THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

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SC Court of Appeals

J. C. Nicholson, Jr., Circuit Court Judge

Trial Case No.'s 2009-CP-08-1068, 2009-CP-08-3916,
2009-CP-08-1413, 2008-CP-08-2714
Appellate Case No. 2014-002390

THE OAKS AT RIVERS EDGE PROPERTY OWNERS ASSOCIATION, INC., JOHN E. ATKINSON, JOAN D. STRANDQUIST, JOSEPH E. CHIOVAROU, JR., PEYTON H. COOK, JR., BRENDA COOK, JOHN W. EDELEN, KAREN A. NELSON, ROBERT J. GRAHAM, MAUREEN S. GRAHAM, NANCY K. JOHNSON as trustee for the Nancy K. Johnson Revocable Trust, WILLIAM JUNG, CHARLES MARAZITI, PATRICIA MARAZITI, GEORGE S. POLLARD, ELEANOR J. POLLARD, ROBERT REECE, GERARD M. RUVO AND SUE S. RUVO as trustees for the Ruvo 2006 Living Trust, CAROLYN M. JENNINGS, THOMAS EDWARD KEANE, EDWARD WALLACE BARR, III, RICHARD B. PEKRUHN, PAULINE PEKRUHN, MATTHEW J. SEVERANCE, and ELIZABETH ASHLEY PHILLIPS SEVERANCE,

Respondents,

v.

DANIEL ISLAND RIVERSIDE DEVELOPERS, LLC, and CARRIAGE HILL ASSOCIATES OF CHARLESTON, LLC,

Appellants.

RECORD ON APPEAL
Vol. III of VI

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1 member, would have been privy to any of that information;
2 correct?
3 A. Yes, I guess I would have. Yeah.
4 Q. Was there anything, that you're aware of, known
5 by Carriage Hill or Daniel Island Riverside Developers,
6 during the developer-control period, that was not then
7 given to subsequent board members? Any information about
8 the construction or problems that existed?
9 A. I have no knowledge of that.
10 Q. In 2006, you and your wife moved into the
11 Renaissance building?
12 A. Yes, that's correct. Yes.
13 Q. Did you rent there beforehand, before you
14 purchased your unit?
15 A. No, we just purchased it and moved in.
16 Q. Can I ask you how much you paid for the
17 Renaissance building?
18 A. $1,100,000.
19 Q. And correct me if I'm wrong. I apologize if --
20 That's the same price you originally listed your
21 unit for on Daniel Island, wasn't it?
22 A. That's what they told me it was worth. Yes. I
23 took the advice of my broker, Angela Black.
24 Q. I think we spoke about Ms. Black yesterday.
25 A. I believe you did.

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1 Q. Did she inform you that she had also owned units
2 out on that -- in that development?
3 A. She never did inform me of that, but I learned
4 of it.
5 Q. So before you moved in -- or at the time you
6 closed, you were going to turn around and sell your unit
7 and in 2006 you were informed by your real estate agent,
8 Daniel Island --
9 Was that Daniel Island Real Estate?
10 A. Daniel Island Real Estate. Yes.
11 Q. -- Mr. Jung, that your unit was worth 1.1
12 million dollars?
13 A. That's what she told me.
14 Q. Eventually, though, you did not list it for that
15 price, did you?
16 A. No. We dropped it down. There was absolutely
17 no interest at that price, so we dropped it several times
18 and I believe we ended up at about 800,000.
19 Q. I believe it was 899,99. Does that seem about
20 right?
21 A. That could be correct, yeah.
22 Q. But that didn't have anything to do with any
23 disclosure of any construction defects --
24 A. No, I --
25 Q. -- for the lowering of that price, did it?

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1 A. No. I didn't -- she never presented me with a
2 document that a later real estate broker did, the
3 disclosure statement. I had no knowledge that that was a
4 requirement. She never presented the form or discussed it
5 with me.
6 Q. And how long was that listing agreement with Ms.
7 Black, that I believe has been marked as an exhibit? Do
8 you recall?
9 A. I believe it was for six months and it expired
10 sometime that fall of 2006.
11 Q. So though she told you the market value was 1.1
12 million, you listed it at right around 900 and you still
13 didn't get any offers on the property?
14 A. That is correct. Not a single offer.
15 Q. The property that you actually moved into at the
16 Renaissance, that you paid 1.1 million, are you aware that
17 there were construction defects at the Renaissance when
18 you purchased your unit?
19 A. Yes. They were completely visible. The
20 building was surrounded by scaffolding and work was in
21 progress.
22 Q. Okay. So at that time that you saw the
23 Renaissance, while it was in breakdown mode,
24 so to speak --
25 Would that be a good term for it?

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1 A. Yes, it certain would.
2 Q. -- y'all choose to go ahead and purchase in that
3 building, even though you knew that there were
4 construction defects on that property?
5 A. That is correct.
6 Q. And was the reason that you purchased was -- did
7 somebody tell you that all the problems there were being
8 fixed?
9 A. Yes. The broker and, of course, my son's in-
10 laws, who lived in the building, all told us that the
11 construction defects were being repaired by the original
12 builder at his expense and that we might anticipate, once
13 the repairs were completely made, that the value of the
14 property would be even higher.
15 Q. And Mr. Donato told you the same thing about the
16 property on Daniel Island?
17 A. According to his appraisal, yes.
18 Q. So if he -- if the fixes and repairs are made,
19 then the value -- there will be no lost value. Is that
20 your understanding?
21 A. That's my wish. I hope that's going to be
22 correct, yes.
23 Q. Has that occurred at the Renaissance?
24 A. No. The opposite.
25 Q. Has it gone down in value?

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1 A. It's gone down in value.
2 Q. And is that because of the economic impact to
3 the Charleston area?
4 A. That is correct.
5 MR. MAYBANK: All right. Just a few more
6 questions.
7 Q. [Mr. Maybank] You sat on the board. Did you
8 attend any meetings with Ted Padgett?
9 A. Yes. A number of them.
10 Q. Mr. Behringer?
11 A. Yes.
12 Q. More than one, wasn't it?
13 A. Oh, yes. Numerous. We would meet every two
14 weeks.
15 Q. And that was for at least a two-year time frame?
16 A. I would say roughly a two-year time frame, yeah.
17 Q. And how about Jerry Rumplick? Do you know
18 Jerry?
19 A. Yeah. I believe he was an assistant to Rich
20 Behringer. He was a construction man. He was also from
21 Long Island.
22 Q. Do you see him in the courtroom?
23 A. With my eyesight, no.
24 Q. Okay. I understand.
25 How about Bob Behringer? Did you ever meet with

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1 Bob, as well?
2 A. Oh, yeah. Yes. Just a couple of times.
3 Q. And so during the time that you were on the
4 board, Carriage Hill Associates and Daniel Island
5 Riverside Development actively participated in trying to
6 assist the homeowners in fixing the problems that were out
7 there, didn't they?
8 A. That was the initial thrust of our endeavors.
9 They were trying to fix it, and we were trying to get them
10 to fix it.
11 Q. Are you aware that they also turned to their
12 subcontractors, who sold them the product and also
13 installed different components on the building, to try to
14 get them to assist in assisting in the repair and
15 remediation of the problems?
16 A. Yes. Rich Behringer told us that he was making
17 those attempts.
18 Q. Are you familiar with whatever happened with
19 those attempts? Were they successful, or did they fail,
20 or do you know?
21 A. I don't know.
22 Q. Okay. My understanding from your testimony is
23 that progress was made in dealing with my clients in that
24 y'all stabilized the parapets, the roof issues, which I
25 believe -- did you ever meet with a Mike Parker?

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1 A. I'm not sure.
2 Q. Sutton Carolyn [phonetic] and Associates and
3 a water intrusion engineer?
4 A. I don't recall meeting him, no.
5 Q. It's not that he wasn't there, you just don't
6 recall possibly meeting --
7 A. I'm not sure. There were several occasions
8 where Mr. Behringer would bring some person into the
9 meeting, but I'm not sure just who it was.
10 Q. But they did, over those years and over those
11 meetings, try to address and fix the problems as were
12 being brought to their attention by the homeowners
13 association?
14 A. I would say some of them, yes; some of them, no.
15 Q. On the balustrades and the bannisters, do you
16 recall whether or not there was a scope of work or
17 remediation fix that was agreed to and presented to the
18 board?
19 A. We did not agree to it. I recall that there was
20 a proposal, but we did not agree to it.
21 Q. And it was their attempt to try to present
22 something to the board to fix whatever problems existed
23 with those issues?
24 A. Yes. It was presented for that purpose.
25 Q. And they presented fixes and repairs to the roof

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1 problems?
2 A. Yes.
3 Q. They tried to present them -- present, to the
4 homeowners association, repairs to the window issues?
5 A. Yes, they did.
6 Q. Were you ever made aware, as a homeowner or a
7 board member, that eventually at some point the windows
8 were deemed to have been manufactured defectively?
9 A. Yes, I was -- certainly was. The actual testing
10 of the windows was conducted in my unit and I was present
11 when that was taking place.
12 Q. Were you -- I believe it was your units, and
13 other units, had water testing done to them; correct?
14 A. Yes. They -- I think the principle -- the
15 testing was done in my unit.
16 Q. And as president --
17 THE COURT: Mr. Maybank, hold on just a second,
18 please.
19 MR. MAYBANK: Yes, sir.
20 [Off the record momentarily]
21 THE COURT: Okay. Mr. Maybank, you may proceed.
22 Q. [Mr. Maybank] Mr. Jung, we've talked about
23 different mediations and plans and proposals. As to the
24 water testing that was done on your windows, would you
25 agree with me that Carriage Hill Associates of Charleston

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1 hired and paid for the experts who did the water testing
2 on your windows?
3 A. Yes.
4 Q. They were as curious as the homeowners
5 association, were they not, as to why the windows were
6 failing at these -- on these buildings, weren't they?
7 A. We all were. Yes.
8 Q. At some point, the determination was made as to
9 the failure and the cause; correct?
10 A. That is correct.
11 Q. And you understand that my client didn't
12 manufacture the windows, don't you?
13 A. I do -- I understand that, yes.
14 Q. They didn't design them?
15 A. No.
16 Q. And in terms of the installation, that was also
17 done by other subcontractors that were not employed by my
18 client?
19 A. Yes. That's correct, yeah.
20 Q. Do you remember what the warranty was provided
21 for, when you purchased the unit, as to the plumbing or
22 the electrical or the appliances that were in your unit?
23 A. I believe that he warranted everything for a
24 period of one year. I never saw a written warranty on
25 anything.

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1 Q. So you don't know if it might be in your sales
2 contract or contract to purchase?
3 A. I believe it is, yes.
4 Q. Would you agree with me that these bills that
5 you're asking to be paid -- and these are Exhibit 118-P,
6 as in Peter -- are dated in 2011, 2013, and 2012, at least
7 six to seven years after you have closed on your unit?
8 A. I am aware of that, yes.
9 Q. That would make that outside the warranty time
10 for my client, wouldn't it?
11 A. It would make it outside of the original
12 warranty period, yes.
13 Q. Did you ever deal with a Meggan Crocker?
14 A. A Meggan? Yes. Yeah.
15 Q. Did she assist you in making warranty claims to
16 the window manufacturer?
17 A. No. Not to the window manufacturer, no.
18 Q. Did she assist you in making warranty claims?
19 A. Yes.
20 Q. Okay. Did she submit those to third parties, or
21 were those warranty claims processed and repaired for
22 [phonetic] by Carriage Hill or Daniel Island?
23 A. Both.
24 Q. At any time did Meggan, as an employee of
25 Carriage Hill, ever tell you that she or they would refuse

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1 to do any of the warranty work that you asked for?
2 A. She never refused it, no.
3 MR. MAYBANK: Mr. Jung, thank you very much.
4 THE COURT: Any redirect?
5 MR. MCDONALD: Very brief.
6 REDIRECT EXAMINATION
7 BY MR. MCDONALD:
8 Q. Mr. Jung, did you ever make warranty claims that
9 arose out of somebody else's unit you didn't know?
10 A. No.
11 Q. You didn't make any warranty claims when
12 somebody else's pipe burst in the wall --
13 A. Oh.
14 Q. -- in their unit?
15 You didn't make a warranty claim for something
16 that was outside of your unit?
17 MR. MAYBANK: Objection. Leading the witness.
18 A. No. I didn't understand the question.
19 Yes, I made a warranty claim --
20 THE COURT: I'll let him lead for a while.
21 MR. MAYBANK: Thank you.
22 A. I made a warranty claim because of damage that
23 had occurred in another unit and came into mine.
24 Q. [Mr. McDonald] Inside the walls; right?
25 A. Inside the walls. Yes, sir.

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1 MR. MCDONALD: Thank you, sir.
2 THE COURT: Any recross?
3 MR. MAYBANK: None, Your Honor. Thank you.
4 THE COURT: You may step down. Be careful
5 stepping down. Thank you very much.
6 [Whereupon, Mr. Jung is excused and exits the
7 witness stand]
8 MR. MCDONALD: Your Honor, I'm just going to get
9 that --
10 THE COURT: Move that thing out of his way, if
11 you would, that poster or whatever you call it.
12 Poster paper.
13 Call your next witness, please.
14 MR. MCDONALD: Plaintiff would call Mr. Robert
15 Reece.
16 [Whereupon, Mr. Reece comes forward]
17 [Whereupon, Mr. Reece is duly sworn by the clerk
18 of court as follows: do you swear or affirm that your
19 testimony will be the whole truth and nothing but the
20 truth, so help you God]
21 THE WITNESS: I do.
22 THE CLERK OF COURT: State your full name and
23 spell your last name.
24 [Whereupon, Mr. Reece takes the witness stand]
25 THE WITNESS: My name is Robert Reece. Last

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1 name, R-E-E-C-E.
2 MR. MCDONALD: Mr. Reece, how are you doing this
3 afternoon?
4 THE WITNESS: Afternoon. Good. Thank you.
5 - - - - -
6 ROBERT REECE,
7 Having Been First Duly Sworn,
8 was Examined and Testified as Follows:
9 DIRECT EXAMINATION
10 BY MR. MCDONALD:
11 Q. Mr. Reece, would you state your address for the
12 record, please.
13 A. My address is 1327 Deep Water Drive, Mount
14 Pleasant, South Carolina.
15 Q. Okay, sir. Where are you from?
16 A. I am from Montgomery, Alabama.
17 Q. And born and raised in Montgomery, Alabama.
18 A. Born and raised in Montgomery, Alabama.
19 Q. And where did you go to school?
20 A. I did not go to college. Finished Sidney Lanier
21 High School in 1973.
22 Q. In Montgomery?
23 A. Yes.
24 Q. And on what occasion did you have to move from
25 Montgomery, Alabama?

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1 A. I was employed in the heating and air-
2 conditioning industry, working for a wholesaler, and moved
3 to a couple of locations: Selma, Alabama, for a while,
4 and Pensacola, Florida.
5 Q. And how long did yo live in Pensacola, Florida?
6 A. Two years, two and a half years.
7 Q. And are you married, Mr. Reece?
8 A. I am not.
9 Q. And where -- on what occasion did you have to
10 locate to Charleston, South Carolina?
11 A. I was hired by Lenox Industries in Atlanta,
12 Georgia, as an account representative in the Charleston
13 area and I moved to Charleston in 1987.
14 Q. And working for Lenox?
15 A. Working for Lenox.
16 Q. And what did you do for Lenox?
17 A. A sales representative for them, representing
18 the eastern part of -- eastern -- coastal part of South
19 Carolina.
20 Q. And what does a sales representative do?
21 A. Call on heating and air-conditioning contractors
22 to try to get them to use the Lenox product, sell it, work
23 with them on marketing programs, calling architects and
24 engineers. Same thing. Trying to get the product
25 specified.

