALF, BUT I DID

1 FOLLOW THE RULES OF
2 PREPARATION. IT WAS IN
3 VIRGINIA. IT'S AKIN TO
4 ATTENDING A LAW SCHOOL, AND
5 DOING THAT DOES MAKE
6 SOMEONE QUALIFY IN VIRGINIA
7 TO STAND FOR THE BAR, WHICH
8 I DID NOT DO.
9 THE COURT: SO YOU'RE NOT LICENSED IN
10 VIRGINIA?
11 MR. JARMUTH: NO, I'M NOT.
12 THE COURT: OR ANYWHERE ELSE?
13 MR. JARMUTH: NO. NO, SIR.
14 THE COURT: ALL RIGHT. IS THERE
15 ANYTHING ELSE?
16 MS. GOLDING: NO, SIR. THANK YOU, YOUR
17 HONOR.
18 THE COURT: THANK YOU. GO AHEAD.
19 (MR. JARMUTH CONTINUES TESTIFYING).
20 Mr. Jarmuth: Now, looking at the Horton
21 computation data, it appears that they never
22 gave the thousand dollars. Whether I think
23 it's right or wrong is irrelevant for this.
24 The point is their documents submitted by Order
25 of Court says that Horton -- There's a problem,

1 because Horton's data begins back in, in the
2 early period and goes to the middle of the
3 period where K.A. Diehl's material run. K.A.
4 Diehl's material picks up in the middle of
5 Horton's material and runs beyond it. So I --
6 for -- to be able to do a fair comparison of
7 the analysis, I only used the period where both
8 Horton's material and K.A. Diehl's period had a
9 common period. This is not to say other money
10 didn't disappear later. All I'm saying is that
11 my analysis only concerns the boundaries of
12 dates where both the Horton material and the
13 K.A. Diehl period material had a common period
14 of time, and in that window of time, Horton
15 said they contributed forty-six thousand, eight
16 hundred and thirty-four dollars as capital
17 contributions from a ledger in evidence.

18 MS. GOLDING: I'M GOING TO MAKE AN

19 OBJECTION TO ANYTHING THAT

20 HORTON SAYS, YOUR HONOR.

21 THAT'S HEARSAY.

22 THE COURT: HEARSAY, YES. DON'T TELL

23 US WHAT SOMEBODY ELSE SAID,

24 IT'S HEARSAY.

25 MR. JARMUTH: IT'S NOT WHAT THEY SAID.

1 IT'S A DOCUMENT SUBMITTED
2 FROM A ORDER OF THE COURT
3 SHOWING THE FINANCIAL
4 RECORDS OF HORTON OF WHAT
5 WAS CONTRIBUTED.
6 MS. GOLDING: THAT'S STILL -- YOUR HONOR,
7 I'M GOING TO MAKE AN
8 OBJECTION. ALL THOSE
9 DOCUMENTS ARE HEARSAY.
10 THE COURT: OKAY. I'LL NOTE YOUR
11 OBJECTION. GO AHEAD.
12 MS. GOLDING: THANK YOU, YOUR HONOR.
13 Mr. Jarmuth: I want to point out that
14 the -- labeled as the money given to the HOA
15 and it was in lieu of the deposition, which is
16 done under -- originally subpoena the documents
17 like that. Now, the K.A. Diehl documents for
18 the same period show that they received from
19 the developers thirty thousand, seven hundred
20 seventy-one dollars and no cents. This is from
21 the period for January 13th, '05 to April 30th,
22 '06. There was a discrepancy for that limited
23 window of time of sixteen thousand and sixty-
24 three dollars, and I submit that based upon the
25 documents themselves there's -- it's more

1 likely than not, given the method the money was
2 handled, that Defendant K.A. Diehl is
3 responsible for the discrepancy. I'm not
4 saying that they purposely stole it, they may
5 have lost it. All I know is there's a
6 discrepancy, there's evidence that money was
7 provided to K.A. Diehl for the benefit of the
8 Association. There's evidence it was not
9 booked in, it's missing, and K.A. Diehl by
10 contract was responsible for the handling of
11 that money. I suggest to The Court that as
12 part of the final order, K.A. Diehl be required
13 to make up the discrepancy.

14 THE COURT: IS THAT YOU?

15 MR. JARMUTH: THAT'S MY PRESENTATION OF
16 THE CAPITAL CONTRIBUTIONS.

17 THE COURT: ALL RIGHT.

18 MS. GOLDING: NO QUESTIONS.

19 THE COURT: ALL RIGHT.

20 MR. JARMUTH: YOUR HONOR, THE NEXT
21 SUBJECT IS THE CONDUCT OF
22 THE DEFENDANT REGARDING THE
23 RESTRICTIONS OF THE PARKING
24 LOT. I BELIEVE I'VE
25 ALREADY ADDRESSED OWNERSHIP

1 OF THE PARKING LOTS. I

2 HAVEN'T ADDRESSED THEIR

3 CONDUCT REGARDING THAT.

4 THE COURT: PROCEED.

5 (MR. JARMUTH CONTINUES TESTIFYING.)

6 Mr. Jarmuth: I'd like to remind The

7 Court that there is in evidence or I would like

8 to place into evidence the deeds to the parking

9 lot. These also appear in the Defendants'

10 Exhibits. I don't believe there's any

11 disagreement between the Defendant and yourself

12 that the HOA owns both parking lots; however

13 ---

14 MS. GOLDING: THAT'S CORRECT. THE HOA

15 DOES OWN THE PARKING LOTS,

16 YOUR HONOR.

17 THE COURT: OKAY. THANK YOU.

18 Mr. Jarmuth: At a meeting of the Board

19 on -- I'd like to put into evidence the

20 minutes of the Board, March 24th, 2009,

21 which is a workshop of the Board of

22 Directors, which minutes I received from the

23 Defendant -- minutes March 24th, 2009, and

24 on number six -- well, I want to give some

25 background on this. When Defendant Rosemary

1 Toth came into office as president of the
2 Board, there existed signs at the entrance
3 to parking lot one which said, "These
4 parking lots are private, they're for use of
5 the owners of the -- use of the amenity
6 center and residents in the property."
7 Subsequent to that at a Board meeting, which
8 I was present at, Defendant/President of the
9 HOA at the time, Rosemary Toth, directed
10 that those signs be removed. She stated
11 that the problem I presented was that
12 because of -- I found many cars there at
13 hours the amenity center was closed and at
14 times it was so full there was no room for
15 homeowners to park, and the explanation that
16 Rosemary Toth said at the Board meeting was
17 that we should be thankful the golf course
18 allowed us to use their parking lot, because
19 none of the parking lots belong to us, they
20 belong to them, and she, at the time,
21 directed that the signs be removed.
22 Now, before I sued, the
23 lawsuit, I asked them to reverse this, look
24 at the deeds. I obtained the deeds which
25 they did not seem to have, and prior to

1 2011, at least, maybe 2012, the -- well, the
2 last time I actually talked to the Board in
3 2009, they refused to back off from the
4 assertion that the parking lots belong to
5 the golf course. Now, we still have the
6 question of who owns it, but we haven't
7 prevented a future president from taking the
8 signs down or taking the position that we do
9 not own it. Now, at this Board meeting the
10 -- they said, "The Board has taken into
11 consideration the homeowners are
12 occasionally parking in golf course parking
13 lots for regular amenity center events."
14 And the action was, "The Board will direct
15 K.A. Diehl to remove all no parking signs
16 within the pool parking. The Board
17 encourages homeowners to use discretion (in
18 time and numbers) when parking in golf
19 course lots," that is the amenity center
20 parking lots. The Board also encourages
21 golf course employees to use discretion
22 (middle of July, August) when parking in the
23 pool parking lots," which are parking lots
24 one and two. And I'd ask The Court in the
25 relief of grants to join any future

1 president from removing the parking lot
2 signs, that declare that these are, that
3 these are the property of the Association.
4 There are pictures I have
5 in evidence -- when I get back, I'll give
6 numbers -- which show that parking lot one
7 was, in fact, used by the Joe Bernat Golf
8 Academy which somehow has a relationship
9 with the golf course, is not a golf course
10 entity, some entity, for parking. There
11 were signs there and the signs are, I have
12 pictures of them in evidence, which direct
13 customers of the golf academy to use the
14 parking lot one, and since the golf course
15 is subject to the covenants, I'd ask The
16 Court, in remedy, to direct and order that
17 no one subject to the covenants may erect
18 any sign which -- within the PUD, which is
19 the whole area of the PUD, which gives the
20 impression that one of these two golf course
21 parking lots of use, of use other than the
22 amenity center, such as golf academy use.
23 I'm done.
24 MS. GOLDING: NO QUESTIONS.
25 (MR. JARMUTH CONTINUES TESTIFYING.)

1 Mr. Jarmuth: The next issue I want to
2 bring before The Court is the issue of what
3 is the discrepancy that the HOA Defendant
4 should be, in good faith, collecting from or
5 attempting to collect from the golf course,
6 failing to pay assessments. The rate of
7 assessments for the golf course is set out
8 in covenants at 547, 6.5, Rate of
9 Assessments, which is basically fifty times
10 the rate of assessments for homeowners. In
11 my exhibits, I'm not going to go through
12 them, I've, I've listed the documents which
13 show how much the rates of assessments were
14 for each year for homeowners. At Exhibit
15 389 is my worksheet, which it summarize
16 that, and the bottom line of that, as it
17 shows, that beginning in 2003 there is no
18 year that the golf course ever paid
19 anywheres near the assessments called for in
20 the covenants. By going through the
21 computation of 389, to refer to the Exhibits
22 in evidence, you come up with the
23 discrepancy that as of the end of, the end
24 of 2012, using, using those computations,
25 the golf course is short a hundred and

1 eighty-three to five thousand, three hundred
2 thirty-three dollars. Now, excuse me, I'm
3 wrong. There is a golf course agreement
4 which was signed in 2003 by the golf course
5 -- by the Horton employee, Doug Brown, which
6 I've mentioned already. That number is the
7 number of shortfall of a hundred and eighty-
8 three thousand dollars if the golf course
9 had lived up to that agreement. So in no
10 year has the golf course lived up to that
11 agreement, if The Court even finds that the
12 agreement was valid. So in any case if it
13 finds it valid or not. So if that agreement
14 was valid, with the interest, there's a
15 shortfall of a hundred and eighty-five
16 thousand dollars. Now, if the agreement was
17 not valid, the second page of my worksheet
18 shows that, in fact, the loss to the HOA is
19 five hundred and eighty-three thousand,
20 seven hundred and seventy dollars. Why is
21 that of concern to me personally? It's of
22 concern to me personally because that is
23 more than the annual budget of the HOA, and
24 for every dollar that the golf course
25 doesn't pay, we homeowners have to make

1 that, that up dollar for dollar, because the
2 expenses of running the HOA are not
3 dependent on who's a member, they're
4 dependent, the way the budget is computed,
5 on the needs to maintain the various aspects
6 of the property.

7 Now, the HOA in this
8 court has currently maintained an
9 independent lawsuit against the golf course.
10 This was initiated this year after I
11 presented this information prior to the
12 January 17th date of original trial. I'm
13 not going to attribute any motives for why
14 it took to 2012 to initiate that lawsuit.
15 The problem I have is that having before
16 them the clear financial trail of what the
17 discrepancy is, I think it's a breach of
18 good faith, a breach of their duty to try to
19 collect forty-five thousand dollars from the
20 golf course which owes, in fact, more than
21 half a million dollars, and I don't want
22 this court to interfere with our lawsuit. I
23 merely want The Court to make a finding that
24 the -- as a result of the covenants, the
25 covenants require the golf course to have

1 paid four hundred thirty-nine thousand, two
2 hundred dollars through 2012 to the
3 Association, and if The Court finds, looks
4 at the documents and ledgers and uses the
5 math directly from the covenants, which said
6 fifty times the annual unit, it would
7 suffice for The Court to make a finding of
8 what the obligation of that category of
9 members are of the, of the Association is to
10 the golf course based upon fifty and a
11 regular membership. I'm done with that.

12 MS. GOLDING: NO QUESTIONS, YOUR HONOR.

13 MR. JARMUTH: YOUR HONOR, JUST FOR THE
14 RECORD, I'D LIKE TO MAKE
15 THE RECORD REFLECT THAT THE
16 EXHIBITS WHICH APPLY TO
17 THAT ARE EXHIBITS 389 TO
18 394 AND 705 THROUGH 707, TO
19 MAKE SURE THEY GET INTO
20 EVIDENCE.

21 MS. GOLDING: YOUR HONOR, I'M NOT SURE I
22 UNDERSTAND WHAT THE
23 DOCUMENTS HE HAD WERE, AND
24 THE EXHIBIT LIST I HAVE
25 FROM HIM ARE NOT

1 SEQUENTIALLY NUMBERED.
2 THEY'RE SET FORTH IN A
3 DIFFERENT WAY, SO I NEED TO
4 HEAR THOSE NUMBERS..
5 THE COURT: TELL HER THE NUMBERS AGAIN,
6 PLEASE, SIR.
7 MR. JARMUTH: IT'S NUMBERS 389 THROUGH
8 394. IT'S ON PAGE ELEVEN
9 OF THE DOCUMENT I GAVE YOU.
10 MS. GOLDING: I'VE GOT PAGE TEN.
11 MR. JARMUTH: DATED 7/31/2012, THE
12 REVISION I'VE GIVEN YOU,
13 AND ---
14 MS. GOLDING: WE DON'T HAVE THAT
15 REVISION.
16 MR. JARMUTH: I HAND-CARRIED IT TO YOUR
17 OFFICE.
18 MS. GOLDING: DO YOU HAVE ANOTHER COPY?
19 MR. JARMUTH: AND NUMBERS -- PAGE ELEVEN
20 AND NUMBERS 701 -- NOT 701,
21 EXCUSE ME. NUMBERS 705
22 THROUGH 707.
23 MS. GOLDING: AND JUST TO UNDERSTAND
24 CORRECTLY, YOU'RE NOT
25 ATTEMPTING TO INTRODUCE

1 700, 701, 702?

2 MR. JARMUTH: I SAID THOSE WERE THE ONES
3 FOR CAPITAL CONTRIBUTIONS
4 BEFORE, SO I WAS
5 INTRODUCING THEM, WHEN I
6 WAS TALKING ABOUT CAPITAL
7 CONTRIBUTIONS.

8 MS. GOLDING: SO WITH RESPECT TO EXHIBIT
9 700 AND 701, YOUR HONOR, I
10 WOULD OBJECT TO THOSE, AS
11 THOSE ARE D.R. HORTON
12 DOCUMENTS. THAT WOULD BE
13 HEARSAY.

14 MR. JARMUTH: TO MAKE SURE I'VE GOT IT,
15 700 THROUGH 704, 700
16 THROUGH 704 IS THE CAPITAL
17 CONTRIBUTIONS DOCUMENTS,
18 700 BEING THE HORTON
19 SUMMARY AND 704 BEING THE
20 COMPUTATION WORKSHEET. AND
21 AGAIN, THE WORKSHEET IS MY
22 PREPARATION, THE OTHERS ARE
23 DOCUMENTS PRODUCED BY ORDER
24 OF THE COURT, SUBJECT TO
25 SUBPOENA, AND THE COURT CAN

1 MAKE ITS OWN DECISION ON
2 THAT.
3 MS. GOLDING: OF COURSE, YOU KNOW THAT
4 DOESN'T MEAN THAT ANYTHING
5 IS ADMISSIBLE SIMPLY
6 BECAUSE THE COURT MAY ORDER
7 THAT THE PARTY RESPOND TO A
8 SUBPOENA, SO I WOULD OBJECT
9 TO EXHIBITS, ALL OF HIS
10 EXHIBIT NUMBERS 700, 701,
11 702, 703, 704, ON THE BASIS
12 THAT ALL THOSE NUMBERS ARE
13 PREMISED ON D.R. HORTON'S
14 NUMBERS WHICH ARE
15 INADMISSIBLE.
16 THE COURT: HEARSAY.
17 MS. GOLDING: YES, SIR. THANK YOU.
18 THE COURT: SUSTAIN OBJECTION.
19 MR. JARMUTH: YOUR HONOR, I HAVE A
20 PROBLEM WITH THAT, BECAUSE
21 D.R. HORTON, ---
22 THE COURT: JUST A MINUTE.
23 MR. JARMUTH: --- IF YOU LOOK AT THE
24 EXHIBIT THEMSELVES ---
25 THE COURT: I SAID, WAIT JUST A MINUTE.

1 THEY'RE IN. SHE'S MADE AN
2 OBJECTION. I'VE NOTED THE
3 OBJECTION, SO THEY'RE IN.
4 MR. JARMUTH: YOUR HONOR, WHEN ---
5 THE COURT: THEY'RE IN SUBJECT TO HER
6 OBJECTION.
7 MR. JARMUTH: WHEN YOU WILL LOOK AT IT,
8 YOUR HONOR, PLEASE LOOK AT
9 THE TITLE OF THE PAGES.
10 THESE ARE ACTUALLY HORTON'S
11 RECORDS OF ITS BOOKS. IT'S
12 THEIR RECORDS OF WHAT THEY
13 SAID THE HOA SHOULD'VE --
14 IT SAYS HOA RECORDS.
15 THE COURT: I UNDERSTAND.
16 Mr. Jarmuth: So it, in fact, becomes
17 the records of the Association and they ran
18 the Association at the time.
19 The next subject is
20 practices of Defendant K.A. Diehl as a
21 contracting agent for the IHOA Association,
22 practices which I object to and which I
23 think are illegal and restrictive trade.
24 Here are the issues: Board members are not
25 permitted to sell goods or services to the,

1 to the HOA until at least three years after
2 leaving office, and this includes competing
3 with Diehl for the management contract or
4 doing any work which has nothing to do with
5 what they did for the HOA. I believe that
6 South Carolina Act 3903, Restrictive Trade,
7 makes this illegal restriction of trade.

8 The next issue is, and
9 I'll get into that, Diehl keeps or kept
10 credit card cash rebates for purchases on
11 the behalf of and paid by the HOA, and I
12 believe that this is illegal theft ---

13 MS. GOLDING: YOUR HONOR, THERE HAS TO BE
14 SOME -- IF YOU'RE REFERRING
15 TO ---

16 MR. JARMUTH: I'LL BRING THE DOCUMENTS
17 IN.

18 MS. GOLDING: WOULD YOU MIND, LET ME
19 FINISH. WE NEED TO HAVE A
20 FOUNDATION, SOME DOCUMENTS
21 THAT HE'S RELYING UPON
22 RATHER THAN MAKING THOSE
23 CONCLUSORY STATEMENTS.

24 Mr. Jarmuth: Your honor, I'm
25 presenting the issues, then I'll attempt to

1 prove it. And then the third issue is Diehl
2 requires potential vendors to pay Diehl to
3 be, "eligible vendor," and Diehl also
4 reveals the names of competing vendors to
5 these vendors who pay that money.

6 The next related issue is
7 Diehl provides potential vendors who pay
8 them this two hundred and fifty dollars and
9 sign up, the names and contact information
10 for homeowners without our consent.

11 And the next thing is
12 that Diehl requires the HOA to join
13 community associations, too. From Diehl's
14 2009 contract, page one, my 367, it says,
15 "The Association acknowledges that during
16 the relationship with the manager, each
17 Board member will acquire knowledge of
18 organizational and operational methods and
19 other information concerning the unique and
20 distinctive elements comprising the
21 manager's business and agrees to maintain
22 this knowledge in a confidential manner.
23 The Board agrees to refrain from hiring,
24 directly or indirectly, any Board member who
25 is or was on the Board of the Association

1 during the term of the agreement and for two
2 years following the termination of this
3 agreement without obtaining the written
4 consent of manager." I'd like to point out
5 that when I read the Diehl contract, I don't
6 see that Board members of individual
7 capacities signed off on any employment
8 agreement or agreed to that terms of that
9 contract, and Board members clearly are not
10 parties to the Diehl contract. I would
11 argue that proprietary information about
12 this HOA or any HOA is the property of the
13 HOA, not K.A. Diehl, the contractor. I'd
14 argue that there's nothing proprietary or
15 special about how Diehl is organized or
16 operates, and I'd also point out that this
17 provision also prevents a Board member from
18 being employed by a contractor. I believe
19 this is illegal. I'd also point out that
20 when the Defendant HOA solicits homeowners
21 to be members of the Board or committee
22 member, they never tell them about this
23 provision which may prevent them, if legal,
24 from competing with K.A. Diehl, the
25 management contractor, but we do have

1 licensed realtors within the homeowner
2 community, or from directly soliciting from
3 the HOA the -- soliciting, getting a
4 contract for goods or services of the HOA.
5 South Carolina, South
6 Carolina code 39-3-140, calls this an
7 agreement to limit competition by not
8 dealing with or boycotting those not in
9 agreement and shall be called a conspiracy
10 to defraud. I'm not going to read the
11 entire text. South Carolina code 39-3-10,
12 my 363 -- the other one is my 265 -- says,
13 which are entitled, "Arrangements,
14 contracts, agreements, trusts and
15 combinations adversely affecting competition
16 or price declared against the public
17 policy." I'm not going to read that, per
18 your advise.
19 I'd also like to say
20 parenthetically I believe The Court is
21 required to take judicial notice of the acts
22 of the legislature of the County Council and
23 the United States Congress, and this
24 pertains putting all those acts into
25 evidence in aid of The Court taking such

1 judicial notice. Does Diehl keep credit
2 card cash, rebates from purchases on things
3 paid by the HOA? The HOA used their credit
4 card to buy something, at the end of the
5 year cash comes back, goes back to the
6 cardholder. My personal inspection of the
7 general ledgers failed to disclose entries
8 which show Diehl depositing to the credit of
9 the HOA such cash rebates. Let's look at
10 their contract, 2009 contract, page two of
11 367, 2.3, "Manager discloses to Association
12 that by virtue of manager's services to
13 other similar associations, manager is
14 occasionally able to obtain discounts by
15 dealing on a volume basis," and it goes on
16 to explain that it may be able to get things
17 for less than the stated price. I believe
18 that any such discounts on the property of
19 the, of the Association, in fact, should be
20 booked as reduction in book value of the
21 asset rather than not being -- not going in.
22 A rebate or reduction or kickback or
23 something, by IRS, IRS rules, reduces the
24 amount that the person spending the money
25 can claim as a business deduction, and I

1 believe that these aren't proper income of
2 the -- of K.A. Diehl which is acting solely
3 as the agent of the Association. I see no
4 reason or right they have in any discount
5 they may get from a vendor, discount at the
6 time of sale or as a credit to show volume
7 purchases. And it says on 5.3, page three,
8 "In addition, to the fees outlined in this
9 section for services, manager may also
10 receive compensation for their role in
11 providing, investment and finance, provide,
12 provide insurance," et cetera. Although
13 Diehl pays some HOA expenses by a Diehl
14 credit card, receives cash or other rebates
15 from the bank card issuer, such
16 consideration of the OHA --OA. The IRS rule
17 on this is at my 367. It was issued in
18 2002, it's their rule, IRS announcement
19 number 2002/18, and there's a court case of
20 that, USA v. Pestige, U.S. District Court
21 Georgia, Northern Criminal, 1:08-criminal-
22 201, Home Depot Buying Agent, 18-USC-1349,
23 in which instance a Home Depot employee was
24 sent to jail and The Court found that the
25 rebates this guy got from vendors, which did

1 not, did not influence the price that Home
2 Depot paid, Home Depot paid the same amount
3 he would've paid without this arrangement.
4 It said even though, even so when this guy
5 got money from these vendors because he
6 placed contracts with them, whether it was
7 done correctly -- he still had, had broken
8 the law and defrauded Home Depot. In this
9 same way, I argue that any time K.A. Diehl
10 gets anything back in compensation from any
11 vendor in any sort as a consequence of
12 providing goods and services to the HOA on
13 vendor contract it is fraudulent and a crime
14 under Federal Law to keep that money. I'll
15 point out, by the way, Your Honor, that the
16 homeowners have not been made available to
17 these contracts. I got them after three
18 years by discovery. The 2008 contract, page
19 five, my 343, and earlier agreed to remit
20 such rebates to the HOA. By 2009, somehow,
21 and later, K.A. Diehl has permitted to do
22 that. I believe that this is not a
23 judicious act which should've been done in
24 good faith by the Board signing such a
25 contract. I believe such a provision, by

1 the way, should be declared against the
2 public policy and void any provision of the
3 contract which permits such acts.

4 Now, the 2009 contract,
5 pages eleven through twelve, my 367,
6 requires open bidding. It does not restrict
7 bidding to a closed, to a closed list, does
8 not authorized Diehl to surcharge potential
9 buyers. They do that, anyway. The only
10 vendors they consider in placing and
11 awarding contracts or even making known to
12 the HOA potential bidders are those
13 contractors who have paid them the two
14 hundred and fifty dollars and have signed a
15 agreement, a contract, with K.A. Diehl, of
16 K.A. Diehl. Two, paragraph two of that,
17 outside contractors, this is the contract
18 with -- between the HOA and Diehl, "Initial
19 competing bidders" -- well, I'll let The
20 Court read it. The bottom line is the
21 contract for 2009 does not permit this
22 process.

23 The 2008 contract, my
24 343, at their page five, actually prohibits
25 collecting or charging any fees, rebates or

1 discounts, and I believe that in 2008,
2 that's within the statute of limitations,
3 when I filed suit in 2009, so anything they
4 did back then is subject to a suit. In my
5 Rule 16 List of Exhibits, I mention certain
6 state statutes. I'd like The Court to take
7 judicial notice of South Carolina 39-3-10,
8 "Agreement affecting competition", 39-3-30,
9 "Injured person may recover damages", and
10 39-3-140, "Agreements to limit competition",
11 my 263, 264 and 265.

12 Looking at the Diehl
13 arrangement, the vendor package, my 397,
14 page one, it reads, "Approved contractors,
15 contractors, suppliers and vendors" ---
16 THE COURT: WAIT A MINUTE. ISN'T THAT
17 ATTACHED IN YOUR EXHIBIT
18 LIST?

19 MR. JARMUTH: IT'S IN MY EXHIBIT AND IT'S
20 MY NUMBER 397.

21 THE COURT: I CAN READ THAT. IT'S
22 NOTED AND I'LL LOOK AT IT.
23 OKAY. UNLESS YOU GOT SOME
24 SPECIFIC PART OF IT YOU
25 WANT TO ---

1 (MR. JARMUTH CONTINUES TESTIFYING.)
2 Mr. Jarmuth: Yes. The first page of
3 it directs them, requires them to pay the
4 two hundred dollars processing fee to be
5 eligible for payment of goods and services
6 or even bid on goods and services, and then
7 in addition at 399, a different document, it
8 says that -- this is a Diehl document, that
9 the Defendants must pay an annual fee of one
10 twenty-five to remain in the vendor list of
11 vendors who will be told about requirements
12 from the HOA for contracts for goods and
13 services. Then in their number 399, which
14 is part of the vendor program, at page one,
15 it says that the people who are in there
16 will see, not only the names of approved
17 vendors and their category, which I think
18 limits competition or impairs it, but it
19 says they'll have the ability to send hints
20 and articles directly to the homeowners
21 because from the agreement at 397, it says
22 K.A. Diehl will give to every one of these
23 vendors the names, addresses of all owners
24 in the HOA Association without obtaining a
25 privacy release from us homeowners, so my

1 name and address and other contact
2 information may be given to any people who I
3 don't know, who I have no business
4 association with. In this context, K.A.
5 Diehl has never given me a statement of
6 privacy practices or request to release
7 anything. I do not receive from them any of
8 the Friday Facts or anything by email, which
9 they send to the other homeowners, even
10 though they have my email address. The
11 email address, of course, has been used by
12 defense counsel from time to time to send me
13 things. I notice that in the exhibit list
14 they have some of the Friday Facts listed
15 there, which I could not have possibly seen
16 before today, because I don't receive any
17 Friday Facts from them, but they give my
18 name and address to companies which I have
19 nothing to do with it, so that they can
20 announce their services to homeowner,
21 homeowner hints and articles and
22 solicitation for service. The failure to
23 give a statement of privacy practices,
24 obtain privacy releases, I believe, violates
25 FTC Regulations on credit cards and, and

1 organizations which do collection in sending
2 of bills by electronic means or by mail, and
3 they, in fact, collect assessments
4 electronically to a bank account which puts
5 them in that category. I, of course, have
6 my check sent directly to their registered
7 agent, but they send me the, the bills and
8 notices electronically or through the mail.

9 I note that the Diehl and
10 the HOA contract does not allow such a
11 disclosure to the vendors, so this problem
12 is directed, not at the Defendant HOA, seems
13 now the proper contract there, except the
14 2009 later ones, took out -- seems to allow
15 them to collect the extra money discounts.

16 Now, I'd like to look at
17 K.A. Diehl's failure to do its duty to
18 homeowners under the South Carolina Non-
19 profit Act and under the particular bylaws.
20 In my July 24th, 2008 letter to the
21 Association through K.A. Diehl as their
22 agent, I demanded a copy of the voter list
23 and the homeowner list. They wouldn't give
24 it to me. The South Carolina Non-profit
25 Corporation Act says, 33-31-720, the members

1 list will be given to any homeowner for
2 proper purpose or to communicate with the
3 other members upon demand. I said in my
4 letter I want to communicate with the other
5 members and bring issues to them relating to
6 elections of a general reason, and in the
7 correspondence which are in the evidence
8 from the Defendant, the question was that
9 communicating with other members or
10 addressing election issues is a legitimate
11 purpose, but the statute does not allow them
12 to make that decision since I state a
13 legitimate purpose or if I want to
14 communicate with the members, that's
15 sufficient. On April 20th, 2009, my number
16 358, I repeated my demand. These letters
17 were sent to K.A. Diehl and to the
18 Association.

19 On September 3rd, 2009,
20 my 361, I, again, repeated the demand. I
21 believe that as an agent for the Defendant
22 Association, K.A. Diehl, the agent, has the
23 same obligations under the law that the
24 Master has regarding disclosure of records
25 and documents. So I believe that it is

1 proper to ask the court to direct the
2 Defendant K.A. Diehl, so long as they are
3 the management company for the Association,
4 to provide any and all records to any member
5 upon demand which are stated in the statutes
6 as subject to inspection and copying, and I
7 believe that such an order should also be
8 directed to the Association which has vetted
9 the refusal by K.A. Diehl to do that.