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1 Q. And how long did you work there?
2 A. Worked there from 1987 until sometime in 1991.
3 Q. What did you do in 1991?
4 A. 1991, I became a partner with Pardee Heating and
5 Air-Conditioning in Charleston.
6 Q. Okay. Still in the HVAC business?
7 A. Still in the HVAC industry.
8 Q. And how long were you with Pardee?
9 A. Until 1996.
10 Q. And what did you do then?
11 A. 1996, we sold the company to a national company
12 called Service Experts and I was hired by Service Experts
13 to be their regional manager for the southeastern United
14 States.
15 Q. So still in the HVAC business?
16 A. Still in the HVAC industry.
17 Q. And how long were you with them?
18 A. I was with them until 2001. No. Yeah, 2000.
19 Q. And are you in Charleston this whole time?
20 A. No. I moved to -- relocated to Nashville,
21 Tennessee, and I had the responsibility for I think
22 thirty-three locations in nine states.
23 Q. And in 2001, did you find yourself back in
24 Charleston?
25 A. 2001, I missed Charleston and I moved back to

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1 Charleston. Quit that job and didn't do anything for
2 about six months.
3 Q. And then what did you get into?
4 A. I got into the commercial real estate business.
5 Q. And what aspects of the commercial real estate
6 business?
7 A. Sales, leasing, and doing some development work.
8 Q. In the commercial rather than the residential
9 setting?
10 A. Strictly commercial.
11 Q. And what type of -- are you currently still
12 employed doing that?
13 A. I am.
14 Q. And what do you do, just briefly, in that field?
15 A. As I said, sales. Third-party brokerage work,
16 sales for clients, and leasing for clients that own
17 properties. And I've acquired some of my own properties
18 over the years and do some leasing for those and
19 management.
20 Q. Do you work for yourself?
21 A. I am an independent contractor, yes.
22 Q. And on what occasion did you have to find out
23 about -- hear about and get involved with The Oaks, which
24 bring us here today?
25 A. You know, I honestly don't recall exactly how I

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1 found out about the property. It may have been through a
2 newspaper ad. I'm not sure. But I ended up inquiring
3 about the property, and subsequently decided to move
4 forward with a purchase, and entered their so-called
5 lottery.
6 Q. And I'll hand you what's been marked as 121-A.
7 Is that --
8 THE COURT: What number?
9 MR. MCDONALD: 121-A. Your Honor, it's --
10 THE COURT: Okay.
11 MR. MCDONALD: I'm not going to move it into
12 evidence. It's this.
13 THE COURT: Just you can refer to it for the
14 record. I believe it's what, 134? The same thing?
15 MR. MCDONALD: 143.
16 THE COURT: 143. Okay.
17 Q. [Mr. McDonald] Do you recognize that document,
18 sir?
19 A. I do.
20 Q. And was this document presented to you prior to
21 you making your decision to purchase at The Oaks?
22 A. It was.
23 Q. Did you rely on it in making your decision?
24 A. I did.
25 Q. Ultimately, you said you entered into the

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1 lottery?
2 A. Yes.
3 Q. And how did that process work?
4 THE COURT: We heard the lottery before. Let's
5 go on, move on, okay? I don't need --
6 Q. [Mr. McDonald] Did you get --
7 THE COURT: -- to hear about the lottery again.
8 A. Yeah, I ended up --
9 Q. [Mr. McDonald] Did you win the lottery?
10 A. Yeah, I won the lottery all right.
11 Q. And at some point after deciding -- or finding
12 out that you had won the lottery and were going to move
13 into The Oaks, what unit did you end up purchasing?
14 A. Unit 4-B in building five.
15 Q. I'll hand you what's been marked as Plaintiffs'
16 Exhibit 121, ask you if you recognize that.
17 A. It looks like a record of the deed. And it is
18 the deed behind it.
19 Q. That's your deed when you bought it; right?
20 A. Correct.
21 MR. MCDONALD: I would move 121 into evidence.
22 THE COURT: Any objection?
23 MR. MAYBANK: No objection.
24 THE COURT: 121 admitted without objection.
25 [Whereupon, Plaintiffs' Exhibit Number 121 is

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1 admitted into evidence by the Court]
2 Q. [Mr. McDonald] And your purchase price was
3 $716, 850; correct?
4 A. That is correct.
5 Q. And for what purpose did you purchase The Oaks?
6 Were you going to move in there?
7 A. Yes. I purchased --
8 Q. You were going to live there?
9 A. I purchased it to live in and did, in fact, live
10 there for about five years.
11 Q. And upon moving in, did you have an opportunity
12 to serve on the board?
13 A. Yes.
14 Q. And why did you decide to serve on the board?
15 A. Well, it became evident pretty quickly that
16 there were some problems with the property and I thought
17 given some of my background in the construction-related
18 trades that I might be of some assistance. And having
19 done some development work.
20 Q. So when the board was handed over to the
21 individual homeowners, you were on that first board?
22 A. That's correct.
23 Q. And it was your intention to try and help out
24 with some of the problems that at least y'all knew about
25 at that point?

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1 A. Correct.
2 Q. Okay. And did you, in fact, do that? Did you
3 try and work through those problems?
4 A. We tried our best.
5 Q. And how long did you serve on the board?
6 A. From 2006 I think until 2010 or through 2010.
7 And I think I came off in -- I think I came off the board
8 in January of '11.
9 Q. So did you -- there's been a lot of testimony in
10 this courtroom about whether or not the developer was
11 going to fix things and whether or not you-all were
12 working with the developer. Were you involved in that
13 process?
14 A. Very much.
15 Q. Can you explain or just tell the Court what your
16 testimony is on how that process went, what your version
17 is, how it was to work with Carriage Hill?
18 A. Well, I think it's already been described as
19 pulling teeth, and I would put that -- say that was mild.
20 It was a struggle the whole way. Yes, they made some
21 attempts to try to fix some of the problems that were
22 identified, but a lot of problems they just refused to
23 fix. For instance, the elevator pit in building number
24 one, it still leaks water, to my knowledge. You have
25 rusty equipment in there that's rusting in a 50,000-dollar

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1 elevator. They just refuse to do anything about that.
2 Q. And did they give you a reason why they refused
3 to fix that issue?
4 A. No. They just refused to do it.
5 Q. What about other things that they wouldn't fix?
6 Did they give you a reason why they refused to do that?
7 A. Well, you know, for instance, the windows and
8 the doors: they just -- you know, I sat in a meeting --
9 we had numerous meetings at my office over, as Mr. Jung
10 testified, I think a two-year period. And we tried to
11 identify items, come up with a plan, and then check
12 progress in a couple of weeks. And some of the things we
13 made some progress on, but some things we just did not,
14 like the windows and the doors.
15 And I can't tell you the date of the meeting,
16 but I remember a very specific meeting at my office. I
17 was -- not in the normal conference room with everybody
18 else. I was in a smaller conference room with Mr. Bob
19 Behringer. And when it was apparent, after testing had
20 already been done, that the windows leaked, I asked him,
21 are you going to replace these windows. He avoided
22 answering the questions and I had to badger him and press
23 him to say these windows are judged defective; are you
24 going to replace these windows. He eventually said, yes,
25 of which, of course, they eventually refused to do.

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1 Q. And what building was your unit in?
2 A. Building five.
3 Q. And in building five -- they pulled the stucco
4 off the back of building five, didn't they?
5 A. That's correct.
6 Q. And that was during the time you -- the board
7 was working with them; right?
8 A. Correct.
9 Q. And that was -- how did that process go, in that
10 the board working with them, in trying to do a remediation
11 of building five?
12 A. Well, it was -- my unit was affected. And they
13 built a temporary wall on the inside while they took the
14 windows out. They didn't replace the windows with new
15 windows. They took the windows out and reworked that
16 opening and put the same windows back. But they built a
17 temporary wall on the inside, with plastic up, to try to
18 not make such a mess and be so intrusive on my life. But,
19 you know, there was dust throughout the whole house and I
20 just had to deal with that for quite a while.
21 Now, once they got the windows replaced, the
22 back of the building was still left exposed and they
23 covered it with plastic, but you can imagine in a wind
24 storm what that plastic sounded like flapping.
25 Q. Was this just where they just had the plastic up

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1 for a couple of weeks?
2 A. They just had plastic up there, I don't know, it
3 was probably nine months to a year.
4 Q. They had the plastic covering the back of the
5 building --
6 A. Just plastic covering the back of the building.
7 Q. -- for nine months to a year?
8 A. Yes.
9 Q. And that's when the homeowners association was
10 trying to get them to do something to fix these things?
11 A. Yes.
12 Q. And that's building five; right?
13 A. Building five.
14 Q. Do you know whether or not building five, as it
15 sits today, has to be repaired, that back side?
16 A. It -- to my -- well, I understand -- now, I --
17 they put the back of building five -- finally put it back
18 together. Again, did not replace the windows. Put the
19 same defective windows back in.
20 Q. So they put the same defective windows back into
21 the building?
22 A. Correct.
23 Q. Now, did there come a point in time when the
24 board could not -- could no longer work with Carriage Hill
25 as to what they were proposing?

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1 A. Yes.
2 Q. What happened then? Why did that come about?
3 A. Well, it just kind of built up for a number of
4 things. I mean, dealing with the roof, dealing with the
5 air-conditioning units not being tied down, which they did
6 eventually tie those down. But the roof, it's my
7 understanding, never did ever meet code. We allowed them
8 -- it didn't have enough slope, but we allowed -- and then
9 we had water standing on the roofs. They did some work on
10 it. They tapered the roof some, so that the water
11 wouldn't puddle as bad. The roof didn't meet the
12 manufacturer's criteria for a proper installation because
13 it didn't have enough fasteners at the proper spacing. So
14 they finally did come back and agree to do that. You
15 know, and that's the roof.
16 But when it got to the windows, the doors, when
17 it came to the balustrades and the railings that were
18 rotting and becoming dangerous, they were not willing to
19 do anything else on those.
20 Q. Did they ever do a fix that you felt like, as a
21 board member or an individual owner, was up to the
22 standard of what you bought?
23 A. Absolutely not.
24 Q. Did you ever see a single repair that was done,
25 when you-all let Carriage Hill do a repair, that was up to

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1 the standard that you thought, this is exactly what it
2 should have been before, this is what I was expecting to
3 purchase?
4 A. No.
5 Q. You don't live at The Oaks anymore, do you, sir?
6 A. I do not.
7 Q. This is on the back side of Exhibit 121, which
8 is already in evidence. Do you recognize this portion of
9 121?
10 A. This is the deed where I transferred the
11 property to the purchaser in January of -- January 4th,
12 2012.
13 THE COURT: Any objection to 121-G, which is the
14 deed?
15 MR. ALTMAN: No, sir. None.
16 THE COURT: 121-G admitted without objection.
17 [Whereupon, Plaintiffs' Exhibit Number 121-G is
18 admitted into evidence by the Court]
19 Q. [Mr. McDonald] And, sir, what was your sales
20 price?
21 A. $377,000.
22 Q. There were some questions earlier, sir --
23 And this was January 6h, 2012?
24 A. January 4th, 2012.
25 Q. Have you hired the services of Mr. Donato?

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1 A. I did.
2 Q. Okay. And are you relying on his testimony as
3 to determine what individual damages you may have suffered
4 in this lawsuit?
5 A. Yes.
6 Q. Now, there were some questions earlier, sir,
7 about this warranty -- warranty claims that you might be
8 able to make to a developer, when you're an owner, or
9 Carriage Hill. Are you familiar with that process, the
10 warranty claim forms?
11 A. Yes.
12 Q. And how did that work? Did you make a warranty
13 claim and put on there what was the problem and they would
14 come in and fix it and it would just be the end of it
15 right there? Is that your experience of how it goes?
16 A. Some of the very small items, yes. But, I mean,
17 there were -- there began to be so many -- you know, early
18 on after I bought, you know, I wouldn't even fill out a
19 warranty claim form. I would just call them and tell them
20 I have a problem and they would come fix it. But I think
21 when the claims became so numerous from all the
22 homeowners, in order for them to organize their procedure
23 and make sure they took care of everything, they came up
24 with a form.
25 Q. And I will hand you what has been marked

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1 Plaintiffs' 121-B, 121-C, 121-D and 121-E. And let's
2 start with the first one. Do you recognize that document?
3 A. I do.
4 Q. What do you recognize it to be?
5 A. It is warranty claim form -- I don't know when
6 it was submitted. It's not signed. They must have typed
7 it up themselves.
8 Q. And it deals with tile on the threshold under
9 the shower door is cracked; if not repaired, it can cause
10 a leak in the unit below.
11 A. That's correct.
12 Q. And did you fill these out -- these warranty
13 claim forms out?
14 A. I did not fill this one out because it's typed
15 and it was -- I'm sorry. There is a date. No, that was
16 the closing. I closed in June of 2006, so this was
17 sometime subsequent to that.
18 Q. So did you offer a -- or did you call them up
19 and tell them what the warranty was and then they typed
20 this out?
21 A. I would assume that. I didn't fill it out.
22 Q. But you don't know?
23 A. I don't know.
24 Q. You don't know. Okay.
25 Here is -- I'll hand you -- 131-C you've got in

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1 front of you?
2 A. Correct.
3 Q. And this is another warranty claim form; right?
4 A. February of 2007. Correct.
5 Q. Is that your signature?
6 A. It is.
7 Q. And it says the stucco wall is cracked on your
8 front porch?
9 A. Correct.
10 Q. And do you know whether or not they fixed the
11 stucco problem pursuant to this warranty claim form?
12 A. They did come back and put another coat over it,
13 yes.
14 Q. So they patched the crack?
15 A. That's my opinion, yes.
16 Q. Now, the next one is 121-D?
17 A. Okay.
18 Q. This is another warranty claim form?
19 A. Correct. Dated July -- excuse me -- August
20 2006. [Reading] Hardwood floors are beginning to separate
21 in the dining room in three places.
22 Q. So hardwood floors are beginning to separate;
23 right?
24 A. Correct.
25 Q. Take a look at 121-E. Do you recognize this

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1 document?
2 A. Yes.
3 Q. What do you recognize it to be?
4 A. From Daniel Island Riverside Developers. It is
5 a notice to me -- let's see.
6 [Whereupon, the witness reviews documents]
7 A. This is about the sound transference issues, the
8 fact that they hired an acoustical engineer and conducted
9 tests.
10 Q. [Mr. McDonald] And it's dated January 31st,
11 2007; correct?
12 A. That's correct.
13 Q. And it says: we have reviewed the findings and
14 are not satisfied with the test results between floors in
15 certain areas of the homes. Right? Second paragraph.
16 [Whereupon, the witness reviews documents]
17 A. Yes.
18 Q. [Mr. McDonald] Did they ever tell you that
19 their findings were -- initially, that it didn't meet
20 code?
21 A. No.
22 Q. Did they ever tell you that their only goal was
23 to bring it up to the minimum standard? While they were
24 going to move you out and do all these things, they were
25 just going to make it meet the building code? Did they

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1 ever tell you that?
2 A. No.
3 MR. MCDONALD: I would move 121-B through 121-E
4 into evidence.
5 THE COURT: Any objection?
6 MR. ALTMAN: No objection.
7 THE COURT: B, C, D and E, 121, admitted without
8 objection.
9 [Whereupon, Plaintiffs' Exhibit Number 121-B is
10 admitted into evidence by the Court]
11 [Whereupon, Plaintiffs' Exhibit Number 121-C is
12 admitted into evidence by the Court]
13 [Whereupon, Plaintiffs' Exhibit Number 121-D is
14 admitted into evidence by the Court]
15 [Whereupon, Plaintiffs' Exhibit Number 121-E is
16 admitted into evidence by the Court]
17 MR. MCDONALD: Beg the Court's indulgence.
18 [Whereupon, Mr. McDonald and Mr. Bundy confer]
19 Q. [Mr. McDonald] Let me ask you this on that last
20 question. If all you would have -- if all you would have
21 known -- if you would have known that they were only going
22 to bring it up to the minimum building code, would you
23 have went through this whole process in going through the
24 sound remediation if that's all they were trying to
25 accomplish?

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1 A. Probably not, you know, because I've been in
2 apartments before and these, as they're built, are nothing
3 more than a basic apartment is built where you can hear
4 everything that goes on above you and below you. So, no,
5 I would not have gone to that trouble.
6 Q. Did you have to put rugs down, after that,
7 throughout --
8 A. I put rugs down all over my house, and wore
9 socks most of the time instead of my shoes, so that I
10 didn't cause any noise to people below me.
11 Q. Did you upgrade when -- did you get the upgrade
12 package?
13 A. I upgraded a number of things.
14 Q. Did you upgrade any of the floors or did you
15 just get the wood floors --
16 A. No, I --
17 Q. -- that they gave you?
18 A. Well, they were would floors. They were cherry
19 floors.
20 Q. So you did upgrade to the cherry package?
21 A. I did. I did.
22 Q. And so you upgraded to the cherry package on the
23 floors; right?
24 A. That's correct.
25 Q. And what ended up happening was you put rugs

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1 over the whole flooring?
2 A. Over most of it.
3 Q. In 2012 you sold, sir, for $377,000?
4 A. That's correct.
5 Q. And why did you sell?
6 A. Just got tired of dealing with the B.S. with the
7 contractors, things not getting done, a trial that just
8 continued to drag on, all the continuances. And,
9 fortunately, I was in a position just to realize I made a
10 huge mistake getting into -- purchasing from a group that,
11 in my opinion, didn't know what the hell they were doing.
12 So I was able to take the loss. I took a loss of $420,000
13 cash and left and bought another house.
14 Q. And that's why you've hired Mr. Donato to figure
15 out what, if anything, you're entitled to; correct?
16 A. That's correct.
17 MR. MCDONALD: Thank you very much, Mr. Reece.
18 That's all I have.
19 THE COURT: Cross-examination.
20 MR. ALTMAN: Mr. Reece, we've met before. I'm
21 Charles Altman, representing Daniel Island Riverside
22 and Carriage Hill.
23
24 - - -
25 - - -

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1 CROSS-EXAMINATION

2 BY MR. ALTMAN:

3 Q. How long have you been in the real estate

4 business?

5 A. In the real estate business, per se, eleven,

6 twelve years.

7 Q. And you said you do some development work?

8 A. Do some development work. Have in the past.

9 Not doing any currently.

10 Q. When was the last time you developed any

11 property?

12 A. Oh, put three office buildings in North

13 Charleston in the '05 to '07 range.

14 Q. Is that the last time you did anything?

15 A. That's the last time I did some development

16 work. That's correct.

17 Q. You're just in sales and leasing now?

18 A. And my own properties. Yes.

19 Q. And how many properties do you own?

20 A. Five or six.

21 Q. Do those properties have problems that need

22 fixing periodically?