10 Now, let's go beyond
11 that. When I was getting these records, I
12 was revealing and telling the Association,
13 the homeowners, about discrepancies in the
14 cable contract such as that the cable
15 contract provided for increase of so much
16 money in April and they were collecting back
17 in January, and there were other financial
18 discrepancies. I was questioning about what
19 the amendment said. The moment I filed
20 suit, they completely cut me off from being
21 able to go in to exercise my statutory
22 rights as a homeowner to get records from
23 the Association, and it's my conclusion that
24 there's nothing in the civil rules, what
25 statutes recite, just because I filed suit,

1 I lose my statutory rights for access to
2 records which, by law, I have a right to get
3 to, plus the bylaws of the Association that
4 they claim to be living under have the same
5 right of inspection and copying for members.
6 And I believe it's, it's a correct
7 conclusion to say that because the
8 Association and Diehl were both represented
9 by common counsel, had access to counsel and
10 could be presumed to have talked to counsel
11 about the matter, they refused to provide me
12 the access to records which are the right
13 under the statutes constitutes a breach of
14 the covenant, applied covenant of good fair
15 and fair dealing, and The Court is asked to
16 impose such sanctions as it deems proper.

17 I also point out I did
18 not have an alternative between 2009 and
19 2011, because from the moment I filed suit,
20 I believe it was in March of 2009 until
21 October 3rd, 2011, although I, for one,
22 provided the Defendant seven thousand pages
23 or so of material, they didn't provide me
24 any other single page. I note that in
25 discovery I demanded these other documents,

1 which I had a right to get by, by statutory
2 right, and I was not given -- I was
3 stonewalled by the Defendant and by counsel.
4 I don't want to go into the failure of the
5 counsel to provide me discovery material at
6 the time. I really want The Court to note
7 that this, that this cutoff in March of 2009
8 did not leave me with a viable alternative
9 to be able to get the things I had a
10 statutory right to get and there was
11 material things happening in 2009, September
12 election, in 2010 another election and the
13 formation of budgets for which I had a
14 legitimate reason to get that material and I
15 could've conceivably provided legitimate
16 input to the homeowners to discuss bearing
17 on whether they want to elect the incoming
18 Board or make some other requests or maybe
19 alter the bylaws or covenants. So this goes
20 into the idea that this was done for
21 improper purpose. I'm done with that, Your
22 Honor.

23 CROSS-EXAMINATION

24 BY: MS. GOLDING:

25 Q: Mr. Jarmuth, you appealed the decision to

1 dismiss me as a Defendant from this lawsuit;
2 did you not?

3 A: Yes, ma'am.

4 Q: And you appealed that, and that appeal was
5 from June of 2009 until October of 2011; is
6 that correct?

7 A: Yes, ma'am.

8 MS. GOLDING: OKAY. THANK YOU. NO
9 FURTHER QUESTIONS, YOUR
10 HONOR.

11 THE COURT: THANK YOU.

12 MR. JARMUTH: YOUR HONOR, I THINK WE NEED
13 TO TAKE A BREAK, ABOUT TEN
14 MINUTES.

15 THE COURT: CERTAINLY. ALL RIGHT, COME
16 BACK AT TEN-THIRTY.

17 MR. JARMUTH: THANK YOU, YOUR HONOR.

18 *****OFF THE RECORD*****

19 (ON THE RECORD.)

20 THE COURT: ALL RIGHT. ARE YOU READY?

21 MR. JARMUTH: YES, YOUR HONOR. I INTEND
22 TO BRING ALL WITNESSES
23 AFTER I GET DONE WITH THIS
24 NEXT ISSUE, YOUR HONOR.

25 THE COURT: ALL RIGHT.

1 (MR. JARMUTH CONTINUES TESTIFYING.)

2 Mr. Jarmuth: I'll try not to rehash
3 anything we've done so far, Your Honor. I want
4 to address the requirement to join the amenity
5 center and argue that should be set aside,
6 because it's a personal services contract, does
7 not sufficiently touch concerned land. It has
8 been widely assumed in Horry County by
9 developers that they can force homeowners ---

10 MS. GOLDING: YOUR HONOR, I'M GOING TO
11 MAKE ANY OBJECTION TO ANY
12 ASSUMPTIONS ABOUT THE THIRD
13 PARTIES. I THINK THAT'S
14 ALSO HEARSAY.

15 THE COURT: IT IS HEARSAY. PLEASE TRY
16 TO ---

17 MR. JARMUTH: YES, YOUR HONOR.

18 THE COURT: --- TO HOLD ---

19 Mr. Jarmuth: There is an assumption
20 going on within our community ---

21 MS. GOLDING: YOUR HONOR, I CONTINUE MY
22 OBJECTION.

23 THE COURT: SAME OBJECTION?

24 Mr. Jarmuth: There's assumption ---

25 THE COURT: WAIT JUST A MINUTE. SAME

1 OBJECTION?

2 MS. GOLDING: YES, SIR, HEARSAY. HE

3 CAN'T -- BASED UPON

4 ASSUMPTIONS AND

5 COMMUNITIES, ANYTHING LIKE

6 THAT.

7 THE COURT: OKAY. ALL RIGHT. I'M

8 GOING TO LET YOU GO AHEAD,

9 BUT SHE'S RIGHT, OF COURSE.

10 (MR. JARMUTH CONTINUES TESTIFYING.)

11 Mr. Jarmuth: The HOA has asserted that

12 they can force all homeowners within the PUD,

13 including myself, to enroll in the amenity

14 center run by their HOA, the IHOA. I have

15 observed that in Georgetown County, to our

16 north in North Carolina, and in George --

17 rather, in -- well, in Georgetown County, in

18 South Carolina to our south, and to the north

19 of us in North Carolina, I have observed, I

20 personally visited many areas controlled by

21 HOAs where the practice has been that you buy

22 the house run by the -- in the area controlled

23 by the HOA, and then you have the option,

24 sometimes at a great discount, to join the

25 country club. Down around Pawleys Island and

1 Litchfield there are many of them, which by the
2 records of the court, have disputes going on
3 because of the reduced price, investment, that
4 homeowners pay when they join these things, so
5 there's a record in this court that within the
6 county south of us, which is within this
7 judicial district, this is not an uncommon
8 practice.

9 I point out by looking at
10 the Murrells Inlet Golf Plantation Association,
11 original approval and submission by the
12 Murrells Inlet Golf Plantation Corporation who
13 is the predecessor to Plantation A.D., the
14 plats clearly indicates to me, and The Court
15 can draw its own conclusion, that the amenities
16 are to be provided by a common country club
17 located in the area on that plat called "G-2."
18 If we look to the developer's agreement, which
19 is in evidence, the agreement between Sunbelt
20 and Horton in 2003 said, on its face, that the
21 developer, Plantation A.D., was not fulfilling
22 its requirements and obligations to build the
23 common amenities, and they were stepping in and
24 giving their thousand dollars a home to do it.
25 There was nothing in that developer's agreement

1 which formed an extension to or abridgement of
2 the covenants. That was a private contract
3 between Sunbelt and, and Horton, and although
4 it's titled, "Plantation," looking at the
5 signature page, Plantation -- R. Scott Pyle
6 somehow couldn't be brought to sign it. He's
7 not the signatory, that's a fact.

8 In South Carolina, courts
9 are freely drawn upon other state's decisions,
10 treatises and restatements of property in
11 fashioning the law of restrictive covenants,
12 Lynch 159 Southeast at 30, Marathon Finance
13 Company versus HHC Liquidation Corp., 43
14 Southeast 2nd, 757, 764, South Carolina Court
15 of Appeals 1997; Midsouth Golf v. Fairfield
16 Harbourside Condominium Association, 187 North
17 Carolina, Appeals 22, 31, 652 Southeast 2nd,
18 378, 384, 2007. In Midsouth, the declaration
19 of restrictive covenants provide that the
20 homeowners be assessed a licensed fee for
21 maintenance of recreational amenities owned by
22 the declarant, regardless of whether or not
23 they use the amenities. This, again, the
24 assessments being provided for people in what
25 they call the POAC, meaning the single family

1 homeowners, to support the amenity center
2 whether or not we actually use it. This was
3 Midsouth 33. The homeowners had no equitable
4 rights in the amenities, decision at 35. Look
5 at the covenants, we have no equitable rights
6 in the amenities, either. The court in
7 Midsouth relied heavily upon the precedence set
8 by the court in Raintree Corporation v. Rowe,
9 38 North Carolina, Appeal at 664, 248, South
10 Carolina 2nd at 904, 1978, and Midsouth voided
11 the homeowners' obligation finding in Midsouth
12 that it did not run with the land. I believe
13 that this is the exact parallel to the
14 obligation that we have to pay for the use of
15 property. What was on the amenity center, I
16 believe, I will argue, just like the court
17 found in Midsouth, does not touch and run with
18 the land. It doesn't say what we must, must do
19 or cannot do on our property; as a matter-of-
20 fact, the amenity center did not exist for many
21 years until it was built by Horton, and the
22 amenity center over here is very different from
23 the concept which was known to the buyers of
24 the houses back in 2001 before Horton ever came
25 on the scene which envisioned common amenities

1 and a golf course, country club type thing at
2 G-2, but Midsouth doesn't depend on that
3 original -- what homeowners were sold.

4 In Raintree, a developer
5 created a covenant requirement of all lot
6 owners to be members of a country club and pay
7 dues. The court found that the covenant did
8 not run with the land. The covenant creates an
9 affirmative duty, a charge, an obligation to
10 pay money, that is, country club dues for the
11 services and use of the country club facilities
12 which are not upon, upon, connected with or
13 attached directly to the Defendant's land in
14 any way.

15 I point out that in Pebble
16 Creek, Pebble Creek ends well before and up the
17 road from the amenity center which is on a
18 separate plot of land; as a matter-of-fact,
19 Your Honor, no homes which are directly
20 appurtenant to the amenity center, and it went
21 on. The lot owners are required to pay whether
22 they are -- whether they use the facilities or
23 not. The payment of a collateral sum of money
24 does not concern the land.

25 Citing another case, Nesbit

1 versus Nesbit, 1 North Carolina, 490, 495, 1
2 Cam. and Nor. 318, Cam, and Nor. 318, 1801, and
3 it went on to say, courts have generally held
4 that covenants to pay money do not touch and
5 concern the land." The court in Raintree,
6 citing that, and citing Neponsit Property
7 Owners Association v. Emigrant Industrial
8 Savings Bank, 278 New York, 248, 15 Northeast
9 2nd, 793, New York 1938, the court in Raintree
10 said, "We find that the performance by the
11 Defendants of the covenant is not connected
12 with the use of their land and does not touch
13 or concern their land to a substantial degree."
14 Raintree v. Rowe -- also, that was Raintree v.
15 Rowe at 664.

16 Midsouth concluded that the
17 recreational amenities are not appurtenant to
18 the land and therefore the covenant to pay
19 amenity fees does not touch or concern the
20 land, Midsouth at 36. This should be the law
21 of the case for both the amenity center and the
22 Highway 17 dues. The Court is asked to so
23 declare.

24 On January 31st, 1999,
25 Sunbelt signed a document which is filed with

1 the Recorder of Deeds on February 18th, 1999,
2 which said that, and I read it, that if by the
3 time Sunbelt has sold one hundred houses and
4 Plantation has not built the golf course
5 community center, amenities, that it promised
6 by contract to Sunbelt, then Sunbelt would
7 sacrifice several lots and build a pool and
8 cabana exclusively for Pebble Creek homeowners.
9 This document is one of the documents which I
10 expected that Sunbelt would give in response to
11 the Subpoena, knew it existed; of course,
12 Sunbelt told the court it had destroyed it, so,
13 but it's on record in the court. It also
14 reflects -- the developer's agreement also
15 cites this prior contract between Plantation
16 A.D. and Sunbelt providing for these amenities,
17 and Plantation A.D., when they were being
18 (unintelligible) R. Scott Pyle said he had
19 destroyed his documents, that contract he asked
20 for particularly, and Sunbelt said they
21 destroyed their copy of the contract as well,
22 which is referred to in this other document
23 filed with the Recorder of Deeds and the
24 developer's agreement itself.
25 The Court is asked to note

1 that at the time Plantation A.D. was the owner
2 of the entire PUD and the golf course area had
3 not yet been split off from Plantation's
4 subsidiary, from Plantation Golf, LLC., and the
5 document says, "Whereas, Plantation owns the
6 property shown."

7 Now, there is in my
8 documents an agreement between Sunbelt and
9 Plantation A.D. regarding use of the
10 Plantation, Plantation Golf, supposed golf
11 course facilities and amenities there, and it
12 said that the homeowners, and this is, this is
13 in record. It's titled, "Sunbelt Golf Course
14 Ninety-nine Year Agreement," for use of the
15 golf course. It says here that the golf course
16 would have golf course members, there'll be no
17 more than four hundred and fifty members, just
18 like these other agreements which were referred
19 to by the court in Raintree and elsewhere. It
20 said, "Pebble Creek envisioned approximately
21 two hundred twenty houses and the contract
22 estimated that half the members" -- let me
23 revise that. The agreement said that the
24 Plantation Golf Course would have no more than
25 four hundred and fifty members. It said that

1 up to all the two hundred twenty homes in
2 Pebble Creek could be members of the country
3 club if they so chose, if they so chose, and
4 that for the other houses or other public free
5 to go elsewhere to be members, take residual
6 membership. It also says, "Joining the golf
7 course and the country club would be optional,"
8 paragraph two of that arrangement. It said
9 further that, at paragraph two, "Sunbelt
10 customers could later join the country club if
11 there were vacancies of membership and when a
12 vacancy came up," they could take such a
13 membership, exactly the concept addressed by
14 the courts earlier elsewhere.

15 On August 22nd, 2002,
16 Plantation Golf gave the IHOA a deed for the
17 amenity center land, which they -- both they
18 and I have put into evidence, for 1.56 acres.
19 Clearly, this was an attempt -- my -- well, The
20 Court is invited to see whether this was an
21 attempt to get around Plantation Golf's
22 obligation to have this country club, whatever,
23 but that doesn't control what they did there.

24 The subsequent conduct by
25 Plantation Golf in giving additional parking

1 lot area also has not set aside the original
2 agreement between Sunbelt and plantation for
3 the Pebble Creek homeowners to be optional
4 members of how the, the entity that will be
5 providing all these amenities, and it shows
6 that in 2004, four years later, this was the
7 alternative which is apart from what was sold
8 to homeowners and separate from the original
9 agreement, and the original agreement was never
10 modified, it still stands today for ninety-nine
11 years.

12 Now, if The Court finds for
13 any of these reasons that Plaintiff is not
14 contractually obligated to join the amenity
15 center, but money was involuntarily collected
16 from them, and it was, the question arises,
17 "How much does the IHOA owe the Plaintiff?"
18 And I say the Plaintiff because The Court is
19 free to decide whether this money be due the
20 other homeowners, but I don't see them having
21 entered the suit, so, I believe in this matter
22 I can only probably demand money on my behalf,
23 because I don't see them as Plaintiffs,
24 although I remind The Court I said in the face
25 of my Complaint this is a derivative action on

1 behalf of all the homeowners in the
2 development.

3 I have computed this for
4 the period 2001 to 2012, ignoring the prior
5 years, rather 2007 to 2012, so I'm not
6 requesting any money from before 2007. The
7 suit was filed in 2009, so this limits --
8 eliminates all sorts of questions about
9 statutes of limitations. Through August of
10 2012 from January of 2007, the amount is
11 computed as follows: looking at the documents
12 in evidence, at least in my evidence books, in
13 2007, the total assessment collected was
14 seventy dollars, and the amenity center
15 collection was eighteen dollars for a month or
16 two hundred and sixteen dollars. This comes
17 from Exhibit 317, the November 2006 year-end
18 documents. In 2008, the total assessment is
19 still seventy dollars, amenity center eighteen
20 dollars. That's from the December 2nd, 2007
21 IHOA letter; no changes in assessments for
22 2008, my number 342; 2009, total assessment
23 eighty-eight dollars, amenity center still
24 eighteen, a bargain. And there was nothing
25 announced saying there was a change in the

1 amounts for the amenity or anything else, no
2 change in dues. 2010, from November 6th, 2009
3 budget, Plaintiff's 364, and the November 20th,
4 2009 newsletter, my 366, and this is not Friday
5 Facts. Total assessment, now it's up to
6 eighty-eight dollars, amenity center dues still
7 eighteen dollars, so each year two-sixteen a
8 year. 2011, from November 16th, 2010 budget
9 letter regarding 2011, my 387, amenity center
10 charges are unchanged. 2012, total assessment
11 ninety-one dollars. From November 20th, 2011
12 budget for 2012, my 388, over-assessments
13 realized, but the amenity center charge remains
14 at eighteen dollars a month, which means two-
15 sixteen dollars a year times six years, one
16 thousand, two hundred twenty-four dollars,
17 which I ask The Court to declare as a judgment
18 in my favor, ultimately.

19 I'd like to remind The
20 Court that in October of 2011, which is the
21 first time The Court heard motions, The Court
22 acted on my 2009 motion to deposit all these
23 assessments into the Clerk of Court. As I
24 said, The Court directed me not to do it
25 because of The Court, burden on The Court, and

1 I've been marking these paid under protest. I
2 believe this is the measure of damages. Thank
3 you on that.

4 MS. GOLDING: LET ME GET EXHIBIT,
5 DEFENDANT'S EXHIBIT 30,
6 DEFENDANT'S EXHIBIT 96.

7 MR. JARMUTH: CAN I SEE THEM, PLEASE?

8 CROSS EXAMINATION

9 BY MS. GOLDING:

10 Q: Now, Mr. Jarmuth, isn't it a fact that you ---

11 A: Ma'am, may I see the documents?

12 Q: I'm not ready to let you see them, okay?

13 Isn't it a fact, Mr. Jarmuth, that you have
14 used the amenity center since you became a
15 property owner in 2006?

16 A: Upon recollection, I don't believe I've used
17 them since 2008. I believe, also, upon my
18 belief, I didn't use it in 2007, either.

19 Q: So you used the amenity center in 2008; in
20 fact, you ---

21 A: That's all I said, ma'am. I said I ---

22 Q: My question was, you used the amenity center
23 in 2008; is that ---

24 A: No, ma'am.

25 Q: Okay. Let me give you your email, Exhibit

1 Number 30. That's an email you sent to the
2 Homeowners Association. You sent an email on
3 June 23, 2008, and on that email you said that
4 you had gone to the web blog because you had
5 mentioned you had been at the amenity center
6 and there was a light bulb in the clubhouse
7 men's room been burned out and that the shower
8 control was not working; is that not correct?

9 A: I'll admit I wrote ---

10 Q: Is it not correct?

11 A: --- that letter.

12 Q: Is that not correct, what you said in this
13 email?

14 A: I'll admit I wrote the email. I inspected the
15 premises and found a, and found something
16 which I reported to the Horry County
17 authorities as a problem, two, two problems.
18 I related to the Board that I believe that
19 what they had there did not provide -- satisfy
20 Americans With Disabilities Act requirements.
21 I said I was unable to use it, because it did
22 not satisfy Americans With Disabilities Act
23 requirements, particularly the bathrooms, and
24 in looking to see was it, was it adequate, I
25 found light bulbs and stuff out, didn't mean I

1 use the facilities.

2 Q: And then when was it, in 2020, in March of
3 2020, for several days, you used the amenity
4 center and took depositions in this case; did
5 you not?

6 A: I believe there is no year in 2020.

7 Q: Yes or no? Here's Mr. Astorino's deposition.
8 You scheduled his deposition, you took his
9 deposition and you took it in March 27, 2012;
10 is that not correct?

11 A: Ma'am, for the record ---

12 Q: Yes or no? Is that not correct?

13 A: Ma'am, for the record, you said the year 2020.

14 Q: Did you not take Mr. Astorino's deposition in
15 2012 in the amenity center?

16 A: Yes, because -- to answer, because you, as
17 counsel for the Defendant, told me that's
18 where you wanted to use it.

19 Q: Okay. Mr. Astorino, I told you I wanted it in
20 my office and you said you wouldn't go to my
21 office; isn't that the truth? Mr. Jarmuth?

22 A: What was the question, ma'am?

23 Q: I wanted those depositions in my office and
24 you didn't want to go to my office, so you
25 wanted -- you were the one that sent out the

1 notice and selected ---

2 A: Ma'am ---

3 Q: --- the amenity center?

4 THE COURT: WAIT JUST A MINUTE.

5 REMEMBER, MY LITTLE LECTURE

6 WHEN WE STARTED ABOUT

7 CIVILITY? DO NOT TALK WHEN

8 SOMEBODY ELSE IS TALKING.

9 LET HER FINISH AND YOU CAN

10 SAY WHATEVER YOU WANT TO,

11 PLEASE, SIR.

12 Q: You were the one that sent out the notices for

13 Mr. Astorino's deposition, Mr. Pizzi's

14 deposition, Ms. Pizzi's deposition, Mr.

15 Butryn. You took all of those depositions in

16 the amenity center in 2012; did you not?

17 A: Yes, ma'am.

18 Q: And you didn't pay one penny to the Homeowners

19 Association for renting those rooms, did you?

20 A: No, ma'am.

21 Q: That's because you paid assessments; isn't

22 that correct?

23 A: I can't draw that conclusion. You -- I answer

24 in further, the court reporter who used -- had

25 other facilities available and I negotiated

1 with Alicia Thompson, sitting at the table,
2 regarding alternative places, because a lot of
3 us felt uncomfortable coming to your office,
4 and one of the alternatives was to hold the
5 depositions at other locations which the court
6 reporter could've provided. And Alicia
7 Thompson -- I don't know if the email is here,
8 because it seemed to me emails back and forth
9 between counsel is not properly admissible,
10 and suggested that she had talked with Mr.
11 Freiboth who had offered to use the amenity
12 center at no cost for the depositions. So I
13 was relying on Mr. Freiboth's offer through
14 Ms. Thompson sitting there to provide a place
15 for that which is convenient for her people as
16 well, whatever, at no cost, and I believe, if
17 I recall, the email said at no cost and didn't
18 -- did not, did not condition that on whether
19 I was a member or not. It was just
20 negotiating back and forth, trying to find
21 where we would hold those depositions, and I
22 did not suggest that that would be
23 definitively the place, that was one of the
24 possibilities we talked about.

25 Q: Okay. Have you answered that question now?

1 A: Yes, ma'am.

2 Q: Okay. Now, you also testified that you
3 weren't getting the Friday Facts; is that
4 correct?

5 A: Yes, ma'am.

6 Q: Okay. Let me give you an email that you sent
7 to K.A. Diehl on March 5, excuse me, on March
8 4, 2012, when you said to them, "K.A. Diehl,
9 my phone number and email address," and you
10 put this is capped and bold, "not to be placed
11 in any Homeowner Directory." Isn't that what
12 you said in your email to K.A. Diehl?

13 A: I would read -- I told ---

14 Q: That's a yes or no. Isn't that what you typed
15 in an email to K.A. Diehl?

16 A: Yes, I said that K.A. Diehl is not to place my
17 name in any Homeowner Directory. I don't see
18 anything which refers to my receipt.

19 Q: And go to the first page.

20 A: Let me finish looking, ma'am, please.

21 Q: Okay.

22 A: In answering further, I want to point out that
23 in my paragraph three, I referred to a
24 conversation I had with Bill Freiboth,
25 February 13th, 2012, which I believe was --

1 which was either before or after the
2 deposition which I held of him in the office
3 where our conversation at your office revealed
4 to him I was not receiving Friday Facts, and I
5 did not say I received Friday Facts. As a
6 matter-of-fact, paragraph three says I told
7 him I was not receiving Friday Facts, and he
8 says that he told me that he'd fix that, but
9 he probably has not done so, and I don't see
10 how my telling a new K.A. Diehl person who
11 replaced Julie Case and Beckie Abel, not to do
12 something I objected to, like not to give
13 anybody -- not violate my privacy by giving
14 out my name and address has anything to do
15 with the Friday Facts, ma'am.

16 Q: And up to today, you still have not authorized
17 K.A. Diehl to send you any emails, have you?

18 A: That's not true.

19 Q: Well, have you sent an email saying, "My phone
20 number and email address can be placed in the
21 Homeowners Directory;" have you done that?

22 A: I've told them repeatedly ---

23 Q: Have you sent an email to K.A. Diehl saying,
24 "You can now use my email address and my phone
25 number?" Have you sent that email to K.A.

1 Diehl?

2 A: For what purpose, ma'am?

3 Q: I'm asking you. Have you sent an email to
4 K.A. Diehl saying, "You can now use my email
5 address and my phone number and it can be put
6 in the Homeowners Directory?" Have you done
7 that?

8 MR. JARMUTH: I OBJECT TO THE QUESTION,
9 IT'S VAGUE, BECAUSE ---

10 THE COURT: WAIT JUST A MINUTE. ANSWER
11 THE QUESTION, THEN YOU CAN
12 EXPLAIN, OKAY?

13 Q: Have you done that?

14 A: I have not told them that they may use my name
15 and address in the Membership Directory. I
16 have sent, however, separate emails to them
17 many times, I believe to you at the -- in your
18 law firm, saying I would -- I'm demanding that
19 they use the email they have for me to send me
20 Friday Facts which is not the same as
21 publishing my name, address, email address to
22 everybody else.

23 Q: Okay. I tell you what, Mr. Jarmuth, you go --
24 any time today, any time tomorrow, I want you
25 to go find me an email that you sent to K.A.

1 Diehl to say, "Email me the Friday Facts." I
2 want you to present that email into this
3 courtroom, okay?

4 A: Ma'am, I will refer back to paragraph three of
5 your document which says that I told Bill
6 Freiboth at that deposition I was not
7 receiving it, and I gave him permission to use
8 my email address to send me the Friday Facts,
9 and he's President of the HOA, and it's
10 perpetuated in your document.

11 Q: Okay. Let me give you, then, the response
12 email from K.A. Diehl to your email saying,
13 "Don't use my phone number and email." Do you
14 see that? The next day they sent you an email
15 on March 5, 2012. The first paragraph talks
16 about the ARB meeting, and then it says, "To
17 receive emails from the Association, including
18 Friday Facts, you must be registered on the
19 Association's website, which is
20 www.internationalclubHOA.com. Once you have
21 completed the initial registration, you can go
22 to 'My profile,' and then request that your
23 contacts be sent via email. This way, you
24 will receive email notifications."

25 A: I don't dispute that K.A. Diehl, the agent of

1 the IHOA, made that demand, and I thank you
2 for opening the door on this issue, because
3 what you have for The Court has not been
4 provided as a fact, that to get into that, you
5 have to sign up for the website which means
6 now you're providing other people things you
7 sign, a privacy agreement, which gives
8 Association voice out in Denver, Colorado the
9 right to use anything that's posted, including
10 your financial information, your payment
11 information, your private information, and
12 gives the Association the voice. It
13 establishes a business relationship with the
14 Association voice and gives them the right to
15 give to their people they do business with
16 your email address and name and address to
17 mail you an email advertising material, and I
18 don't see how this release -- this privacy
19 agreement, this release, has anything to do
20 with my obtaining information from the
21 Association about what's going on. I don't
22 see why I should be required to join this
23 website to get copies of material which the
24 HOA mails every -- most of the other
25 homeowners those Friday Facts. This is not a

1 website thing. It's a communication from the
2 HOA presumably using money they get from me to
3 maintain those emails. I think this is
4 against the public policy, a violation of the
5 covenant of good faith and fair dealing to
6 demand that I release my privacy rights in
7 exchange for getting information which I have
8 a right to get. It goes further than that,
9 because this release of privacy rights also
10 supposedly gives K.A. Diehl the right to
11 release the information, also, but in looking
12 at the K.A. Diehl contract arrangement,
13 they're doing it, anyway. They're releasing
14 my name and address and other information to
15 vendors who pay them the one twenty-five a
16 year, plus two-fifty. So to sign up to the
17 website would waive many of the causes of
18 action I've given -- I've addressed in this
19 courtroom. One of those causes of action is
20 the failure of the Defendants, both K.A. Diehl
21 and the other Defendant, the IHOA, to give us
22 privacy notices, obtain Privacy Act Agreement
23 to the -- to their privacy practices.

24 Q: Now, Mr. Jarmuth, you've also used the
25 swimming pool at the amenity center; have you

1 not?

2 A: Back in 2006.

3 Q: And you've also used -- gone to socials Friday
4 evenings at the amenity center; did you not?

5 A: Not since 2007, I don't believe.

6 Q: And you used the pool ---

7 A: I'd like to answer further than that. Back
8 ---

9 Q: And you used the pool ---

10 A: Ma'am, let me, let me finishing answering the
11 question.

12 Q: I'm sorry.

13 A: Until September of 2007, the Social Committee
14 was wholly self-supporting. During these
15 events, they collected contributions. They
16 held some sort of a grab bag raffle, you get
17 half the money in it, to support all the
18 expenses of the Social Club. When Defendant
19 Rosemary Toth became putative president of the
20 Association, she immediately changed that. If
21 I recall correctly, all the officers of the
22 Social Committee quit because they were
23 directed to turn all their money they
24 collected for the operation of the Social
25 Committee from homeowners who participate over

1 to the HOA which now took control. When that
2 happened, which is around September of 2007, I
3 ceased doing anything there in the amenity
4 center with any Social Committee activities.
5 It was a big problem.