23 A. Sure.

24 Q. Tenants or purchasers come to you and say, we

25 need something fixed?

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1 A. Sure.
2 Q. Do you always agree with them?
3 A. If it's reasonable and if it's a -- and if it's
4 a real problem, I'll take care of it --
5 Q. But you don't --
6 A. -- like any good landlord would do.
7 Q. You don't fix everything all the time? You
8 don't agree with everything, do you?
9 A. I always refer them back to their lease and, you
10 know, what does the lease say, what does the lease say the
11 landlord is responsible for and what does it say the
12 tenant is responsible for. If I'm responsible for it, I
13 fix it.
14 Q. Like you say, you served on the board for
15 several years?
16 A. Correct.
17 Q. And you were involved in meetings with people
18 from Carriage Hill and Daniel Island --
19 A. Yes.
20 Q. -- Daniel Island Riverside?
21 A. Yes.
22 Q. Were you aware that the window manufacturer,
23 Weather Shield, denied that the windows were the problems
24 with the leaks?
25 A. Sure. They denied that, yes.

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1 Q. They absolutely denied it, didn't they?
2 A. Yes.
3 Q. They claimed that it was some other problem?
4 A. They always did.
5 Q. They always did.
6 What if they had been right? Would that have
7 meant -- if the windows had been changed out, it would
8 have been somebody -- Carriage Hill or Daniel Island's --
9 A. Well, it's my understanding there were problems
10 with the windows. But there were also problems with some
11 of the installations. None of the installations were
12 perfect, either. So they indeed were leaking other
13 places, not just the window. They were leaking around the
14 windows, as well. Not in all cases, but in some they
15 were, particularly Mr. Jung's unit when they took that
16 window out.
17 Q. The main problem was the windows; right?
18 A. That was one problem with the property.
19 Q. Was that the main problem, or was that just a
20 minor problem?
21 A. It wasn't a minor problem; it was a major
22 problem.
23 Q. It was a major problem.
24 A. It wasn't the only major problem.
25 Q. You talked about the roof, didn't you?

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1 A. Talked about the roof.
2 Q. Is the roof still under warranty?
3 A. I'm not sure.
4 Q. Do you know if the manufacturer continued to
5 warrant the roof --
6 A. The manufacturer has a warranty, and I believe
7 it was a ten-year warranty. I'm not sure. Ten-, fifteen-
8 year warranty.
9 Q. But the manufacturer did not void the warranty
10 because of what you said were problems in how it was
11 installed, did they?
12 A. They didn't void the warranty, but they
13 certainly said that additional things had to be done for
14 their warranty to be effective.
15 Q. Who paid for those additional things to be done?
16 A. Carriage Hill did.
17 Q. It wasn't the homeowners association, was it?
18 A. No. The roofer paid for it.
19 Q. It wasn't you personally, was it?
20 A. No, it wasn't.
21 Q. Carriage Hill worked with the roofer to get the
22 work done; correct?
23 A. They did.
24 Q. Are you familiar with --
25 A. Actually, I communicated with the roofers much

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1 as -- as much, or more, probably than they did.
2 Q. But the roofer took care of it? The roofing
3 contractor took care of it?
4 A. He took care of what he -- he could not correct,
5 though; the fact that the slope on the roof was not
6 proper.
7 Q. But he installed the roof?
8 A. He installed the roof according to the plans and
9 specifications, is my understanding, which it's my
10 understanding were incorrect as to the slope of the
11 building -- of the roof.
12 Q. Again, it's --
13 A. And, again, we have another person that will
14 testify to that effect -- I'll refer to him on that.
15 Q. Have there been any leaks in the roof since it
16 was fixed?
17 A. There were leaks from time to time, but, you
18 know, they were taken care of.
19 Q. When you did your development, you ran into
20 problems with roof leaks or other problems --
21 A. Sure.
22 Q. -- throughout, didn't you?
23 A. Absolutely.
24 Q. Not unusual?
25 A. Well, but not to the extent that we had with

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1 this property.
2 Q. I'm talking about the roof now.
3 A. You're talking about the roof?
4 Q. Yes, sir.
5 A. I didn't have any problems with the roof. Well,
6 I did have a problem with the roof on one building, but
7 the roofer took care of it. The roofer and the general
8 contractor stepped up and took care of it.
9 Q. In all the buildings you've developed, have they
10 all been constructed exactly like they were supposed to be
11 and like the architect designed them? Has there been any
12 defects with the way the buildings were constructed?
13 A. Not to my knowledge.
14 Q. Not to your -- none at all?
15 A. Not to my knowledge.
16 Q. How many times did you meet with the Behringers?
17 A. Which Behringer?
18 Q. Any of them.
19 A. Numerous times. Probably twenty-five or thirty
20 times, at least. Probably more than that.
21 Q. They made some recommendations to fix the
22 balusters and railings; correct?
23 A. Right.
24 Q. And the HOA turned that down?
25 A. We did for a reason.

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1 Q. Did you know if it would work? The
2 recommendation.
3 A. Based on our experts, they were just covering up
4 the problem, which it was going to continue to happen
5 again and they were going to continue to rot.
6 Q. You didn't give it a chance, though, did you?
7 A. No, we didn't, because we followed the advice of
8 our experts. When we found out the railings were not
9 properly primed before they were put together, we knew it
10 was just a disaster for future problems.
11 Q. Did you know that there was some work done on
12 the railings?
13 A. I know there was some work done on the railings.
14 Q. Do you know what condition of the work that was
15 done on the railings, that tried to fix them, what that
16 condition is today?
17 A. I don't know.
18 Q. Do you know if they rotted?
19 A. I don't know. They did some work on one unit
20 and we found it not be satisfactory, either from an
21 esthetic standpoint or the fact that it didn't meet what
22 our experts recommended to do, so we asked them to
23 discontinue work.
24 Q. What happened to the value of property,
25 generally, in the Charleston area after 2008? Did it go

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1 up or down?
2 A. I think we all know it went down.
3 Q. You said you lost $420,000 when you sold;
4 correct?
5 A. Yes.
6 Q. Do you contribute all of that to the condition
7 of the building?
8 A. No.
9 Q. How much would you contribute to the economy?
10 A. I would contribute -- well, let's see. I'll
11 just have to reference my appraisal, is the best way for
12 me to answer that, is the professional that did it. And
13 he -- I think he appraised it for --
14 Q. No. I want to know your opinion.
15 A. Well, my opinion --
16 Q. -- your opinion --
17 A. My opinion is the lawsuit damaged the value of
18 my property to some degree. $280,000 is my figure for
19 that.
20 Q. For the damage from the construction?
21 A. No. Based on the -- yes. Based on the lawsuit
22 and the fact that I couldn't sell my property in a normal
23 -- in a normal fashion because of the lawsuit. The fact
24 that nobody could get financing. It was most likely going
25 to be a cash buyer, which is what ended up happening with

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1 my unit.
2 Q. And so that would mean $140,000 that you would
3 attribute to the economy?
4 A. At one time it appraised for nine forty. So,
5 you know, it's just -- yeah. The market -- I've already
6 answered the question. The market conditions went down.
7 I don't know exactly what value to put on that.
8 Q. You put two eighty on the construction defect?
9 A. I did.
10 Q. And you said four twenty was the total loss?
11 A. Four twenty -- based on what I had in the unit.
12 Q. So the amount from that would be one forty was
13 the loss attributable to the economy; is that fair?
14 A. I haven't added the numbers up. I don't know.
15 $280,000 is my figure for what I feel like I am due, based
16 on the fact that I had to sell it at loss. And that's the
17 number -- the difference between what I got for it and
18 what it would have been if I had been able to sell it
19 without the defective conditions.
20 Q. Have you seen the reports on the sound
21 attenuation?
22 A. We asked Carriage Hill for the reports on
23 numerous occasions and were denied access to those and
24 were never given them. So the reports that I saw were
25 after the fact and I'm not sure -- I know I saw our

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1 engineer's reports. I'm not sure if I saw Carriage Hill's
2 reports. I know I've never -- the only time we might have
3 ever seen them was after we subpoenaed them, and I don't
4 remember whether I ever saw them. We requested them
5 numerous times, as we did the building plans, and were
6 refused and never given them.
7 Q. Mr. Reece, you said you saw the report from your
8 engineer. That's Quietly Making Noise?
9 A. Yes.
10 Q. A company out of Florida?
11 A. Yes.
12 Q. Do you remember what that report said regarding
13 the repair that was done or the remediation that was done?
14 A. I believe it brought all them up to just barely
15 basically meeting the building code, except for I think it
16 was in some bathroom areas where there was tile and there
17 was nothing they could do, I think, in that area. I think
18 there was an area that was not brought up completely to
19 code.
20 Q. Do you remember seeing any wording in that
21 report regarding what more could be done or what would be
22 done -- if more work was done, how it would help or make
23 the sound less of a problem?
24 A. I don't remember.
25 Q. You don't remember any language like that in the

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1 report?
2 A. I believe there was some, but I don't remember
3 exactly what it said.
4 MR. ALTMAN: Just a moment, Your Honor.
5 [Whereupon, Mr. Altman and Mr. Maybank confer]
6 THE COURT: Yes, sir. Any redirect?
7 MR. MCDONALD: Very brief.
8 REDIRECT EXAMINATION
9 BY MR. MCDONALD:
10 Q. Mr. Reece, you were asked some questions earlier
11 about problems that Carriage Hill was trying to address.
12 Did they ever tell you that the brick veneer wasn't
13 connected properly to the building?
14 A. No, they never told us that. We discovered --
15 MR. ALTMAN: Your Honor, I do not believe this
16 is proper examination --
17 THE COURT: I'm sorry. What's your objection?
18 MR. ALTMAN: This was not covered --
19 THE COURT: It's not responsive to --
20 MR. ALTMAN: -- to my examination.
21 THE COURT: -- cross?
22 Ask the question again, please -- I'm sorry, it
23 passed me by, I didn't hear it -- and I'll rule on his
24 objection.
25 MR. MCDONALD: Not a problem, Your Honor.

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1 Q. [Mr. McDonald] Mr. Altman asked you some
2 questions about Carriage Hill working with you-all as to
3 various problems?
4 A. Yes.
5 Q. Did they ever tell you -- Carriage Hill or
6 Daniel Island Riverside Developers, did they ever tell
7 you --
8 THE COURT: Go ahead.
9 Q. [Mr. McDonald] -- that the brick wasn't
10 properly attached to the building on all six of these
11 buildings?
12 MR. ALTMAN: Your Honor --
13 THE COURT: All right. What's your legal
14 objection?
15 MR. ALTMAN: There's absolutely been no
16 discussion whatsoever about brick. That was not asked
17 on direct or on cross-examination, as far as what the
18 problems were. We discussed many problems. He's
19 discussed --
20 THE COURT: I'll sustain the objection.
21 MR. MCDONALD: Thank you, Your Honor.
22 MR. ALTMAN: Thank you, Your Honor.
23 THE COURT: Do you have any other redirect?
24 MR. MCDONALD: No, sir.
25 THE COURT: Okay. You may step down. Thank you

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very much.

[Whereupon, Mr. Reece is excused and exits the witness stand]

THE COURT: Call your next witness.

MR. MCDONALD: Your Honor, I would call Mr. George Pollard.

[Whereupon, Mr. Pollard comes forward]

THE CLERK OF COURT: Raise your right hand.

[Whereupon, Mr. Pollard is duly sworn by the clerk of court as follows: do you swear or affirm that your testimony will be the whole truth and nothing but the truth, so help you God]

THE WITNESS: I do.

THE CLERK OF COURT: State your full name and spell your last name.

[Whereupon, Mr. Pollard takes the witness stand]

THE WITNESS: George Samuel Pollard, Jr. My address is 136 Fairbanks Oak Alley, unit 2-A, Daniel Island.

MR. MCDONALD: Mr. Pollard, how are you doing this afternoon?

THE WITNESS: Fine. Thank you.

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1 GEORGE S. POLLARD,
2 Having Been First Duly Sworn,
3 was Examined and Testified as Follows:
4 DIRECT EXAMINATION
5 BY MR. MCDONALD:
6 Q. What is your current address?
7 THE COURT: He just gave it. Go ahead.
8 MR. MCDONALD: I apologize.
9 A. Just provided it. It's building --
10 Q. [Mr. McDonald] Is that at The Oaks?
11 A. Yes.
12 Q. And what's your unit number?
13 A. It's building four, unit 2-A.
14 Q. And that's on the -- that's on the bottom level;
15 correct?
16 A. That's correct.
17 Q. And where are you from, Mr. Pollard?
18 A. Originally, I'm from Bethesda, Maryland.
19 Q. And were you born and raised there?
20 A. I was born in St. Louis, moved to east coast at
21 an early age to Townsend, Maryland, outside of Baltimore,
22 and then spent junior high school and high school in
23 Bethesda, Maryland.
24 Q. What did you do in Townsend, Maryland, after you
25 graduated high school? Did you go to school?

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1 A. That was in Bethesda. Yeah. Townsend was kind
2 of early age.
3 Q. When you graduate high school, did you go to
4 college?
5 A. I did.
6 Q. Where did you go to college?
7 A. University of Missouri in Columbia, Missouri.
8 Q. And what did you study there, sir?
9 A. Industrial engineering.
10 Q. And did you get a degree?
11 A. Yes, I did.
12 Q. In industrial engineering?
13 A. Yes.
14 Q. And did you pursue employment after you
15 graduated college?
16 A. I did.
17 Q. What did you do?
18 A. I worked for General Electric Company. My first
19 assignment was in Arkansas. Had subsequent manufacturing
20 -- engineering and manufacturing management assignments in
21 Virginia and North Carolina.
22 Q. And about what time frame was this?
23 A. I graduated in 1971 and I was with GE until
24 1975.
25 Q. Okay. And were you in the same position with GE

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1 for those four years?
2 A. It was generally a -- I was in a manufacturing-
3 management program, kind of rotating through different
4 phases of manufacturing, and I finished as what they call
5 a produceability engineer. You're trying to improve the
6 production processes and work with the design engineers to
7 improve the efficiency of the plant.
8 Q. I got you.
9 And what type of plants would you have been
10 working in?
11 A. I worked in a motor assembly plant, I worked in
12 a TV production plant before the Japanese took over the
13 whole industry, and I worked in an outdoor-lighting plant.
14 Q. Okay. And your role was to figure out how the
15 manufacturing process could be more efficient?
16 A. Yes.
17 Q. Okay. And you left GE in 1975?
18 A. I did.
19 Q. And what did you do once you left GE?
20 A. I went to work back in Bethesda, as a matter of
21 fact, for Lou's Island Applied Research.
22 Q. Okay. What did you do at Lou's Island Applied
23 Research?
24 A. I did -- again, it was manufacturing engineering
25 related. We did several engagements, one large one with

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1 the U.S. Army with ammunition production. Did another one
2 for Fairchild Industries, it was a defense contractor, on
3 manufacturing. I also participated, as a junior member,
4 in a big Atomic Energy Commission study that we did. And
5 also worked on some naval legal shipbuilding claims. So
6 it was a number of different assignments, primarily
7 leveraging my manufacturing background.
8 Q. And how long were you with Lou's Island?
9 A. About two and a half years.
10 Q. And what did you do after that?
11 A. Then I moved, started work for AT&T.
12 Q. And where were you -- where were you working
13 with AT&T --
14 A. In Washington, D.C.
15 Q. And what did you do with AT&T?
16 A. First assignment was in a sales function, and a
17 client was the U.S. Navy. Then I moved into an operations
18 assignment, out in West Virginia, where I had a central
19 office and a set of customers I was responsible for. I
20 then went to Pittsburgh and was a national account manager
21 for a large account. And following that I moved to New
22 Jersey, where I actually stayed for the rest of my career
23 in New Jersey in various progressively more responsible
24 assignments.
25 Q. And that was still in New Jersey with AT&T?