6 Q: So are you denying, then, that you used the
7 swimming pool last year in 2011?

8 A: Yes, ma'am.

9 Q: Okay. Thank you, nothing further.

10 THE COURT: ALL RIGHT. ANYTHING ELSE?

11 MS. GOLDING: NOTHING FURTHER, YOUR
12 HONOR.

13 THE COURT: ALL RIGHT. YOU MIGHT COME
14 DOWN.

15 MR. JARMUTH: PARDON ME, WHILE I GET
16 INFORMATION FOR

17 RECOLLECTION. YOUR HONOR,

18 I'M GOING TO BE CALLING

19 WITNESSES, BUT I'D LIKE TO

20 CLARIFY SOMETHING BECAUSE I

21 ANTICIPATE SINCE ALL THE

22 OBJECTIONS ABOUT THINGS

23 BEING PRESENTED BEFORE, THE

24 WITNESSES ARE INVOLVED IN

25 MANY ISSUES AND I DON'T

1 WANT TO BE BRINGING THEM
2 BACK AND FORTH AND BACK
3 FORTH, SO I'LL ASK THEM
4 ABOUT THESE ISSUES ALL
5 COLLECTIVELY. THESE ISSUES
6 ARE BUILDINGS AND GROUNDS,
7 DEFAMATION ---
8 MS. GOLDING: CAN HE PROCEED WITH THE
9 WITNESSES, YOUR HONOR?
10 THE COURT: YES, JUST CALL YOUR FIRST
11 WITNESS.
12 MS. GOLDING: AND YOU NEED TO STAND UP.
13 THE COURT: WE'LL SORT IT OUT AS YOU
14 GO, PLEASE.
15 MR. JARMUTH: I'D LIKE TO CALL MY FIRST
16 WITNESS, JANE PIZZI.
17 THE COURT: COME AROUND, PLEASE, MA'AM.
18 JANE PIZZI, AFTER HAVING BEEN CALLED TO THE STAND
19 AND DULY SWORN, TESTIFIED AS FOLLOWS:
20 COURT REPORTER: WILL YOU STATE YOUR NAME
21 AND SPELL YOUR LAST?
22 MS. PIZZA: JANE P-I-Z-Z-I.
23 MR. JARMUTH: I'D LIKE TO INTRODUCE INTO
24 EVIDENCE MY EXHIBIT 533,
25 WHICH IS A LETTER FROM THIS

1 -- WHICH IS A STATEMENT
2 ISSUED BY AND SIGNED BY
3 THIS WITNESS, WHO I'LL ASK
4 TO AUTHENTICATE IT.
5 MS. GOLDING: YOUR HONOR, I'M GOING TO
6 OBJECT TO ANY STATEMENTS BY
7 WITNESSES BEING INTRODUCED
8 INTO EVIDENCE. THE WITNESS
9 IS HERE TO TESTIFY.
10 THE COURT: HAS THAT BEEN MARKED?
11 MR. JARMUTH: 533, 533.
12 THE COURT: AND WHAT'S YOUR OBJECTION,
13 MS. GOLDING?
14 MS. GOLDING: THE WITNESS IS HERE TO
15 TESTIFY. THAT'S IMPROPER
16 TO INTRODUCE A STATEMENT.
17 THE COURT: IS IT THIS WITNESS'
18 STATEMENT?
19 MR. JARMUTH: YES, IT IS.
20 THE COURT: I'M GOING TO LET YOU ASK
21 HER ABOUT IT, BUT, I'M
22 GOING TO NOTE THE
23 OBJECTION.
24 MS. GOLDING: THANK YOU, YOUR HONOR.
25 THE COURT: ALL RIGHT. GO AHEAD.

1 MR. JARMUTH: I'D LIKE TO INTRODUCE,
2 INTRODUCE THIS, ALSO, AS A
3 STATEMENT, AS A DOCUMENT
4 USED TO REFRESH HER
5 RECOLLECTION, WHICH I
6 BELIEVE IS ALLOWED IN THE
7 RULES OF EVIDENCE.
8 THE COURT: IT'S IN, SUBJECT TO THE
9 OBJECTION.
10 DIRECT EXAMINATION
11 BY MR. JARMUTH:
12 Q: Could you please examine this document?
13 A: (Pause while reviewing document). Yes.
14 Q: This says on June 2nd -- What prompted you to
15 write this document?
16 A: When I -- when we received the document from
17 in the mail, I called K.A. Diehl and I talked
18 to Julie Case. I asked Julie specifically why
19 it was sent out, because it had nothing to do
20 with the HOA business. It was more against
21 your character, and I asked her why would we
22 pay for such a document to go out. Julie then
23 turned and said she didn't understand, you
24 know, why it was sent out, and I says, "Well,
25 who did it, was it by our HOA or our Board?"

1 She says, "No, it was done by
2 Henrietta, the lawyer, so it was all legal."
3 And I had no -- I could not question it, and
4 that's, that's what it was, and I was
5 disappointed at that time that they had, had
6 done such a thing, a waste of money, and it
7 was just to, to smear you.

8 Q: Did you write this document?

9 A: I did.

10 Q: Did I request you to write it to, to make sure
11 you remembered your ---

12 MS. GOLDING: YOUR HONOR, HE'S GOING TO
13 NEED TO ASK DIRECT
14 QUESTIONS, NOT LEADING
15 QUESTIONS.

16 THE COURT: YES, DON'T LEAD THE
17 WITNESS. DON'T SUGGEST ---

18 Q: What did I, What did I ---

19 THE COURT: SIR, WAIT JUST A MINUTE.
20 YOU CAN ASK HER QUESTIONS.

21 DON'T SUGGEST THE ANSWER IN
22 YOUR QUESTION, PLEASE.

23 Q: What was the reason I asked you to write the
24 letter?

25 MS. GOLDING: YOUR HONOR, THIS WITNESS IS

1 NOT COMPETENT TO TESTIFY AS
2 TO MR. JARMUTH'S REASONS.

3 Q: What was the reason I told you ---

4 A: You told me you wanted me to make sure that I
5 recalled what I had said to Julie and how it
6 went down. That's what you told me, just to
7 write it to myself, and I gave you a copy, so
8 I would remember.

9 Q: Now, when you phoned Julie Case, ---

10 A: Yes.

11 Q: --- who owned the phone number you dialed?

12 A: The phone number that I was calling from or
13 to?

14 Q: Calling to?

15 A: To K.A. Diehl.

16 Q: And you know this because?

17 A: They answered the, the phone, "This is K.A.
18 Diehl."

19 Q: And who did you ask to talk to?

20 A: Julie Case, 'cause that's the person I always
21 talk to.

22 Q: Did the person identify herself who answered
23 the phone?

24 A: Yes. She identified herself as Julie Case.

25 Q: And why -- is there any other way you'd

1 recognize the voice?

2 A: I've talked to her a couple of times, maybe I
3 -- no, probably not. She said she was Julie
4 Case.

5 Q: Now, getting back, you referred to another
6 document. Could you describe this document
7 which led to you calling Julie Case?

8 A: It was a document that had no bearing on any
9 of the HOA business. It was all about your
10 lawsuits and about defaming you, and I just
11 thought it was -- you could go on Google to
12 get it -- it was a waste of money.

13 Q: Did I ask you to make that phone call?

14 A: Absolutely not.

15 Q: Had you even talked to me before ---

16 A: No.

17 Q: --- you made the call?

18 A: Not, not, not -- no. I made that phone call
19 as a concerned homeowner.

20 Q: How do you know that, that -- How did you
21 receive that? Was it by mail or by phone or

22 ---

23 A: By mail.

24 Q: How do you know it was about me?

25 A: I read it.

1 Q: You read it. How do you know that what you
2 read was about me?

3 A: Everybody -- it was -- your name was on it.

4 Q: My name was on it. Thank you. Did it have --
5 Did it contain things in it that you believed
6 was injurious to my reputation?

7 A: Yes.

8 Q: Could you ---

9 MR. JARMUTH: THIS DOCUMENT IS IN
10 EVIDENCE AND I -- RATHER
11 THAN READ THE PARTICULARS
12 OF THE THING, I ASK THE
13 COURT TO BE ABLE TO, TO
14 READ THE DOCUMENT ITSELF AT
15 ITS LEISURE. THE
16 DEFENDANTS HAVE BEEN
17 PROVIDED -- THIS IS IN
18 2009, AND AGAIN, IN THE
19 EVIDENCE BOOK, PUT IN THE
20 EVIDENCE BOOK. I'D LIKE TO
21 GIVE THE COURT THE
22 INTEGRATED COPY, BUT THE
23 PIECES ARE SEPARATELY
24 LISTED IN THE LIST OF
25 EVIDENCE.

1 MS. GOLDING: YOUR HONOR, ---
2 MR. JARMUTH: THE PIECES ---
3 THE COURT: WAIT JUST A MINUTE, SIR.
4 MS. GOLDING: --- THIS IS IMPROPER;
5 NUMBER ONE, IT'S NOT MARKED
6 AS AN EXHIBIT. HE'S GOT
7 NOTATIONS, HE'S MADE LINES
8 AND ARROWS THROUGH
9 EVERYTHING, HE'S BLOCKED
10 OUT CERTAIN THINGS, SO THIS
11 IS AN IMPROPER DOCUMENT
12 THAT SHOULD NOT BE AN
13 EXHIBIT ---
14 MR. JARMUTH: I WILL POINT OUT ---
15 THE COURT: WAIT JUST A MINUTE.
16 MS. GOLDING: --- DUE TO THE MARKINGS AND
17 CHANGES HE'S MADE ON THE
18 DOCUMENT. NOW, THIS
19 DOCUMENT, THE LETTER, MY
20 LETTER WITH THE ATTACHED
21 LIST IS PART OF HIS -- IS
22 IN EVIDENCE ALREADY AND HE
23 DOESN'T HAVE ANY MARKINGS
24 ON IT, SO THIS IS A
25 DUPLICATE AND IT'S A

1 PRACTICAL MATTER, ANYHOW.
2 MR. JARMUTH: YOUR HONOR, I CAN SEE THAT
3 IT'S A DUPLICATE, BUT THE
4 COPIES OFFICIALLY IN
5 EVIDENCE DO NOT HAVE THOSE
6 MARKINGS, AND RATHER THAN
7 WASTE THE COURT'S TIME AND
8 SAY, "LOOK HERE, LOOK
9 THERE," THIS IS FOR THE AID
10 OF THE COURT IN LOOKING AT
11 THE THINGS WHICH I CONSIDER
12 ISSUES. AND I NOTE THAT ON
13 THE DEFENDANT'S EXHIBITS OR
14 THE BIG PLATS, SHE PUT
15 STICKERS ON AND OTHER
16 THINGS, WHICH IMPAIRED THE
17 VIEW OF THIS, SO I SUGGEST
18 THAT THE OFFICIAL COPIES
19 ARE THE SAME AS THAT AND
20 THAT PULLING TOGETHER FROM
21 ABOUT THIRTEEN DIFFERENT
22 EXHIBITS IMPROVES THE
23 ABILITY OF THE FACT FINDER
24 TO, TO DRAW SOME
25 CONCLUSIONS.

1 THE COURT: I'M GOING TO NOTE YOUR
2 OBJECTION AND I'LL TAKE IT
3 FOR WHATEVER IT'S WORTH,
4 BUT CONFINE YOURSELF TO
5 TALKING TO THE WITNESSES.
6 WE NEED TO, NEED TO MOVE
7 ON, PLEASE.

8 MR. JARMUTH: YES. YES, YOUR HONOR.

9 Q: Did your conversation include any question
10 from you and the answer from -- anything to
11 suggest from either side that any instructions
12 were given to Julie Case, how to handle that?

13 MS. GOLDING: OBJECT TO THE FORM OF THE
14 QUESTION.

15 THE COURT: NOTED. GO AHEAD AND ANSWER
16 IT.

17 A: I'm not sure I know what you mean.

18 Q: Well, your letter has the phrase, "She told me
19 that it was constructed by the lawyer and
20 approved to distribute to the entire
21 community." Did Ms. Case say to you anything
22 which would lead you to believe that any
23 instructions were given by someone else to Ms.
24 Case about how to handle the mailing?

25 A: No. She just said it was done by the lawyer

1 and it was legal.

2 Q: Thank you.

3 A: You're welcome.

4 MS. THOMPSON: YOUR HONOR, NO QUESTIONS.

5 NO QUESTIONS.

6 THE COURT: ARE YOU FINISHED WITH THIS

7 WITNESS?

8 MR. JARMUTH: YES, I AM. I WANT TO

9 INTRODUCE A RELATED THING

10 OF EVIDENCE, MY NUMBER 525.

11 THAT IS A 2009, 5/28. IT'S

12 SUPPOSEDLY THE OFFICIAL

13 DOCUMENT WHICH THE

14 DEFENDANT PROVIDED ME THIS

15 YEAR PER JUDGE JOHN'S ORDER

16 TO GIVE ME THE REST OF THE

17 STUFF REGARDING THE

18 MAILING, BECAUSE THEY GAVE

19 ME NOTHING REGARDING THE

20 MAILING OF EMAIL ACCOUNTS

21 OR ANYTHING. I SUBPOENAED

22 CAROLINA MAIL HOUSE, AND

23 THIS IS AN OFFICIAL

24 DOCUMENT FROM K.A. DIEHL

25 WHICH SAYS THAT -- THIS

1 RELATES TO JULIE CASE, AND
2 IT SAYS THAT SHE MAILED A
3 CERTAIN NUMBER OF EMAILS
4 WHICH CONTAINED THIS
5 INFORMATION.
6 MS. GOLDING: YOUR HONOR, JUST FOR THE
7 RECORD, THIS EXHIBIT, MR.
8 JARMUTH'S EXHIBIT 525, IS
9 AN AFFIDAVIT OF MS. CASE
10 AND OBVIOUSLY THAT'S
11 INADMISSIBLE. THANK YOU,
12 YOUR HONOR.
13 THE COURT: ALL RIGHT.
14 MR. JARMUTH: THE NUMBER 525 IS AN
15 OFFICIAL DOCUMENT, THE PAGE
16 ITSELF, OF THE, OF THE
17 DEFENDANT K.A. DIEHL WHICH
18 IS AUTOMATICALLY GENERATED
19 IN THE COURSE OF BUSINESS
20 WHERE THEY SENT OUT A MASS
21 EMAIL. IT ACTUALLY RUNS
22 THROUGH MANY PAGES. THE
23 PART I'M LOOKING AT IS A
24 PART WHERE IT SAYS,
25 "STATISTICS", AND IT'S NOT

1 AN AFFIDAVIT, IT'S AN
2 AUTOMATICALLY GENERATED
3 REPORT WHEN YOU SEND A BULK
4 EMAIL. IT SAYS, "TOTAL
5 NUMBER OF EMAILS SENT,
6 577," SENT BY -- IT SAYS,
7 "SENT BY JULIE CASE." SO
8 IT SAYS WHO ACTUALLY
9 PHYSICALLY SENT ALL OF
10 THOSE EMAILS WHICH I CLAIM
11 ARE DEFAMATORY, AND AT THE
12 TIME IT SAID SHE -- SENT
13 FROM, IT SHOWS THAT SHE'S
14 SENDING IT IN THE CAPACITY
15 AS AN EMPLOYEE BY THE
16 DEFENDANT K.A. DIEHL, AND
17 K.A. DIEHL, THE DEFENDANT,
18 IS RESPONSIBLE FOR THE ACTS
19 OF ITS EMPLOYEES WITHIN THE
20 COURSE OF THE BUSINESS AND
21 HER BUSINESS, HER JOB TO
22 SENDING THOSE EMAILS SHE
23 WAS SUPPOSED TO SEND. AND
24 AT HER DEPOSITION, AND THE
25 COURT IS INVITED TO READ

1 IT, SHE ADMITTED THAT SHE'S
2 BEEN INSTRUCTED TO SEND IT
3 AS, AS AN OFFICIAL ACT
4 WHILE EMPLOYED. I CALL LOU
5 ASTORINO. I CALL LOU
6 ASTORINO.
7 LOUIS ASTORINO, AFTER HAVING BEEN CALLED TO THE
8 STAND AND DULY SWORN, TESTIFIED AS FOLLOWS:
9 COURT REPORTER: WILL YOU STATE YOUR NAME
10 AND SPELL YOUR LAST?
11 MR. ASTORINO: LOUIS ASTORINO, A-S-T-O-R-
12 I-N-O.
13 DIRECT EXAMINATION
14 BY MR.JARMUTH:
15 Q: Mr.Astorino, will you state your address?
16 A: 862 Castlebridge Drive, Murrells Inlet, South
17 Carolina.
18 Q: Is that within the PUD?
19 A: Oh, yeah, with the H -- the HOA.
20 Q: Is that within the Sunbelt Pebble Creek sub-
21 community?
22 A: Yes, it is.
23 Q: You normally receive coupons and other
24 material, assessment charges, from the
25 Defendant HOA?

1 A: Yes, I do.

2 Q: Has there come a time when you've attempted to
3 vote or been told you may not vote in
4 elections of the HOA?

5 A: Yes.

6 Q: Could you please describe that?

7 A: Those last, last September at the Homeowners
8 meeting.

9 Q: Who told you that?

10 A: Beckie Abel and Julie -- and, and Julie, Julie
11 was there, as well.

12 Q: What do you know as to Beckie Abel's
13 employment?

14 A: She's an employee of K.A. Diehl. She's an
15 assistant.

16 Q: Do you have any information as to K.A. Diehl's
17 relationship with the IHOA?

18 A: They represent them.

19 Q: Is K.A. Diehl the management company for the
20 HOA?

21 A: Yes.

22 Q: Do you have frequent dealings with K.A. Diehl
23 over common matters?

24 A: Yes, I do.

25 Q: Have you ever received a letter from K.A.

1 Diehl telling you you're being fined?

2 A: Oh, yes.

3 Q: Could you describe that?

4 A: There have been numerous ones, one for -- I
5 submitted the paperwork for a well, insulation
6 of an irrigation pump and installing fig
7 trees. I got an approval from the ARB. The
8 -- a year, roughly a year later, they sent it
9 back that I'm being fined for putting in a
10 well pump and the planting of the fig trees.
11 I get issues that I had a concrete pad, which
12 I do not have. I get various issues that are
13 related to the property.

14 Q: Have you ever received a letter from the Board
15 itself signed by a member of the Board that
16 you were being fined or deprived of your
17 rights as a homeowner?

18 A: No, it, it comes from K.A. Diehl.

19 Q: Who signs them, normally?

20 A: Generally, it was Beckie or Julie Chase
21 (Case).

22 Q: Has any Board member actually signed them?

23 A: I, I have not seen that in nothing, no.

24 Q: Have you ever received an invitation from the
25 Board to attend a meeting of the Board of

1 which they have addressed your violations and
2 possible sanctions?

3 A: No.

4 Q: Have you ever received a decision or anything
5 which looks like a decision signed by a member
6 of the Board of which they have authorized the
7 suspension of your voting rights for imposing
8 fines?

9 A: From the Board, no.

10 MR. JARMUTH: 548, THE BYLAWS OF THE
11 ASSOCIATION, HAS ALREADY
12 BEEN PUT INTO EVIDENCE.
13 IT'S ALSO A DOCUMENT FROM
14 K.A. DIEHL'S H -- THE
15 DEFENDANT'S SET OF
16 EVIDENCE. I'D LIKE TO SHOW
17 THE DEFENDANT A COPY OF
18 SECTION 13.3 MARKED
19 "PROCEDURE." IT'S PART OF
20 THE DOCUMENTS ALREADY IN
21 EVIDENCE, 548.

22 Q: Please take a moment to look at it.

23 A: (Pause while reviewing document). Okay.

24 Q: Looking at this document, will you agree or
25 disagree that the HOA Board has followed its

1 procedure set forth prior to posing a fine or
2 suspending your voting rights?

3 A: I disagree.

4 Q: Can you see anything there, any procedure
5 specified in the Bylaws of Section 13.3,
6 Exhibit 548, which they have followed?

7 A: No.

8 Q: Mr. Astorino, if you need a glass of water or
9 something, please ask for it.

10 A: Okay.

11 Q: Are you a party -- I'll make it simple. Are
12 you involved in the dispute with the Defendant
13 IHOA and K.A. Diehl or K.A. Diehl regarding
14 your use of the roads?

15 A: Yes.

16 Q: Will you please describe that?

17 A: The, the Board has told me that, that I can't
18 park my vehicle on the roads, but they don't
19 own the road.

20 Q: Did I hear you right, that you said they
21 admitted they don't own the road, but still
22 insisting you can't park on the road?

23 MS. GOLDING: YOUR HONOR, IF HE COULD
24 JUST ASK DIRECT QUESTIONS.

25 A: That -- that's true, and at, at one meeting we

1 -- I went to specifically, I addressed
2 Rosemary Toth about the Board -- the, the HOA
3 owning the roads, and she specifically said,
4 and that, that particular statement, I have it
5 taped, that the HOA does not own the roads.

6 Q: Did you give me -- Did you make available to
7 me the physical device you used to record that
8 conversation with Rosemary Toth?

9 A: Yes, I did.

10 Q: Did you inspect and listen to the CD I made
11 after I transcribed the CD?

12 A: Yes, I did.

13 Q: Is it the same thing?

14 A: Yes.

15 MR. JARMUTH: I'D LIKE TO POINT OUT TO
16 THE COURT THAT THIS IS ONE
17 OF -- PIECE I'VE PUT IN
18 EVIDENCE THROUGH THIS CD
19 WITH THAT CONVERSATION
20 BETWEEN DEFENDANT ROSEMARY
21 TOTH AND THIS WITNESS, AND
22 IN THAT -- IN THE TITLE IT
23 SAYS SO MANY MINUTES IF YOU
24 ADVANCE TO THAT POINT IT
25 HAS A DECLARATION AGAINST

1 THE INTEREST BY ROSEMARY
2 TOTTH SAYING THAT THE COUNTY
3 OWNS THE ROADS, NOT AS AN
4 EASEMENT, IT SAYS THE
5 COUNTY OWNS THE ROADS. SO
6 -- WHICH COULD BE SEEN BY
7 LISTENING TO THE
8 CONVERSATION.

9 Q: How frequently do you drive around the
10 Sunbelt, the Pebble Creek community?

11 A: When -- I go back and forth to New York often
12 and -- for medical issues, and when I'm here,
13 I drive around a lot.

14 Q: But when you're living here in South Carolina,
15 how frequently do you drive along the streets
16 of the neighborhood?

17 A: Every day.

18 Q: What have you observed regarding boats and
19 trailers and cars parked in driveways and on
20 the roads?

21 A: Occasionally, there's sometimes a cluster of
22 cars parked in front of someone's house or in
23 the cul-de-sac. Sometimes the, the RVs has
24 been on the road or parked in the, in the cul-
25 de-sac, and I've seen a boat on the road as

1 well.

2 Q: Have you ever seen boats or other trailers or
3 RV things parked in driveways for more than a
4 day?

5 A: Yes.

6 Q: How many days have they been parked?

7 A: I, I think from, from when I've been around,
8 maybe two or three days, at the most.

9 Q: Is it common to see a lot of cars parked
10 within the community on the streets?

11 A: Sometimes, I guess, for people having a party
12 at night or whatever it is.

13 Q: After -- did you receive in the mail something
14 from the International Club in an oversized
15 envelope which related to me?

16 A: Yes.

17 Q: Is this what you received?

18 A: Yes.

19 Q: Looking at the printout of the envelope, what
20 there is different between the one I got and
21 the one you got?

22 A: My address.

23 Q: Is there any other difference?

24 A: No.

25 Q: Looking at the "From" thing, who is it from?

1 A: International Club HOA.

2 Q: After you received this mailing, did there
3 come an occasion when other community members
4 said things about me which were detrimental to
5 my reputation?

6 A: Absolutely.

7 Q: Could you describe that?

8 A: They called you a pedophile.

9 Q: Who?

10 A: John Marzano was number one, and Bill Fletcher
11 was another.

12 Q: Is this the same Bill Fletcher who was on the
13 Transition Committee?

14 A: Yes.

15 Q: Is this the same Bill Fletcher who at times
16 was on the ARB?

17 A: He was on the Board, yeah.

18 Q: Thank you. Was anything said to you by any
19 person in the community, after receiving this
20 letter, suggesting that you should cease and
21 desist from having contact with me?

22 A: Yes.

23 MS. GOLDING: YOUR HONOR, I'M GOING TO
24 MAKE AN OBJECTION. THAT'S
25 OBVIOUSLY HEARSAY.

1 Q: Could you describe any conversation ---

2 THE COURT: WAIT JUST A MINUTE.

3 MS. GOLDING: HE SAID, "DID ANY MEMBER OF

4 THE COMMUNITY SAY SOMETHING

5 TO YOU" ---

6 THE COURT: YES, DON'T, DON'T DO THAT,

7 OKAY?

8 Q: Did either of the two people who talked to

9 you, named people, say anything to you

10 regarding ceasing from having contact with me?

11 MS. GOLDING: AND, YOUR HONOR, AGAIN,

12 THAT'S HEARSAY.

13 THE COURT: SAME OBJECTION. REPHRASE

14 YOUR QUESTION, SO YOU DON'T

15 ---

16 Q: Can you describe any other event which

17 interfered with your social relationship with

18 me?

19 A: Yeah. I, I, I think because I consider you a

20 friend, people from the community rather not

21 ---

22 MS. GOLDING: I WOULD HAVE AN OBJECTION

23 TO ANY TESTIMONY REGARDING

24 WHAT PEOPLE FROM THE

25 COMMUNITY SAID, YOUR HONOR.

1 THE COURT: I'M GOING TO NOTE YOUR

2 OBJECTION AND LET ---

3 Q: Complaints of specific people ---

4 THE COURT: WAIT JUST A MINUTE -- AND

5 LET YOU ANSWER IT. GO

6 AHEAD AND FINISH.

7 A: The people of the community, you know, don't

8 like me, but I, I really don't care, because

9 to, to start a rumor without, without

10 verifying the source is wrong. It's an

11 accusation that shouldn't have been made.

12 Q: When did you buy your house in the

13 development?

14 A: We purchased it in, I believe, in 2006, April

15 2006 or February 2006.

16 Q: Are you the original purchaser?

17 A: No.

18 Q: Have you ever consented or been asked to

19 consent to the delivery of cable TV service?

20 A: No.

21 Q: Have you been asked whether you wanted to or

22 agree to receive garbage collection services?

23 A: No.

24 Q: Which amendments of the covenants were you

25 told about -- let me rephrase. When you

1 bought your house, were you required to obtain
2 some sort of a package from K.A. Diehl, the
3 management company?

4 A: We got the paperwork from the attorneys.

5 Q: And did he get that from the management
6 company?

7 A: I believe so. I don't know.

8 MR. JARMUTH: I WANT TO ASK THE COURT TO
9 NOTE THAT IN THE K.A. DIEHL
10 MANAGEMENT CONTRACT
11 PROVIDES A FEE FOR THEM
12 EACH TIME THEY PROVIDE --
13 ACTUALLY CHARGE THE BUYER
14 TO GET A PACKAGE TO BE
15 PROVIDED TO THE BUYER OF
16 THE HOUSE.

17 Q: Did that package contain the covenants or any
18 amendments to the covenants?

19 A: Yeah, there was, there was stuff in it. At
20 the time, I didn't read it all right away.

21 Q: You bought the house in 2006.

22 A: Yeah.

23 Q: Were you ever given copies of the covenants
24 which were filed after that?

25 A: No.

1 Q: Were you ever asked to agree to any of the
2 amendments to the covenants, amendments of the
3 covenants, filed after that?

4 A: No.

5 Q: Did you ever receive a covenant violation
6 letter accusing you of making a change which,
7 in fact, you did not make?

8 A: Yeah.

9 Q: Can you describe that?

10 A: One was the, the, the, the fig tree. I didn't
11 plant the -- I, I requested to plant two fig
12 trees. I planted only one, and there was a
13 problem with that.

14 Q: Was there an issue regarding -- could you
15 describe the issue regarding your concrete pad
16 for the air conditioner?

17 A: Yeah. I, I, I was told to, to -- I was being
18 fined for a concrete pad on the side of my
19 house and which I'd never had a concrete pad
20 on the side of my house.

21 Q: What were you told, what were you told would
22 be the consequences if you didn't remove this
23 non-existent concrete pad?

24 A: I'd be fined.

25 Q: Were you ever asked by the Board or any of its

1 agents, representatives, to agree to the sale
2 of -- to anything relating to an agreement
3 between the HOA and Central Electric?

4 A: No.

5 Q: Did you ever agree to them releasing to the
6 homeowners seventy-five dollars per home?

7 A: No.

8 Q: Did you ever agree to them giving The Villas
9 ten thousand dollars of that money from that
10 settlement?

11 A: No.

12 Q: What's your experience installing storm
13 drainage for roads and homes?

14 A: Excuse me?

15 Q: Do you have any experience installing storm
16 drainage for roads and homes?

17 A: I'm a plumber by trade, so I've worked on many
18 different types of -- anything related with
19 pipe, I've worked on.

20 Q: Does that include drainage for roads and ---

21 A: Yeah.

22 Q: --- houses?

23 A: Yes.

24 Q: Are you a licensed plumber?

25 A: Yeah. I, I held a license in New York,

1 Connecticut, and South Carolina, holding.

2 Q: For how many years have you held those
3 licenses?

4 A: The longest one is probably about thirty-eight
5 years.

6 Q: What can you tell me about the relationship
7 and dependence of an upstream retention pond
8 or drainage area on the proper ratio of a
9 downstream one?

10 MS. GOLDING: YOUR HONOR, I'M GOING TO
11 MAKE AN OBJECTION, NUMBER
12 ONE, THIS WITNESS HAS NEVER
13 BEEN LISTED AS AN EXPERT,
14 SO I DON'T THINK THAT THAT
15 WOULD BE PROPER TO GET ANY
16 INFORMATION WITH REGARD TO
17 THAT.

18 THE COURT: ARE YOU OFFERING HIM AS AN
19 EXPERT NOW?

20 MR. JARMUTH: I'M OFFERING HIM AS A
21 REBUTTAL EXPERT WITNESS TO
22 REBUT ---

23 THE COURT: YOU NEED TO QUALIFY HIM.

24 MR. JARMUTH: --- WHAT CHRIS SULLIVAN ---

25 THE COURT: YOU NEED TO QUALIFY HIM AS

1 AN EXPERT.

2 MR. JARMUTH: I BELIEVE I JUST QUALIFIED

3 HIM, YOUR HONOR.

4 MS. GOLDING: HE'S A PLUMBER.

5 THE COURT: WHAT DID YOU SAY?

6 MS. GOLDING: YOUR HONOR, HE'S A PLUMBER?

7 THE COURT: IS THAT CORRECT?

8 MR. ASTORINO: WELL, YEAH, ABSOLUTELY.

9 THE COURT: OKAY.

10 Q: And your trade -- and what you've done in work
11 and your trade and your actual job is
12 including installing this sort of drainage?