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1 A. Yes.
2 Q. And when you said for the rest of your career,
3 at some point did you retire from AT&T?
4 A. I did. I took an early retirement from AT&T in
5 1998.
6 Q. And did you stay in New Jersey after that?
7 A. We did.
8 Q. And you said we. Are you married, Mr. Pollard?
9 A. Yes.
10 Q. And is your wife in the courtroom?
11 A. She is. Ellie.
12 Q. And how long have you been married?
13 A. Thirty years.
14 Q. Well, you got that -- you got that question
15 right. That was quick.
16 And did Ms. Pollard move with you each time?
17 Move with your job?
18 A. Well, we met in New Jersey. It's a second
19 marriage for both of us. So we met while we were both
20 working for AT&T and we lived in New Jersey -- I've got to
21 get the dates right versus the work right. But we lived,
22 after being married, for twenty-two additional years in
23 New Jersey before coming down here.
24 Q. And that was going to be my next question, sir.
25 Did Ms. Pollard retire from AT&T at the same time as you

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1 did?
2 A. Yes. We both worked, subsequently, after that.
3 Q. And what did you do, subsequently, after working
4 with AT&T?
5 A. I worked for a call-center outsourcing company,
6 OSI, and I was with them and subsequent companies
7 essentially in the same business, for eleven years.
8 Q. And that was still in New Jersey?
9 A. In New Jersey up until 2005 we moved down here,
10 while I was still working.
11 Q. And were you -- what was the purpose of moving
12 down to Charleston?
13 A. We decided that it was time to kind of downsize
14 our life and it was a decision to move from New jersey,
15 try to experience something new in a new environment
16 somewhere. We looked at three or four different options,
17 did some visits, and we -- well, my -- you have to know my
18 wife is sometimes a taskmaster, so we did set a target
19 date for when we wanted to sell -- list our house, and it
20 turned out that we sold the house in one day. So we said,
21 well, what are we going to do now, where are we going. I
22 had reason to be doing business in the Charleston area.
23 We were both kind of fond of our visits to the city over
24 the years so we said, well, hey, let's try moving to
25 Charleston, I still have reason to be here on work-related

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1 basis. And that's how we made the decision to come here.
2 Q. And how did it -- how did the process work in
3 going about finding a place to live in Charleston?
4 A. The first time?
5 Q. Yes.
6 A. We came down, we made a couple of visits down
7 here. During the process that we were kind of downsizing
8 everything in our home up in New Jersey, and getting the
9 house listed, we had made some visits. Once we sold the
10 home, we made subsequent visits to Charleston and tried to
11 find -- we decided we were going to rent, initially, just
12 to get to know the area, get to experience what it was
13 like to live here, and make sure that it was going to be
14 the right decision for us to, you know, own in Charleston.
15 Q. And where did you rent at?
16 A. We ended up renting downtown at Laurens Place.
17 It's a condominium on the harbor right next to the
18 maritime center.
19 Q. Okay. And at some point, did you have occasion
20 to find out about The Oaks?
21 A. We started -- I guess we lived at Laurens Place
22 for a total of over two years, almost two and a half
23 years. And during the last year we knew our lease was
24 going to come up and we were trying to decide, all right,
25 what are we going to do, are we going to keep renting or

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1 are we going to find a place to make our permanent home
2 and, you know, actually buy a place.
3 Q. How many stories is Laurens Place?
4 A. It is, let's see, similar to our units here.
5 There is a first-floor garage level, then the actual
6 living units start at two and they go up to five.
7 Q. And what floor were you on?
8 A. We were on both the third floor for a period of
9 time, and then we transitioned down to the second floor.
10 Q. And in -- okay. So at some point you have --
11 your lease was about to run up in Laurens?
12 A. And we started investigating where are we going
13 to live. We actually were quite pleased with the condo
14 living. We were on a single floor. It was good for us.
15 We thought as you -- you know, you get older and you think
16 about retirement, maybe, you know, a condo with a single
17 floor would be good approach for us.
18 We looked at several options throughout
19 Charleston and were having difficulty trying to find a
20 place that we felt best suited our needs and what we liked
21 about what we were experiencing at Laurens Place.
22 Q. So you didn't have any problems at Laurens Place
23 with regard to sound, hearing things? You were pretty
24 comfortable with the condominium living?
25 A. We were.

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1 Q. So at some point, you found out about The Oaks;
2 correct?
3 A. Correct.
4 Q. Can you walk me through that briefly?
5 A. Yes. We had engaged a real estate agent. Lee
6 Rowe was her name. She took us all over Charleston
7 looking at different things. We kept -- it was kind of a
8 lengthy process of occasionally going to look at units.
9 We looked at them all over the peninsular. We finally --
10 and initially we said we really didn't want to leave -- we
11 liked living right in the city. We liked the energy of
12 the city. And finally she asked if we would be willing to
13 look at units out on --
14 Q. Daniel Island?
15 A. -- Daniel Island. And I believe at one time we
16 had even independently taken a ride out there and looked
17 around. But eventually she brought us to a couple of
18 units on Daniel Island. One was The Island Park
19 condominiums and then the other one was at The Oaks.
20 Q. And what did you think of The Oaks when you
21 first saw it? when you first saw the six buildings?
22 A. We thought that they looked very impressive.
23 And we particularly liked the floor plan. It seemed to
24 fit the style of living that we were looking for.
25 Q. Okay. And eventually you bought a unit there,

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1 didn't you?
2 A. We did.
3 Q. I'm going to hand you what's been marked as
4 Plaintiffs' Exhibit 120-A. And is that your deed?
5 A. Yes, it is.
6 Q. And it is from William B. Wright and Barbara R.
7 Wright; correct?
8 A. That's correct.
9 Q. So you didn't buy directly from Daniel Island
10 Riverside Developers, did you?
11 A. No.
12 Q. And what was the state -- and your purchase
13 price was $870,000; correct?
14 A. That's correct.
15 Q. And what was the state of the unit when you
16 moved in?
17 A. It was virtually new. The previous owner, they
18 had other properties that they lived in. I believe they
19 used some of the bedroom and actually what some people use
20 as a dining room but they converted it into a den-office
21 type arrangement and they kind of worked -- they were a
22 work-from-home kind of couple. They had a little business
23 of some advertising type things that they did. And the
24 unit was very nice. Essentially, everything looked brand
25 new.

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1 Q. And what was your understanding, when you
2 purchased, about the sound issue out at The Oaks?
3 A. We were told that there were some sound issues,
4 that we had a choice to get the ceilings lowered -- I
5 believe it was four inches is what we were told -- that
6 there was a process to fix the noise problem, particularly
7 that, you know, the unit above, by dropping the ceiling
8 four inches and putting insulation in there in a way that
9 would fix it. Actually, the multiple listing that we had
10 on the unit, the agent notes refer to soundproofing twice
11 on that multiple listing. So -- and having the good
12 experience that we had, you know, at Laurens Place, we
13 were under the impression that this would fix, you know,
14 any of the complications.
15 Q. And who was your understanding was going to be
16 performing the sound remediation?
17 A. The builder.
18 Q. Not you. You weren't going to put it up, were
19 you?
20 A. No. In fact, we delayed closing specifically
21 so that the -- so that this remediation could be
22 accomplished.
23 Q. And when you say the builder, you mean Carriage
24 Hill --
25 A. Correct.

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1 Q. -- correct?
2 Now, was it, in fact, accomplished in your unit,
3 the sound remediation? Did they do the work?
4 A. They did the work.
5 Q. And did you, in fact, move in?
6 A. We moved in not until March of 2008.
7 Q. And why was that? Why did you not move in until
8 March of 2008?
9 A. Our closing was November, November 1st, of 2007.
10 And, immediately, when we showed up to, you know, begin to
11 plan our move from downtown -- and we had some overlap
12 between when our lease downtown was completed and so we
13 did not want to try to move in in one week and everything.
14 We knew we were going to take our time and get in there.
15 We found that we were having a very difficult and severe
16 odor and air-quality issue in the apartment.
17 Q. What do you mean odor-air-quality issues?
18 A. There was some kind of chemical smell that was
19 in the apartment and we couldn't stay there for more than
20 fifteen, twenty minutes without, you know, feeling it in
21 our throat, feeling it in our lungs, and eyes would water.
22 It was very severe.
23 Q. And what did you do about that?
24 A. We started to actually communicate with both the
25 manufacturing company, Ravenel, and Lee McManus at the

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1 offices of Carriage Hill, about the issues we were facing
2 so that -- you know, first thing we wanted to know, did
3 anybody else experience this and is there a problem or a
4 solution that, you know, is common that we can engage. We
5 didn't get anywhere with those efforts.
6 We then hired our own specialist, Environment --
7 the name of the company was Environmental Clean Air
8 Systems. And they conducted some tests. The type of test
9 they conducted is you put like a little swab of some kind,
10 like a petri dish, in various parts of the apartment. You
11 leave it open, then go back in a couple of days, and then
12 they send it to a lab for analysis.
13 Q. And, other than doing your own test, where did
14 you get with dealing with the Carriage Hill folks on
15 taking care of the issue? What was the upshot of that?
16 A. They came for a visit. And this was also
17 related to some of the other issues we were having which
18 we can, you know, go into subsequently. But we had
19 visited -- I personally visited the Ravenel offices to see
20 if I can find anything in our file of complaints or
21 anything that would give me some kind of history or
22 background on this. And I had mentioned to the Ravenel
23 representation, Dan Tollins was his name, that I was -- my
24 next step was going to be to get an attorney. I think
25 that motivated him, along with our notes that we had been

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1 sending over to Lee McManus. That motivated them to
2 respond.
3 What happened is they came to our unit and
4 visited. This was before we even moved in yet, because we
5 were unable to move in, or felt we could not move in,
6 until this problem was fixed. Who actually showed up was
7 John Behringer. That was the only time I met John.
8 Q. And that's one of the Behringer brothers?
9 A. That's correct.
10 And he had brought I guess you would call it his
11 own expert. I showed him the reports. I showed them to
12 his expert where it detailed the kind of mold, and other
13 chemical issues that were present in the apartment, based
14 on the analysis that was done. His expert basically said
15 there that he would look it over but it looked like to him
16 that it was within, you know, acceptable limits.
17 Q. Okay.
18 A. That gave me the opinion that they weren't going
19 to do anything. And, you know, subsequent letters and
20 notes, we never really did hear anything from them.
21 Q. So they didn't do anything about that, did they?
22 A. No.
23 Q. Okay.
24 A. We went back to Environmental Clean Air Systems
25 and we actually paid them to remediate -- we thought we

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1 paid them to remediate the issue. It seemed -- I went to
2 the apartment right after they completed their procedure
3 and process. It seemed to be better. We went back two
4 days after that and the smell was back.
5 So the next thing we did is that we purchased
6 air purifiers, which we continue to operate today. And,
7 you know, a combination of using two air purifiers full
8 time, as well as, you know, running the furnace often.
9 Sometimes we just put the fan on even without, you know,
10 the air or heat on, to make sure the air is circulating.
11 Q. Now, did you have an occasion to attend a
12 homeowner's meeting in January of 2008?
13 A. Yes. Before we moved in, that was my first
14 experience with the introduction to The Oaks and --
15 Q. You hadn't moved in yet?
16 A. We hadn't moved in. We were trying to resolve
17 the problems that I just described.
18 Q. And what do you recall from he homeowners
19 association [phonetic] you attended in January of 2008?
20 A. Well, one of the things I was very interested in
21 attending was while we were visiting the apartment and
22 beginning to, you know, get the furnishings and everything
23 situated the way we wanted, we knew now that there was
24 some very severe issues with the noise, that dropping the
25 ceilings really did not solve any kind of issue relative

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1 to the noise. So I went to that meeting to understand
2 what was going on and also to bring that up in the
3 meeting.
4 Q. So you were going to raise at the meeting the
5 fact the building had done its remediation in your unit --
6 Which is unit two, right, on the bottom?
7 A. That's correct.
8 Q. -- and as far as you knew, it's still very loud
9 in there?
10 A. That's right.
11 Q. And what happened when you got there? Did you
12 get a chance to raise that?
13 A. There were a number of other residents that
14 raised it immediately. Some of them were full-time
15 residents and some of them were landlords claiming that
16 they couldn't hold a tenant in there units.
17 Q. And what happened next? After that meeting, did
18 you move into the unit?
19 A. We did. After that meeting, I believe the board
20 said that there might be a committee to investigate the
21 noise further. And I know the board, you know, continued
22 to review that to some extent. But we were coming to the
23 end of our lease at Laurens Place and, you know, we were
24 out of time, so we moved in on March the 1st.
25 Q. And once you moved in on March the 1st -- I know

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1 you had been there to move around some furniture and you
2 thought it sounded loud. But did it get any better once
3 you moved in on March the 1st?
4 A. It -- no. I mean, the living conditions were
5 even worse. It's one thing to be there when you can hear,
6 you know, footsteps. It's another to try to live through
7 it full time.
8 You know, this is our only real estate that we
9 own. We moved in here to be full-time residents, and it's
10 been a struggle. It's been horrendous trying to live in
11 the apartment with that kind of noise issue from above.
12 I'll give you an example. Last night the tenants above
13 returned home at midnight. We never now when we're going
14 to be able to go to sleep, because you're subject to the
15 whatever's happening above you. They got up sometime
16 between 5:00 and 5:30. So a typical night -- a good night
17 is six hours of sleep for us. Currently, sometimes there
18 are four adults in the apartment so we can't even retreat
19 to another bedroom and say, oh, I know nobody is going to
20 be above there. You never know what's going to happen
21 with the noise above you.
22 We have come to find that we -- for a long
23 period of time, we couldn't even have guests over for
24 dinner because the noise above us, if somebody's, you
25 know, having dinner hour above you, it's just too severe

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1 to even consider trying to have a conversation with
2 guests.
3 So it's just been horrendous. Every time
4 there's a new tenant above, we have to change our sleeping
5 pattern. We don't know if we're getting up early, we're
6 getting up late. We don't know what's going to happen
7 with that.
8 Q. And that is all related to the sound
9 transference from the unit above you --
10 A. That's right.
11 Q. -- to your unit?
12 A. That's right.
13 Give you an example. Not only is it thunderous,
14 the footsteps, but there's creaking. Something about the
15 actual construction of the drop ceilings -- and, you know,
16 I'll leave it to the engineering witnesses to explain
17 that. But we actually hear a creaking. When children
18 were present, kind of playing above us --
19 Q. As children do.
20 A. -- that's even more severe. We've actually seen
21 our fans waffle, okay, due to kind of running and jumping
22 in the apartment. There is actual vibration transference
23 into our ceiling. And I don't know if any acoustical
24 engineer will, you know, claim any expertise in that, but
25 I know there's vibration transference into our apartment.

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1 Q. Let me ask you this.
2 A. Uh-huh.
3 Q. If an acoustical engineer sits down right where
4 you're sitting right there and tells you to your face that
5 what you are hearing in your unit you are not hearing, is
6 he ever going to change your mind?
7 A. No. I would just -- you know, my scenario or
8 my -- what I would really like to see is for the Court to
9 come experience it, because I don't think expert testimony
10 really captures what we've experienced or what it's like
11 to live there.
12 Q. Now, what other problems have you encountered,
13 other than the sound, in your experience with The Oaks?
14 A. We've had -- in addition to, you know, the odor
15 issue and the fact that we need the air purifiers, and we
16 still have them, we've had a series of at least five water
17 intrusion or flood type occurrences. The first one
18 occurred -- I made a note on it -- February 25th of 2008.
19 That was due to the unit above. They were going through
20 the dropping of the ceiling, and part of that process is
21 to make some changes to the sprinkler system.
22 Q. The fire-sprinkler system?
23 A. That's correct.
24 In the process of doing that, they released
25 water into the apartment above and it flowed into our

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1 kitchen, den, and dining room, a significant amount of
2 water. It just so happened that we were there just after
3 it had happened. We had come for a visit kind of
4 preparing to move in on March 1. We went upstairs. They
5 immediately shut the water off. I mean, this water, it
6 came through the fan vent over the stove, it came through
7 the lights over the center counter, it -- you know, it
8 destroyed ceiling. It was a significant water event.
9 They immediately brought in, you know, one of those flood
10 remediation type companies. We had fans going in the
11 apartment for a week to dry everything out.
12 Q. And you said you've had five of these instances
13 where there's been flooding from above, or the side, or
14 whatever it came from?
15 A. Yes. The others were related to, you know,
16 various shower leaks above, or at least water events in
17 the bathrooms above us, either on the fourth floor or the
18 third floor. There was one in August of 2008. We had a
19 shower leak. There was one in May of 2009. This wasn't
20 in the -- this one was in our master bath, but it was one
21 of those ones that's described earlier today. It was a
22 cold-water feed line that was in the wall, and I guess due
23 to a nail or something, the same kind -- the same kind of
24 event. It rusted out, finally, and started leaking.
25 Actually leaked through the bathroom into the master

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closet and into the closet in the adjoining spare bedroom. Actually, there was water dripping into the garage and onto cars below our unit from that.

Q. And are those types of experience spread out over time? Has that been kind of what it's like to live at The Oaks?

A. It's been very difficult, because we never know what's going to happen next. We've had -- you know, also, I think from the fourth floor we had in January of 2012 brown water seeping into our shower and this caused us to experience, you know, some repairs on the ceiling and on the drywall there, the external wall there in the bathroom. The latest leak was just in January of this year.

Q. So you've experienced them from sometime in February of 2008 on --

A. That's correct.

Q. -- through January of this year?

Let's talk about -- you've been in this courtroom during this trial, have you not?

A. I have.

Q. Let's talk about your wood floors that you have in your unit. Do you have any issues with them?

A. We do. We have some separation. We have also some black kind of mold-looking spots coming up through.

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1 And it seems to be progressive. You know --
2 Q. Why do you say that?
3 A. Well, I mean, when we first moved there, we did
4 not notice any of these types of defects. But over time,
5 you know, we're now getting many of the floorboards
6 separating. And, you know, it seems like we've continued
7 to find new areas where these black spots are showing up.
8 Our floor is installed on, you know, the concrete subfloor
9 there. There's concrete, you know, between the garage and
10 the first level of the building and that's what our wood
11 floors are -- have been installed on.
12 Q. Sir, I'm going to hand you what's been marked as
13 Plaintiffs' Exhibit 120-C, which is a collection of three
14 pictures, and ask you if you recognize those pictures.
15 A. Yes. I took those.
16 Q. And when did you take them?
17 A. I took them over this weekend, this past
18 weekend.
19 Q. Okay. And are they a true and accurate
20 representation of how your floors looked when you took
21 them?
22 A. Yes.
23 Q. And do they represent what you just described to
24 the Court?
25 A. Yes.

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1 MR. MCDONALD: I would move Plaintiffs' Exhibit
2 120-C into evidence.
3 THE COURT: Any objection? You said 120-B?
4 MR. MCDONALD: C.
5 THE COURT: C.
6 MR. MCDONALD: I just marked it.
7 THE COURT: Any objection?
8 MR. MAYBANK: No objection, Your Honor.
9 THE COURT: 120-C admitted without objection.
10 [Whereupon, Plaintiffs' Exhibit Number 120-C is
11 admitted into evidence by the Court]
12 Q. [Mr. McDonald] All right, sir. Have you had an
13 occasion -- your original deed was from --
14 THE COURT: Can I look at the pictures?
15 MR. MCDONALD: Certainly, Your Honor.
16 [Whereupon, Mr. McDonald proffers documents to
17 the Court]
18 Q. [Mr. McDonald] Your original deed was to you
19 and your wife individually; correct?
20 A. Yes.
21 Q. And you -- have you since transferred it into a
22 family trust, of which you-all are the --
23 A. We have.
24 Q. -- trustees?
25 A. It's a living trust, which is typical of what

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1 you do with a -- you know, an estate and will-planning
2 type attorney --
3 Q. So in the process of estate planning, you've
4 transferred it into a trust?
5 A. Yes.
6 Q. Of which you are here as the proper
7 representative today?
8 A. That's right. My wife and I are both trustees.
9 Q. Did you -- have you hired Mr. Donato, of
10 Atlantic Appraisals, to do an appraisal for you on your
11 unit?
12 A. I have.
13 Q. And are you relying on him to determine what
14 damages you, individually may have sustained as a result of
15 your purchase of The Oaks?
16 A. Yes.
17 Q. And do you have any out-of-pocket expenses, sir,
18 that you've expended, that you are asking this Court to
19 award you individually in your case?
20 A. Yes. I spent $2300 for the environmental
21 testing and remediation, that I've described, right after
22 we moved in. The water intrusion into our bathroom --
23 actually, we waited a while to make sure, you know, this
24 wasn't going to happen continually and we -- but I spent
25 $875 to make that repair.

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1 Q. And anything else, other than the 2300 for
2 environmental testing and eight seventy-five for leak
3 repairs?
4 A. I believe that's -- but let me just check any
5 additional.
6 [Whereupon, the witness reviews documents]
7 A. I think the other -- any other expenses are part
8 of the HOA case, and, you know, will be covered, you know,
9 in terms of any repair internally that may be required
10 during construction repairs and move-in, move-out, those
11 types of things.
12 MR. MCDONALD: Your Honor, I beg the Court's
13 indulgence for just one moment.
14 THE COURT: Yes, sir.
15 [Whereupon, Mr. McDonald reviews documents]
16 MR. MCDONALD: Thank you, Your Honor. That's
17 all I have.
18 Mr. Pollard, please answer any questions that
19 the defense counsel may have.
20 THE WITNESS: Okay.
21 THE COURT: All right. We'll adjourn for lunch
22 and reconvene at -- you said y'all needed some extra
23 time today?
24 MR. ALTMAN: 2:30 will work.
25 THE COURT: Will 2:30 work?

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1 MR. ALTMAN: Yes, sir.
2 THE COURT: Will that give you enough time to do
3 what you need to do?
4 MR. ALTMAN: I believe so, yes, sir.
5 THE COURT: All right. We'll adjourn until
6 2:30.
7 MR. MCDONALD: Your Honor, can I -- I want to
8 make sure I put 120-A into evidence, the deed. I
9 believe I did. I just want to be sure.
10 THE COURT: You haven't yet.
11 MR. MCDONALD: I have not yet?
12 THE COURT: No.
13 MR. MCDONALD: May I move that into evidence at
14 this time, Your Honor?
15 THE COURT: Any objection?
16 MR. MAYBANK: To the deed?
17 THE COURT: To the deed. Any objection to 120?
18 MR. MAYBANK: Is that the deed?
19 THE COURT: It's the deed.
20 MR. MAYBANK: No, sir.
21 THE COURT: All right. 120, without objection.
22 120-A, I believe it is.
23 MR. MCDONALD: Yes, I think it's 120-A, Your
24 Honor.
25 [Whereupon, Plaintiffs' Exhibit Number 120-A is

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1 admitted into evidence by the Court]
2 [Whereupon, a recess is taken from 1:15 p.m. to
3 2:54 p.m.]
4 THE COURT: Let me see the attorneys up here
5 just a second. Mr. McDonald?
6 MR. MCDONALD: Yes, sir.
7 [Whereupon, an off-the-record bench conference
8 is held]
9 [Off the record momentarily]
10 - - - - -
11 STIPULATION
12 THE COURT: All right. Mr. Bundy, Mr. McDonald,
13 Mr. Maybank and Mr. Altman, we had a conference prior
14 to the lunch break and I asked the parties to see if
15 there were some facts that they could stipulate to,
16 because I understand each individual property owner
17 has the same issues concerning noise attenuation and
18 other problems, plus they have some individual issues,
19 to see if there was something that we could agree on,
20 as far as a factual stipulation, to cut down on the
21 amount of testimony that they would offer. And I
22 understand you have reached an agreement; is that
23 correct?
24 MR. BUNDY: Yes, Your Honor.
25 THE COURT: Mr. Bundy, do you want to state the

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1 agreement?
2 MR. BUNDY: Yes, Your Honor. I'll try.
3 Your Honor, we have agreed that the following
4 plaintiffs, if they took the stand -- and those
5 plaintiffs are Maraziti, Barr, Cook, Nelson, Graham,
6 Pekruhn, Severance and Jennings.
7 THE COURT: Cook, Nelson, Graham, who?
8 MR. MCDONALD: Cook, Maraziti.
9 THE COURT: Deen?
10 MR. MCDONALD: Maraziti. M-A-R-A-Z-I-T-I.
11 THE COURT: Okay.
12 MR. MCDONALD: Barr, B-A-R-R, Cook, Nelson,
13 Graham, Pekruhn. Pekruhn is P-E-K-R-U-H-N, Severance,
14 S-E-V-E-R-A-N-C-E, and Jennings.
15 MR. BUNDY: Your Honor, the stipulation is if
16 these witnesses took the stand and took the oath, they
17 would all testify consistent with the previous
18 witnesses regarding the sound problems and their
19 particular problems with the sound. All that
20 testimony would be consistent. The defendants aren't
21 agreeing that that's accurate, but that's what they
22 would testify to and it would keep us from having to
23 keep repeating the same testimony over and over again.
24 The other thing is we have agreed that all the
25 deeds into and out of, to the extent there are deeds

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1 out of these people, would also be admitted into
2 evidence without objection.
3 We've also agreed that these individuals, to the
4 extent they hired Mr. Donato -- and all of them did
5 except Mr. Pekruhn. Is that correct? All the
6 plaintiffs hired Mr. Donato to present their damages
7 or losses, except for Mr. Pekruhn. And so we all
8 stipulate that Mr. Donato -- they're not going to have
9 to take the stand and testify they hired Mr. Donato to
10 do that. That's just the stipulation. Donato can
11 take the stand and testify as to each and every one.
12 With regard to the individual damages -- and by
13 that I mean lost-rent claims and these other smaller
14 claims that we've had -- we've agreed that we're going
15 to provide to the defendants a list of those numbers
16 and that that will be what they would testify to if
17 they took the stand.
18 THE COURT: Not that it's truthful numbers, but
19 that's what they would testify to?
20 MR. BUNDY: That would be their sworn testimony.
21 That is correct.
22 The other is, Your Honor, regarding --
23 [Whereupon, Mr. Bundy and Mr. McDonald confer]
24 MR. BUNDY: Yeah. Southeastern is going to
25 testify to the floor repairs on 2-A and 2-B. That's

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1 so that the individuals don't have to do that.
2 [Whereupon, Mr. Bundy and Mr. McDonald confer]
3 MR. BUNDY: We're going to have to -- with
4 regard to whether an individual or individuals
5 attempted to sell their unit, we're just going to have
6 to deal with that on an individual basis. We may have
7 to put up a witness to testify that they tried to sell
8 it so that they can cross-examine. So we're not going
9 to be able to completely eliminate the testimony but
10 we think we can cut it down drastically, the length of
11 it.
12 And I think that's it. That is it. That's it,
13 Your Honor.
14 THE COURT: Is that the agreement? From
15 Mr. Maybank and Mr. Altman?
16 MR. MAYBANK: It is, Your Honor.
17 MR. ALTMAN: It is, Your Honor.
18 THE COURT: The rest of the witnesses, as far as
19 the individual condominium owners, will operate under
20 that stipulation.
21 Anything else y'all want to add concerning the
22 stipulation?
23 Let me put in the record that the parties did
24 this at the Court's request. Thank you so very much.
25 MR. MCDONALD: Thank you, Your Honor.

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1 MR. BUNDY: Thank you, Your Honor.
2 THE COURT: All right. I believe cross-
3 examination.
4 MR. MAYBANK: Thank you, Your Honor.
5 Good afternoon, Mr. Pollard. How are you, sir?
6 THE WITNESS: Doing well. Thank you.
7 CROSS-EXAMINATION
8 BY MR. MAYBANK:
9 Q. You and I know each other, don't we?
10 A. We do.
11 Q. How do we know each other?
12 A. Well, as I mentioned previously, we had rented
13 the third floor at Laurens Place upon arriving in
14 Charleston and it turns out that your mother and
15 stepfather kicked us out of there.
16 Q. You mean they bought the unit?
17 A. They bought the unit --
18 Q. That's right.
19 A. -- and we were offered the opportunity to go one
20 floor down, and we did that, and we came to a good
21 arrangement on that, so we were neighbors for a period of
22 time with your mother and stepfather.
23 Q. Yes, you were.
24 Now, the Laurens Place, do you know if that is a
25 concrete building or a stick building?

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1 A. My understanding, it's concrete.
2 Q. Did you do any investigation into whether or not
3 a stick-built sound attenuation versus a concrete sound
4 attenuation would be different than each other?
5 A. I did not.
6 Q. Do you know if The Oaks development is a stick-
7 built or a concrete-built development?
8 A. My understanding, it was stick-built.
9 Q. And I know you're not a contractor. I'm just
10 using wood frame versus concrete, is what I'm referring
11 to.
12 A. Yes. And, I mean, I became aware of that after
13 the fact.
14 Q. Would knowing that ahead of time have made any
15 kind of difference in your decision to purchase the unit?
16 A. If I felt there were going to be long-term
17 issues, regardless -- particularly if the so-called
18 soundproofing remediation was not really going to do much,
19 that would have made a difference, yes.
20 Q. My understanding is before you moved in in your
21 unit, you had it inspected by a company called Sherlock
22 Holmes Inspections; is that correct?
23 A. That's correct.
24 Q. And in that inspection process, did you have the
25 inspector limited in any way in terms of the inspection

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1 that they did on your unit?
2 A. Well, my understanding is that that was a
3 typical pre-closing type inspection where you're looking
4 to make sure there are no, you know, obvious cracks in the
5 walls, that the appliances are working, that, you know,
6 the right kind of airflow is occurring in the heating and
7 ventilation system, and all of that. I do not believe it
8 included anything, really, about the structural integrity
9 of the building or the ethicacy of, you know, the sound
10 remediation. The --
11 Q. So it didn't get -- I'm sorry. Go ahead.
12 Sorry.
13 A. The only thing is that the inspector did tell us
14 that he was there when they were dropping the ceilings and
15 he observed them doing the work.
16 Q. So was there anything in his report, that he
17 provided to you, that gave you any concern as to why you
18 should not purchase a unit at The Oaks?
19 A. No.
20 Q. All right. And you purchased your unit from
21 Ms. and Mr. William B. Wright?
22 A. Yes.
23 Q. And you paid $870,000 for your unit?
24 A. Yes.
25 Q. Are you aware that about twelve months before

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1 that, Mr. and Ms. Wright bought their unit for about
2 $650,000?
3 A. Yes.
4 Q. So they made about $200,000 on their unit in
5 less -- in about a year; is that about right?
6 A. That's about right.
7 Q. Did you expect that the price would continue to
8 go up, at that type of rate, on an annual basis?
9 A. No. I think -- the way I describe it, we don't
10 own other real estate. This is a full-time residence for
11 us and we put a large part of our lifetime savings into
12 securing this particular property. We were not looking at
13 the short term of whether it would go up or go down. We
14 were looking to find the right place in Charleston that
15 would fit, you know, our lifestyle and provide, you know,
16 a good home for us.
17 Q. Would you agree -- in what business were you in
18 again? I forgot.
19 A. The biggest core of my career was in various
20 management and executive positions at AT&T. And then I
21 followed that in the call-center outsourcing service
22 provider type business for eleven years.
23 Q. Would you agree with Mr. Chiovarou's testimony
24 that the extent of the economic downturn was something
25 that was an extreme event in 2008, 2009, 2010?

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1 A. Yes. I think by all evidence from the national
2 economy, as well as, you know, things that happened
3 locally, it was severe.
4 Q. Are you aware of what percentage the values of
5 real estate on Daniel Island dropped during those three or
6 four timing -- those three or four years -- '07 to '10?
7 A. I don't know the exact number for Daniel Island,
8 but I would say it's something in the forty-percent range.
9 And just a point of reference, ours -- you know, the unit
10 next door to our that sold last year would represent a
11 seventy-three percent reduction over what I paid.
12 Q. Are you aware of units at The Oaks selling in
13 the last three to four years where there was a residential
14 real estate disclosure that failed to disclose the
15 existence of this litigation?
16 A. I'm not aware of what's been in their
17 disclosures, no.
18 Q. Would you agree with me that if units were sold
19 without the disclosure, the price would be the market
20 price? the price it sold for would be the market price
21 dictated by economics, not necessarily by construction
22 defect?
23 A. I don't know, because I don't know the impact
24 of the word of mouth. And, you know, I just can't say
25 what -- to tell you the truth, I'm a bit suspicious about

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1 real estate agents, so I really don't know what's going on
2 in some of these transactions.
3 Q. I understand.
4 MR. MAYBANK: May I approach the witness, Your
5 Honor?
6 THE COURT: Yes, sir.
7 Q. [Mr. Maybank] If you would, this is Exhibit 5
8 to your deposition.
9 A. Uh-huh.
10 Q. Can you tell me what that is, Mr. Pollard?
11 [Whereupon, the witness reviews documents]
12 A. The real estate disclosure statement.
13 Q. [Mr. Maybank] Statement from the Wrights to
14 you?
15 A. That appears that's what it is.
16 Q. And that is sometime in 2007?
17 A. Yeah. We closed on November 1st. This is dated
18 February, February 25th, of '07.
19 Q. But you didn't close until March?
20 A. November.
21 Q. Pardon me. November.
22 A. Yes.
23 Q. Look at item number 20 on that report. If I
24 may? I think -- let me look. I think it's 20. Yes, sir.
25 Can you read that into the record?

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1 A. Number 20 says law suits, foreclosures,
2 bankruptcy, tenancies, judgments, tax, other liens,
3 proposed assessments, notice from any government agencies,
4 that can affect title to the property. The response is
5 no.
6 Q. Do you believe that the Wrights disclosed to you
7 fully the condition of your property at the time you
8 purchased it?
9 A. That is difficult for me to say, and let me
10 explain why. I don't think they lived in the unit, as I
11 described earlier. They used it as an office. But I
12 think they cleared out entirely after the remediation. So
13 if they were not there at all, I'm not sure at the time
14 that we closed on the property that they were aware of
15 anything. In February of '07, I would say they might have
16 known that there were noise issues. That was disclosed to
17 us. But as I said earlier, the multiple listing sheet in
18 the agent notes describe soundproofing. So we were
19 relying on and they were relying, I believe, on the
20 builder's, you know, effort for soundproofing.
21 Q. How about for odor?
22 A. I just don't know. It's possible they might
23 have known something was there and took similar
24 remediation action that we did. I don't know.
25 Q. How about windows and doors?

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1 A. They knew there were some issues with windows
2 and doors, at least my knowledge is. I believe, in fact,
3 there were some letters from Carriage Hill, even as
4 earlier as 2007, that described some issues with windows.
5 There was one area of moisture, near a window at one of
6 the spare bedrooms of the unit, kind of in the front of
7 the building where the brick is -- the brick front is in
8 the front of the building, and that was in the -- that was
9 in the report that we got.
10 Q. So it's your testimony that the Wrights fully
11 disclosed everything to you and you bought after an
12 inspection by your own inspector without any problems that
13 weren't either fixed by the Wrights or remediated by my
14 clients?
15 A. Yes.
16 [Whereupon, Mr. Maybank and Mr. Altman confer]
17 Q. [Mr. Maybank] Mr. Pollard, one other thing.
18 And you kind of laughed. You and I have met personally at
19 the Laurens Place, didn't we?
20 A. Yes.
21 Q. You came upstairs, didn't you, to my parents'
22 unit?
23 A. I did.
24 Q. Do you remember why you came upstairs?
25 A. Yes.