13 A: Oh, yeah.

14 Q: Could you please answer the question? What is
15 the dependence that you know about of the
16 proper operation of an upstream drainage
17 system, drainage of a downstream ---

18 THE COURT: I DON'T THINK HE'S

19 QUALIFIED TO TESTIFY TO

20 THAT, I'M SORRY. WE'VE GOT

21 TO CALL A HALT TO SOME OF

22 IT. I'VE BEEN VERY LIBERAL

23 WITH LETTING YOU ASK AND

24 INTRODUCE AND ALL, BUT, YOU

25 KNOW, UNLESS HE'S GOT SOME

1 QUALIFICATIONS, I DON'T
2 THINK THAT HE NEEDS TO
3 TESTIFY AS AN EXPERT IN
4 THIS PARTICULAR AREA. IF
5 HE WANTS TO TESTIFY ABOUT
6 PLUMBING, PLUMBING THINGS,
7 THEN THAT'S FINE.

8 Q: What is right behind your house?

9 A: The, the pond. There's a pond, yeah.

10 Q: Please describe, as a homeowner, what you
11 think the condition of that pond is?

12 MS. GOLDING: YOUR HONOR, WHAT HE THINKS,
13 YOUR HONOR, HAS NO BEARING
14 OR RELEVANCY IN THIS
15 MATTER.

16 THE COURT: I NOTE YOUR OBJECTION. GO
17 AHEAD AND ANSWER.

18 A: Well, I see there's a lot of -- it's not
19 always clean. It's a lot of the leaves, the,
20 the, the stuff that grows under the water, you
21 know, floating on the water.

22 Q: Do these obstruct the outflow at that pond?

23 A: Oh, absolutely.

24 Q: Have you had any conversations with anyone
25 regarding whose responsibility it is to solve

1 that problem?

2 A: No. No.

3 Q: Is there anything that leads you to believe
4 that either a member of the Board, a member of
5 the ARB Committee or one of the employees such
6 as working for K.A. Diehl has entered upon
7 your property without your permission?

8 A: Yes.

9 Q: Will you please describe it?

10 A: Because I have the pond behind my house and I
11 have an open porch in the back, they're
12 complaining about what's, what's on my porch,
13 what's on my -- they, they trespass on my
14 property to get -- they got me under a
15 microscope.

16 Q: Is there any way they could get behind your
17 house without -- to see what's going on back
18 there other than coming across your lot?

19 A: No.

20 Q: Do you have material stored there to which --
21 on the back area to which the HOA has
22 objected?

23 A: Yes.

24 Q: Have you been given anything to believe that
25 there is no covenant provision restricting

1 **that?**

2 A: Yeah. In the, in the bylaws, you know, it
3 was, it was deleted for what they have on my,
4 my personal property.

5 **Q: Was it the bylaws or the covenants?**

6 A: It was on the bylaws, I believe, or the -- I,
7 I, I don't recall. It was, it was in the
8 regulations, but I don't remember which one.

9 **Q: Thank you.**

10 THE COURT: ANY CROSS?

11 MS. GOLDING: I'M SORRY.

12 CROSS EXAMINATION

13 BY MS. GOLDING:

14 **Q: Mr. Astorino, since you purchased your**
15 **property in the International Club, you**
16 **received numerous letters with respect to**
17 **notices of violations; have you not?**

18 A: That's right.

19 **Q: You received a letter on March 13, 2006 from**
20 **K.A. Diehl advising that approving the**
21 **installation of either one or two fig trees so**
22 **long as you keep the grounds clean; is that**
23 **correct?**

24 A: Let me see that.

25 **Q: Sure.**

1 A: Yeah, right.

2 Q: So you were authorized -- your application to
3 the ARB was approved to plant one or two fig
4 trees; is that correct?

5 A: That's right.

6 Q: And then in the next month, on April 28th,
7 2006, you received a notice that your
8 landscaping and mowing your lawn was not
9 maintained on a regular basis; is that
10 correct?

11 A: Yeah, and I -- I'd, I'd like to address that.

12 Q: Go right ahead.

13 A: I have property elsewhere in, in South
14 Carolina and it was the same issue. Now,
15 there's nowhere -- nowhere in the bylaws does
16 it indicate how high the grass has to be or
17 anything else.

18 Q: Then in May of 2006, you received notice again
19 that your property is in need of weeding, the
20 pine straw needed refreshing, and there's a
21 dead plant that had to be moved; is that
22 correct?

23 A: That's what it says, but I guess there -- I
24 repeat myself again. The -- there's no
25 definition in, in the bylaws or, or covenants

1 exactly what it has to be.

2 Q: Then in August of 2006, you receive another
3 notice saying the same thing, "Please weed,
4 please refresh the pine straw, mow the grass,
5 and take the necessary steps to maintain your
6 yard;" is that correct?

7 A: Yes. I do take care of my yard. I'm not
8 always here.

9 Q: So in 2006, between April and August, you
10 received four different notices from the K.A.
11 Diehl, ARB; is that correct?

12 A: Yeah.

13 Q: Now, in 2006, then you got a second notice in
14 August of 2006, saying, "You haven't done your
15 yard maintenance we've asked you to do;" is
16 that correct?

17 A: Yeah.

18 Q: Now, apparently at some point in time, you
19 started parking your vehicles on the road in
20 International Club; is that correct?

21 A: That's right.

22 Q: And that's because you have five vehicles; is
23 that right?

24 A: That's right.

25 Q: And the vehicles that you park on the road,

1 some of those are in Exhibit 65(A) through
2 "Y". Are these all your vehicles shown in
3 these photographs?

4 A: Yes, it is.

5 MS. GOLDING: YOUR HONOR, WE WOULD
6 INTRODUCE THESE PHOTOGRAPHS
7 AS OUR DEFENDANT'S EXHIBIT
8 65.

9 MR. JARMUTH: YOUR HONOR, I'D LIKE FOR
10 THE COURT TO NOTE FOR THE
11 RECORD THAT PRIOR TO
12 YESTERDAY, I NEVER WAS
13 SHOWN OR GIVEN A COPY OF
14 THOSE PHOTOGRAPHS.

15 THE COURT: ALL RIGHT.

16 MS. THOMPSON: YOUR HONOR, THEY WERE
17 PRODUCED IN DISCOVERY.

18 THEY WEREN'T PRODUCED ON
19 THESE HARD COPY PAPER, BUT
20 IT WAS PRODUCED

21 ELECTRONICALLY, SO HE
22 RECEIVED THEM.

23 THE COURT: OKAY.

24 MS. GOLDING: AND, ALSO, THEY WERE IN MR.
25 ASTORINO'S DEPOSITION, SOME

1 OF THEM, THAT WERE TAKEN IN
2 MARCH. THANK YOU, YOUR
3 HONOR.

4 A: I have in, in question one, this is, this is
5 considered my well pump, okay?

6 Q: Let's refer -- This is Exhibit 65(G).

7 A: That's for my well pump, okay? This is also
8 -- I, I have my hose outside.

9 Q: And that's Exhibit 65(H).

10 A: Okay. And this one here with a final, with a
11 final warning on it, now ---

12 Q: And that's Exhibit -- I assume that's 65(I) or
13 "J", but on this photograph, it has a
14 photograph of a vehicle window shield and it
15 has four different final notices; is that
16 correct?

17 A: All right. Now, with this ---

18 Q: Is that correct?

19 A: Yes. I'd like to go back to square one. When
20 I first submitted my paperwork for that well
21 pump and that fig tree, it got approved for it
22 and then started getting fined because I, I --
23 because I put it in, and even though I
24 submitted the letters and I presented them to
25 the Board, in which I never got an answer.

1 back, I, I found with K.A. Diehl, the issues
2 where I have another piece of property, they
3 -- they're always looking for money in one way
4 or another. Now, the -- what I'm getting at
5 is whoever put these notices on there
6 certainly didn't have the backbone during the
7 day to come and do it, they did it at night.
8 They got washed out, and you kept, you kept
9 threatening me with, "We're going to
10 disconnect your TV, your" -- you're going to
11 disconnect -- you know, you didn't mention the
12 garbage, but was going to cut all my services,
13 and I come to find out in my, my career when
14 you start with a lie in the beginning, how can
15 I continually follow all the lies that you
16 keep sending me? You keep threatening to shut
17 off the TV, you haven't done it. I don't, I
18 don't believe you're even authorized to do it.
19 So why should I, why should I be responsible,
20 and I, I, I addressed it in the -- I, I sent
21 it to Rosemary Toth), because we can't settle
22 this issue up-front, which I brought it to a
23 Small Claims Court, Henrietta brought it to
24 the, to the, to the larger court. The issue
25 was they fined me for a hundred and fifty

1 dollars or a hundred and seventy-five dollars.

2 In my previous cases in another issue, I got
3 fined for a grass -- again, they didn't have
4 a, they didn't have what height the grass has
5 to be cut at. I won that particular case, so
6 now I, I did everything the right way and they
7 keep harassing me. I said to, I said to
8 Rosemary, "We'll settle this in court, because
9 to -- continually listening to this and being
10 threatened or, or, or however you want to put
11 it, I will settle, settle in the court."

12 Q: Then in 2009, you got approval, you put in an
13 application to install an attic fan, which was
14 approved, right?

15 A: That's right.

16 Q: And then also in August of 2009, you received
17 notice because you made a modification to an
18 installation of some water system or well on
19 your property that had not been approved; is
20 that correct?

21 A: Yeah. Well, no, no, wait, I never received
22 that one. I never received that.

23 Q: That's your address on that letter; is that
24 correct?

25 A: That's right, but I never received that

1 letter.

2 Q: Then on December 11, 2009, here's another
3 letter, which is a second notice of the same
4 issue, that you didn't get approval from the
5 ARB, and it looks like that was sent certified
6 mail, and that was received by you, by the
7 signature on the certified; is that right?

8 A: That's not my signature.

9 Q: Is that your wife's signature or someone at
10 your home?

11 A: It, it is not.

12 Q: But someone apparently signed your name on a
13 Certificate of Mail?

14 A: I didn't see it.

15 Q: So you're saying you didn't receive this
16 notice dated December 11, 2009, a second
17 notice of violation?

18 A: That's right, I didn't get it.

19 Q: Then here is a final notice of violation of
20 December 18, 2009, that was also sent by
21 registered mail. Did you receive that?

22 A: No. I got an approval for the pump.

23 Q: So when did you get approval from the pump?

24 A: When I got that letter, the first letter, and
25 there was a leak on my water main, that's why

1 I was fixing it.

2 Q: Then you started parking cars in the street

3 and you received notices of those, and here

4 ---

5 A: Yeah.

6 Q: Is that correct?

7 A: Yeah.

8 Q: You received probably what, five or six

9 notices, at least?

10 A: I don't know, they're numerous.

11 Q: I'm sorry?

12 A: They are numerous.

13 Q: They're numerous notices. And finally, you

14 received notice of a hearing to be held before

15 the Board on June the 2nd, 2010; is that

16 correct?

17 A: Pay seventy-five dollars -- I paid, I paid a

18 hundred and something dollars for ---

19 Q: Well, in fact, you received a notice to appear

20 before the Board of Directors and you did

21 appear before the Board of Directors?

22 A: Yeah.

23 Q: And when you appeared before the Board of

24 Directors, there was discussion about all of

25 these issues that you had with the ARB?

1 A: No.

2 Q: Is that correct?

3 A: No, it was specifically about the parking. It
4 was -- the issue was with the parking and the,
5 the well, the well pump.

6 Q: The well and the parking?

7 A: That's right.

8 Q: And at that Board meeting were present all the
9 Board members; is that correct?

10 A: Well, Rosemary was the president at that time.

11 Q: Well, she wasn't president at that time, but
12 all the Board members were present at that
13 meeting?

14 A: Yeah.

15 Q: And you got an opportunity to speak at that
16 meeting and state your position; is that
17 correct?

18 A: Yeah, it was short.

19 Q: And as a result of that, the Board continued
20 to uphold the violations and said that you are
21 in violation of the covenants; is that
22 correct?

23 A: No. What happened was last September, they
24 kept -- when I went to go to do the voting,
25 they told me I'm being fined, and I said,

1 spoke to Julie, I says, "Send me a list of
2 what I'm being fined for." I never got
3 nothing until about two months ago, did I get
4 anything. So I had no idea these fines would
5 keep going or whatever they're doing with it.

6 Q: So after the Board hearing, then that's when
7 the fine started, is that correct, after you
8 attended the Board hearing ---

9 A: After that one, that one Board meeting, and I
10 paid my fine and I -- they said, "You didn't
11 pay the fine." I, I, I, I gave them a copy of
12 the cancelled check.

13 Q: Well, in the lawsuit that's going on between
14 you and the Association, ---

15 A: Yeah.

16 Q: --- it's about parking and it's about some
17 other things that you haven't done?

18 A: Well, with the parking, I called the Highway
19 Department in South Carolina and ask them
20 about -- to verify that Castlebridge Drive is
21 a County road, and they told me it's a County
22 road.

23 Q: But that lawsuit is about parking and other
24 instances in which you've violated the
25 covenants; is it not correct?

1 A: But the covenants have been deleted.

2 Q: But that is the subject of the lawsuit; is
3 that right?

4 A: That they deleted, yes.

5 Q: And in that lawsuit, the Association is saying
6 you owe over two thousand dollars for the
7 fines; is that correct?

8 A: That's what they're saying.

9 Q: And in that lawsuit, the Association is also
10 saying because you started the lawsuit and you
11 won't be paying your fines, you also have to
12 pay attorney's fees; isn't that correct?

13 A: No.

14 Q: You're represented by a lawyer in that
15 lawsuit, aren't you?

16 A: Yeah, up to now.

17 Q: So you still have a lawyer, don't you?

18 A: Well, I don't know. I got to see after today
19 what happens.

20 Q: Now, you still continue to be a friend of Mr.
21 Jarmuth, Mr. and Mrs. Jarmuth, don't you?

22 A: Yes.

23 Q: And, in fact, I think on at least one occasion
24 Mr. Jarmuth has written a letter for you; has
25 he not?

- 1 A: I don't know which one.
- 2 Q: Well, I mean, hasn't he written several
3 letters for you or at least one letter?
- 4 A: He's written -- yeah.
- 5 Q: And that letter was to the Homeowners
6 Association; is that correct?
- 7 A: Which one are you referring to?
- 8 Q: Hasn't he written a letter for you to the
9 Homeowners Association?
- 10 A: Yes.
- 11 Q: Okay. No further questions.
- 12 RE-DIRECT
- 13 BY MR. JARMUTH:
- 14 Q: Have you ever seen the ARB guidelines?
- 15 A: Yeah.
- 16 Q: Do they have anything in them which tell you
17 at what point you will know that your lawn is
18 disorderly?
- 19 A: That I'm disorderly?
- 20 Q: Is there any standard there you can use to
21 know your ---
- 22 A: No.
- 23 Q: --- lawn is messy?
- 24 A: No.
- 25 Q: Is there anything in the ARB guidelines to

1 tell you that your lawn needs to be mowed?

2 A: No.

3 Q: Is there anything in the ARB guidelines that
4 tell you that you need to change your mulch?

5 A: No.

6 Q: Is there any comparable standards or standards
7 of the same subjects in the bylaws?

8 A: No.

9 Q: Are there any standards like that in the
10 covenants?

11 A: No.

12 Q: Have you been shown a copy of Amendment I
13 which says the restriction on storing stuff
14 behind your house has been deleted?

15 A: Yes, I've seen that.

16 Q: Is that one of the issues they're still trying
17 to fine you on?

18 A: Yes.

19 Q: Is K.A. Diehl the management company for the
20 other place you're a property owner?

21 A: Yes, it is.

22 Q: Was the defense counsel here the defense
23 counsel in the other lawsuit that you won?

24 A: No.

25 Q: Both sides were represented by counsel,

1 though, in that lawsuit?

2 A: Yes.

3 Q: Did you ever get a copy of a decision letter
4 from the Board saying what the outcome of that
5 meeting with the Board was?

6 A: No.

7 Q: Did it ever say, "You're losing the right to
8 vote?"

9 A: Only when I went to the meeting last year and
10 I was signed in, Julie told me I couldn't
11 vote.

12 Q: Did she show you a letter from the Board?

13 A: No. I asked her to send me something, but I
14 never received it after that time.

15 MR. JARMUTH: YOUR HONOR, I'D LIKE FOR
16 THIS COURT TO STIPULATE
17 THAT THE EVIDENCE LIST HAS
18 EVERY SINGLE, THE MINUTES
19 OF EVERY SINGLE MEETING OF
20 THE BOARD OF DIRECTORS, AND
21 13.3 WHICH IS AT 348, A
22 PIECE OF EVIDENCE WHAT
23 BYLAWS, THE HOA SAY THAT
24 BEFORE A SANCTION CAN BE
25 EFFECTIVE IT HAS TO BE

1 ENTERED INTO THE MINUTES OF
2 THE MEETING WITH A WRITTEN
3 STATEMENT OF THE RESULTS OF
4 THE HEARING, THE SANCTIONS
5 IMPOSED, AND THAT IS TO BE
6 PART OF THE PERMANENT
7 RECORDS OF THE ASSOCIATION.
8 I'D LIKE TO STIPULATE THAT
9 SINCE 2001, THERE ISN'T A
10 SINGLE MINUTES OF ANY
11 MEETING OF THE BOARD OF
12 DIRECTORS WHERE THEY HAVE A
13 RECORD OF ANY MEETING WITH
14 ANY HOMEOWNER POSING ANY
15 FINE OR ANY OTHER SANCTION,
16 AND THEREFORE ANY ACTION
17 ALONG THOSE LINES VIOLATES
18 THE END OF THE PROCEDURE
19 LIST, ALL WHICH HAVE TO BE
20 FOLLOWED BY 13.3 REGARDING
21 THE POSITION OF ANY
22 SANCTION.
23 THE COURT: IS THAT A STIPULATION Y'ALL
24 WILL AGREE TO?
25 MS. GOLDING: OH, NO, SIR, YOUR HONOR.

1 THE COURT: ALL RIGHT.

2 MR. JARMUTH: AND THIS COURT IS INVITED

3 TO READ 13.3 AND DRAW ITS

4 OWN CONCLUSION.

5 THE COURT: OKAY. THANK YOU.

6 MR. JARMUTH: THE COURT IS ALSO INVITED

7 TO READ ALL OF THE MINUTES

8 OF THE BOARD OF DIRECTORS

9 AND SEE IF YOU CAN FIND

10 THEM, BECAUSE I CAN'T.

11 THE COURT: THE COURT HAS GOT A LOT TO

12 READ.

13 MR. JARMUTH: THANK YOU.

14 MS. GOLDING: NO FURTHER QUESTIONS FOR

15 THE WITNESS, YOUR HONOR.

16 THE COURT: YOU MIGHT COME DOWN. THANK

17 YOU FOR COMING AND

18 PARTICIPATING.

19 MR. JARMUTH: MAY WE BREAK FOR LUNCH,

20 YOUR HONOR?

21 THE COURT: NO, SIR, NOT YET. CALL

22 YOUR NEXT WITNESS.

23 MR. JARMUTH: I WOULD CALL PETE PIZZI.

24 PETER PIZZI, HAVING BEEN CALLED TO THE STAND AND

25 DULY SWORN, TESTIFIED AS FOLLOWS:

1 COURT REPORTER: WILL YOU STATE YOUR NAME

2 AND SPELL YOUR LAST?

3 MR. PIZZI: PETER PIZZI, P-I-Z-Z-I.

4 DIRECT EXAMINATION

5 BY MR. JARMUTH:

6 Q: Mr. Pizzi, could you please give your address
7 for the record?

8 A: 193 Pickering Drive, Murrells Inlet, South
9 Carolina.

10 Q: And is that residence located within the
11 community known as Pebble Creek?

12 A: Yes, it is.

13 Q: Is that residence located within the
14 International Club PUD?

15 A: Yes.

16 Q: Have you served at any time as a member of a
17 committee, of any of the committees of the
18 International Club HOA?

19 A: Yes, on the Building and Grounds Committee.

20 Q: For how long did you serve that?

21 A: From its inception until it was dissolved.

22 Q: When you say inception, what year was that in?

23 A: I couldn't recall.

24 Q: Was it before ---

25 THE COURT: JUST A MINUTE. CAN YOU

1 GUYS HEAR IN THE BACK?

2 SLIDE UP JUST A LITTLE BIT,

3 SIR, OR EITHER PULL THE

4 MICROPHONE ---

5 MR. PIZZI: SURE.

6 THE COURT: --- TOWARDS YOU, ONE OR THE

7 OTHER.

8 MR. PIZZI: OKAY.

9 THE COURT: THERE YOU GO, THAT'S

10 BETTER. THANK YOU VERY

11 MUCH.

12 Q: When did you buy your house in Pebble Creek?

13 A: August of 2002.

14 Q: What representations were made to you
15 regarding providing amenities?

16 MS. GOLDING: YOUR HONOR, I'M GOING TO

17 MAKE AN OBJECTION TO

18 ANYTHING THAT THIRD PARTIES

19 HAVE REPRESENTED TO THE

20 WITNESS.

21 THE COURT: JUST TESTIFY WHAT YOU KNOW

22 YOURSELF, PLEASE, SIR.

23 A: When I bought the house, they said there would
24 be a pool and an amenity center.

25 MS. GOLDING: YOUR HONOR, I'M GOING TO

1 MAKE AN OBJECTION. THAT'S
2 HEARSAY.

3 THE COURT: IT'S HEARSAY. GO AHEAD AND
4 ANSWER IT, SO WE CAN GO
5 DOWN THE ROAD. ALL RIGHT,
6 FINISH, SIR, PLEASE.

7 A: When I, when I went -- enter into a sales
8 agreement, the, the real estate person and the
9 builder stated that there would be a pool and
10 an amenity center.

11 Q: Was that Charles Flynn?

12 A: Yes, it was.

13 Q: Are there any ponds near your house?

14 A: There's a pond across the street from my
15 house.

16 Q: What do you believe is the condition of that
17 pond -- what can you tell me about the existence
18 of any obstructions in that pond for its
19 drainage?

20 A: Both the culverts are overgrown and blocked,
21 they're partially blocked.

22 Q: During your membership on the Buildings and
23 Grounds Committee, did there come a time when
24 the committee went to any Horry County agency
25 to obtain drainage plans?

1 A: Not as a committee member, I did it on my own.

2 I -- I've been talking with the stormwater
3 people in Horry County. They came over and
4 looked at the ponds and give me a disk of all
5 the planning and the, the structure of the
6 ponds and, and how they worked.

7 Q: What brought on that visit and that request
8 for documents?

9 A: Well, the pond was so overgrown, I was, I was
10 concerned over flooding, because the --
11 they're all interconnected and basically they
12 all drain into the Waccamaw, and once you get
13 a blockage downstream, I was on the end of it,
14 and I was afraid of flooding. That was my
15 concern.

16 Q: Did you relate any of what you learned to the
17 Board?

18 A: Yes. I, I relayed my concerns to the Board
19 about the ponds at the golf course, and I have
20 no, no help at all. They tell me they have no
21 authority over the ponds and no authority over
22 the golf course, that they belong to the golf
23 course and they can't help me. I called the
24 County, and the County said to go to the HOA
25 and try to get some help there, which was the

1 only solace I received, and the County said
2 that, "If you do flood, the golf course is
3 responsible for all damages."

4 **Q: Is there anyone in this room, particularly**
5 **including Defendant Rosemary Toth, who told**
6 **you the golf course is not subject to the**
7 **covenants?**

8 A: That was Freiboth at the last meeting or a
9 meeting I was at when I complained about the
10 ponds again, bring the pictures of the
11 overgrown condition.

12 **Q: Was he talking in his capacity as President of**
13 **the HOA?**

14 A: Yes, I would say so. See, I'm totally
15 confused, because they, they just went into a
16 thing against the golf course where it --
17 where the document reads they are subject to
18 covenants and restrictions and then I'm told
19 they're not, so I, I really don't know, you
20 know, who to believe.

21 MR. JARMUTH: I'D LIKE FOR THE COURT TO
22 TAKE JUDICIAL NOTICE OF THE
23 FACT THAT THE IHOA WITH MS.
24 GOLDING AS THEIR COUNSEL IS
25 CURRENTLY BEFORE THE

1 MASTER-IN-EQUITY IN A
2 LAWSUIT WHOSE COMPLAINT
3 STATES, IT'S A PUBLIC
4 RECORD, THAT THE GOLF
5 COURSE IS SUBJECT TO THE
6 COVENANTS.

7 Q: During your duties as a member of the
8 Buildings and Grounds Committee, did you have
9 occasion to go around the neighborhood to see
10 the condition of the grounds?

11 A: Yes.

12 Q: And what purpose did these observations serve
13 regarding your preparation of specifications
14 or evaluation -- preparation of specifications
15 for contractors?

16 A: We felt, as a committee, that the, the
17 landscapers weren't held accountable and we
18 had no, we had -- as we took over the
19 committee and looked at the grounds there was
20 no -- nothing written down for us on, on when
21 they submitted bids or even what work they
22 did. Mr. Butryn and myself sat down and made
23 a contract where they were held accountable
24 weekly, monthly and yearly on the, the, the
25 duties they were to perform, and this way, we

1 could hold them accountable where before we
2 didn't. All they would, you know, do whatever
3 they want.

4 Q: What input, if any, did you get from K.A.
5 Diehl or any of its employees on making that
6 specification?

7 A: None.

8 Q: What input did you get, if any, from K.A.
9 Diehl and its employees regarding preparation
10 of the model contract?

11 A: None.

12 Q: Did you make this data available to K.A.
13 Diehl?

14 A: I wouldn't know that. That would be Mr.
15 Butryn.

16 Q: Did there come a time when you participated in
17 the evaluation of potential contractors for
18 the landscaping contracts?

19 A: I, I didn't -- what I did was I formulated the
20 grounds, I gave them instructions and maps on
21 what they were to do and, and the cutting that
22 they were to perform. I gave them the area.
23 That's what I did.

24 Q: Did you participate in the evaluation of the
25 competition between several contractors in

1 **2008 for the contract?**

2 A: Again, I, I just formulated the, the
3 instructions for the contract. As I sat in
4 the room, I gave them maps of what they were
5 supposed to cut and what they were supposed to
6 do, and they -- I had nothing to do with it
7 after that.

8 **Q: As an individual homeowner, have you ever**
9 **received violation letters regarding use of**
10 **your property?**

11 A: Yes.

12 **Q: Could you describe some of them?**

13 A: A garbage can left side of my house, a bunch
14 of erroneous ones that I never did. I've
15 received letters with violations of covenants
16 that aren't listed in the book, and I went
17 down to talk to them and they said it was a
18 discrepancy, you know, somebody typed it
19 wrong, and I went down to find out what it was
20 and they -- it was nothing to -- they never
21 got back to me on what the violation was.
22 I've been in violation of putting bushes that
23 I never did. I called them up and told them
24 to come down and show me which bushes. I got
25 violations for rock work that was done with

1 the original builder and which -- and I asked
2 them again to come down, and I talked to
3 Beckie, and Beckie said she was just doing her
4 job, so apparently it come from somebody else.

5 Q: Were there any issues relating to a hot tub in
6 the rear of your house?

7 A: Yes.

8 Q: Can you describe it?

9 A: I was in violation because I didn't have a
10 fence. There was five other hot tubs in the
11 area that weren't fenced in, so I just put
12 mine in figuring you didn't need a fence, then
13 I started getting letters for the fence, and,
14 and when I, when I went down to talk to Beckie
15 about the violation letter with the erroneous
16 covenant numbers, Beckie told me to put up a
17 screen. I said, "Do I need to go to the ARB
18 for a screen?"

19 She said, "No." I put the screen up
20 and maybe six or seven months later, I got a
21 letter for -- a violation letter for putting
22 up a screen and the hot tub again.

23 Q: Have you ever been fined for any violations?

24 A: No, just threatened.

25 Q: What do you call a threat?

1 A: Well, you -- I think -- I was threatened with
2 a fine for the bushes that I didn't put in.

3 Q: What is your perception of the occasion --
4 what occasioned your -- what were the
5 circumstances which you ceased to be a member
6 of the Buildings and Grounds Committee?

7 A: There was an email put out to the entire
8 community that I was fired from the Building
9 and Grounds Committee. I answered their,
10 their allegations and wanted a meeting with
11 the Board, which I was denied or never -- they
12 never confronted me with it. At a meeting we
13 had with the Board, I asked for an apology for
14 the, the erroneous stuff they, they put in the
15 email, and I -- they never got back to me, and
16 -- or I, I got hearsay back, saying that they
17 didn't apologize to anyone.

18 Q: What were the allegations?

19 A: I don't have them here that ---

20 Q: How often do you go around the neighborhood?

21 A: I'm through the neighborhood daily.

22 Q: When you go through the neighborhood, what was
23 your -- do you walk, drive, how do you ---

24 A: Both. Excuse me, I also got a violation for
25 parking on the road, a letter, a letter with a

1 violation for parking on the street.

2 Q: How often do you walk around the neighborhood?

3 A: Every day.

4 Q: Is there any consistency -- when you do these
5 walks, do you observe fences at people's
6 houses?

7 A: Yes.

8 Q: Is there any consistency, in your opinion,
9 regarding one fence, another, another,
10 another?

11 A: No.

12 Q: Could you describe the fence and the house
13 across Pickering Drive from you, on the side
14 yard?

15 A: You have to get closer than that.

16 Q: Is there a house across the street from you,
17 either the left or the right, which has a
18 vinyl fence on the side?

19 A: There's all kinds of fences on the side.
20 There's fences in the front. There's fences
21 on the side. They're, you know.

22 Q: When you walked around the neighborhood, how
23 common are palm trees or palm tree beds?

24 A: Very common.

25 Q: When you walked around the neighborhood, how

1 common are edge blocks around planting beds?

2 A: Very common.

3 Q: Did the HOA or anyone else, other than myself,
4 ever tell you about the existence of
5 amendments two through five to the covenants?

6 A: No.

7 Q: Before the covenants were amended, were you
8 asked to consent to the amendments?

9 A: No.

10 Q: Were you ever asked to consent to the
11 settlement of the Central Electric money?

12 A: No.

13 Q: In 2009, did you receive an oversized envelope
14 by mail, material about me from the Defendant
15 International Club HOA?