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1 Q. Why did you come upstairs?
2 A. It was -- I believe it was around Christmastime
3 or New Years, right around one of the holidays. My wife
4 and I, I believe, were both sick. We were really having a
5 tough time. And there was some noise from above, which we
6 had never heard before in all the time that your mother
7 and stepfather were up there. So --
8 Q. My mother -- you know she was in a wheelchair?
9 A. Yes, we know that.
10 Q. So she wasn't walking around.
11 A. No. I believe it was children doing something
12 very aggressive up there, but -- so I came up and
13 explained that, you know, we were sick and not feeling
14 good and it was, you know, a bit troublesome, that, you
15 know, we needed a little more quiet.
16 Q. Three kids. Three kids. Thank you.
17 A. Okay.
18 THE COURT: Redirect?
19 MR. MCDONALD: No redirect, Your Honor.
20 THE COURT: You may step down. Thank you so
21 very much.
22 [Whereupon, Mr. Pollard is excused and exits the
23 witness stand]
24 THE COURT: Call your next witness.
25 MR. MCDONALD: The plaintiff would call

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1 Mr. Charlie Maraziti.
2 [Whereupon, Mr. Maraziti comes forward]
3 [Whereupon, Mr. Maraziti is duly sworn by the
4 clerk of court as follows: do you swear or affirm
5 that your testimony will be the whole truth and
6 nothing but the truth, so help you God]
7 THE WITNESS: Yes, I do.
8 THE CLERK OF COURT: State your full name and
9 spell your last name.
10 [Whereupon, Mr. Maraziti takes the witness
11 stand]
12 THE WITNESS: My name is Charles Maraziti.
13 M-A-R-A-Z-I-T-I.
14 MR. MCDONALD: Mr. Maraziti, how are you doing
15 today?
16 THE WITNESS: Very well, thank you.
17 - - - - -
18 CHARLES MARAZITI,
19 Having Been First Duly Sworn,
20 was Examined and Testified as Follows:
21 DIRECT EXAMINATION
22 BY MR. MCDONALD:
23 Q. You, sir, were in the courtroom when the
24 stipulations were just made?
25 A. Yes, sir.

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1 Q. So this is going to be relative to those things
2 that we're not stipulating to, so we'll move through it
3 quickly. Okay?
4 A. Yes.
5 Q. All right. Mr. Maraziti, when did you -- where
6 are you from?
7 A. Baytown, New Jersey.
8 Q. And where do you live?
9 A. Currently live in Buton, New Jersey. That's our
10 home residence.
11 Q. And how did you come to purchase your unit at
12 The Oaks at Rivers Edge?
13 A. In 2003, we started looking for a place to
14 retire. We went to Florida, Georgia, came up to
15 Charleston, fell in love with Charleston, bought a home on
16 Daniel Island, a modest home on Daniel Island. And then
17 in 2007, when the bank I had worked for for forty years
18 merged with an international bank, I retired. And at that
19 point we decided we had enough of cutting grass and
20 painting houses, and all the repair work that was needed
21 for a home, and decided we would come down to Daniel
22 Island, meet with our realtor who sold us the home, Sally
23 Castengara, and look at condos. And the plan was to sell
24 our house in New Jersey, sell our house on Daniel Island,
25 and move into the condo.

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1 Q. And how did that -- how did the plan go? Did
2 you sell your house in New Jersey and --
3 A. No. We were going -- I'm sorry.
4 Q. No. Go ahead.
5 A. Excuse me.
6 We were looking first to purchase the condo by
7 taking out a loan on our New Jersey home and then taking
8 funds from our retirement account, retirement savings,
9 purchase the condo, and then go through the process of
10 selling both properties -- so we had a place to move into
11 first -- and then sell the other properties.
12 Q. Okay. So you were going to live in The Oaks
13 when you moved -- your plan was to retire and live in The
14 Oaks?
15 A. Correct.
16 Q. Now, and you bought in November 20th of 2006;
17 correct?
18 A. That's when we closed. We actually signed the
19 purchase contract May 19th of 2006 and closed on October
20 the 18th.
21 Q. And have you ever actually lived at The Oaks?
22 A. No, never spent a night there.
23 Q. And why the change? Why the change from you're
24 going to retire down here to where you didn't actually
25 move in?

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1 A. It's a long story. I'll make it short.
2 Q. Thank you.
3 A. We had the walkthrough on October 18th. We were
4 not allowed in the unit prior to that, and I have a memo
5 to that effect from our realtor saying that the builder
6 wouldn't allow anyone into the property prior to the
7 walkthrough.
8 We walked through, created a -- with Curtis, I
9 don't know his last name, from Carriage Hill. Created a
10 punch list with twenty-two items on it. The following
11 morning we had a home-inspection report completed by
12 Sherlock Holmes and they came up with twenty-two, plus a
13 couple of other items. That morning -- we actually
14 purchased the unit from Angela Black. Her name was
15 mentioned previously. And she closed in the morning of
16 the 18th, we closed on the afternoon.
17 Q. And who did Ms. Black buy it from?
18 A. Ms. Black bought it from -- Ms. Black bought it
19 from Carriage Hill.
20 So that afternoon we closed. And immediately
21 the next morning, we went to see Lee McManus at Carriage
22 Hill to talk about the twenty-two items that were on the
23 list to see if they could be fixed.
24 Q. And did Ms. McManus express to you that she was
25 going to have those items addressed and fixed?

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1 A. Yes. Curtis mentioned that and Lee mentioned
2 that. And we were handed the warranty claim forms to fill
3 out for all of those items, even though they were already
4 on the list.
5 Q. And walk me through that process. Were the
6 items on the punch list ultimately taken care of?
7 A. No, they were not.
8 Q. And what, if anything, did that have to do with
9 why you didn't move into the unit for it to be your
10 retirement home?
11 A. We were looking for, again, a carefree -- as
12 carefree as possible -- living, and we started off with
13 items such as a stove that the glass was shattered on the
14 door and it was not operable. And this is a high-end
15 piece of equipment. We had a wine cooler that would throw
16 out hot air. Would not cool the wine, it would heat it.
17 We had a refrigerator that did not work. We had tile in
18 the bathroom that was mismatched. It was marble tile from
19 two different batches and it just didn't look right at
20 all.
21 Q. And these, along with other issues, were the
22 ones that you brought to Carriage Hill's attention?
23 A. Yes.
24 Q. And they did nothing about it?
25 A. They did nothing about that for three and a

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1 half months. And I have letters back and forth, e-mails
2 back and forth, and actually a registered letter to
3 Mr. Behringer, signed by him that he received it, with all
4 these items on it and stating that if this was not
5 resolved, we would take legal action.
6 Q. And what did -- how did that process make you
7 feel? Were you frustrated?
8 A. Frustrated. And we decided that our dream condo
9 turned into an economic and emotional nightmare, and we
10 wanted out at that point. We just had enough.
11 Q. And this would have been when? In early 2007?
12 A. It was the -- February 7th, we actually listed
13 the unit for sale. We purchased it for eight eighty-nine
14 nine and put it on the market for eight seventy-nine,
15 taking a 10,000-dollar loss, possibly, plus $40,000 in
16 commission, so we were willing to accept that loss to get
17 out.
18 Q. And at this time, other than the defect -- other
19 than the punch-list items, were you aware of the other
20 significant construction issues?
21 A. Not until -- as I said, we listed the unit on
22 February 7th. And the end of March, we received a letter
23 from Carriage Hill stating they were going to do sound
24 remediation. And so at that point we felt we had to take
25 the unit off the sales market because there were defects

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1 that would decrease the value. We didn't want to be
2 involved in selling a property that had defects, so we
3 removed the unit from the sales market pending the
4 remediation.
5 Q. And did they ultimately come in and perform the
6 so-called remediation?
7 A. Yes, they did. They changed the schedule four
8 times on us. It was finally done the end of August. We
9 had Sherlock Holmes come back in, do another home-
10 inspection report. There were a number of issues, things
11 on the wall, scratches in cabinets, whatever, floors that
12 were scratched. Took another two weeks for them to repair
13 that. And then we put the unit back on the market
14 November 30th.
15 Q. Of 2007?
16 A. Of 2007.
17 Q. And what was the list price then?
18 A. Same price. Eight seventy-nine.
19 Q. And at that point, you felt they had -- at least
20 the sound issue had been remediated?
21 A. Correct.
22 Q. And what happened? Were you able to sell it
23 when you put it on the market?
24 A. No. No offers at all. We did receive one
25 communication back from a realtor to say that -- and I

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1 don't have the name of the individual that looked at the
2 property, but they decided not to go farther because of
3 the sound issues. They talked to other individuals in the
4 condo and learned that there were still sound issues.
5 Q. And did you ultimately take it off the market,
6 at some point, as a result of that?
7 A. We took it off the market February of 2008 when
8 the other issues with The Oaks, the water intrusion issues
9 and others, were -- became more evident. And we felt that
10 what we would do is put the unit on the rental market for
11 a year or two, at the most, figuring that Carriage Hill
12 would step up to the plate, do the right thing, and fix
13 all the problems, and we could then sell it.
14 Q. And you haven't been able to sell since then,
15 have you?
16 A. Correct.
17 Q. And you've hired Mr. Donato, have you not --
18 A. Yes, sir.
19 Q. -- to assess what damages you may have sustained
20 individually?
21 A. Yes, sir.
22 Q. And in addition to that, you've had some problem
23 with your floors, have you not?
24 A. Yes. We have warped floors. If you look at the
25 floors from the end of the hallway, it looks like you're

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1 looking on the Wando River with waves.
2 Q. And I've got Plaintiffs' Exhibit 119-M. Do you
3 recognize that picture?
4 A. Yes, I do.
5 Q. Is that in your unit?
6 A. Yes, it is.
7 MR. MCDONALD: I would offer 119-M into
8 evidence.
9 THE COURT: Any objection?
10 MR. MAYBANK: We need to find it, Your Honor.
11 [Whereupon, Mr. Maybank reviews documents]
12 THE COURT: What's that? a picture of the floor?
13 MR. MCDONALD: Yes, sir.
14 A. The floors are actually worse than that now.
15 THE COURT: Any objection to 119-M? I believe
16 it's a picture.
17 MR. MAYBANK: Trying to find it --
18 THE COURT: Okay.
19 A. That was last August.
20 Q. [Mr. McDonald] When was this picture taken?
21 A. Last August.
22 THE COURT: All right. Let me see if they have
23 any objection first. You can just lay it up here.
24 Let me see if they've got an objection.
25 [Whereupon, Mr. McDonald proffers documents to

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1 the Court]
2 MR. MAYBANK: No objection, Your Honor.
3 THE COURT: All right. 119-M admitted without
4 objection.
5 [Whereupon, Plaintiffs' Exhibit Number 119-M is
6 admitted into evidence by the Court]
7 MR. MCDONALD: And I'm wrapping up here with
8 you, Mr. Maraziti.
9 Q. [Mr. McDonald] And you're unit 2-A?
10 A. Correct.
11 Q. Which is on the second floor above the garage?
12 A. Yes. In unit number -- in building two.
13 Q. All right, sir. And you're not claiming any
14 lost rent, are you, sir?
15 A. No, sir.
16 Q. And no -- you haven't had any out-of-pocket
17 expenses that you're claiming here today?
18 A. No, not that I'm claiming.
19 MR. MCDONALD: Thank you very much, Mr.
20 Maraziti.
21 THE WITNESS: You're welcome.
22 MR. MCDONALD: Please answer any questions the
23 Court or these gentlemen may have.
24 THE WITNESS: Yes, sir.
25 THE COURT: Cross-examination.

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1 MR. MAYBANK: Yes, Your Honor. It should be
2 brief.
3 Mr. Maraziti, good afternoon. My name is Roy
4 Maybank.
5 THE WITNESS: Good afternoon.
6 CROSS-EXAMINATION
7 BY MR. MAYBANK:
8 Q. You would understand why you wouldn't be allowed
9 into that unit, wouldn't you, by Carriage Hill Associates?
10 You didn't buy the unit from them, did you?
11 A. No. But the realtor, Sally Castengara, who is
12 the top sales person on Daniel Island for the last eleven
13 years, wrote to me, I have the memo, saying that
14 absolutely no one was allowed into the property that they
15 purchased until the walkthrough.
16 Q. My question is, sir, to you, is --
17 A. Yes.
18 Q. -- you didn't buy your unit from our clients,
19 did you?
20 A. Correct. I did not.
21 Q. So they couldn't keep you in or out of the unit
22 because they --
23 A. No. No.
24 Q. -- didn't have the deed to that unit; correct?
25 A. Yes, sir.

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1 Let me just go a little farther. Angela Black,
2 who was a realtor, also, at Daniel Island Real Estate,
3 could not get in there with us. We asked her to intervene
4 on our behalf so we could take a look, and she said the
5 same thing, that --
6 Q. You're not Angela Black, are you?
7 A. I'm not Angela Black.
8 MR. MAYBANK: I would ask the Court to strike
9 that.
10 And what I would ask you to do is just to answer
11 the question.
12 THE WITNESS: Yes, sir.
13 Q. [Mr. Maybank] You didn't buy the unit from my
14 clients, did you?
15 A. I did not.
16 Q. Do you know if Ms. Black was the original
17 purchaser of that unit --
18 A. Yes, sir.
19 Q. -- from Daniel Island?
20 A. I do, sir.
21 Q. Do you know how much she paid for it?
22 A. Yes. She paid seven sixty-nine.
23 Q. And then without even moving in or taking
24 physical possession of that unit, you then -- I don't
25 believe she ever -- did she ever move into the unit?

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1 A. No. We both closed the same day on the unit.
2 She bought in the morning, we bought -- or closed in the
3 afternoon. I'm sorry. She closed in the morning of the
4 18th, we closed the afternoon of October 18th.
5 Q. Were y'all both there at the closing at the same
6 time?
7 A. In the same attorney's office --
8 Q. Yes, sir.
9 A. -- no. She was there in the morning, we were
10 there in the afternoon.
11 Q. Is that referred to as a double-blind closing?
12 Do you know?
13 A. I'm not really sure.
14 Q. What bank did you work for?
15 A. I worked for -- the last bank I worked for was
16 Independence Community Bank in Brooklyn.
17 Q. And what other banks have you worked for in the
18 past?
19 A. United Jersey Banks in New Jersey, which was a
20 bank holding company eventually bought out by Bank of
21 America.
22 Q. And you were in the banking industry for thirty-
23 plus years?
24 A. Yes, sir.
25 Q. How much did you buy your home on Daniel Island

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1 for?
2 A. $330,000.
3 Q. And how much did you sell it for?
4 A. We have not sold it yet.
5 Q. Have you attempted to sell the home?
6 A. No, because we are going to hold on to the home
7 and sell the condo instead. We don't want to move into
8 the condo.
9 Q. I apologize. I was mistaken. Maybe I didn't
10 hear your testimony. I thought that you said that you
11 bought a modest home on Daniel Island --
12 A. Correct.
13 Q. -- and you had a place in New Jersey --
14 A. Correct.
15 Q. -- and you were going to sell both of those.
16 A. The plan was -- yes. The plan was to purchase
17 the condo, move into the condo, sell the New Jersey home
18 and sell the Daniel Island home and only end up with one
19 home, which would be the condo.
20 Q. Currently, you own the Daniel Island home?
21 A. We own the Daniel Island home and the New Jersey
22 home. We're stuck with three homes now.
23 Q. Okay. How old are you, sir?
24 A. Sixty-seven, sir.
25 Q. And you purchased, from Ms. Black, your home for

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1 almost $900,000?
2 A. Yes, sir. And put another 10,000 into it to
3 prepare it for the rental market by putting up plantation
4 shutters and other items.
5 Q. And if I'm not mistaken, then, Ms. Black made
6 about $110,000 on a home she never took possession of?
7 A. Absolutely.
8 Q. Being in the banking industry, would you agree
9 with me that the last few years have been some of the
10 worst financial of record in the history of the United
11 States?
12 A. I agree with you one hundred percent.
13 And if I may state that we placed our unit on
14 the market in 2007 when the market was doing very well.
15 The market didn't start to drop until the beginning of mid
16 2008.
17 Q. I understand that.
18 And you also understand that there were a lot of
19 speculators on Daniel Island during that time, don't you?
20 A. I don't know that.
21 Q. Would you believe that Ms. Black's investment
22 was a speculation, or do you think --
23 A. No, I don't.
24 Q. You thought it was a long-term investment on her
25 behalf?

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1 A. Yes, sir, I did, for personal reasons. I cannot
2 -- I would be speculating if I gave you anymore
3 information than that.
4 Q. Since 2008, have you tried to sell your condo?
5 A. No, sir.
6 If I may, also: being in banking, I understand
7 that because of the issues at The Oaks, certainly with the
8 defects, the prices would have dropped. and also with
9 litigation. There's no bank in their right mind would
10 give anyone a mortgage on a property like that, so you
11 would have to sell for cash.
12 Q. Really?
13 A. Yes.
14 Q. Did you hear Mr. Jung testify earlier about
15 buying a condominium covered in construction --
16 A. I'm just speaking from my experience in New
17 Jersey, with the banks in New York and New Jersey --
18 Q. In New Jersey?
19 A. -- that I worked with. That if there's
20 litigation, they will not grant the mortgage.
21 MR. MAYBANK: Thank you, sir.
22 THE WITNESS: You're welcome.
23 THE COURT: Any redirect?
24 MR. MCDONALD: No, Your Honor.
25 THE COURT: You may step down. Thank you very

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1 much.
2 THE WITNESS: Thank you, Your Honor.
3 [Whereupon, Mr. Maraziti is excused and exits
4 the witness stand]
5 MR. MCDONALD: Plaintiffs' call Ms. Brenda Cook.
6 [Whereupon, Ms. Cook comes forward]
7 THE CLERK OF COURT: Raise your right hand.
8 Please raise your hand.
9 [Whereupon, Ms. Cook is duly sworn by the clerk
10 of court as follows: do you swear or affirm that your
11 testimony will be the whole truth and nothing but the
12 truth, so help you God]
13 THE WITNESS: I do.
14 THE CLERK OF COURT: Please be seated.
15 [Whereupon, Ms. Cook takes the witness stand]
16 THE CLERK OF COURT: State your full name and
17 spell your last name.
18 MR. MCDONALD: Hi, Ms. Cook. Would you state
19 your full name and spell your last name.
20 THE WITNESS: My full name is Brenda Johnson
21 Cook. My last name is spelled C-O-O-K.
22
23 - - -
24 - - -
25 - - -

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1 BRENDA COOK,
2 Having Been First Duly Sworn,
3 was Examined and Testified as Follows:
4 DIRECT EXAMINATION
5 BY MR. MCDONALD:
6 Q. What is your current address?
7 A. My current address is I live in The Oaks. It is
8 144, unit 3-B.
9 Q. And you were in the courtroom, were you not,
10 Ms. Cook, when the stipulations were read?
11 A. Yes.
12 Q. So this is going to be somewhat brief, but I'm
13 going to move through it with you. Okay?
14 A. Okay. That's fine.
15 Q. Where are you originally from, Ms. Cook?
16 A. I grew up on a farm in South Georgia in
17 Shellman, Georgia.
18 Q. And were you born and raised there?
19 A. I was.
20 Q. And how did you come to Charleston?
21 A. Our boys went to the Citadel, both of our boys
22 did, one in '81 and one in '91. So when my husband
23 retired from Delta, we came back to Charleston.
24 Q. And what is your husband's name?
25 A. Peyton Cook.

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1 Q. Okay. And when was that? When did you come --
2 when did your husband retire from Delta and you come to
3 Charleston?
4 A. My husband retired in 2000 and we came to
5 Charleston in 2002.
6 Q. And were your sons still at the Citadel at that
7 point, or it was after they graduated?
8 A. No. They both had graduated.
9 Q. How did you come -- in this case, how did you
10 come to get involved with The Oaks project?
11 A. When we came to Charleston -- I had been in real
12 estate since 1973 and my husband said, why don't you
13 activate your license and go to work selling here on
14 Daniel Island. So I did, in fact, do that. Fortunately,
15 or unfortunately, I got in at the real good time when
16 things were really, really moving up, invested in several
17 properties and was just doing really, really well with
18 sales. And so when The Oaks came along, I could just tell
19 from being in real estate for forty years that that was
20 going to be a good investment, so I purchased two of
21 those.
22 Q. So there were two Oaks units that you got?
23 A. Yes.
24 Q. And one of those units was in your name; is that
25 right?

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1 A. Yes, that's right.
2 Q. And one of the units that was purchased was in
3 the name of your husband; correct?
4 A. Yes, it was. The first one I bought myself, and
5 I encouraged him to buy one because I felt like it was a
6 good investment. All the years we had been married, I had
7 never lost money on real estate. I had always been very
8 frugal and very wise with investing. And so I encouraged
9 him to do that.
10 Q. I'm not trying to get personal here, Ms. Cook --
11 A. That's fine.
12 Q. -- but my question to you is this: you
13 encouraged him. So did he have his own money that he was
14 going to invest and you had your own money?
15 A. Yes, he did. When my husband retired from
16 Delta, he got a large lump sum. At the time, he gave me
17 half of it, which I managed, and he managed the other
18 half. So from that time forward, when he retired I became
19 independent and he let me just do my own thing.
20 Q. Are you talking about the same bank account? Or
21 you-all had different bank accounts?
22 A. We had different bank accounts.
23 Q. And he did whatever he did with his money and
24 you --
25 A. Right.

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1 Q. -- did whatever you did with your money?
2 A. Exactly.
3 Q. So you bought a unit and your -- you encouraged
4 your husband to buy a unit?
5 A. Right.
6 Q. And, in fact, did your husband buy the unit on
7 your advice?
8 A. He just put the down payment down. I told him
9 if he would put the down payment down, I would get the
10 mortgage and I would take care of it, because I was making
11 a lot of money. And so that's why he did that.
12 Q. And so you actually signed and took on, as a
13 personal debt, the mortgage?
14 A. I did, with NBSC.
15 Q. And do you still -- at some point, was that unit
16 conveyed from your husband into your name?
17 A. Not until very late in the process.
18 Q. And why was that done?
19 A. Because I was selling it at a short sale and the
20 bank was going to give me a deficiency judgment. So my
21 husband, Heather Gilbert [phonetic], put the unit in my
22 name because the whole time, the mortgage had been in my
23 name and I had paid it as long as I could.
24 Q. Okay. And the only unit that's the subject of
25 this lawsuit is the one that you encouraged your husband

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1 to buy --
2 A. Right.
3 Q. -- and you took the mortgage out on?
4 A. That's right.
5 Q. And you bought that on September 12th, 2006;
6 correct?
7 A. Let me make sure about that date.
8 [Whereupon, the witness reviews documents]
9 A. I wrote the contract in January of 2006. Yes.
10 Q. [Mr. McDonald] Just to refresh your
11 recollection --
12 A. Okay.
13 Q. -- the deed here was recorded on September 12th,
14 2006; correct?
15 A. Okay. Okay. I wrote the -- no. I wrote -- I'm
16 sorry.
17 Q. That's all right.
18 A. I got the dates wrong there.
19 Q. And when -- after you purchased the unit at The
20 Oaks, or put it in your husband's name and you took the
21 mortgage out on it, did you try and sell it?
22 A. Yes, I surely did. As soon as they finished it,
23 I put it on the market to sell. That was right at the top
24 of the market, when the market was just starting to go
25 down. And there were a lot of us real estate agents who

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1 had done the same thing. A lot of girls in my office had
2 done the same thing. Angela Black, Lynn Borrow, Sally
3 Castengara, and a lot of us had done the same thing. We
4 had bought those as investments, as we had done all over
5 the island.
6 Q. And were you able to sell it at the end of 2006,
7 beginning of 2007?
8 A. No. It stayed on the market and I kept it on
9 the market and I thought, well, I'm being real smart, I'll
10 go in and do some additions inside. I went in and redid
11 the floors, painted the inside, put some upgrades in it,
12 thinking that I would be able to sell it. Well, I
13 couldn't sell it. So in the beginning of I think it was
14 2008 to 2010, I decided I had to rent it. So I did that.
15 And still trying to sell it.
16 But let me kind of regress here. Because when
17 the sound remediation was done, Mr. Behringer called me
18 and asked me if I would be the first one, since my unit
19 was vacant, for them to do the remediation. And I agreed
20 that it would be fine. It took them six months to
21 remediate my unit.
22 Q. And this was in 2007?
23 A. That's right.
24 And, you know, during the time, I'm still trying
25 to sell it and do all this -- do all these things. But in

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1 2000 and -- I think it was the beginning of 2010, I didn't
2 have a renter in it at that time and I got two offers. I
3 had lowered it down. I had quit making the payments and I
4 got two offers on my unit and both of them backed out
5 because of the lawsuit and all the conditions. And I
6 disclosed everything. Anybody that wanted to see any
7 paperwork that I had, I gave it to them.
8 Q. And between 2008 and 2010, were you actively
9 trying to sell the unit --
10 A. Yes.
11 Q. -- as well?
12 A. Yes.
13 Q. And, ultimately, were you able to sell the unit?
14 A. Yes, I was.
15 Q. And was that in a short sale?
16 A. Yes, it was.
17 Q. I hand you what's been marked as Plaintiffs'
18 Exhibit 114-C.
19 A. Okay.
20 Q. Do you recognize that document?
21 A. I do.
22 Q. And what do you recognize it to be?
23 [Whereupon, the witness reviews documents]
24 A. It's when I sold it and I disclosed to the buyer
25 everything that was going on.

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1 Q. [Mr. McDonald] And this document is called a
2 disclosure and acknowledgment of pending litigation?
3 A. Right.
4 MR. MCDONALD: I would move 114-C into evidence.
5 THE COURT: Any objection?
6 MR. ALTMAN: No objection, Your Honor.
7 THE COURT: All right. 114-C admitted without
8 objection.
9 [Whereupon, Plaintiffs' Exhibit Number 114-C is
10 admitted into evidence by the Court]
11 Q. [Mr. McDonald] And in the short sale, it was
12 certainly that. You had a sales price of --
13 Do you remember what your sale price was in the
14 short sale?
15 A. It was -- it was -- in the short sale, I sold it
16 for three fifty.
17 Q. And but you had more than that on the mortgage
18 that you had taken out; right?
19 A. Yes. It was pretty close to eight -- well, in
20 the seventies.
21 Q. I'll hand you what's been marked as Exhibit
22 114-D.
23 A. Okay.
24 Q. Do you recognize that document?
25 A. Yes. Very much.

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1 Q. And what do you recognize it to be?
2 A. It's a deficiency judgment.
3 Q. It's a confession of judgment for $400,000?
4 A. Right.
5 Q. To the bank; correct?
6 A. Yes. Yes.
7 Q. And do you --
8 MR. MCDONALD: I would move 114-D into evidence.
9 THE COURT: Any objection?
10 MR. ALTMAN: This is not -- or, yeah, it's
11 recorded. Has this been recorded? It doesn't show it
12 has been.
13 MR. MCDONALD: About to get into that.
14 MR. ALTMAN: Well, unless it's recorded, we
15 object to it.
16 MR. MCDONALD: Okay.
17 Q. [Mr. McDonald] Did you sign a confession of
18 judgment here --
19 MR. MCDONALD: I'll lay some foundation, Judge.
20 Q. [Mr. McDonald] You signed a confession of
21 judgment here for $400,000; correct?
22 A. Right. I did.
23 Q. But you got an agreement with the bank?
24 A. With the bank, yes. And they --
25 Q. And what is that agreement?

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1 A. That agreement is if I -- $250,000, and I pay
2 them $250 a month. I was supposed to go up to $1,000 a
3 month, but I have not been able to yet.
4 Q. But you pay them the $250 a month?
5 A. Yes. And I pay them religiously.
6 Q. So really what you owe the bank, assuming that
7 you make those two hundred -- what happens if you don't
8 make those 250-dollar payments?
9 A. They will claim the whole thing.
10 Q. And you're going to make those 250-dollar
11 payments --
12 A. Yeah.
13 Q. -- because you undertook that obligation --
14 A. Right.
15 Q. -- correct?
16 A. Right. I've never been able -- not able to pay
17 my bills before.
18 Q. So what -- are you asking this Court for the
19 $400,000 or are you asking this Court for the $250,000
20 because you're going to pay your bills over time?
21 A. The two hundred and fifty. And I've paid about
22 five on that so far.
23 MR. MCDONALD: So at this time, I would move
24 Exhibit 114-D into evidence.
25 MR. ALTMAN: We object. Your Honor, we would

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1 like to see the agreement that she has for two fifty
2 that says it's been recorded.
3 MR. MCDONALD: I draw his attention to Exhibit
4 114-C --
5 THE COURT: Hold on a second.
6 MR. MCDONALD: -- that's into evidence --
7 THE COURT: Hold on. Hold on a second.
8 All right. What's your objection to the
9 confession of judgment, 114-D?
10 MR. ALTMAN: The confession, Judge, it has not
11 been filed. We don't understand -- we don't have the
12 documentation of the exact terms.
13 MR. MCDONALD: Yeah. 114-C, that's already into
14 evidence.
15 THE COURT: What's the -- which one did you go
16 into about the bank agreement?
17 MR. MCDONALD: It's 114-C, Your Honor.
18 THE COURT: 114-C?
19 MR. MCDONALD: Or D.
20 THE COURT: Okay.
21 MR. MCDONALD: And it's page 2. It's actually
22 the fourth page of 114-C.
23 THE COURT: That's the letter from Smith Cox and
24 Associates?
25 MR. MCDONALD: Yes.

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1 THE COURT: So you're offering C and D; is that
2 correct?
3 MR. MCDONALD: Yes.
4 And, actually, the confession of judgment,
5 though not recorded, is already a portion of 114-C,
6 but I didn't realize that, so --
7 THE COURT: Do you have any objections to
8 offering 114-C and D together, which I think explains
9 the confession? The letter does, anyhow.
10 MR. ALTMAN: Not realizing that this is -- 114-C
11 was more than one document --
12 THE COURT: We'll consolidate them, if you want
13 to, into 114-C.
14 MR. ALTMAN: 114-C is called a settlement
15 agreement and all we have is one page. It's not
16 executed. It's not executed by the bank to show if
17 there's an agreement, so we would object to it.
18 THE COURT: Well, it's the seller here, there's
19 a purchaser. That's the listing, I guess, for
20 something else. Let me see. There's a settlement
21 agreement that's signed. Later on in, a settlement
22 agreement and confession of judgment. The settlement
23 agreement lays out the proceeds and it's signed by
24 Ms. Cook and it looks like it's witnessed by someone
25 else.

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1 I'll admit C and D together --
2 MR. MCDONALD: Thank you, Your Honor.
3 THE COURT: -- with objection.
4 [Whereupon, Plaintiffs' Exhibit Number 114-C is
5 admitted into evidence by the Court]
6 [Whereupon, Plaintiff's Exhibit Number 114-D is
7 admitted into evidence by the Court]
8 Q. [Mr. McDonald] And is that what you're claiming
9 here today from this Court --
10 A. Yes.
11 Q. -- is the $250,000?
12 A. Yes. Yes.
13 Q. Okay. And have you, in fact, incurred out-of-
14 pocket expenses along the way, small out-of-pocket
15 expenses?
16 A. I have, but I'm not claiming that.
17 Q. That's not part of --
18 A. No.
19 Q. -- part of your claim, is it?
20 A. No.
21 MR. MCDONALD: That's all I have, Ms. Cook.
22 Please answer any questions these other lawyers may
23 have.
24 THE COURT: Cross-examination.
25 MR. ALTMAN: Just a moment, Your Honor.

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1 CROSS-EXAMINATION

2 BY MR. ALTMAN:

3 Q. Ms. Cook, how many pieces of property did you

4 speculate on on Daniel Island?

5 MR. MCDONALD: Objection, Your Honor.

6 THE COURT: What's your legal objection?

7 MR. MCDONALD: Objection --

8 THE COURT: Pardon?

9 MR. MCDONALD: Characterization of how many

10 pieces of property did you speculate on on Daniel

11 Island.

12 THE COURT: Overruled. If she doesn't know, she

13 doesn't know. If she does, she can answer it.

14 Go ahead.

15 A. I do know, and I don't mind answering. With my

16 personal home, it was five.

17 Q. [Mr. Altman] And you said you made money on all

18 the others; right?

19 A. No. No, no. I made money on one. I sold one

20 in foreclosure. I did two in short sale.

21 Q. Why did you decide to short sale the others?

22 Not the Daniel Island -- not The Oaks property, but the

23 others. Why did you --

24 A. I couldn't make the payments. I was making

25 about seventy-five percent of what I had been making the

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1 year before. I just overinvested. And, you know, not
2 only did I lose that, I almost lost my marriage. My
3 husband left me for two years during this time because I
4 spent so much money investing. And I'm sorry to be so
5 emotional.
6 Q. I understand. I'm just trying to understand --
7 A. I understand what you're saying. But I have
8 been able, thanks to my husband, to be completely debt
9 free now except for this that I owe the bank. And I would
10 like to have that money to pay them.
11 Q. On these other properties that you sold --
12 A. Yes.
13 Q. -- in short sale --
14 A. Yes.
15 [Off the record momentarily]
16 Q. [Mr. Altman] On the other properties that you
17 sold at short sale, you didn't have to have a deficiency
18 judgment --
19 A. No --
20 Q. -- taken --
21 A. I did not. They were smaller condos and Chase
22 did not give me a deficiency judgment. And one I just let
23 go to foreclosure. I was -- and that's the first one I
24 did. And if I had known what I know now, I could have
25 done a short sale and wouldn't be -- my credit is really

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1 messed up.
2 MR. ALTMAN: I have nothing further, Your Honor.
3 THE WITNESS: Thank you.
4 THE COURT: Any redirect?
5 MR. MCDONALD: No redirect, Your Honor.
6 THE COURT: You may step down. Thank you very
7 much.
8 THE WITNESS: Thank you.
9 [Whereupon, Ms. Cook is excused and exits the
10 witness stand]
11 THE COURT: Next witness.
12 MR. MCDONALD: The plaintiffs call Karen Nelson.
13 [Whereupon, Ms. Nelson comes forward]
14 [Whereupon, Ms. Nelson is duly sworn by the
15 clerk of court as follows: do you swear or affirm
16 that your testimony will be the whole truth and
17 nothing but the truth, so help you God]
18 THE WITNESS: I do.
19 THE CLERK OF COURT: State your full name and
20 spell your last name.
21 [Whereupon, Ms. Nelson takes the witness stand]
22 THE WITNESS: My name is Karen Nelson. Last
23 name is spelled N-E-L-S-O-N.
24 MR. MCDONALD: How are you doing today,
25 Ms. Nelson?