16 A: Yes.

17 Q: Could you describe the contents of the
18 envelope?

19 A: It was all matters that you were legally
20 involved with, all personal matters, nothing
21 to do with the HOA.

22 Q: How do you know it related to me?

23 A: Because your name was on the envelope.

24 Q: On the envelope with the contents?

25 A: And the contents.

1 Q: Was there anything within there which, to your
2 impression, would have led you to question
3 anything about my reputation?

4 A: Yes, there was all kinds of derogatory things.
5 I just skimmed it. I didn't go through it. I
6 found it disgusting, reprehensible, and my
7 wife called the HOA to complain about it, and
8 they said it was the attorneys. We called
9 McNair and we told them that we weren't going
10 to do business with them anymore, 'cause we
11 didn't want to be affiliated with a firm that
12 participated in those kind of practices.

13 Q: Are you familiar with any web mechanism called
14 ICbuzz?

15 A: Yes.

16 Q: After you received that letter, did you
17 receive any email from other homeowners by
18 ICbuzz addressed to you which related to me?

19 A: I, I don't recall. It was -- there was just
20 so much going on there and, and I didn't open
21 and read that stuff.

22 Q: When you -- is there anything that would lead
23 you to believe that the Buildings and Grounds
24 Committee of which you were a member was the
25 expert consultant for the Board on Buildings

1 and Grounds matters?

2 A: Of course, we were.

3 Q: Say again.

4 A: Yes.

5 Q: What was that?

6 A: Mr. Butryn and I walked the entire community,

7 the area that the landscapers were cutting.

8 We formulated square footage, this way, we'd

9 have some kind of gauge on how much we were

10 charging and how much we were going to pay per

11 square foot for the cuttings.

12 Q: When you were appointed to the Buildings and

13 Grounds Committee, what were you told about

14 your duties?

15 A: We were there to help the Board.

16 Q: Would you agree or disagree with the statement

17 that your committee was the expert consultant

18 for the Board?

19 A: Yes.

20 Q: Was that agree or disagree?

21 A: Agree.

22 Q: Did your committee come to look into the issue

23 of spending HOA money to maintain private

24 property?

25 A: Yes.

1 Q: What did you find?

2 A: We found, after extensive research with the
3 County, that we were cutting homeowner's
4 property, golf course property, non-residents'
5 property, et al. This place is a mess.

6 Q: Are you familiar with the phrase, "The
7 Transition Committee?"

8 A: Yes.

9 Q: Did the Transition Committee come into
10 existence before or after you joined Buildings
11 and Grounds?

12 A: That would have to be before.

13 Q: Did you have any contact with the Transition
14 Committee regarding Buildings and Grounds
15 issues?

16 A: No.

17 Q: Did Defendant Rosemary Toth personally ever
18 tell you anything directly regarding
19 maintaining private property?

20 A: No, it was between myself and Mr. Templeton
21 and Mr. Butryn. We recommended that we stop
22 cutting the homeowners' property and that the
23 golf course, we should sit down with the golf
24 course and get quit-claim deeds on all the
25 property that we were cutting, and this way,

1 your, your, your contract would make more
2 sense and it would be easy to enforce. When
3 we, when we put out the bid, there was no
4 homeowner property in the contract, okay?

5 Q: In your travels throughout the community, have
6 you ever observed any swing sets on homeowner
7 lots?

8 A: Yes.

9 Q: Is there any consistency about these swing
10 sets?

11 A: No.

12 Q: Do you have a daughter and son-in-law who live
13 in the community?

14 A: Yes.

15 Q: You have occasion to visit them?

16 A: Yes.

17 Q: Is their house similar to my house?

18 A: Yes.

19 Q: What is there on the right side of their
20 house?

21 A: A swing set.

22 Q: Can you see it from the road?

23 A: Yes.

24 Q: Is there anything to ---

25 MR. JARMUTH: I'D STIPULATED TO THE COURT

1 THAT THE SWING SET IN
2 QUESTION WAS APPROVED BY
3 THE ARB FOR INSTALLATION
4 AND THE PLACE IT IS. I'M
5 DONE. THANK YOU.
6 THE COURT: ALL RIGHT. IT'S TWELVE-
7 THIRTY. IT'D BE A GOOD
8 TIME TO BREAK.
9 MS. GOLDING: SHE JUST HAS A FEW CROSS.
10 THE COURT: YOU WANT TO DO THAT BEFORE
11 WE LEAVE?
12 CROSS EXAMINATION
13 BY MS. THOMPSON:
14 Q: Mr. Pizzi?
15 A: Yes.
16 Q: I'm Alicia Thompson. I represent the
17 Defendants. How are you doing today?
18 A: Very good, thank you.
19 Q: I'm going to give you what's been marked as
20 Plaintiff's Exhibit Number 523. Have you seen
21 that document before?
22 MR. JARMUTH: MA'AM, COULD I SEE A COPY
23 OF THE DOCUMENT?
24 MS. THOMPSON: IT'S YOUR EXHIBIT 523.
25 A: I don't recall. I ---

1 Q: Now, Mr. Jarmuth asked you if you received a
2 mailing in May of 2009; is that correct?

3 A: The one I was talking about was his legal
4 matters. That's the thing I received.

5 Q: But was there a cover letter to the list of
6 lawsuits that Mr. Jarmuth has been involved
7 in?

8 A: I don't recall. I didn't look at it. It, it,
9 it wasn't something I wanted to be involved
10 in. I thought it was a terrible thing.

11 Q: You didn't refuse ---

12 A: I paged it, I looked at it, I seen what it
13 was, about all his -- I didn't -- I don't
14 recall this as being part of the document.
15 All I recall was just all his legal actions.

16 Q: Well, was the letter that you received dated
17 May 27, 2009 that enclosed his lawsuits?

18 A: I don't recall it, no, if I did, I ---

19 Q: Did you receive the letter ---

20 A: I don't know.

21 Q: --- at the end of May or the beginning of
22 June?

23 A: I don't know. All I remember is the, the, the
24 document put out by the HOA with all his
25 lawsuits in this. I don't recall this, if I

1 did, I didn't read it.

2 Q: You didn't read it?

3 A: Maybe not.

4 Q: Was there at least a cover letter, though,
5 with the list of lawsuits?

6 A: I don't recall.

7 Q: Do you remember how large the package was?

8 A: The only one I received -- I, I don't receive
9 any -- I don't remember anything from McNair
10 or anything with McNair's header.

11 Q: Well, didn't your wife just testify that she
12 was very angered by the fact that the package
13 was very large and that the correspondence
14 came from McNair, and that it made her very
15 upset?

16 A: No, the correspondence come from the HOA, not
17 from McNair. I don't think there was a
18 McNair, McNair header on it, 'cause I would've
19 called McNair.

20 Q: But did your wife not complain about the fact
21 that the package was very large? Is that
22 correct?

23 A: How many -- I don't recall. Yeah, she said
24 she got a package. What's the difference what
25 size it was? I don't understand where you're

1 going.

2 Q: Was she not upset about the fact that it cost
3 a lot of money to do this mailing because of
4 the size of the package?

5 A: Yes.

6 Q: Okay. I'm giving you what's been marked as
7 Plaintiff's Exhibit Number 515. Is that the
8 list of lawsuits that was enclosed with the
9 package that you were just referring to?

10 A: I, I don't recall.

11 Q: You don't recall? That's not it?

12 A: I don't recall, that's what I'm saying.

13 Q: So you never received that?

14 A: I don't recall.

15 Q: You don't recall receiving that?

16 A: We're talking back 2009. I didn't keep the
17 package. I threw the package away.

18 Q: And Mr. Pizzi, you also testified that you
19 were on the Building and Grounds Committee in
20 2008; is that correct?

21 A: I guess. I don't know. I don't know the
22 exact dates when I was there.

23 Q: Were you on the Building and Grounds
24 Committee, ---

25 A: Yes.

1 Q: --- Mr. Pizzi? Thank you. And did the
2 Building and Grounds Committee request that
3 the Board cancel its contract with Amazing
4 Blades for 2009, so that it could request
5 bids?

6 A: No, that wasn't because Amazing Blades --
7 after we formulated the contract, Amazing
8 Blades took it, and we were taken off -- I was
9 taken off the committee maybe, maybe three or
10 four months into the Amazing Blades contract.

11 Q: But before that contract was entered, didn't
12 the HOA enter the contract and then the
13 Building and Grounds Committee asked for it to
14 be cancelled and you solicited bids and ended
15 up contracting with Amazing Blades in the end,
16 anyway; isn't that what occurred?

17 A: I have no knowledge of that.

18 Q: You don't remember that?

19 A: No.

20 Q: And isn't it true that you, the Building and
21 Grounds Committee, you recommended that
22 certain properties be maintained and other
23 properties not be maintained?

24 A: Yes.

25 Q: And what was the basis for saying that certain

1 properties shouldn't be maintained under the
2 contract?

3 A: Because they weren't in the HOA.

4 Q: Okay. And so your complaint was that any
5 property that is not actually owned by the HOA
6 or a common area shouldn't be maintained by
7 the HOA; is that right?

8 A: That's correct.

9 Q: And aren't you also making the same argument
10 that the golf course pond should be maintained
11 by the HOA, but they're not owned by the HOA?

12 A: No, I didn't say that.

13 Q: Okay. Well, do you expect for the HOA to
14 maintain the pond?

15 A: The HOA should maintain the ponds if the golf
16 course isn't doing it and they should bill
17 them for it.

18 Q: And if the golf course isn't maintaining the
19 buffer property around the International Club
20 that everybody sees when they come in, don't
21 you think the HOA should also maintain that,
22 too?

23 A: Not if it belongs to someone else.

24 Q: But don't the ponds belong to the golf course?

25 A: Yes.

1 Q: Okay. Thank you.

2 A: And then they should -- I also said that they
3 should be billed for it, not to do it just to
4 make it pretty.

5 Q: All right. Thank you. I have no further
6 questions.

7 MR. JARMUTH: NO FURTHER QUESTIONS, YOUR
8 HONOR.

9 THE COURT: WELL, LET'S BREAK. WE'LL
10 COME BACK AT TWO.

11 MS. GOLDING: THANK YOU, YOUR HONOR.

12 MR. PIZZI: AM I DONE?

13 THE COURT: YOU'RE DONE. THANK YOU
14 VERY MUCH FOR COMING.

15 MR. PIZZI: I'M DONE? THANK YOU.

16 *****OFF THE RECORD*****

17 ON THE RECORD.

18 THE COURT: GOOD AFTERNOON. THANK YOU
19 FOR COMING BACK PROMPTLY.

20 MS. GOLDING: YOUR HONOR, I HAVE ONE

21 MATTER TO BRING TO THE

22 COURT, TO REQUEST OF THE

23 COURT. ONE OF OUR

24 WITNESSES, DENISE, AMBUHL,

25 SHE'S AN EMPLOYEE WITH HTC,

1 Horry TELEPHONE
2 COOPERATIVE.
3 THE COURT: OKAY.
4 MS. GOLDING: AND HER DAUGHTER IS GOING
5 TO GOVERNOR'S SCHOOL
6 TOMORROW MORNING AND SHE
7 HAS TO TAKE HER, AND I WAS
8 WONDERING IF I CAN CALL HER
9 TO COME HERE LET'S SAY AT
10 FOUR O'CLOCK. SHE'LL BE A
11 SHORT WITNESS.
12 THE COURT: OKAY. HAVE YOU GOT A
13 PROBLEM WITH THAT?
14 MR. JARMUTH: NO PROBLEM, YOUR HONOR.
15 THE COURT: OKAY, THAT'S FINE.
16 MS. GOLDING: THANK YOU, YOUR HONOR.
17 THE COURT: OR EARLIER IF YOU WANT TO.
18 MS. GOLDING: OKAY.
19 THE COURT: SHE'S TRYING TO GET OUT OF
20 HERE AND GO TO COLUMBIA?
21 MS. GOLDING: YES, SIR.
22 THE COURT: TELL HER TO COME ON WE'LL
23 STICK HER IN SOME PLACE.
24 EARLIER THAN FOUR WILL BE
25 ALL RIGHT.

1 MS. GOLDING: OKAY. THANK YOU, YOUR
2 HONOR.
3 THE COURT: IF YOU GOT A JURY YOU KIND
4 OF GOT TO WORRY ABOUT
5 GETTING WITNESSES SCRAMBLED
6 UP, BUT, YOU KNOW, THEY
7 PROBABLY FIGURE I'M SO
8 CONFUSED, IT DOESN'T MAKE
9 ANY DIFFERENCE. ALL RIGHT.
10 ARE YOU READY?
11 MR. JARMUTH: I'D LIKE TO CALL MY NEXT
12 WITNESS, MR. MICHAEL
13 BUTRYN.
14 MICHAEL BUTRYN, AFTER HAVING BEEN CALLED TO THE
15 STAND AND DULY SWORN, TESTIFIED AS FOLLOWS:
16 COURT REPORTER: WILL YOU STATE YOUR NAME
17 AND SPELL YOUR LAST?
18 MR. BUTRYN: MICHAEL BUTRYN, B-U-T-R-Y-
19 N.
20 DIRECT EXAMINATION
21 BY MR. JARMUTH:
22 Q: Mr. Butryn, would you please state your
23 address of your home here in South Carolina?
24 A: 1008 Ennis Drive in Murrells Inlet.
25 Q: Is that within Pebble Creek?

1 A: Yes, it is.

2 Q: Is that within the International Club PUD?

3 A: Yes, it is.

4 Q: Will you please give us a -- state to us any
5 prior education or work or training which
6 relates to -- Have you served on any
7 committees with the HOA?

8 A: Yes.

9 Q: Which one?

10 A: The Buildings and Grounds Committee.

11 Q: Could you please relate to us any training,
12 education or work which is relevant to that
13 capacity?

14 A: I had at least thirty, thirty-five years of
15 experience. I worked for Lehigh University in
16 Bethlehem, Pennsylvania. I worked for the
17 Bethlehem School District in Pennsylvania, and
18 also for the Quakertown Community School
19 District in Pennsylvania.

20 Q: During those jobs, what experience, if any,
21 did you have regarding specifications or
22 contracts or the actual work of buildings and
23 grounds and maintenance?

24 A: I wrote all the specifications except where it
25 came to prevailing wages, and that's an area

1 where -- it's above a certain contract.

2 Prevailing wage takes over and then we had

3 someone else write those specifications.

4 Q: During those periods of time, were you an
5 employee or a contractor?

6 A: I was an employee.

7 Q: Did you supervise anybody?

8 A: Yes, at Lehigh University, approximately fifty
9 some people, Bethlehem School District there
10 were two hundred and twenty, Quakertown
11 Community School District there was about, oh,
12 maybe fifty, fifty-one.

13 Q: Who appointed you to the Buildings and Grounds
14 Committee?

15 A: It was the Board.

16 Q: And what year was that, if you recall?

17 A: I believe that was in '59.

18 Q: Say again.

19 A: 2059. Which one are you talking about, the,
20 the Board here?

21 Q: The Board here.

22 A: Yes.

23 Q: Which year?

24 A: 2009.

25 Q: Thank you. And at the time, was the Defendant

1 Toth on the Board?

2 A: Yes.

3 Q: And she was in what capacity?

4 A: She was the president.

5 Q: But prior to your appointment through the
6 Buildings and Grounds Committee, did they gain
7 knowledge in any respect of your experience
8 you just related?

9 A: Yes.

10 Q: Did they say anything to you regarding that
11 experience which leads you to believe that was
12 a factor in your appointment?

13 A: Oh, yes. I gave the presentation which was a
14 power point and at that point, the Board -- I
15 guess everyone was there, except Maureen
16 Sullivan. The CD that I gave to Rosemary
17 Toth, she gave it to Mrs. Sullivan, and at the
18 next meeting where she was president, she said
19 it was done very professionally.

20 Q: Did you have any experience in the termination
21 of any employees while you were working for
22 any of these government agencies?

23 A: Yes. I did the interviewing, checked on their
24 background, and recommended them to the Board
25 for employment.

1 Q: How about the discharge?

2 A: Yes.

3 Q: How difficult did you find it to be to
4 discharge or terminate a government employee?

5 A: Well, there's a process you go through. It
6 wasn't that you just, say, catch somebody
7 sleeping or catch somebody not working or an
8 extending coffee break, what you had to do is
9 go through this process. It was a three-step
10 process; first, you gave them a warning, then
11 a written reprimand, then you gave a three-day
12 suspension, and after that, they were taken in
13 front of the Board and then discharged.

14 Q: What was your experience in supervising
15 contractors who did buildings and grounds
16 maintenance?

17 A: After writing the specifications, they would
18 come to me and we, we would decide. The
19 actual supervision, I had an assistant at
20 Lehigh University and the Bethlehem School
21 District, and Quakertown, I did not, and what
22 I did do is all the contracts that were there,
23 we would set up meetings monthly. It all
24 depends on the job itself; for example, there
25 was an extension on the cafeteria. That was a

1 three million dollar job. It wasn't what I
2 would consider real large, you know, in the
3 past experience, but it was one where we would
4 meet monthly. Some of the other jobs, for
5 example, we had a school called
6 Trumbauersville. That was an elementary, that
7 was a two-story elementary. That cost around
8 forty-three million. There, we had meetings
9 twice a month and we also had meetings in
10 between. If there was a discrepancy, a
11 dimension off or what have you or a contractor
12 couldn't make it, the material didn't come in,
13 then we would set up a special meeting just
14 for that.

15 **Q: Now, when you went to award a contract, what**
16 **sort of criteria did you find relevant to use**
17 **in qualifying a potential vendor?**

18 **A:** Well, first of all, we would check their
19 references; second, we'd have to make sure
20 that they follow the specifications; for
21 example, the prevailing wage, that took much
22 longer to choose someone in that, but in a
23 government contract you had to award it to the
24 lowest bidder, except if you found out that
25 the work was done shabby, you know, in a

1 previous job, but the criteria that's met is
2 you've got to go through those specifications
3 and look, did they submit everything, was
4 there a bid bond, was there a surety bond, all
5 their references, if all their references were
6 in there, and if not, you disqualify them only
7 on a temporary basis, because I didn't
8 actually do the disqualification, the Board
9 did. They accepted my recommendation, but it
10 wasn't something I could say, "Well, I can't
11 use this person."

12 Q: If, hypothetically, two potential vendors, two
13 bidders who would come in, the same identical
14 monetary cost proposal, what sort of criteria
15 would you use to make a recommendation, one
16 way or the other, of who should get the
17 contract?

18 A: We looked at past history, did that contractor
19 work for us before, did he work for those
20 school districts. I belong to what they call
21 the -- it's called PASBA, it's an acronym.
22 It's called Pennsylvania Association of School
23 Business Officials. They had a list that
24 they'd provide to everyone in my position,
25 that you could look at that criteria and then

1 you could see whether, you know, they were
2 late on a job, whether it was an over
3 expenditure on the job. So given that, if
4 both -- if two bidders had the same amount,
5 they bid the same amount, you would go through
6 and look and see, you know, if there were any
7 discrepancies on one and/or the other. We
8 would probably choose the one that we felt,
9 one, was going to get the job done in time,
10 because you're dealing with students.

11 **Q: Was it a lot of work, a little work or hard or**
12 **difficult to get all this qualifying**
13 **information about these potential bidders?**

14 A: The bigger the job, okay, the more difficult
15 it is, because then you have, you have to look
16 at the subcontractors. Now, when you go
17 through a prevailing wage, you go with four
18 primes where, instead of having one general
19 contractor, you have four primes, and that
20 would be the general contractor, the
21 electrical contractor, heating and
22 ventilating, and the plumbing contractor, so
23 you would have those four. So it becomes more
24 difficult, okay, checking all those references
25 out.

1 Q: Did you do this investigation of potential
2 vendors before or after they submitted their
3 bid?

4 A: We did a pre-cursor; for example, we had a
5 preliminary bid where -- a bid meeting where
6 all the contractors would, would come in, and
7 we'd ask them, "Here's what you're going to
8 have to submit." We went over the bid
9 specifications, and then we would ask them if
10 anyone had difficulties, any kind of problems.
11 So we tried, tried to eliminate that problem
12 before they submitted their bid, and once they
13 submitted that bid -- if they gave like a ten
14 percent bid bond, they weren't going to get
15 that money back, so that's why we did that,
16 and it was in favor of them and in favor of
17 the District, so they wouldn't get that back
18 until the bid was awarded. So they could be
19 holding on to -- or we would be holding on to
20 ten percent.

21 Q: Was it before or after a particular project,
22 particular requirement was announced?

23 A: Before the project was announced?

24 Q: Was all this work you did on having anything
25 to do with the qualifications of a vendor, did

1 you do that work before or after the project
2 requirement was announced?

3 A: Oh, after the project was announced.

4 Q: Now, looking at this, what value would you see
5 in qualifying a vendor if all the vendor is
6 required to submit is their Workman's
7 Compensation insurance number and their Social
8 Security number and the name of the company?

9 A: I'm sorry, would you repeat that?

10 Q: What value is it to you -- as a contracting
11 official, what value would it have been to you
12 if the total qualification required of the
13 vendor was just strictly, "Give us a copy of
14 your insurance policies, your employee, E.I.D.
15 number, and the name of the company?"

16 A: No, you need to get a lot more than just a few
17 pieces of material. By doing that and going
18 into that detail, you're now able to
19 understand more, not only, really, but you're
20 able to understand or you're going to have
21 problems with the contractor, so it, it does.
22 You go into a lot of detail, you just don't
23 accept, okay, a preliminary, "Well, here's,
24 here's my insurance card or here's my
25 license," no, it's more than that.

1 Q: What value to you would a qualifications
2 package be if it excluded references of work
3 history?

4 A: No value.

5 MR. JARMUTH: I ASK THE COURT IN LOOKING
6 AT THE CONTRACTOR PACKAGE
7 PREVIOUSLY PUT INTO
8 EVIDENCE TO NOTE THAT NONE
9 OF THESE THINGS, WORK
10 HISTORY OR REFERENCES, IS
11 IN THAT PACKAGE, AND THE
12 PACKAGE WAS REQUESTED
13 BEFORE ANY PARTICULAR
14 REQUIREMENT WAS SUBMITTED
15 OR IT WAS ANNOUNCED.

16 Q: Now, moving on, did there come an occasion
17 when you had a talk with William J. Martin?

18 A: Yes.

19 Q: Who is he?

20 A: Works for the Horry County.

21 Q: In what capacity?

22 A: Excuse me, I believe he is the engineer for
23 the water department out there or sewage,
24 stormwater and sewage.

25 Q: I'm going to show you two documents labeled

1 461 and 451, the first one having the title,
2 "Murrells Inlet Golf Plantation PUD," the
3 second one having the title, "Lantana PUD."
4 I'll ask you, do you recognize them?

5 A: Yes, I do.

6 MR. JARMUTH: I'D LIKE THE BIG VERSIONS
7 OF THESE BE MARKED. WELL,
8 THE LANTANA ONE IS ALREADY
9 MARKED INTO EVIDENCE. I'D
10 LIKE TO ASK THE PUD ONES BE
11 MARKED INTO EVIDENCE.

12 THE COURT: DO YOU ALSO HAVE THE SMALL
13 VERSIONS OF THOSE?

14 MR. JARMUTH: YES. YES, SIR.

15 THE COURT: OKAY. THANK YOU.

16 MR. JARMUTH: THE SMALL VERSION OF THAT
17 IS AT 461, YOUR HONOR.

18 THE COURT: THANK YOU.

19 PLAINTIFF'S EXHIBIT NUMBER 461(A)
20 MARKED FOR IDENTIFICATION.

21 A: Now, looking at these two maps, did you
22 receive these two from Mr. Martin?

23 A: Yes.

24 Q: And what did he tell you they related to?

25 MS. GOLDING: OBJECT TO ANY TESTIMONY

1 FROM A THIRD PARTY. THAT'S

2 HEARSAY.

3 THE COURT: SUBJECT TO THE OBJECTION.

4 Q: Could you please read the titles of them in
5 the bottom right corner or the bottom of the
6 page?

7 A: On the bottom right it says, "Murrells Inlet
8 Golf Plantation PUD," and on the other one it
9 says, "Lantana PUD."

10 Q: Does it say Lantana PUD on the bottom?

11 A: Yes.

12 Q: And what caused you to talk to Mr. Martin,
13 what was the occasion?

14 A: There were problems with the storm drainage.
15 We asked to meet with him, so we could get
16 some recommendation to the Board. There was a
17 backup on Trent Street, Trent, Trent Avenue,
18 and I forget the gentleman's name, but he had
19 called me personally, asked if I would come
20 down and take a look. I took a look at it.
21 We called Mr. Martin, and Mr. Pizzi also met
22 with him, and that's when we learned that all
23 of these were connected. We thought they were
24 separate.

25 Q: In your capacity working for these other

1 government employees, did you have occasion to
2 make contracts for putting in sewers and other
3 drainage systems?

4 A: Well, within -- only on our property.

5 Q: Did you ever have any problems relating to
6 drainage or backups in the areas you were
7 responsible for?

8 A: No. I thought we did a very good job, because
9 I know they call this low country down here,
10 but you ought to see Quakertown, it's the same
11 thing up there.

12 Q: While you were working for these government
13 entities, was it your responsibility to ensure
14 that the maintenance was properly done on
15 (unintelligible) and retention ponds?

16 A: Yes. We had two retention ponds, one at the
17 high school and one at an elementary school.

18 Q: What leads you to believe you had any
19 expertise in deciding whether work needed to
20 be done on those retention ponds?

21 A: Probably when I received a raise, that's
22 partly why, but no, I, I, I thought we went
23 into detail, we gave -- there was usually two
24 Board members that were a liaison for
25 Community and also Buildings and Grounds, and

1 when we would give them our recommendation,
2 they accepted. And to give you an example, we
3 wanted to create a new football field, or I'm
4 sorry, girl's hockey, as a result, we had to
5 remove that detention pond and place it
6 somewhere else, so we acquired some adjoining
7 property behind the high school, created that
8 detention pond there, and again, this area is
9 very level, so you had to have enough pitch.
10 So we had to bring in so many tons of soil to
11 elevate that property to have that correct
12 drainage.

13 Q: Was all this work and the oversight of the
14 retention ponds and specifications and
15 evaluation with the condition within your
16 official duties?

17 A: Yes.

18 Q: Now, if you had seen -- next to your house or
19 near your house, is there a retention pond?

20 A: Oh, I don't know if you call it a retention
21 pond, but there is a pond there. It does
22 retain -- and, and see, there's a -- sometimes
23 I believe there's a misconception. One says
24 retention and the other one is another where
25 they just reclaim it and use it, okay, or

1 detention, that's what it is. One is to
2 detain the water, the other is to retain, so
3 it all depends on what you're using it. If
4 it's a detention pond, then it just means that
5 it's going into that pond and eventually going
6 to drain out. A retention pond is meaning
7 that water stays in there, it's large enough,
8 deep enough that it will retain that water for
9 any use you want.

10 Q: Would you also be willing to call these a
11 anti-surge pond or retention pond?

12 A: Yes.

13 Q: And how is the retention pond act to slow down
14 the surge?

15 A: The retention?

16 Q: A retention pond?

17 A: Okay. What, what, what it does, like I said,
18 if it's deep enough so that when you have that
19 capacity to fill up, for example, we would
20 never get the deluges you would get down here,
21 but up there we did get hit a lot of times
22 with the hurricanes which were usually in
23 September or October, and when that happens --
24 some of those ponds were maybe twenty-five
25 feet, but being so low and from our school

1 district which was quite large, they ran into
2 that retention pond, as a result, it --
3 sometimes it filled up almost to the capacity,
4 but fortunately, it, it was not.

5 Q: Relating to the pond of whatever sort, is that
6 the one at the end of Ennis Drive? Is that
7 where you live?

8 A: Yes.

9 Q: And Ennis Drive is next to Pickering?

10 A: Yes.

11 Q: Relating to that pond, would you call that a
12 retention pond?

13 A: At this point, it is a retention pond, because
14 the, the detention pond would not have any
15 flow, it would just -- it wouldn't go into
16 another pond, okay, but the one that is by my
17 house does, it's connected to other areas,
18 other ponds, so as a result, if one blocks up,
19 then the others are going to fill in. And the
20 one by my house, that comes from the property
21 -- I forget the party's name, but he owns all
22 that wooded land there beyond me, so all that
23 area that's in the back there, that then flows
24 into that retention pond, and if you have a
25 heavy rain, you'll see that rise up very fast.

1 Q: During the time you've lived in Pebble Creek,
2 have you ever observed a problem with that
3 particular pond having its outflow blocked?

4 A: Yes, in fact, when Mr. Martin came down, one
5 of the things that he said to us is that
6 periodic maintenance should be done on this
7 more often, and you could see where it goes
8 under the road of Ennis Drive and it's on the
9 right-hand side. It's right behind -- well, I
10 forget their name, but you could see it. Now,
11 that was blocked in the front. Now, I'm not
12 sure who opened it, whether it was the owner
13 or what, but the owner had opened that,
14 because it was starting to flood up into his
15 property. As they opened that, well, then we
16 started, you know, you have to clean something
17 out here, and again, I don't know who cleaned
18 it out on this side.

19 Q: Did I hear you say that you personally
20 observed water flowing on a homeowner's
21 property because of a blockage of that?

22 A: Yes.

23 Q: Have you ever personally observed anybody,
24 golfers, anybody, do maintenance of that pond?

25 A: No. I saw the owner next to the property

1 doing work on it.

2 **Q: Who owns that pond?**

3 A: Who owns the pond?

4 **Q: That pond?**

5 A: The golf course.

6 **Q: Who do you believe is responsible to maintain**
7 **that?**

8 MS. GOLDING: OBJECTION, YOUR HONOR.

9 HE'S SEEKING A LEGAL
10 CONCLUSION.

11 **Q: During your work in Buildings and Grounds, did**
12 **you investigate the ownership of the ponds**
13 **within the PUD?**

14 A: Yes. What we were told by Horry County is
15 that it was the responsibility of the golf
16 course to take care of that; however,
17 ultimately, it was the HOA's responsibility if
18 it was not taken care of, and he made the
19 recommendation and he'd just have to bill them
20 back.

21 **Q: Who made the recommendation?**

22 A: Mr. Martin.

23 **Q: Did you ever relate these blockage problems to**
24 **any Board member of the IHOA?**

25 A: Yes. I'm not sure when and, and, and the

1 nature of the meeting, but I know we had
2 brought that up, and one of the items -- the
3 response was that they really couldn't push
4 the golf course for cleaning that up.

5 Q: What is you -- with all this professional
6 experience on doing retention ponds, what's
7 the conclusion about the effect of a blockage
8 on that pond and on the upstream ponds?

9 A: Well, if, if one of those ponds, let's just
10 say the lowest one, and if that one here gets
11 blocks, it's going to build up, and depending
12 what's going in that first one, there's a
13 critical path here and you, you have to --
14 it's just not one person that would be
15 flooded. If that is coming into one area and
16 it's from, you know, all that wooded land in
17 there, which there are or there is -- what do
18 you call it? I forget the word I'm looking
19 for. It's -- well, like swampland, okay, but
20 anyway, that's going into there, and it all
21 depends on how much rain you're getting, okay,
22 these ponds are going to fill up. If there's
23 a blockage down here, everything is going to
24 fill up and it's going to go into the entire
25 community. If it's only this one in the

1 middle, say, then it's going to go and flood
2 this area, then eventually go down.

3 Q: In your experience, is it common practice for
4 the government who has control of building
5 permits and all to require these retention
6 ponds to the people handling the ten year
7 maximum rainfall or flood or storm?

8 A: Yeah. Well, there's a -- well, up there we
9 had a hundred year flood plan and you had to
10 be careful that that didn't reach that, so.
11 And again, that was taken in elevations of the
12 ground. There was -- we had to maintain -- I
13 believe this -- is, is this what your question
14 is, what --- repeat your question again.

15 Q: No, the question is, looking at the design
16 standard of these retention ponds, basically
17 going to the point of, what is required to
18 meet a ten or you're saying a hundred year
19 flood level to even to take care of such an
20 event?

21 A: Well, here if it's a ten year, and again, I'm
22 not sure I understand your question. Are you
23 looking whose responsibility ---

24 Q: No, I'm looking for the capacity, the design
25 capacity of these ponds to absorb a storm.

1 A: Okay. That's, that's completed, okay.
2 Whoever, whoever's responsibility it is
3 building these homes in here, it's their
4 responsibility to make sure it's approved by
5 Horry County, you know, you, you just can't go
6 in and say, "Well, you know, we're going to
7 build a ten foot deep pond and catches water,
8 have you looked at all the surrounding areas,
9 have you looked at where it's going to go,
10 what happens in the maximum?" And they have
11 records as to what flooding took place ten,
12 fifteen years, whatever, and you have to look
13 at those boundary lines, and is that going to
14 suffice, if not, then you have to build either
15 a larger one, deeper one, or one somewhere
16 else.

17 Q: Have you had the opportunity to inspect the
18 total drainage plan the entire -- at least
19 Pebble Creek?

20 A: Pebble Creek, I have.

21 Q: If this system which is to still work
22 properly, is there any reason, other than a
23 hurricane, that the system should overflow
24 onto the roads?

25 A: We would have a problem right there at the

1 pond that's next to my house, then the -- that
2 goes underneath the ground, underneath
3 Pickering and goes into the one that goes
4 along Trent. That is where you would have
5 problems.

6 Q: Are you familiar with where my house is?

7 A: Yes.

8 Q: Okay. If the storm system was not impeded or
9 blocked in any fashion up and down the thing,
10 is there any reason, not in a hurricane, not
11 in a tropical storm, a tropical storm as a
12 possibility, is there any reason outside a
13 hurricane that the water should come, should
14 back up and flood my road?

15 A: No.

16 Q: If, in fact, during an event, not including
17 the hurricane, it flooded the road in front of
18 my house, what does that tell you about the
19 condition of the drainage system?

20 A: That there's a blockage somewhere. Well, it
21 could, you know, it could be either a drain
22 that's blocked or it could be one that's
23 cracked. They're settling, yeah.

24 Q: From what you were told by Mr. Martin, whose
25 responsibility is it to keep those systems

1 **clean?**

2 A: Initially, it's the owner of that pond, and
3 after that, it was the HOA that has the
4 ultimate responsibility. That's what we were
5 told, and if, if the HOA had to pay to clean
6 this out, to do whatever, to make repairs,
7 they would have to bill back the golf course.

8 **Q: Now, do you have occasion to go through, past**
9 **the large lake at the amenity center side**
10 **entrance to Pebble Creek?**

11 A: Yes.

12 **Q: Would you be able to estimate how deep that**
13 **lake is?**

14 A: Well, from the discussions that -- the only
15 way I could estimate, if I actually went in
16 and, and put a stick in there, but from what
17 they were saying from the -- when they put the
18 water fountain in, you know, I thought it was
19 about five, six feet.

20 **Q: Now, are you familiar with the lake by The**
21 **Villas?**

22 A: Yes.

23 **Q: Would you be able to estimate how deep that**
24 **is?**

25 A: No.

1 Q: Would you be able to say for sure that
2 certainly is more than five feet?

3 A: I would, I would think it is. I would think
4 it would have to be.

5 Q: Now, looking to the other side of the road, we
6 see a area which seems to be, was integrated
7 with The Villas -- Have you had occasion to,
8 on official duties at the Buildings and
9 Grounds, to go past the area known as The
10 Villas?

11 A: Yes.

12 Q: Will you be able to estimate the year in which
13 that gate was placed at the entrance to The
14 Villas?

15 A: That was in 2009.

16 Q: Could you describe the fence which is also
17 between The Villas and the road?

18 A: Yeah. I believe that was done at a later
19 time, and that's at least seven hundred feet,
20 six feet high.

21 Q: Now, I'm six feet high. Is it taller than me
22 or the same height as me?

23 A: It's about the same height.

24 Q: And what's it made of?

25 A: Iron, steel. Yeah, it's probably iron, rough

1 iron.

2 Q: Are you familiar in any way to the
3 circumstances surrounding the erection of that
4 fence?

5 A: No. The, the only thing that I know is that I
6 had talked to Charlie Ferrera when, when
7 Mr.Pizzi and I ---

8 MS. GOLDING: AGAIN, I'M GOING TO OBJECT
9 TO HEARSAY.

10 Q: Okay. Let's stop that, okay?

11 A: Oh. Oh, okay.

12 MS. GOLDING: JUST OBJECT TO HEARSAY.

13 Q: Who maintains the -- until at least two years
14 ago, who maintained the stretch of ground
15 between the roadway and the fence of The
16 Villas?

17 A: The roadway and the fence of The Villas?
18 Well, we didn't do The Villas.

19 Q: Did The Villas maintain ---

20 A: They, they maintain their own.

21 Q: Did they maintain the edge of the road in
22 front of The Villas?

23 A: Yes.

24 Q: And that's the area of the road between the
25 curb of International Club Drive and their

1 fence?

2 A: Yes.

3 Q: And the fence, is the fence, in your estimate,
4 knowing the boundaries, all the properties, is
5 that the property line?

6 A: Pretty much so, yes.

7 Q: In your movements throughout the HOA on
8 official business, have you had occasion to
9 notice the fences within the community?

10 A: Yes.

11 Q: Is there any particular uniformity with those
12 fences?

13 A: No.

14 Q: In your travels throughout the community, have
15 you had occasion to look at the swing sets in
16 the community?

17 A: Yes.

18 Q: Is there any uniformity with those swing sets?

19 A: I couldn't tell you that.

20 Q: Are they the same type swing sets?

21 A: Are they the same type?

22 Q: Yes.

23 A: To me, a swing set is a swing set.

24 Q: In your travels throughout the community, have
25 you had occasion to notice the edgers used

1 around flowerbeds or palm tree beds?

2 A: Yes.

3 Q: How common are they used?

4 A: Well, a lot of people use them, use them for
5 the flowerbeds. I have them around my palm
6 trees. People use a variety. That's probably
7 what -- what's ever on sale at Home Depot or
8 at Lowe's you're going to buy.

9 Q: When you were working for these government
10 agencies, did your work include specifications
11 for the erection of walls?

12 A: No. Oh, when I was working for the agency?
13 Yes.

14 Q: Yes. Now, if you wanted to build a wall, what
15 would you do to the ground under the wall
16 first?

17 A: Foundation. What, what type of wall are we
18 building?

19 Q: Masonry.

20 A: Masonry, then up there I'd have to have a --
21 three foot in the ground, okay, the foundation
22 footings, and that's to keep it from lifting
23 up in -- during the winter, and that was
24 determined, so if my wall was, say, eight
25 inches, okay, then that meant I had to have

1 sixteen inches. So you would take the amount
2 of your wall, just double it, and that was the
3 size of your footer.

4 Q: What was the function of a paver base in that
5 construction?

6 A: The paver base?

7 Q: Paver base.

8 A: I'm not sure I understand the question.

9 Q: Kind of like the aggregate which you put
10 underneath the block?

11 A: Well, it's concrete.

12 Q: Now, you said you're familiar with edgers.

13 Are edgers useful to build a wall?

14 A: No. Now, there -- there's a material out
15 there, but, you know, if you're looking at a
16 stationary wall, no, you don't use edgers.

17 Q: As a person involved in construction, would
18 you call a line of edgers a wall?

19 A: No.

20 Q: Are you familiar with the houses directly
21 across the street, across Pickering, from the
22 amenity center?

23 A: Yes.

24 Q: Do they have stone or brick walls adjacent to
25 their patios?

1 A: You'll have to describe the exact location.

2 Q: Okay. If you were to stand on Pickering Drive
3 and look, with your back to the amenity center
4 at the lots there, are there, in fact, two
5 houses, patios next to each other which have
6 patios with brick walls on each of the sides
7 facing Pickering Drive?

8 A: Okay. I'm, I'm not that familiar.

9 MR.JARMUTH: AT THIS POINT, I'D LIKE TO
10 INTRODUCE INTO EVIDENCE
11 WHAT I CALL EXHIBIT 331,
12 WHICH IS A WORKSHEET I
13 PREPARED, AND 330, A
14 PRESENTATION IN WHICH THE
15 NUMBERS WERE OBTAINED.

16 Q: Will you please examine Number 330?

17 A: Yeah. This is the -- this was a study we did
18 for the Board, and it was from this that the
19 recommendations as to the landscape bids.

20 Q: Is that the presentation you gave on June
21 25th, 2008?

22 A: Yes.

23 Q: Did Mr.Pizzi have a hand in preparing it?

24 A: Pardon?

25 Q: Mr.Pizzi, did he have a hand in preparing it?

1 A: Yes, he did.

2 Q: Did he agree with it?

3 A: Yes, he did.

4 Q: What role did Mr. Templeton have in preparing
5 it?

6 A: Nothing. We gave it to him. He, he was a
7 Board liaison between the Board and the
8 Building and Grounds Committee.

9 Q: Was he a member of the Board?

10 A: Yes, he was.

11 Q: Did he agree with it?

12 A: Yes. He was quite happy, in fact, his comment
13 to me was that, "At least now the Board will
14 have something to determine proportionately as
15 to where they're -- where the money is going,
16 what it's being spent on."

17 Q: I'm going to show you a table of 331. Do you
18 recognize these numbers from the presentation?

19 A: Yes.

20 Q: Would it be correct to say that based upon --
21 were those computations of yours?

22 A: Yes.

23 Q: And to do those computations, what work did
24 you do to get to the numbers you put on there?

25 A: Well, first of all, we went to the County and

1 got the latest drawings, the drawings that
2 they had, and we spent, I'm going to say a
3 good two months, because we had to go through
4 -- I purchased a wheel so that we could go
5 ahead and measure the distance, figure out the
6 square footage. We knew where the property
7 lines were based on that -- drawings that we
8 got from the County. Once that was
9 determined, we took -- at that current year, I
10 believe the bid was sixty-five thousand or
11 that's what the contract was, so we took that
12 sixty-five thousand and then we created,
13 again, proportionately so that if we said that
14 -- I think the, yeah, thirty-eight percent --
15 yeah, or thirty-one percent was the, the
16 common area, seven percent was the amenity.
17 So whatever that contract was, if it was
18 sixty-five percent, we took the thirty-one
19 percent from the common area of that
20 particular budget and said, "Well, that's what
21 it would cost." I said, "That's what it
22 should cost us," okay? The only thing that we
23 found out, that as we went through this
24 process, the golf course was more intensive,
25 labor intensive, and the reason for that, you

1 had a lot more trees, you had lot more areas
2 that took pruning and handwork, and that was
3 noted in here. Even though I felt these were
4 accurate from that, you know, interpretation,
5 the fact that the golf course had so much
6 work, you know, hand and labor intensive, that
7 number is probably skewed, it shouldn't --
8 might be up to forty-three percent.

9 Q: So you're spending not less than this number
10 on the golf course and maybe more?

11 A: And maybe more.

12 Q: Is there any reason for you to believe that
13 the golf course considered you the expert
14 within the community on Buildings and Grounds
15 matters?

16 A: Why they should not or ---

17 Q: Did they consider you?

18 A: Well, I thought they did. I had a good
19 rapport with everyone there.

20 Q: Now, after this was submitted, was Amazing
21 Blades one of the competitors?

22 A: Yes.

23 Q: Was Sunbelt Landscaping the other competitor?

24 A: Sunbelt, I believe -- yes, they did, they did
25 bid on it. There were several bidders, but

1 Sunbelt was the one that was currently doing
2 it, and with this bid, it was Sunbelt and
3 several other bidders. There should be a
4 breakdown.

5 Q: Yeah. I'm showing you a page of the
6 presentation where the name, Sunbelt, is
7 listed, and Amazing Blades, also. Do you
8 recognize that?

9 A: Yes. Yeah, and let me just say first, you
10 have two contractors here, and the reason you
11 only have two is there were other people that
12 bid, but again, they lacked fulfilling the
13 total bid specifications, and we wanted people
14 to have -- make sure they had a criminal
15 record check.

16 Q: Whose idea was that? Was that ---

17 A: That's mine.

18 Q: --- K.A. Diehl or yours?

19 A: That was mine, and that comes from dealing
20 with students. So the fact that we've got
21 children in the area, you wanted to have that.
22 There were some other factors. I don't recall
23 at this point why we eliminated some of the
24 other ones, but these were the two, and I look
25 at -- yeah, Sunbelt was 74, okay, it was

1 actually the lower bid, but I recommended
2 Amazing Blades for the simple reason that when
3 you look at the overtime, okay, this is a new
4 contract, you know, more detail that was ever
5 been here, so we were sure that there was
6 going to be other areas that were going to
7 come in need, and so when you look at the cost
8 for a man hour, it's thirty dollars versus
9 Sunbelt, which was thirty-five. So there were
10 areas we knew we had to go, and it was my
11 understanding that we were going to bill the
12 golf course and they were going to pay us
13 back, so I looked at that in consideration,
14 also. If you're going to do the golf course,
15 again, that was so labor intensive, so we
16 said, "Well, jeez, are we now going to be
17 charging them more, so let's go with the
18 lower, the lower cost?"

19 Q: Did I hear you say and I read properly that
20 that said Amazing Blades was the more
21 expensive bidder?

22 A: Amazing Blades was more expensive per hour.

23 Q: On the bottom of your chart it shows that
24 Amazing Blades would be seventy-seven plus
25 thousand and Sunbelt seventy-four thousand?

1 A: That's right.

2 Q: And you recommended Amazing Blades?

3 A: Yes, I did.

4 Q: Did the Board agree with your recommendation?

5 A: Yes.

6 Q: Did Amazing Blades get the contract?

7 A: Pardon?

8 Q: Did Amazing Blades get the contract?

9 A: Yes, they did.

10 Q: Now, in looking at that presentation, what was
11 your recommendation regarding the HOA
12 maintaining the golf course property?

13 A: Well, there was a belief there that we were
14 going to cease that, and that's what I was
15 told by Mike Templeton, but if we were going
16 to do it, at least he had the numbers that
17 they could speak to the golf course about
18 them.

19 Q: What was your recommendation about the HOA
20 maintaining the Horton property at a cost of
21 fourteen plus thousand dollars at HOA expense?

22 A: We thought they should be doing it themselves.

23 Q: What was your recommendation regarding the HOA
24 maintaining private property yards at the cost
25 of over a thousand dollars?

1 A: We said that the owners should do that
2 themselves. We had a meeting prior to that
3 bid going out and I did ask them how we should
4 approach this, and the recommendation at that
5 point was, "Do not put the residential
6 property in there." So it was not included,
7 but the golf course was.

8 Q: Now, of this sixty-five thousand dollars, how
9 much of it did you find was attributable to
10 maintaining the amenity center?

11 A: Four thousand, nine hundred and eight.

12 Q: Is my -- approximately right if I say it's
13 around two or three percent of the total?

14 A: Yes.

15 Q: Now, did Pete Pizzi work for you sort of as a
16 member of the Buildings and Grounds Committee?

17 A: That's a volunteer position, okay? Nobody
18 worked for me, okay? We were colleagues. We,
19 we went in and, and did what we had to, but to
20 say that he worked for me, no. Did he report
21 to me, yes, you could say that.

22 Q: Did there come a time when a member of the
23 Board made a recommendation to you regarding
24 his continued membership in the Buildings and
25 Grounds Committee?

1 A: Yes.

2 Q: Could you tell us about that?

3 A: I was at some friends of mine that lived in
4 the community. I received a phone call from
5 Mike Templeton.

6 Q: Was Mike Templeton a member of the Board?

7 A: Yes, he was. No, at that point I don't
8 believe he was. I'm, I'm uncertain whether he
9 was at that point. Well, he had to be,
10 because he said he spoke to the Board. That's
11 right. That's right, he was a member, because
12 I was chairman of that committee at that time.
13 So Mike Templeton called me and I picked up my
14 phone, and the voice -- the speaker phone is
15 right there, so when you grab up the phone and
16 flip it open, it goes on a speaker phone, and
17 as he was speaking, he told me that he met
18 with the Board and they decided that Pete
19 Pizzi is no longer an asset to the community.
20 He continued to go on and saying that, "They
21 found him going into your place with papers."
22 And I did ask Pete, "Well, what does"
23 -- I mean, Mike Templeton, "What does that
24 have to do with it?"
25 He says, "Well, at this point, we've

1 all decided that you should get rid of Pete,
2 the fact that he, you know, reports to you."

3 And I said, "I don't think I can do
4 that." So at that point -- and there were two
5 witnesses there that did hear the
6 conversation, because it was on speaker phone.
7 So I hung up with Pete, finished my beverage,
8 and I went to talk to Pete about it, and I
9 told him what happened.

10 Q: Was, in fact, Pete Pizzi terminated as a
11 Buildings and Grounds committee member?

12 A: No, I won't do it.

13 Q: Was he eventually terminated?

14 A: Yeah. I'm not sure what process took place.

15 Q: But he was terminated?

16 A: From what I understand, yeah, because he was
17 no longer coming to the meetings.

18 Q: As a homeowner in the community, have you
19 attended many meetings of the Board of
20 Directors?

21 A: Yes.

22 Q: At any of these meetings, have you ever seen
23 on the agenda an item regarding the Board
24 reviewing a covenant violation of a particular
25 homeowner?

1 A: No.

2 Q: Have you ever seen anything regarding -- in
3 the minutes, have you seen the minutes?

4 A: From the Board meetings? Yes.

5 Q: The Board meetings?

6 A: Yes.

7 Q: Have you ever read in any of the minutes that
8 the Board had taken any action to suspend
9 someone's voting rights or impose a fine?

10 A: No.

11 Q: When you attended these meetings, did you ever
12 listen to the reports given from the
13 committees?

14 A: Yes. There -- well, at one -- the reports
15 used to be given by the chairman of the
16 committee, and then at that point -- there was
17 a point in time where no longer was the
18 committee chairperson, it was whoever was the
19 liaison. So, for example, I had to give my
20 information, any recommendations, to Mike
21 Templeton, and Mike Templeton then would
22 present. Now it's back to the other area
23 where the chairperson can speak or anyone on
24 that committee can.

25 Q: Now, at these Board meetings you attended,

1 were the reports from the ARB, Architectural
2 Review Board, given in any manner to suggest
3 that the ARB was not a committee of the Board?

4 A: Are you saying that they ---

5 Q: Was anything said ---

6 A: That they were not ---

7 Q: --- which would lead anyone to believe they
8 were not a committee?

9 A: No, I thought they were.

10 Q: Were they among the sequence of committee
11 reports given?

12 A: Yes.

13 Q: Did you ever hear at any Board meeting that
14 the Board was appointing someone to the ARB?

15 A: Yeah, the Board would appoint them.

16 Q: Did there come a time when you -- Now, I
17 instituted my lawsuit in March of 2009. Did
18 there come a time after that, that you applied
19 to be the member of a committee of the HOA?

20 A: Yes.

21 Q: What happened?

22 A: Let's see, I contacted K.A. Diehl. I wanted
23 to get some information, and they said, "No."

24 I'm, I'm, I'm going back to give you,
25 chronologically, what happened.

1 Q: Say whatever you want to say.

2 A: Okay. So I contacted K.A. Diehl, and they
3 said, "No, you can't get the records, I've got
4 to contact the Board." So I happened to get a
5 hold of Maureen Sullivan, and I will say she
6 was very helpful, in fact, I, I will say this.
7 If she was present at that time, I don't think
8 we'd be sitting here, because she was helpful
9 enough for me. She set up the meeting for me
10 to go over to K.A. Diehl and to look at the
11 records I wanted to view. I thought I was
12 going to meet with Beckie Abel, I was not.
13 She said she can't talk to me. I said, "Okay,
14 well, who do I talk to?" I also had my
15 neighbor there, Mike Donegan, who was with me,
16 because Maureen said if there was anyone that
17 you wanted to take with you, you could, so I
18 had asked Mike to go with me. We went into
19 the conference room there, and again, I
20 waited, and then it was Jack Bassily that came
21 out, and he's the one that had talked to me.

22 Q: Is Jack Bassily one of the owners of K.A.
23 Diehl?

24 A: I don't know who -- if he's the owner or what.
25 I still have his business card, but I know he

1 was -- apparently, if Beckie couldn't talk to
2 me, he probably was the next in command and I
3 have to go to him. So we sat there, and at
4 first it was more than less cordial as I
5 wanted it to be, and there were a few words,
6 and then we got to the point where we both
7 believed that, you know, this is nonsense. He
8 had said to me, he says, "Mike, I really
9 believe that any time you or any other member
10 wants to come over and get a record of
11 anything, you have that right to do it."

12 Then we went on to, to talking, and your
13 name came up, and I said, "Well, doesn't this
14 seem like a big waste?"

15 And he said, "I agree."

16 So he said, you know, "Maybe what we need
17 to do is just sit down and, and talk about
18 it."

19 I said, "Fine, I'm ready."

20 Q: Excuse me. At this time, he was, in fact, an
21 employee or an owner or something of the
22 Defendant K.A. Diehl?

23 A: Yes.

24 Q: Please continue.

25 A: So what happened then is, I guess, Jack --

1 after our conversation was done, and I said,
2 "Well, jeez, I really didn't need these
3 records then at this point." If we were going
4 to sit down and have future meetings and able
5 to look at things, that's all I had wanted, so
6 I said, "All right, I'll go back and we'll set
7 up the meeting." So Jack contacted Maureen,
8 and then I got a call from her, and I guess
9 she was a little upset with the fact that --
10 of the procedure, and which is rightly so,
11 "Does K.A. Diehl supervise, you know, the
12 Board or does the Board supervise K.A. Diehl?"
13 So when she told me that, she asked me if I
14 could meet with her and Rosemary. I was
15 reluctant to meet with Rosemary for a number
16 of reasons. So I did meet with Maureen at
17 Dunkin Donuts. We went into different topics.
18 She was very up-front, and I really thought
19 she was being helpful. So we decided -- I
20 said, "Well, why don't we sit down" -- and
21 again, this conversation, the conversation
22 kept coming up, "Why don't we sit down, meet
23 and discuss?" And she agreed to that, so we
24 went back to the Board. When I got in there
25 and we were talking about that, I was told

1 they were directed by their attorney not to
2 even sit down and, and, and talk. I would
3 think you'd want to. So Maureen said to me at
4 that time then -- I think there was only -- I
5 think it was -- Bill Freiboth was the only one
6 that was not there at the time, and when I had
7 -- what she suggested to me was that, "Mike,
8 with all your expertise, you should be on one
9 of the committees." I cherish that. I
10 thought that was good. I thought there was a
11 communication where she was very open, and
12 like I said, I cherish it, I'll admit to that.
13 So I did, I put in through the ARB, because
14 there was an opening at the time. It was, oh,
15 maybe about a day or two later and I received
16 a call from Bill Freiboth, saying that ---
17 **Q: Is that the same Bill Freiboth sitting here?**
18 **A:** Yes. Yeah, that, that was not their stand,
19 and I got at that point they didn't want me on
20 there, okay, for whatever the reason might be,
21 they didn't want me on there. And then I did
22 get a call from Maureen Sullivan apologizing,
23 and there wasn't a reason to apologize, but
24 she had called me and said that, you know,
25 "This, this wasn't" -- she thought that I

1 would apply for that position, I would be on
2 there and using my expertise, and that did not
3 happen.

4 Q: Now, prior -- when did you say you bought your
5 house in Pebble Creek?

6 A: 2004.

7 Q: Were you the original homeowner?

8 A: Yes.

9 Q: When you went to buy your house, did you have
10 a chance to look at the package which your
11 closing attorney sent over from K.A. Diehl,
12 got a copy from K.A. Diehl?

13 A: I probably looked at it like every other
14 homeowner, okay, and, and sign at the bottom
15 line, okay, and, and that was it, and made my
16 mortgage payments.

17 Q: Did you retain a copy of that?

18 A: Yeah, I should have it somewhere.

19 Q: Yeah. Prior to 2009, were you ever told by
20 anyone, except myself, that there were, in
21 fact, more than just Amendment I to the
22 covenants?

23 A: No.

24 Q: Prior to 2009, did you have occasion to look
25 at the International Club HOA's website?

1 A: After 2009?

2 Q: Before?

3 A: Yeah, I'm certain I did.

4 Q: When you looked, did you see Amendments II,
5 III and IV on the website?

6 A: No.

7 Q: Did anyone ever ask your opinion or consent to
8 make Amendments II, III and IV?

9 A: No.

10 Q: Did anyone ever, after these were made, tell
11 you they'd been made?

12 A: No.

13 Q: Now, are you familiar with the phrase, MIGPA?

14 A: Yes.

15 Q: What does it mean?

16 A: Murrells Inlet -- I forget, there's so many
17 acronyms, but I, I know it's the one that you
18 established.

19 Q: Is that the Murrells Inlet Golf Plantation ---

20 A: Golf Plantation.

21 Q: --- Association?

22 A: Right.

23 Q: Did there come a time when you were contacted
24 by me regarding MIGPA?

25 A: Yes.

1 Q: Please describe what went on in that contact.

2 A: You contacted me, said you put a book
3 together, you wanted me to look over it and
4 make any suggestions or recommendations, that
5 we could possibly eliminate any of the
6 problems in the future. So there are, there
7 are a number of items on there that we spoke
8 about that, you know, we wanted to at least
9 direct some attention to.

10 Q: Did one of the issue -- was one of the issues
11 delegating too much power to the management
12 company?

13 A: Yes.

14 Q: Was one of the issues changing the Bylaws to
15 make sure the homeowners were not guilty until
16 they proved themselves innocent?

17 A: Yes.

18 Q: In your perception as a homeowner, is the
19 current system of covenant violations a guilty
20 until the homeowner proves himself innocent?

21 A: Well, to some degree it is. I don't know
22 whether it was just the lack of the right-hand
23 not knowing the left-hand, what's happening,
24 but there were times I -- I received two
25 citations, one, it was on the second day I

1 moved in. My trailer was there, a U-Haul. I
2 got the citation, which I didn't even realize
3 what was going on, so I got that citation, and
4 then a second time I received a citation, I
5 was putting on a powder room at, at my home,
6 and I did call K.A. Diehl and I said that,
7 "The trailer is going to be parked there, it's
8 going to be in my driveway, it's a work
9 trailer because of the material that I had to
10 dispose of, so I would be working on that and
11 it's going to be at least a week, week and a
12 half." And then what happened, it was two or
13 three days later -- well, actually three days
14 later, I got a letter in the mail saying that
15 I'm in violation because of this trailer. I
16 did call up Beckie Abel, I spoke to her. I
17 told her I gave the information to Julie Case.
18 Beckie Abel, said, well, the information
19 wasn't forwarded to her. So I said, "Well,
20 what do I do with this in the meantime?"
21 And she said, "Disregard it."
22 And I said, "Well, can you please take
23 that off of my record?" And I believe she
24 did.
25 Q: Now, you live on Ennis Drive?

1 A: Yes.

2 Q: How many houses are there between your house
3 and Pickering Drive coming down Ennis Drive
4 towards Pickering?

5 A: Two others besides me.

6 Q: Have any of those houses had major
7 reconstruction or extension on them
8 particularly related to the rear?

9 A: One has, the last one right next to the pond.

10 Q: Can you describe what was done?

11 A: I believe there was a, like a sunroom, yeah, a
12 sunroom put up there and -- what do you call
13 it?

14 UNKNOWN SPEAKER: PERGOLA.

15 A: I heard the name.

16 UNKNOWN SPEAKER: PERGOLA.

17 A: Pergola, that's it.

18 Q: Now, from your back yard, you could see --
19 could you see what was going on there?

20 A: Yeah.

21 Q: From walking down the street to get to your
22 house, could you see what was going on there?

23 A: Yeah.

24 Q: During the period the work was in progress,
25 did the construction people, whoever they

1 were, did they temporarily store, putting
2 materials some place on that lot?

3 A: Oh, yes. Yeah, the lumber, you got to put the
4 lumber somewhere.

5 Q: For how many days do you think, would you
6 estimate there were materials out there?

7 A: Well, I know the individual that did it, so he
8 was there working on that project. He had to
9 paint it first, pre-paint it, so I would say
10 it had to be on that property for at least a
11 week, week and a half.

12 Q: So for about a week and a half, then, you saw
13 building materials stored on that lot?

14 A: Yes.

15 Q: Was one of the issues I talked to you about
16 trying to figure out a solution to no
17 oversight on the receipt and deposit of cash?

18 A: Yes, and then we also spoke about the privacy
19 act, and that was where I received some
20 information from a homeowner, in fact, I
21 believe I gave you the papers on it. There
22 was a concern that K.A. Diehl might be
23 releasing private information, and it was one
24 where there was a violation of a homeowner
25 that did not maintain the property, so they

1 were being cited, and that paper was given to
2 another homeowner who lived next to him and it
3 was to prove that they were contacting this
4 person that was not maintaining their lawns.
5 So as this homeowner is complaining nothing is
6 being done over here, this homeowner, his
7 private information is given to this person,
8 and we just felt that was wrong.

9 **Q: Was one of the issues running the Association**
10 **secret?**

11 **A: Yes.**

12 **Q: Was one of the issues failing to have**
13 **decisions of the Board on the minutes of the**
14 **Board?**

15 **A: Yes.** One of the concerns that -- in fact,
16 this was quite recently where -- and maybe
17 someone out there can help me, but Tom, Tom's
18 name, I -- Bassily, Bachelli. Anyway, he had
19 raised a question, "Do you mean we can't
20 interject anything, why you're having this
21 meeting?"

22 And he was told, "No, you have to wait." So
23 he really couldn't say anything.

24 **Q: Did you ever personally attend a Board meeting**
25 **where homeowners were told, "You may not**

1 speak?"

2 A: Maybe not to the fact that I would not speak,
3 but if I spoke to you, it would be senseless,
4 and ---

5 Q: I'm not talking about myself, Board meetings
6 which had nothing to do with me, ---

7 A: Oh.

8 Q: --- but homeowners wanted to speak on some
9 issue whether or not -- did you ever attend
10 such a meeting where you were told, "We don't
11 want to hear you?"

12 A: Yes.

13 Q: Did at least one of those meetings happen to
14 be one when Defendant Toth was President of
15 the HOA?

16 A: What now?

17 Q: Did at least one of those Board meetings occur
18 when Defendant Toth was President of the HOA?

19 A: Yes.

20 Q: Did I ask you for your suggestions to address
21 handling of contracts?

22 A: Yes, you did. You asked me if I would write
23 the specifications, and I said I would.

24 Q: Is one of the issues access to Association
25 records?

1 A: Yes.

2 Q: Is one of the issues the fact that Diehl did
3 not compete from the management contract?

4 A: Yes.

5 Q: Was that the extent of communication?

6 A: No. You asked me if I would be an officer,
7 and I said, "No, I, I," you know, you're going
8 through this procedure now. This was so, I
9 mean, it was in the forecast. How could I say
10 yes and no, but I told you that if this --
11 it'd be useless until you found out where you
12 stood, and I wasn't sure at that time whether
13 I would become a Board member of your
14 organization.

15 Q: Did you agree -- were you told -- did I tell
16 you that no one associated with MIGPA was
17 going to do anything until The Court could
18 resolve the question of, "Who is the
19 Association?"

20 A: Yes, you did.

21 Q: To your knowledge, does MIGPA own any property
22 in the development?

23 A: No. That was one of the reasons I gave you,
24 you don't own anything, how could you proceed?

25 Q: Were you served a Subpoena to testify in this

1 trial?

2 A: This one, yes.

3 Q: Were you deposed previously to this case, in
4 this case?

5 A: Yes.

6 Q: Was that by Subpoena?

7 A: Yes.

8 Q: On January 17th, when the trial was originally
9 scheduled, did you appear in court?

10 A: No, I did not. I was ill.

11 Q: Thank you. Were you on call to testify if you
12 had not been ill?

13 A: Pardon?

14 Q: Were you subpoenaed to testify if you had not
15 been ill?

16 A: Oh, yes.

17 Q: Now, after I announced before Judge John that
18 you were going to be a witness and I decided
19 to depose you, among others, what happened to
20 you?

21 A: You, you mean, the time I was ill? I'm not
22 sure what ---

23 Q: No, at the January 17th meeting, I was
24 required to say in open court who my witnesses
25 were going to be and who I was going to

1 depose, including your name, what then
2 happened to you?

3 A: I'm not sure what you're asking me. Is this
4 in relation to when I was ill or ---

5 Q: Did you receive any threats?

6 A: Oh, I, I received threats constantly, in fact,
7 I was somewhat reluctant to come and even
8 testify here. Let me tell you, my wife has
9 been abused. She's been snubbed at the pool.

10 MS. GOLDING: YOUR HONOR, I THINK THAT
11 THIS IS GOING WAY AFIELD.

12 THE COURT: YES, IT IS. LET'S TRY TO
13 STICK TO THE POINT. I
14 REALIZE IT'S A HOT ISSUE
15 AND EVERYBODY HAS BEEN
16 AGGRAVATED.

17 A: I, I just want to say I, I was reluctant, Your
18 Honor, because ---

19 THE COURT: OKAY. THE ANSWER IS YES?

20 A: Yeah.

21 THE COURT: RIGHT. OKAY, I GOT YOU. GO AHEAD.

22 A: And I -- can I mention the fact that ---

23 Q: It's up to the Judge.

24 THE COURT: WELL, WAIT JUST A MINUTE.

25 A: Okay. Okay.

1 Q: Please state anything about me that was said
2 to you by members of the IHOA Board or by
3 Diehl or officials of Diehl employees.

4 A: Well, we had a meeting and I believe -- I'm
5 not sure of the exact date, but again, it was
6 another time that I wanted to sit down and to
7 talk, not only in, in your situation, but it
8 was with The Villas, and I guess The Villas
9 was coming -- going to court, but anyway, at
10 the meeting, I sat down with the Board, and
11 Mike Templeton was on the Board at that time,
12 and it was -- okay. I had mentioned that,
13 "Let's, let's talk to Ron Jarmuth, let's see
14 what he wants."

15 And they said, "Well, don't bother
16 talking to him, it's useless."

17 And I felt, "Why is the sense?"

18 So I insisted on meeting with them, and
19 again, this is why I have to give some respect
20 to Maureen Sullivan, because at that point she
21 was very open, and she did say, "Well, if it's
22 going to save us time and money, maybe it's
23 worth a try." Then it was Bill Jacques who
24 made the comment to me that -- well, he made
25 it to everybody there, and maybe some people

1 out there can remember how the joke went, but
2 it was in relation -- in regards to you,
3 apparently that you could take horse manure
4 and take it and pick it up on a shovel and
5 pile it somewhere else and then pile it
6 somewhere else, and the outcome was still that
7 it's horse manure. Well, I felt, "Man, I'm
8 not going to get anywhere here," so. But
9 then, again, they said for me to go ahead and
10 contact you, and I did, and that's when I
11 called you and I asked you, you know, "What,
12 you know, what are you after, what do you
13 want?" And as we discussed, I went back and
14 my answer at that point was no, but -- so
15 again, I thanked Maureen, because I felt that
16 if, if she was present at the time, I think we
17 could've sat down and we could've saved a lot
18 of money.

19 Q: Did there come a time in May of 2009, when you
20 received an oversized package from the
21 International HOA in the mail?

22 A: Yes.

23 Q: Will you please examine this material which
24 has already been introduced with regards to
25 other witnesses?

1 A: This is it.

2 Q: Is the document in the front the cover letter
3 that you saw, less the markups?

4 A: Yes.

5 Q: Who actually -- was it K.A. Diehl the
6 International Club that actually signed the
7 transfer of the document?

8 A: Well, this come from Beckie Abel.

9 Q: Well, in the front of the document is there a
10 phrase, "For," somebody?

11 A: Oh, yes. Yeah, for the Board of Directors by
12 Henrietta Golding.

13 Q: Is there any reason you had to believe that
14 this is actually for the Board of Directors
15 and from the HOA?

16 A: Yes.

17 Q: What's that reason?

18 A: Well, if, if you got an attorney writing this,
19 I would think it to be true.

20 MR. JARMUTH: I'D LIKE TO POINT OUT TO
21 THE COURT SOMETHING I'M NOT
22 DOING, I'M NOT CONTESTING
23 OR ALLEGING THAT ANYTHING
24 IN THE LETTER, OF THE
25 ACTUAL LETTER, SIGNED BY

1 HENRIETTA GOLDING IS
2 DEFAMATORY. I'M NOT EVEN
3 GOING TO TALK ABOUT THE
4 CONTENTS OF THAT LETTER,
5 YOUR HONOR, BUT LET'S LOOK
6 AT SOMETHING CALLED THE
7 LIST OF LAWSUITS ASSOCIATED
8 WITH RONALD JARMUTH, WHICH
9 IS A LISTED EXHIBIT TO THE
10 COMPLAINT IN THE CASE.
11 THE COURT: TO THE LETTER OR TO WHAT?
12 MR. JARMUTH: THERE IS A COVER LETTER,
13 WHICH MS. GOLDING TALKED TO
14 A PREVIOUS ---
15 THE COURT: I'VE LOOKED AT THE LETTER.
16 WELL, I'M ASKING YOU,
17 WHAT'S THE LAWSUIT, THE
18 SUMMATION ATTACHED TO?
19 MR. JARMUTH: THERE IS A COVER LETTER
20 FROM K.A. DIEHL ON BEHALF
21 OF THE IHOA.
22 MS. GOLDING: MY LETTER, YOUR HONOR.
23 THE COURT: WAIT JUST A MINUTE.
24 MS. GOLDING: THE LIST IS ATTACHED TO MY
25 LETTER. THAT WAS PART OF

1 THE DOCUMENTS I SENT TO THE
2 BOARD OF DIRECTORS, THE
3 LIST.

4 THE COURT: DO YOU DISPUTE THAT? IT
5 CAME AS A PACKAGE, ALL IN
6 ONE PACKAGE?

7 MS. GOLDING: YES. IT WAS MY LETTER,
8 YOUR HONOR, THAT HAD
9 ATTACHED -- I ATTACHED THE
10 LIST OF ---

11 THE COURT: LOCATION?

12 MS. GOLDING: --- CASES THAT WERE FOUND
13 AND GOOGLED.

14 THE COURT: OKAY.

15 Q: Now, looking at Ms. Golding's letter, is there
16 anyone you see there and the addressees who's
17 not a member of the Board?

18 A: Well, they're -- they were ---

19 Q: Are they all members of the Board ---

20 A: Yeah.

21 Q: --- at the time?

22 A: Past members, right.

23 Q: You don't see anything to indicate that Ms.
24 Golding intended it to be sent to you?

25 A: Say this again.

1 Q: Is there anything on the address list there,
2 addressee, that indicates by any inference or
3 something that it actually was to be sent to
4 you?

5 A: No. It's just something that she wrote, and I
6 guess K.A. Diehl sent it out.

7 MR. JARMUTH: IN LOOKING AT THE
8 DEPOSITION TESTIMONY OF THE
9 DEFENDANT ROSEMARY TOTH, I
10 ASK THE COURT TO FIND THE
11 AREA IN THE DEPOSITION
12 TESTIMONY WHERE MS. TOTH
13 ADMITTED THAT THE BOARD MET
14 IN SECRET AND MADE THE
15 DECISION TO SEND ALL THIS
16 MATERIAL THEY RECEIVED FROM
17 MS. GOLDING TO THE
18 COMMUNITY. THAT DECISION
19 IS NOT TO BE FOUND IN THE
20 MINUTES OF THE BOARD AS MS.
21 TOTH ADMITTED ON THE
22 DEPOSITION TRANSCRIPT.
23 Q: Now, looking at the list ---
24 THE COURT: WHICH LETTER?
25 MR. JARMUTH: THE LIST OF LAWSUITS

1 ASSOCIATED WITH RONALD E.
2 JARMUTH.
3 THE COURT: ARE WE SINGING OUT OF THE
4 SAME HYMN BOOK? YOU'RE
5 TALKING ABOUT THE MCNAIR
6 LETTER WITH THE LAWSUITS
7 ATTACHED TO THE BACK OF IT?
8 MR.JARMUTH: I'M TALKING ABOUT THE
9 ATTACHMENT WHICH HAS THE
10 TITLE, "LIST OF LAWSUITS
11 ASSOCIATED WITH RONALD E.
12 JARMUTH."
13 THE COURT: OKAY.
14 MS. GOLDING: THAT IS ATTACHED TO THE
15 MCNAIR LETTER, YOUR HONOR.
16 THE COURT: OKAY.
17 MR.JARMUTH: AND THIS LETTER ---
18 THE COURT: DO YOU AGREE WITH THAT?
19 MR.JARMUTH: YOUR HONOR?
20 THE COURT: DO YOU AGREE WITH THAT?
21 MR.JARMUTH: I AGREE THAT IT WAS
22 ATTACHED.
23 THE COURT: OKAY. ALL RIGHT. THE
24 LETTER AND THE LAWSUITS ARE
25 AS ONE THING, AND YOU SAID

1 YOU DIDN'T THINK IT WAS
2 DEFAMATORY?
3 MR.JARMUTH: NO, I SAID I WAS NOT GOING
4 TO ALLEGE THERE WAS
5 ANYTHING DEFAMATORY IN THE
6 BODY OF THE COVER LETTER
7 THAT MS. GOLDING HAD SENT.
8 THE COURT: WELL, IS THE COVER LETTER
9 THE ONE DATED MAY 27TH THAT
10 YOU HANDED TO ME?
11 MR.JARMUTH: YES, YOUR HONOR.
12 THE COURT: SO TELL ME WHAT YOU THINK
13 IS DEFAMATORY ABOUT THE
14 PACKAGE YOU HANDED UP. IF
15 IT'S NOT THE LETTER AND THE
16 ATTACHMENTS, WHAT IS IT?
17 MR.JARMUTH: THE ATTACHMENTS.
18 THE COURT: THE ATTACHMENTS?
19 MR.JARMUTH: THE ATTACHMENTS, YOUR
20 HONOR.
21 THE COURT: OKAY. IT LOOKS LIKE IT
22 SUMMARIZES SOME LITIGATION,
23 IS THAT CORRECT, OR NOT
24 SUMMARIZE BUT ---
25 MR.JARMUTH: YOU'RE ANTICIPATING MY

1 TESTIMONY, BUT I WOULD SAY
2 IN SUMMARY ---
3 THE COURT: I'M TRYING TO UNDERSTAND
4 WHAT YOU'RE TELLING ME, IS
5 WHAT I'M TRYING TO DO.
6 MR.JARMUTH: THAT WHAT YOU FIND HERE IS
7 NOT A QUOTE FROM THE
8 LITIGATION.
9 THE COURT: ALL RIGHT.
10 MR.JARMUTH: THE CAPTIONS OF THE CASES
11 ALL ARE NOT IDENTICAL TO
12 THE ACTUAL CAPTIONS OF
13 CASES. THE DESCRIPTIONS
14 ARE SIGNIFICANTLY DIFFERENT
15 FROM THE MATERIAL OF THE
16 CASES; AS A MATTER-OF-FACT,
17 SOME OF THESE AREN'T EVEN
18 CASES, THEY'RE ---
19 THE COURT: SO YOU'VE GOT PROBLEMS WITH
20 THE LIST, NOT THE LETTER;
21 IS THAT WHAT YOU'RE SAYING?
22 MR.JARMUTH: I HAVE PROBLEMS WITH
23 EVERYTHING ATTACHED AND
24 TRANSMITTED. I WOULD NOT
25 HAVE A PROBLEM WITH THIS,

1 YOUR HONOR, IF IT STAYED
2 WITHIN THE BOARD OF
3 DIRECTORS. THAT'S
4 ATTORNEY-CLIENT
5 TRANSMISSION, BUT K.A.
6 DIEHL DECIDED SOMEHOW OR
7 THE BOARD DECIDED TO
8 REPUBLISH ALL THIS MATERIAL
9 TO THE HOMEOWNERS.
10 THE COURT: ALL RIGHT. SO YOUR PROBLEM
11 IS NOT WITH MS. GOLDING AND
12 THE MCNAIR FIRM, YOUR
13 PROBLEM IS WITH K.A. DIEHL?
14 MR.JARMUTH: WELL, MY PROBLEM IS ALSO
15 THAT ROSEMARY TOTH HAS
16 TESTIFIED THE BOARD MADE
17 THE DECISION IN CONJUNCTION
18 WITH K.A. DIEHL TO DO THIS
19 REPUBLICATION AND THEY
20 APPROVED SPENDING, I THINK,
21 AROUND TWENTY-SEVEN
22 THOUSAND DOLLARS. THE
23 ACTUAL NUMBERS ARE IN THE
24 CAROLINA MAIL HOUSE
25 EXHIBITS WHICH ARE IN

1 EVIDENCE. I WANT TO MAKE

2 SURE IT'S IN EVIDENCE.

3 THE COURT: WELL, THEN YOUR PROBLEM WAS

4 WITH THE BOARD AND K.A.

5 DIEHL?

6 MR. JARMUTH: MY PROBLEM IS WITH THE

7 BOARD AND K.A. DIEL.

8 THE COURT: NOT MCNAIR?

9 MR. JARMUTH: THAT'S RIGHT, YOUR HONOR.

10 THE COURT: I GOT YOU. GO AHEAD. I'M

11 JUST TRYING TO KEEP UP.

12 Q: Now, looking at this list of lawsuits, is

13 there anything which led you to believe that

14 every one of these actually was a lawsuit?

15 A: Yes. When, when you publish something like

16 this, how, how could you deny it? So I

17 thought it was true, in fact, my neighbor ran

18 out -- I was coming home from a job and he had

19 said, "Did you see this here?"

20 And I said, "No, what is it?" And he

21 went on to explain it to me and he made some

22 comments, and I became concerned.

23 Q: Now, in your capacity as an employee of these

24 government agencies, were you ever involved in

25 a Freedom of Information Act lawsuit?

1 A: No.

2 Q: You never were directed to release information
3 to some sorts of employee lawsuits?

4 A: No.

5 Q: Now, looking at item number two, who does it
6 say is the Defendant? I pointed an arrow to
7 it to help you.

8 A: Yeah, Dr. Brian Krolczyk?

9 Q: Yes. What material difference did it make in
10 your perception to include that doctor as
11 against someone who's not a doctor?

12 A: Well, I don't know he's not a doctor, but when
13 I looked at that and there was some other
14 things there that said you needed to see a
15 doctor, what can I think?

16 Q: From the caption there, does it appear I sued
17 a licensed physician?

18 A: Yes, a doctor, I mean, other than that usually
19 if it's a, like a superintendent of a school,
20 you see the Ph.D. after.

21 Q: Was it your conclusion, since this list was
22 attached behind the McNair letter, that this
23 was vetted, all this material is vetted by the
24 counsel for the Defendants?

25 A: Yes, absolutely.

1 Q: What did that lead you to believe as to the
2 accuracy of all the information on the
3 document?

4 A: I had a problem with it. I thought it was
5 accurate, and I became concerned with it. I
6 talked to a few of the neighbors and we all
7 had that same opinion.

8 Q: Which was? What was your opinion during that
9 conversation?

10 A: Well, my opinion was that, you know, there's
11 something wrong here, and I don't know why you
12 did this, but, you know, it just wasn't right.

13 Q: Looking at number three, is there any reason
14 you'd believe that Tara Patterson was not a
15 Defendant in a lawsuit I initiated against
16 her?

17 A: No. When, when you have it here, Jarmuth
18 versus Tara Patterson, that's ---

19 Q: Are you familiar with the term, "Esquire"?

20 A: Yeah.

21 Q: What does that mean?

22 A: Attorney or someone that handles litigation.

23 Q: So it says I sued an attorney?

24 A: Yes.

25 Q: Now, looking at number four, who does it say

1 the Defendant was?

2 A: Janet Reno.

3 Q: Did the author of this document give you any
4 explanation about the nature of this suit or
5 the one before?

6 A: No.

7 Q: Did it strike you as odd that some of these
8 have explanations and some did not?

9 A: Well, it, it'd strike me as being odd, but I
10 think the more compelling thing was that, you
11 know, what'd you do?

12 Q: How about number six? Looking at number six,
13 is there anything there to indicate I sued
14 this lady, McLemore, in her individual
15 capacity?

16 A: Yeah, it says, "Civil action."

17 Q: Do you see a miscellaneous thing behind it?

18 A: Yes.

19 Q: Have you ever seen that before in a civil
20 suit?

21 A: No.

22 Q: Is there any explanation about the nature of
23 the suit?

24 A: No.

25 Q: Looking at number eight, from the documents --

1 from the description in there, what did it
2 lead you to believe was the nature of this
3 suit?

4 A: Well, it looks like you were wrong, that
5 whatever you filed ---

6 Q: The question, what was the subject from the
7 pursuit?

8 A: It doesn't -- it just says, "Case 04," and
9 that's it.

10 Q: It says I sued Verizon.

11 A: And you're looking at number?

12 Q: Four, Verizon.

13 A: Oh, okay, up here. Okay.

14 Q: Is there anything there that would lead you to
15 believe that this was not a suit in Civil
16 Court?

17 A: No.

18 Q: Now, let's look at number ten. It has the
19 phrase that, "Jarmuth alleged defamation by
20 some of his co-employees of the FBI." Does
21 that text lead you in any way to believe that
22 Frinzi was a co-employee of the FBI? He's the
23 Defendant named there.

24 A: Yeah. Well, it says here, "Alleged defamation
25 by some of his co-employees."

1 Q: Co-employee. What does it say the outcome of
2 the matter was as far as my employment
3 capacity? What does it say happened to me?

4 A: Oh, you allege termination of employment.

5 Q: What does termination of employment mean?

6 A: No job.

7 Q: And is the FBI a Federal agency?

8 A: Yes, it is.

9 Q: And based upon your prior experience in
10 supervising government employees and your
11 prior statement that it's very difficult to
12 terminate an employee, it has to be for no
13 shown cause, what does that lead you to
14 believe about the gravity of what I had done
15 to lead to this termination of employment?

16 A: Well, I thought that really had to be
17 important, I mean, you had to do something
18 terribly wrong.

19 Q: Did it even give a date on my termination? I
20 point out that number there.

21 A: 4/21/01, yeah, 4 -- 4/21/01.

22 Q: Did the inclusion of that detail increase the
23 credibility you gave to this explanation?

24 A: It increased the credibility to that letter,
25 yes.

1 Q: Did you have any independent way of verifying
2 all these descriptions of what I had done in
3 the past?

4 A: No. The only thing that I can recall is that
5 some of the email that was being passed around
6 said, "Go Google Ron Jarmuth, you know, Google
7 and you'll find out all these lawsuits," or
8 something.

9 Q: What does it say on the top of this particular
10 page, top right, top left, rather?

11 A: It says, "West Law."

12 Q: Do you know what West Law is?

13 A: No. West Law, no.

14 Q: Do you have a membership in anything called
15 West Law?

16 A: No.

17 Q: Have you ever heard of anyone with a
18 membership in West Law?

19 A: No.

20 Q: Would you have been willing to pay a fee to
21 join any company which has citations, such as
22 West Law, to verify this?

23 A: I didn't feel there was a need to.

24 Q: Because it was contained a letter from ---

25 A: An attorney.

1 Q: Looking at all the case citations, what do
2 they say in the upper left?

3 A: West Law.

4 Q: Were there any citations of West Law from
5 these other cases where I pointed out there
6 were no explanations beyond the name of
7 Plaintiff and Defendant?

8 A: Repeat that.

9 Q: In looking at the list of lawsuits which had
10 only the name of the Plaintiff and the
11 Defendant, such as Jarmuth v. Patterson, can
12 you find in that stack of papers anything from
13 West Law relating to that particular case, for
14 example?

15 A: No.

16 Q: How about Jarmuth v. McLemore, could you look
17 and see if you can find one?

18 A: No.

19 Q: How about Jarmuth v. Oxana Turetsky, could you
20 look?

21 A: Just that you appealed The Court decision.

22 Q: Now, how many cases do you find on Jarmuth v.
23 Turetsky there in that list? Look at both
24 pages.

25 A: I see one.

1 Q: Thank you. Now, going back to the McNair
2 cover letter which Beckie Abel chose to
3 include the cover letter which is not
4 addressed to you directly, now please read for
5 The Court what you read which is the last
6 sentence on page six there, which is my
7 sequential number, and the first paragraph to
8 the period on the following page. That
9 sentence begins over there.

10 A: "At this time, we are entering into a
11 discovery phase and today I am sending Jarmuth
12 specific interrogatories, preliminary relating
13 to" -- "primarily relating to his background.
14 I have discovered that he has been a Plaintiff
15 in at least thirteen different claims/lawsuits
16 (not counting this lawsuit) and it appears
17 that he is pro se in each one."

18 Q: Now, is there anything further there on that
19 page that says whether I lost any of them?

20 A: "It also appears that he was not ultimately
21 successful in any of the thirteen lawsuits.
22 At this point, I am trying to gather
23 additional information with respect to not
24 only these thirteen lawsuits, but also any
25 additional lawsuits in which he was a

1 Plaintiff or a petitioner. There may be more
2 lawsuits."
3 MR.BUTRYN: EXCUSE ME. YOUR HONOR, I
4 NEED TO GO TO THE RESTROOM.
5 THE COURT: ALL RIGHT. LET'S TAKE A
6 FIVE MINUTE BREAK.
7 MR. BUTRYN: OKAY. THANK YOU.
8 MR. JARMUTH: THANK YOU.
9 THE COURT: THAT'S IMPORTANT.
10 MR. BUTRYN: YEAH, THE WATER.
11 ****OFF THE RECORD****
12 (ON THE RECORD.)
13 THE COURT: I'M GOING TO REMIND YOU
14 YOU'RE STILL UNDER OATH.
15 MR. BUTRYN: YES.
16 MR. JARMUTH CONTINUES:
17 Q: Now, Mr. Butryn, when we left off you had read
18 text that said, if I'm reading correctly, that
19 appeared I was pro se in at least thirteen
20 different claims and that I was not ultimately
21 successful in any of the thirteen lawsuits.
22 In your evaluating the relevance of this
23 material on your view of me or your estimate
24 of my reputation, whatever, what value did it
25 have that I was described as pro se and not

1 represented by counsel in these lawsuits?

2 A: Yes.

3 Q: Would you describe what value that ---

4 A: Well, the fact that you just did this by
5 yourself, it was like any time you felt like
6 suing somebody, you just went ahead and did
7 it.

8 Q: And you believe -- and what leads you to
9 believe that I didn't have counsel in any of
10 these lawsuits?

11 A: Well, it says here that you were pro se.

12 Q: Now, it also said I was not ultimately
13 successful in any of the thirteen lawsuits.

14 What value does that piece of information have
15 on your estimate of my reputation?

16 A: Well, again, I thought any time you felt like
17 suing somebody, you did, and no matter what
18 the outcome, so either you had a lot of money,
19 but again, it, it just felt like, you know, I
20 just couldn't understand why you did it, and I
21 really began to -- well, I did, I accepted
22 that, I accepted that letter.

23 Q: Now, if you had information which would've
24 informed you I was actually successful in
25 some, maybe many, maybe most of these

1 lawsuits, what would that have led to your
2 view about the credibility of the whole
3 package?

4 A: Well, if it, if it had on there that you were
5 successful in some of those cases ---

6 Q: No, that's not my question. My question is,
7 if you learned from another source that, in
8 fact, I was successful in at least some of
9 these cases, what impact would that have had
10 in how -- the credibility you assign to the
11 entire package?

12 A: Then I probably would've said that was trash.

13 Q: And how about if you also learned that at
14 least some of these cases I was represented by
15 counsel?

16 A: I still would've said that was trash.

17 Q: Now, when you received this material, did you
18 read, did you read in detail these West Law
19 sheets which are attached?

20 A: Well, no, not in detail.

21 Q: Did you read them?

22 A: I mean, I scanned over them. I had my
23 neighbor explaining this to me.

24 Q: So you actually engaged in a conversation with
25 another homeowner regarding these sheets?

1 A: Yes.

2 Q: Who was that?

3 A: Mike Donegan.

4 Q: How often do you engage in conversations with
5 your neighbors about material you receive
6 regarding other homeowners? Can you cite a
7 single other time?

8 A: No, I can't.

9 Q: Now, looking at page two of this document
10 which I've marked as page twelve of fifteen,
11 which seems to be part of the description of
12 Jarmuth v. Frinzi, is there anything in this
13 communication, without reading the -- without
14 reading the words, which leads you to believe
15 that I've been accused of some sort of sexual
16 crime?

17 A: Yes. Yes.

18 Q: Don't read what it is.

19 A: Yeah.

20 Q: Would you consider this as communication to
21 you by the Board alerting you to the fact I
22 might be a sexual predator?

23 A: Yes.

24 MR. JARMUTH: I'M DONE WITH THIS WITNESS,
25 YOUR HONOR.

1 CROSS EXAMINATION

2 BY MS. GOLDING:

3 Q: Mr. Butryn, you had made a motion to join in
4 the Homeowners Association foreclosure action
5 against the golf course; is that correct?

6 A: Yes.

7 Q: And why did Mr. Jarmuth ask you to do it
8 instead of doing it himself?

9 A: He didn't ask me. When we were talking about
10 this, I said I wanted the information. I was
11 concerned.

12 Q: And then Mr. Jarmuth then prepared up you for
13 this motion; is that right?

14 A: No, part of that, I did from other ---

15 Q: And Mr. Jarmuth participated in preparation of
16 this motion; did he not?

17 A: I asked him to review it, see what I had, if
18 it made sense.

19 Q: And it looks like the typing that Mr. Jarmuth
20 has, he typed that up, also, for you; did he
21 not?

22 A: He retyped it.

23 Q: Yes. So you had Mr. Jarmuth review your
24 memorandum, this motion to intervene,
25 according to the South Carolina Rules of Civil

1 Procedure; is that correct?

2 A: That's correct.

3 Q: And Mr. Jarmuth was the one that told you what
4 rule of Civil Procedure to use; is that
5 correct?

6 A: That's correct.

7 Q: Okay.

8 MR. JARMUTH: MR. BUTRYN, DID YOU CONTACT

9 ---

10 MS. GOLDING: I HAVEN'T FINISHED.

11 THE COURT: WAIT A MINUTE. SHE'S STILL
12 ON CROSS. LET HER FINISH.

13 MR. JARMUTH: EXCUSE ME. I SAW YOU
14 WALKING DOWN HERE.

15 THE COURT: WE'LL GIVE YOU AN
16 OPPORTUNITY.

17 MS. GOLDING: LET'S GO AHEAD AND GET THIS
18 MARKED AS A DEFENDANT'S
19 EXHIBIT.

20 DEFENDANT'S EXHIBIT NUMBER 107
21 MARKED FOR IDENTIFICATION.

22 Q: Mr. Butryn, this is the motion that was filed
23 in the case, in the foreclosure, and that's
24 Exhibit 107; is that correct?

25 A: Yes.

1 THE COURT: ALL RIGHT. NOW, HAS THAT
2 BEEN PREVIOUSLY MARKED?
3 MS. GOLDING: NO, IT HAS NOT.
4 THE COURT: ARE YOU GOING TO INTRODUCE
5 IT AT THIS TIME?
6 MS. GOLDING: YES, SIR.
7 THE COURT: OKAY. DO YOU HAVE AN
8 OBJECTION TO THE
9 INTRODUCTION OF THIS
10 DOCUMENT, MR. JARMUTH?
11 MR. JARMUTH: IT'S A PUBLIC RECORD.
12 THE COURT: SO THE ANSWER IS YOU DO
13 NOT?
14 MR. JARMUTH: IT'S A PUBLIC RECORD. THE
15 COURT IS REQUIRED TO
16 INTRODUCE ANYTHING FILED
17 WITH THE CLERK OF COURT.
18 THE COURT: WITHOUT OBJECTION.
19 MR. JARMUTH: NO.
20 MS. GOLDING: THANK YOU, YOUR HONOR.
21 MR. JARMUTH: NO, SIR.
22 DEFENDANT'S EXHIBIT NUMBER 107
23 ADMITTED INTO EIVDENCE.
24 Q: Now, do you agree with Mr. Jarmuth that the
25 restrictive covenants governing the whole

1 International Club subdivision are null and
2 void and of no effect?

3 A: I won't decide on anything until the gentleman
4 up here ---

5 Q: I'm asking you if you agree with Mr. Jarmuth
6 that all the restrictive covenants covering
7 all the homes, the residential units in
8 International subdivision, that all those are
9 void and of no effect?

10 A: No.

11 Q: Okay. Do you agree with Mr. Jarmuth that the
12 International Club Homeowners Association
13 should be dissolved?

14 A: I question it.

15 Q: Do you agree with Mr. Jarmuth that the
16 International Homeowners Association should be
17 dissolved?

18 A: No.

19 Q: Do you agree with Mr. Jarmuth that ---

20 MR. JARMUTH: OBJECT TO THAT.

21 THE COURT: WHAT'S YOUR OBJECTION?

22 MR. JARMUTH: MY OBJECTION IS IT'S
23 STATING A POSITION OF MINE
24 WHICH HAS NOT BEEN STATED
25 IN ANY COURT DOCUMENT OR BY

1 ME ANY PLACE, THAT HE'S
2 PUTTING WORDS IN MY MOUTH,
3 WHICH I'VE NOT STATED;
4 MATTER-OF-FACT, IT'S
5 EXACTLY CONTRARY TO WHAT I
6 STATED IN COURT UNDER OATH.
7 THE COURT: ALL RIGHT. I'LL NOTE YOUR
8 OBJECTION. GO AHEAD.
9 Q: Do you agree with Mr. Jarmuth that he should
10 get back all the assessments that he paid
11 since he has been a member and as well as
12 assessments paid by his previous property
13 owner?
14 A: If he's correct, yes.
15 Q: No, I'm asking you, do you agree he should get
16 all that money back, all the assessments?
17 A: You're asking me to make a pre-determination -
18 --
19 Q: I'm asking you if you agree with Mr. Jarmuth
20 that he should get all of his assessments
21 back?
22 A: No.
23 Q: No further questions.
24 THE COURT: NOW, YOU CAN EXPLAIN IT IF
25 YOU WANT TO. YOU HAVE TO

1 ANSWER IT, BUT YOU CAN
2 EXPLAIN IT. YOU CAN
3 EXPLAIN YOUR ANSWER IF
4 YOU'D LIKE.

5 MR. BUTRYN: OKAY. SORRY, SIR, I'M NOT
6 FAMILIAR WITH IT.

7 THE COURT: THAT'S ALL RIGHT. YOU'RE
8 DOING FINE.

9 RE-DIRECT

10 BY MR. JARMUTH:

11 Q: Mr. Butryn, did you ever hear me say that I
12 wanted to interfere in any way with the
13 operation of the IHOA?

14 A: No.

15 Q: Did you ever hear me say specifically that I
16 don't want to do anything which would
17 interfere in the operation of the IHOA?

18 A: That was -- no. That was one of the big
19 considerations when you first approached me,
20 and I -- well, we concurred on that. We
21 didn't want to create anymore havoc that was
22 already in the community at this point. So I
23 even said to you, "Let's just wait and see
24 where this goes before, you know, you do
25 anything."

1 Q: Did you hear me say explicitly, almost word
2 for word, that no one associated with me
3 should do anything which could be interpreted
4 any other way, the interference of the
5 business of the IHOA?

6 A: Yes.

7 Q: Now, going back to your motion to intervene,
8 isn't it a fact that we originally thought it
9 was a motion I prepared for myself, that I was
10 going to intervene in the golf course action?

11 A: That's correct, yes.

12 Q: Isn't it a fact that you took my motion ---

13 MS. GOLDING: YOUR HONOR, HE'S LEADING
14 THE WITNESS.

15 THE COURT: YES, DON'T LEAD, JUST ASK
16 HIM QUESTIONS.

17 Q: Whose name was there as the move to intervene,
18 originally?

19 A: Well, it was your name, and I'll tell you why,
20 because when I made the copy of that, I
21 noticed there were some mistakes, where it
22 should've been singular, it was plural, so I
23 didn't ---

24 Q: And did you replace my name with your name?

25 A: Yes, I did.

1 Q: Did you actually also show your documents ---

2 MS. GOLDING: YOUR HONOR, HE CONTINUES TO
3 LEAD THE WITNESS.

4 THE COURT: YES, DON'T LEAD, PLEASE,
5 SIR.

6 MR. JARMUTH: YEAH.

7 Q: Is there an attorney who was involved in any
8 way, who you contacted, before you filed the
9 motion?

10 A: Yes.

11 Q: So you had advice of legal counsel ---

12 MS. GOLDING: YOUR HONOR, HE'S, AGAIN,
13 LEADING THE WITNESS.

14 THE COURT: JUST ASK HIM THE QUESTIONS,
15 IT'LL BE A LOT FASTER.

16 Q: Did you have advice of legal counsel, a actual
17 attorney, before you filed your material?

18 A: Yeah. I asked him if this was okay, I mean,
19 is this the right procedure, and he said,
20 "Yes."

21 So I, I said, "Are you going to charge
22 me for this?"

23 And he said, "No," so. And I left.

24 Q: So who actually vetted the legal motion you
25 filed?

1 A: The attorney's name?

2 Q: Yeah.

3 A: Steve Ouverson.

4 Q: Thank you. Did I ever say it was the intent
5 of myself or MIGPA ---

6 MS. GOLDING: YOUR HONOR, HE'S GOT TO
7 STOP LEADING THE WITNESS.

8 Q: Could you state the words I ever used, if any,
9 to attempt to take the property from -- any
10 property from IHOA?

11 A: You never said anything, that you were going
12 to take the property away. I don't remember
13 you ever saying that.

14 Q: Can you cite any words that I ever said which
15 would lead anyone to believe that I would try
16 to stop the existence of the IHOA?

17 A: No.

18 Q: Did I ever say anything along the lines that
19 -- what did I say regarding the IHOA's
20 authority to keep running the amenity center?

21 A: I, I don't recall.

22 Q: Who did I, who did I say owns the amenity
23 center?

24 A: What?

25 Q: In this context, did I ever say anything --

1 what did I say about who own -- whether the
2 IHOA or someone else owns the amenity center?

3 A: I, I can't recall.

4 Q: Can you recall any words where I said that
5 they didn't own the amenity center?

6 A: There was a lot of contents. I, I, I don't
7 recall. I, I do know that at one point --
8 what I do recall is you saying that you don't
9 want to disturb anything and you didn't want
10 to take anything away from what they were
11 currently doing.

12 Q: Thank you.

13 MS. GOLDING: NOTHING FURTHER, YOUR
14 HONOR.

15 THE COURT: ALL RIGHT. YOU MIGHT COME
16 DOWN. THANK YOU VERY MUCH
17 FOR COMING.

18 MR. BUTRYN: ALL RIGHT.

19 MR. JARMUTH: YOUR WITNESS.

20 MS. THOMPSON: YOUR HONOR, MS. AMBUHL IS
21 HERE FROM HTC.

22 THE COURT: ALL RIGHT. WE'RE GOING TO
23 TAKE HER OUT OF ORDER. I
24 BELIEVE YOU SAID YOU DID
25 NOT HAVE A PROBLEM WITH

1 TAKING HER OUT OF ORDER; IS

2 THAT CORRECT?

3 MR. JARMUTH: I BELIEVE THAT WE SHOULD

4 EXERCISE COURTESY THE OTHER

5 SIDE AND LET THEM DO WHAT'S

6 NECESSARY TO BE FAIR TO

7 THIS WITNESS.

8 THE COURT: THANK YOU.

9 DENISE AMBUHL, AFTER HAVING BEEN CALLED TO THE

10 STAND AND DULY SWORN, TESTIFIED AS FOLLOWS:

11 COURT REPORTER: WILL YOU STATE YOUR NAME

12 AND SPELL YOUR LAST?

13 MS. AMBUHL: DENISE AMBUHL, A-M-B-U-H-L.

14 DIRECT EXAMINATION

15 BY MS. THOMPSON:

16 Q: Can you please state your name for the record?

17 A: My name is Denise Ambuhl.

18 Q: And thank you for coming today. Where do you
19 live?

20 A: I live in Carolina Forest.

21 Q: And who's your employer?

22 A: My employer is HTC.

23 Q: And how long have you worked for HTC?

24 A: Almost sixteen years.

25 Q: And before you worked for HTC, did you work

1 for another cable company?

2 A: Yes, I did, Cox Cable in Myrtle Beach.

3 Q: What is your position with HTC?

4 A: Director of Business Services.

5 Q: And as the Director of Business Services, do
6 you assist with the International Club HOA,

7 HTC contract in any way?

8 A: I oversee the staff that support and sell
9 contracts of that nature.

10 Q: Are you familiar with the HTC International
11 Club HOA contract?

12 A: Yes, I am.

13 Q: I'm going to give you what's been marked as
14 Defendant's Exhibit Number 10. Is that the
15 contract?

16 A: This is the HTC and International Club
17 contract, yes.

18 MR. JARMUTH: YOUR HONOR, I'D LIKE THE
19 RECORD TO SHOW THIS IS ALSO
20 MY EXHIBIT 302.

21 THE COURT: AGAIN, PLEASE.

22 MS. JARMUTH: 302.

23 MR. JARMUTH: 302.

24 THE COURT: 302, OKAY.

25 MR. JARMUTH: 302.

1 Q: And is this a contract for bulk billing
2 services with HTC?

3 A: This is a contract between HTC and several
4 International Club HOAs for bulk billing
5 services for cable television.

6 Q: And can you explain what a bulk billing
7 arrangement is?

8 A: Certainly. Bulk billing occurs when a HOA
9 negotiates with the cable provider. One
10 hundred percent of the homeowners in the
11 community take the service at a significantly
12 reduced rate.

13 Q: And the contract is actually with the
14 Homeowners Association?

15 A: Yes, it is.

16 Q: And while you worked on this particular
17 account, did you have an occasion to talk to
18 any of the homeowners in the International
19 Club?

20 A: Yes. I've spoken with several homeowners in
21 the International Club on several different
22 occasions, one that comes to mind that's
23 relevant here is I've spoken with the
24 President, Mr. Bill Freiboth, about the
25 validity of the contract and several other

1 issues.

2 Q: And did you ever personally communicate with
3 Mr. Jarmuth who's here today?

4 A: I have never personally communicated with him.

5 Q: Has HTC had communications with Mr. Jarmuth?

6 A: Yes. Yes, we have.

7 Q: And do you know what Mr. Jarmuth's concerns
8 were regarding the International Club HOA HTC
9 contract?

10 A: I believe Mr. Jarmuth had several concerns,
11 one was the validity of the contract itself in
12 light of some Federal regulations, one was
13 relative to some rate regulation, and one was
14 relative to HTC's policy on capital credits.

15 Q: Is it your understanding that Mr. Jarmuth
16 claims that the HTC contract is invalid
17 because it contains non-compete language?

18 A: It is my understanding that he has interpreted
19 some language in the contract to be exclusive
20 language, which is specifically prohibited by
21 Federal Law.

22 MR. JARMUTH: OBJECTION. THAT CALLS FOR
23 A CONCLUSION ABOUT MY
24 INTENT.

25 THE COURT: I'M GOING TO LET HER ANSWER

1 IT. EVERYTHING ELSE HAS
2 COME IN. I'LL FIGURE IT
3 OUT WHEN WE GET TO IT.

4 Q: And, Ms. Ambuhl, can you take a look at the
5 HTC contract in Section 8?

6 A: You said Section 8?

7 Q: Yes, ma'am.

8 A: Interference?

9 Q: Yes. Does it specifically provide that owners
10 shall have the right to contract with third
11 parties for supplementary video and other
12 services so long as it does not interfere with
13 the company's right to provide service under
14 the agreement?

15 A: Yes, it does.

16 Q: So it specifically allows owners to contract
17 with third parties for services other than HTC
18 services; is that right?

19 A: That's right.

20 Q: And is it your understanding that an
21 exclusivity clause would prevent that from
22 occurring?

23 A: No. It's specifically documented in the
24 contract that it can occur, and also Federal
25 Law supports that it can occur.

1 Q: Right, but Mr. Jarmuth was arguing or his
2 concerns have to do with his belief that it's
3 an exclusive contract that would prevent
4 owners from contracting with third parties; is
5 that correct?

6 A: Could you repeat that, please?

7 Q: I'm sorry. Can you explain what an exclusive
8 contract is?

9 MS. GOLDING: IS THIS AN EXCLUSIVE
10 CONTRACT?

11 A: This is not an exclusive contract. There are
12 several provisions in here that allow for
13 third parties to be under contract with
14 individuals.

15 MS. AMBUHL: THIS IS SIMPLY A BULK
16 BILLING ARRANGEMENT, YOUR
17 HONOR, AND WHAT THAT
18 CALLS FOR IS ALL OF THE
19 HOA PARTICIPANTS, ALL THE
20 MEMBERS OF THE HOA, TO
21 SUBSCRIBE TO THESE
22 SERVICES. NOW, WHETHER
23 OR NOT THEY TAKE THEM IN
24 THEIR INDIVIDUAL HOMES IS
25 THEIR, THEIR OPTION;

1 HOWEVER, IT BILLS THE HOA
2 FOR A HUNDRED PERCENT
3 PARTICIPATION AT, AT VERY
4 DISCOUNTED RATES.

5 Q: Thank you. And there's also some questions
6 from Mr. Freiboth regarding the credit
7 allocations for the Homeowners Association
8 account; is that correct?

9 A: That's correct.

10 Q: And what did you communicate to Mr. Freiboth
11 regarding the credit allocations for the HOA
12 account?

13 A: I believe that the questions actually came
14 from Mr. Jarmuth relative to that issue.

15 Q: That came from Mr. Jarmuth, okay.

16 A: That came directly from Mr. Jarmuth, and our
17 CEO, O'Neil Miller, responded to him in
18 writing, but I am familiar with that response,
19 and that response was that HTC does allocate
20 capital credits. In the case of the HOA
21 accounts, the HOA is the customer. HTC's
22 policy is to allocate capital credits or
23 excesses in revenues according to lines of
24 business, so if the cable television line of
25 business had excess profits, excess revenues,

1 then the HOAs would receive that income back
2 in future years as allocated by the Board.
3 These communities had not received any
4 allocations for capital credits for cable
5 television. It has not been a profitable line
6 of business for HTC for those, for those
7 years.

8 Q: And I'm also giving you what's been marked as
9 Defendant's Exhibit Number 56. Is that an
10 email communication Mr. Freiboth explaining
11 that no credit allocations have been made to
12 the Homeowners Association?

13 A: Yes. That's exactly what this is, and this is
14 still consistent today.

15 Q: Thank you. And what about the rate increases
16 under the contract, what's allowed pursuant to
17 HTC's contract with the HOA?

18 A: The contract allows for rate increases to be
19 capped at seven percent per year. Now, that
20 increase is applicable for the cable
21 television rate itself. It is not applicable
22 for any taxes or Federal fees that HTC does
23 not control. There are several instances
24 during these contract years where HTC has
25 raised the rate between five and seven percent

1 consistent with the contract; however, Federal
2 fees, Horry County taxes and State taxes have
3 all gone up in the meantime. So the HOA may
4 have experienced a fee increase greater than
5 seven percent, but it is not a fee increase
6 greater than seven percent on the cable
7 television portion, which is allowed by the
8 contract.

9 Q: So the rate increases were consistent with the
10 HTC contract with the International Club?

11 A: Yes, they were.

12 Q: Okay. I have no further questions. Thank
13 you.

14 CROSS EXAMINATION

15 BY MR. JARMUTH:

16 Q: Ms. Ambuhl, are you familiar with the Bylaws
17 of HTC?

18 A: I am familiar with the Bylaws. I have not
19 read them in quite sometime.

20 Q: Isn't it a fact that the Bylaws of HTC provide
21 that the capital credit, whatever you call it,
22 refund would be based upon the percentage of
23 revenue HTC gets from an individual customer
24 rather than the profit it gets from that
25 particular customer's business?

1 A: I am not familiar with the HTC Bylaws to that,
2 to that level. What I do know is that HTC
3 uses the number one cooperative accounting
4 firm in the country and I'm sure that they are
5 very familiar and review our methodology on a
6 frequent basis.

7 MR.JARMUTH: I PROFFER TO THE COURT
8 THAT I HAVE READ THE HTC
9 BYLAWS EXCRUCIATINGLY
10 CAREFULLY AND THAT WAS
11 PROVIDED TO ME BY HTC
12 ITSELF, A DOCUMENT, WHEN
13 I REQUESTED IT, AND THAT
14 THE HTC BYLAWS PROVIDE
15 THAT THE BASIS OF THIS
16 PROFIT SHARING BUSINESS
17 IS BASED UPON PERCENTAGE
18 OF REVENUE. IF I GET ONE
19 PERCENT OF THE REVENUE, I
20 GET ONE PERCENT OF THE
21 PROFIT OR SOMETHING, HAS
22 NOTHING -- THERE'S
23 NOTHING IN THAT DOCUMENT
24 RELATING TO ---
25 THE COURT: YOU'RE NOW TESTIFYING.

1 SHE DOESN'T KNOW, OKAY?

2 SHE SAID SHE DIDN'T KNOW.

3 Q: What do you know personally about the fact
4 that or my alleged fact that the Bylaws say
5 nothing about profit?

6 A: I do not know anything personally about that
7 information.

8 Q: When you read the Bylaws, were you able to
9 find anything, which is relating to this
10 capital contribution profit thing, allowed or
11 provided for the division of the business into
12 lines of business?

13 A: I'd like to be clear that I do not have that
14 level of familiarity with the Bylaws. What I
15 do know is that we use an accounting firm that
16 has a high level of credibility, and the
17 methodologies that we use to divide our
18 capital credits and allocate them to the
19 membership are approved by that, that firm.

20 THE COURT: SO YOU DON'T KNOW?

21 MS. AMBUHL: I DON'T KNOW.

22 THE COURT: SHE DOESN'T KNOW.

23 MR. JARMUTH: YEAH.

24 Q: Now, your work involves primarily these cable
25 contracts; is that correct?

1 A: My work is broader than that. I'm the
2 Director of Business Services, so all business
3 sales, all residential door to door sales and
4 all bulk contracts are included in my work.

5 Q: Isn't it a fact that HTC has never given
6 customers in these bulk contracts any cable
7 contribution, any of this profit sharing
8 thing?

9 A: I do not know that to be fact.

10 Q: If HTC is not making a profit in the cable
11 business, do you have an answer as to why HTC
12 is in the cable business at all?

13 A: I can answer that, yes. HTC's mission is
14 different than a for profit corporation.
15 HTC's mission initially was to bring services
16 to the rural community that had no other
17 services available. That is why we entered
18 the cable television business.

19 Q: As the director of this line of business,
20 isn't it within your scope of authority to
21 make a recommendation, if appropriate, to HTC
22 to cease a line of business for which it's
23 making no profit?

24 A: If, if I saw fit to make that recommendation,
25 I certainly could. At my level of management,

1 I think it would require several additional
2 approvals.

3 Q: It's within your scope of your authority to
4 initiate such a recommendation; is that
5 correct?

6 A: I could not approve a recommendation. I could
7 certainly discuss a recommendation like that.

8 Q: Could you initiate such a recommendation?

9 A: If I saw fit to initiate that recommendation,
10 I could initiate it, yes.

11 Q: Now, does HTC distribute these capital profits
12 on telephone business?

13 A: If the cable -- if the telephone line of
14 business earns a profit, then yes, it would be
15 appropriate, and they would distribute the
16 capital credits.

17 Q: How many of the prior annual meetings of HTC
18 have you attended?

19 A: I have attended the last fifteen.

20 Q: Isn't it a fact that for every one of those
21 fifteen annual meetings, HTC announced to the
22 members that they were paying out these
23 capital profits on the telephone line of
24 business?

25 A: I don't think that each and every year we paid

1 out capital credits. I believe there was one
2 year in those fifteen where we did not.

3 Q: Which year was that, ma'am?

4 A: I do not remember.

5 Q: Was it within the last seven?

6 A: I do not remember.

7 Q: In connection with these annual meetings, does
8 HTC put out some sort of booklet normally with
9 a letter from the president?

10 A: Yes, we do.

11 Q: Isn't it a fact that at least since 2006,
12 every one of these booklets have announced
13 payment of such a credit for telephone
14 services?

15 A: Again, I, I do not know that to be fact. I
16 know that there was one year when we did not
17 pay. I do not know the year, so I cannot
18 testify that there -- within these sequence of
19 years that that occurred.

20 Q: Now, do you personally have telephone service
21 with HTC?

22 A: Yes, I do.

23 Q: Now, have you noticed within the last several
24 years receiving one of these profit things
25 from HTC?

1 A: Yes, I do receive them.

2 Q: Can you explain why the books of IHOA do not
3 reflect them ever receiving such a credit for
4 the telephone service they receive from HTC?

5 A: I absolutely cannot explain anything relative
6 to the HOA's accounting record.

7 Q: If you receive, have received in these years a
8 telephone, a telephone capital contribution
9 profit, is there any reason why other
10 subscribers would not have received the same?

11 A: My testimony is relative to the cable
12 television accounts with the HOA. I have no
13 knowledge of additional HOA accounts that may
14 include telephone service.

15 Q: Is your line of work encompassing of any
16 telephone services?

17 A: Yes, it does.

18 Q: Within your line of work encompassing
19 telephone services, do the telephone services
20 -- do these telephone services make a profit
21 now?

22 A: Yes, they ---

23 Q: Last year?

24 A: --- made a profit.

25 Q: How about last year?

1 A: Yes.

2 Q: How about the year before?

3 A: I believe so.

4 Q: How about 2007?

5 A: Again, I -- I'm not an accountant and I'm, I'm
6 not able to assure you that each one of these
7 years has made a profit.

8 Q: Is it your testimony at least some of those
9 made a profit?

10 A: That is true.

11 Q: Do you have any explanation of why a
12 particular customer out of all these customers
13 who seem to be eligible would not have
14 received it?

15 A: I'm not testifying that they did not receive
16 it. I'm simply testifying that the cable
17 television account associated with the HOA was
18 not eligible for capital credits for the
19 reasons that I've already described.

20 Q: Would the telephone services of the HOA have
21 been eligible for it?

22 A: They would be eligible if that line of
23 business made a profit during that year, yes.

24 Q: And was it your earlier testimony that the
25 line of business for telephone services did,

1 in fact, make a profit?

2 A: Yes.

3 Q: Now, you said previously that what you have is
4 a bulk services contract; is that what you
5 said?

6 A: That's right.

7 Q: And was it your testimony, you said, "The
8 contract was with several HOAs." Could you
9 name them?

10 A: Are you asking me to name every HOA that we
11 have a bulk services account with?

12 Q: Didn't I hear you say that the particular
13 contract that we're talking about here is with
14 several HOAs?

15 A: The bulk contract is right here in front of
16 me. It's with the International Club Master
17 HOA.

18 Q: Have you had frequent dealings with the
19 Defendant International Club HOA?

20 A: I have had infrequent dealings with them.

21 Q: Have you looked at the bills or communications
22 between you and HTC and the IHOA?

23 A: Could you repeat that?

24 Q: Have you ever looked at, do you have memory of
25 or recollection of any of the communications

1 between the International Club HOA and HTC?

2 A: Oh, yes.

3 Q: Have you ever seen on any of these documents
4 the name, International Club Master HOA?

5 A: Have I ever seen which document, please?

6 Q: Have you ever seen the other party to the
7 contract -- Have you ever seen on any of this
8 correspondence from the other people a
9 letterhead which said or a title under a name
10 which said International Club Master HOA?

11 A: I'm still a bit confused on what you're
12 asking, but I think that you're asking me
13 whether or not correspondence came under some
14 letterhead from the Master HOA.

15 Q: I believe you've testified that you recall
16 with precise recollection that you've seen
17 correspondence and you recall it was from me
18 by name. Can you state, by name, the names of
19 the correspondence you received from the other
20 side of that contract?

21 A: Mr. Bill Freiboth.

22 Q: And what capacity did he say he was acting in?

23 A: These correspondences were through a number of
24 years, so at one point he was simply a Board
25 member or maybe even a committee member, and

1 then, ultimately, I believe he was a Board
2 member and then perhaps the Board president,
3 if I'm recalling correctly.

4 Q: In the various capacities, what was the name
5 of the entity which he was a committee member
6 or a Board member or homeowner in?

7 A: I don't think I can state the legal name.

8 Q: Did he ever say he was a Board member,
9 committee member or homeowner in International
10 Club Master HOA?

11 A: I do not know that.

12 Q: Have you ever looked at the bills that HTC
13 sends out to this particular entity?

14 A: I don't know that I've seen a bill
15 specifically, no.

16 Q: Can you explain why all the bills to this
17 entity are made out to the International Club
18 HOA and not to the International Club Master
19 HOA?

20 A: I don't believe I can explain that.

21 Q: Can you explain why the International --
22 whether or not the International Club HOA gets
23 several bills for the same time period for the
24 cable services; for example, one for The
25 Meadows, one for Pebble Creek, one for The

1 **Lakes, one for The Highlands?**

2 A: I'm sure there's a reason for that, but I
3 don't know specifically outside of the fact
4 that my expectation would be since those
5 Homeowners Associations developed at different
6 times that there was some requirement or some
7 -- something that necessitated us creating
8 specific bills for specific HOAs within the
9 umbrella organization of the International
10 Club Master HOA.

11 **Q: Could you look again at the contract and look**
12 **at the provision which talks about roll-outs?**

13 **Take your time.**

14 A: Okay.

15 **Q: Could you please read that provision for The**
16 **Court?**

17 A: I believe you're talking about the one that
18 says, "These multiple dwelling units known as
19 International Club Master HOA, (the Premises),
20 and agrees that the services shall be made
21 available to a minimum of units, two thousand,
22 two hundred single-family residential units
23 and/or multi-family dwelling units on a roll-
24 out basis for future phases of the premises."

25 **Q: Now, I'd like you to reconcile what you**

1 previously said about separate HOAs with the
2 roll-out provision. That seems to say to me
3 that the same provisions apply to all the
4 houses in the HOA whether they're built or
5 unbuilt.

6 MS. AMBUHL: I DON'T KNOW THAT I CAN
7 RECONCILE THAT, YOUR
8 HONOR. THE CONTRACT
9 BEGAN IN 2003, AND THESE
10 HOAS DEVELOPED OVER A
11 LONG PERIOD OF TIME. I
12 THINK SOME OF THEM
13 WEREN'T EVEN A BILLED
14 ENTITY UNTIL 2007. I
15 DON'T THINK I CAN'T
16 RECONCILE THAT.
17 THE COURT: OKAY.

18 Q: Now, looking towards the back of that
19 contract, could you please look at the rate
20 schedule and provisions for the charges being
21 made to the other party to that contract?

22 A: Certainly.

23 Q: How many cost computation schedules or
24 figures, is there one or many?

25 A: There is one.

1 Q: Can you explain why the bill was, for example,
2 The Meadows, The Lakes, and Pebble Creek? If
3 I was to divide the bill by the number of
4 units, it comes out to significantly different
5 numbers.

6 A: I can explain that only in saying that HTC
7 made an error during its rate increases and
8 the error was in the HOA's favor.

9 Q: Could you explain why these discrepancies have
10 continued from 2000 -- actually, from 2000 --
11 from the year that the service began right
12 through 2011?

13 A: Absolutely, I can explain that. Again, the
14 contract binds us to only a seven percent
15 annual increase, so if we miss the opportunity
16 to increase the HOAs during a past year, we
17 certainly can't make it up in future years.

18 Q: Will you agree that there's supposed to be one
19 uniform rate for everybody under that
20 contract?

21 A: I would agree to that. There was supposed to
22 be a uniform rate. HTC has made some errors
23 in the HOAs favors.

24 Q: So you have no explanation why HTC chose to
25 have separate bills for different areas of the

1 neighborhood?

2 A: Again, I'm sure there was some necessity for
3 that. I do not know what it was.

4 Q: Now, do you bill the IHOA for cable services
5 to The Villas?

6 A: Yes, we do. I'm, I'm sorry, we do not bill
7 the International Club. The Villas -- let me
8 restate that. The Villas is not part of this
9 contract.

10 Q: Why not?

11 A: I'm sorry, I do not know.

12 Q: Doesn't it say in your contract that it's
13 going to be rolled out to all the several
14 thousand units eventually within the whole
15 area owned by the International Club Master
16 HOA or the areas which says it is the
17 authorized agent for?

18 A: It does say that, and as, as we all know, the
19 dynamics of the real estate market are, are
20 very, very -- they, they change frequently and
21 I'm sure that when The Villas became an entity
22 that there was some reason why they were not
23 included here, but I'm not sure what it is.

24 Q: Could you explain why The Cambridge multi-
25 family unit within the HOA is also not billed