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1 THE WITNESS: Good.
2 - - - - -
3 KAREN NELSON,
4 Having Been First Duly Sworn,
5 was Examined and Testified as Follows:
6 DIRECT EXAMINATION
7 BY MR. MCDONALD:
8 Q. Let's go ahead and clear this up. You have
9 since taken your husband's name; correct?
10 A. I have.
11 Q. You are in the process of changing your name to
12 Eland?
13 A. Correct.
14 Q. But I'm going to call you Ms. Nelson because
15 I've called you Ms. Nelson for as long as I've known you.
16 Okay?
17 A. And that's fine with me. I might not answer to
18 the other.
19 Q. Thank you very much.
20 Where are you from, Ms. Nelson?
21 A. I'm from Chicago, Illinois.
22 Q. And were you born and raised in Chicago?
23 A. I was.
24 Q. And on what occasion did you have to move down
25 to Charleston?

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1 A. John and I were looking for places to retire to.
2 We did the old research down the east coast, Florida, and
3 settled on Charleston.
4 Q. And when did you move to Charleston?
5 A. Full time I moved here, myself, in 2009.
6 Snowbird. We did -- I did a couple of winters down here
7 prior to that.
8 Q. And where did you live at in -- where did you
9 live at when you first moved down here?
10 A. At 136 Durbanks Oaks Alley.
11 Q. So at some point, you had a time to come to
12 purchase a unit at The Oaks?
13 A. Yes.
14 Q. Okay. And were you involved in the lottery
15 system?
16 A. We did not.
17 Q. You purchased directly from Daniel Island
18 Riverside Developers?
19 A. We did.
20 Q. And where is your unit? What unit?
21 A. Our unit was 2-B, which was the first floor of
22 residential.
23 Q. 2-B in what building?
24 A. Building four.
25 Q. And how did you come to decide on purchasing at

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1 The Oaks?
2 A. We had actually put our name in on lottery for
3 another condominium and we did not win that. Angela
4 Black, who was our realtor, suggested that there was
5 another unit available at The Oaks. We were essentially
6 taking the place of someone that had won the lottery, and
7 so we put a contract in on it and it was accepted.
8 Q. And you were, in fact, presented with certain
9 marketing materials?
10 A. Yes.
11 Q. Your 115-B; correct?
12 A. Yes.
13 Q. And that's already into evidence.
14 And your purchase price of your unit was
15 $686,000; correct?
16 A. Correct.
17 Q. And did you actually move there, you and your
18 husband?
19 A. Yes, we did.
20 Q. And so you lived at The Oaks?
21 A. Yes.
22 Q. And what was your intent when you moved in? Was
23 it to stay there, was it to --
24 A. The intent was, in the beginning, that it would
25 be a part-time residence for us, long-term retirement.

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1 Q. Okay. And did you have occasion to serve on the
2 board of --
3 A. I did.
4 Q. And when did you get on the board?
5 A. I think that would be January of 2011 to
6 February of 2012.
7 Q. And so that would have been after this lawsuit
8 started?
9 A. Correct.
10 Q. And did you spend a certain amount of time on
11 dealing with the issues related to the building?
12 A. It was not a major focus at that time, but we
13 did have some issues, construction problems, that we did
14 have to deal with.
15 Q. And who was on the board with you?
16 A. On the board was Jeff Secalla [phonetic] and
17 Joan Moran [phonetic].
18 Q. Okay. And you have since sold your unit;
19 correct?
20 A. That's correct.
21 Q. And what was the sales price of your unit when
22 you sold it?
23 A. $330,000.
24 Q. And you sold it on March 29th of 2012?
25 A. That is when we closed, yes.

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1 Q. And was it a short sale?
2 A. According to the bank it wasn't. But the
3 purchase price was less than what we owed on the mortgage.
4 And so what we chose to do to preserve our credit rating
5 was to take a loan out against a home that we were living
6 in at the time. And so we funded our own short sale.
7 Q. And why did you sell the unit for 330,000 and
8 have to fund it?
9 A. To preserve our credit rating is why we chose to
10 fund our own short sale.
11 Q. Well, why did you sell the unit? Why did you
12 decide --
13 A. Why did we sell it?
14 Q. -- to sell the unit? Yes.
15 A. Because it was an environment that we were not
16 interested in living in any longer because of the sound
17 issues.
18 Q. And have you hired Mr. Donato?
19 A. Yes.
20 Q. And you're relying on him to determine what your
21 individual damages, if any, may be?
22 A. Correct.
23 Q. And are you asking the Court for any lost rent?
24 A. No.
25 Q. Are you asking the Court for any out-of-pocket

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1 expenses?
2 A. No.
3 MR. MCDONALD: That's all I've got. Thank you
4 very much.
5 THE COURT: How much did you fund it for?
6 THE WITNESS: It was a little over $90,000.
7 THE COURT: Approximately 90,000 you borrowed --
8 THE WITNESS: Approximately. Yeah.
9 THE COURT: -- to give to the bank on the sale?
10 THE WITNESS: Say again?
11 THE COURT: To give to the bank when you sold
12 it?
13 THE WITNESS: Yeah.
14 THE COURT: Had to take that to the closing
15 table?
16 THE WITNESS: Yes.
17 THE COURT: Okay. Thank you.
18 THE WITNESS: Uh-huh.
19 THE COURT: Cross-examination.
20 MR. MAYBANK: Yes, Your Honor. Thank you.
21 I'm sorry. What was your name again?
22 THE WITNESS: Karen Nelson.
23 - - -
24 - - -
25 - - -

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CROSS-EXAMINATION

BY MR. MAYBANK:

Q. Ms. Nelson, would you -- what do you do for a living?

A. I am retired.

Q. What did you do for a living?

A. I worked for Allstate Insurance Company in their technology department.

Q. Would you agree that the condominium that you lived in was an elegant brick and stucco condominium situated among spectacular and natural scenery?

A. Yes.

Q. Would you agree that it offers high-quality interior finishes, the best of both worlds?

A. There were parts of the construction on the inside that I wouldn't say was spectacular.

Q. No, no. Answer the question. Did it offer high-quality interior finishes in the best of both worlds? A highly-desirable residence or address in a magnificent natural environment and access to the pleasures and conveniences of Daniel Island's downtown?

A. Yes.

Q. Did it offer magnificent views of the Wando River?

A. Yes.

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1 Q. Did it offer a gourmet kitchen with granite
2 counter tops, a large island, and beautiful cabinetry and
3 stainless-steel appliances?
4 A. Yes.
5 Q. Did that also include a six-burner gas range?
6 A. Yes.
7 Q. Two ovens and a microwave?
8 A. Yes.
9 Q. It sounds luxurious, doesn't it?
10 A. It sounds nice.
11 Q. Sounds very nice.
12 Have you seen the listing on your condominium?
13 A. At one point, yes.
14 Q. Do you agree with what is contained in the
15 listing of your condominium from when you sold it?
16 A. I am sure at the time I did, yes.
17 Q. I mean, you just sold it. Closed on it
18 3/21/2012, didn't you?
19 A. Uh-huh.
20 Q. That wasn't that long ago, was it?
21 A. It is what it is. I don't know what long or
22 short. But, yes.
23 Q. I am looking in this remarks because you stated
24 and testified that you sold your unit because of the sound
25 problems, and I don't see a single mention in your listing

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1 of any of the sound problems. And I can understand that
2 you're not the agent that put this information in there,
3 are you?
4 A. Correct.
5 Q. Did you discuss with your real estate agent the
6 type and description of the unit that you were trying to
7 sell?
8 A. I don't actually believe we gave her any input
9 on the description.
10 Q. Is she lying, then, to the general public on
11 your behalf? Or do you believe what was put in this -- in
12 your listing?
13 A. I believe what was in the listing.
14 Q. I do, too. I think on that we can all agree.
15 At least you and I can.
16 I don't see anywhere in the remarks or the agent
17 notes in the listing anything about this litigation. Do
18 you know whether or not it was put in the actually
19 publically -- into the MLS listing itself any remarks
20 about the litigation on these units?
21 A. I do not know.
22 Q. Please don't misunderstand me. I understand
23 you're not the agent that's putting this in there.
24 Now, I understand that you did fill out a
25 residential property condition disclosure statement,

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1 didn't you?
2 A. Yes.
3 Q. You signed it I believe on January 15th --
4 January 5th, 2012. And your name is Karen A. Nelson?
5 A. Correct.
6 Q. And your husband's name is John W. Edelen?
7 A. Correct.
8 Q. Now, you did note in here that -- you checked no
9 on lawsuits, foreclosures, bankruptcy, tenancies,
10 judgment, tax or other liens under section 20. Do you
11 recall doing that?
12 A. I don't know if I did it or whether John did it,
13 but --
14 Q. All right. Now, I did note under that there's a
15 little star. Says, does not affect tile. I don't know
16 what that means. But it does indicate there is a lawsuit
17 against builder-developer for water intrusions at rails
18 and balusters on porches. And I'm going to show you what
19 I have, and tell me if you can identify this as the
20 listing -- if you know if this is the MLS to your unit --
21 you've seen that before -- and/or the South Carolina
22 residential property disclosure form.
23 A. So if I've seen it?
24 Q. Yes, ma'am. If you've ever seen that. It's
25 your unit. I assume you may have seen it, but I could

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1 certainly be wrong.
2 [Whereupon, the witness reviews documents]
3 Q. [Mr. Maybank] I apologize. The stapling is not
4 very good.
5 A. Okay. So what I don't ever remember seeing are
6 these first two pages, which I think they're referring to
7 as the MLS listing.
8 Q. Yes, ma'am. That's correct.
9 A. I don't remember seeing that. I do remember
10 seeing this document.
11 Q. Which is titled the residential property
12 condition --
13 A. Property condition disclosure statement.
14 I remember standing there filling it out with
15 the real estate agent.
16 Q. Okay.
17 A. Okay?
18 Q. Is this your signature on the back?
19 A. That is.
20 Q. Is this your handwriting that has filled this
21 out, or is the realtor's handwriting?
22 A. This is John's handwriting.
23 Q. Your husband's?
24 A. Yes.
25 Q. Were you there when he filed this --

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A. I was --

Q. -- this section out?

A. -- standing there, yes. And he filled it out, based on input from the realtor.

Q. Have you had a chance to review it for content?

A. I don't -- no.

Q. I'll ask this question. Maybe it will shorthand it. Do you see anything in here about sound problems or sound attenuation issues being disclosed to a subsequent purchaser?

A. I did not just now, no.

Q. You would agree with me that, based on your claim, it would be a material issue as to why you did not -- are not no longer living there; correct?

A. Could you ask again?

Q. Sure.

That was the reason y'all left. You short-sold the unit was because of the sound problems; right?

A. [No response]

Q. So yet, according to the information that you filled out and your husband filled out, that was never disclosed to the subsequent purchaser, was it?

A. No.

MR. MAYBANK: At this time, Your Honor, I would like to move into evidence the South Carolina

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1 residential property condition disclosure statement,
2 as well as the MLS listing on the home, for
3 Ms. Nelson.
4 THE COURT: What number?
5 MR. MAYBANK: It would be -- it's actually not
6 been listed as an exhibit, so it would be Number 230.
7 231, Your Honor.
8 THE COURT: All right. Any objection to 231?
9 MR. MCDONALD: No objection, Your Honor.
10 THE COURT: All right. Defendants' Exhibit 231
11 admitted without objection.
12 THE COURT REPORTER: Can I mark it?
13 MR. MAYBANK: Yes, ma'am. Let's do that now so
14 I don't forget.
15 [Whereupon, Defendants' Exhibit Number 231 is
16 marked by the court reporter]
17 [Whereupon, Defendants' Exhibit Number 231 is
18 admitted into evidence by the Court]
19 Q. [Mr. Maybank] Other than this sale, have you
20 had any other short sale of real estate before?
21 A. No.
22 Q. Ever been involved in any other construction
23 litigation?
24 A. No.
25 Q. Ms. Nelson, can you look at this and tell me if,

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1 in fact -- I see it's signed. I believe -- is this your
2 signature?
3 A. It is.
4 Q. If you would take a look at that document and
5 tell me if you've ever seen that document before.
6 [Whereupon, the witness reviews documents]
7 A. Yes, I have.
8 Q. [Mr. Maybank] All right. If I may, may I take
9 that back?
10 A. You may.
11 Q. Unfortunately, I don't have more than one copy.
12 But if you need to refer to it, please ask me and I'll be
13 more than happy to give it back to you.
14 I'm holding 231, which is the MLS listing and
15 the property disclosure. In this information that you
16 provided us, as a result of this litigation, you listed in
17 here the concern of the noise, the sound attenuation. And
18 that was dated March 7th, 2010. Did you see that date on
19 here?
20 A. I did not notice the date.
21 Q. I apologize.
22 [Whereupon, Mr. Maybank proffers documents to
23 the witness]
24 Q. [Mr. Maybank] When did you sign this document?
25 A. March 7th, 2010.

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1 Q. And in this document, you would agree with me
2 that you were complaining about the sound issues at that
3 time?
4 A. Yes.
5 Q. All right. And you did not list your house
6 until 2011; correct?
7 A. Correct.
8 Q. And at that time -- and you did not sell it
9 until 2012; correct?
10 A. Correct.
11 Q. And as I further read in here, that this was not
12 a short sale and it was not a banker foreclosure, was it?
13 A. Correct.
14 Q. This is just -- and I'm quoting -- an incredible
15 deal offered by a real homeowner. Is that right?
16 A. That's what's in the MLS listing, which I have
17 not seen but --
18 Q. Did you approve any of the information that was
19 put in here?
20 A. I don't remember that.
21 MR. MAYBANK: Your Honor, at this time I would
22 like to move into evidence -- it would be Exhibit
23 Number 232. It is the information provided by the
24 plaintiff, Ms. Cook [phonetic], and her husband, in
25 this litigation as to complaints about significant

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1 complaints about the unit.
2 THE COURT: Any objection?
3 MR. MCDONALD: No objection.
4 THE COURT: 232 admitted without objection.
5 MR. MAYBANK: Thank you, Your Honor.
6 [Whereupon, Defendants' Exhibit Number 232 is
7 marked by the court reporter]
8 [Whereupon, Defendants' Exhibit Number 232 is
9 admitted into evidence by the Court]
10 MR. MAYBANK: Thank you very much, ma'am.
11 Answer any questions they may have.
12 THE COURT: Redirect?
13 MR. MCDONALD: I'm fine, Your Honor. Thank you
14 very much.
15 THE COURT: You may step down. Thank you very
16 much, Ms. Nelson.
17 Call your next witness.
18 MR. MCDONALD: Your Honor, the plaintiffs call
19 Mr. Robert Graham.
20 [Whereupon, Mr. Graham comes forward]
21 THE CLERK OF COURT: Raise your right hand.
22 [Whereupon, Mr. Graham is duly sworn by the
23 clerk of court as follows: do you swear or affirm
24 that your testimony will be the whole truth and
25 nothing but the truth, so help you God]

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1 THE WITNESS: Yes, I do.
2 THE CLERK OF COURT: State your full name and
3 spell your last name.
4 [Whereupon, Mr. Graham takes the witness stand]
5 THE WITNESS: My full name is Robert, middle
6 initial J, Graham. G-R-A-H-A-M.
7 MR. MCDONALD: Mr. Graham, how are you doing
8 this afternoon?
9 THE WITNESS: Very well. Thank you.
10 MR. MCDONALD: Good.
11 - - - - -
12 ROBERT GRAHAM,
13 Having Been First Duly Sworn,
14 was Examined and Testified as Follows:
15 DIRECT EXAMINATION
16 BY MR. MCDONALD:
17 Q. Mr. Graham, where are you from?
18 A. I was born in New Jersey and lived in
19 Connecticut for thirty years before moving to Charleston
20 eight years ago.
21 Q. And what brought you down to Charleston eight
22 years ago?
23 A. The weather, medical care, the friendliness of
24 most of the people that I have met here, and a desire to
25 live on Daniel Island.

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1 Q. And did you retire down here?
2 A. Yes, I did.
3 Q. And what did you retire from?
4 A. I had a one-man executive-search firm in
5 Westport, Connecticut. I specialized in human resource
6 executives.
7 Q. Is the term headhunter kosher? Is that --
8 A. It would be appropriate, yes.
9 Q. So a headhunter.
10 A. Or a body snatcher sometimes.
11 Q. Sir, did you have occasion, when you moved down
12 here, to look around to decide -- you said just Daniel
13 Island -- decide on where you wanted to live?
14 A. Once we discovered Daniel Island, we were
15 certain we wanted to live on Daniel Island.
16 Q. Okay. And that's you and your wife, Maureen;
17 correct?
18 A. Of thirty-nine years.
19 Q. And at that time -- at that time frame -- you
20 said eight years ago. So that would have been about 2005;
21 correct?
22 A. April 15th, 2005.
23 Q. And you were in the courtroom earlier when you
24 heard the various stipulations; correct?
25 A. Yes, I have [phonetic].

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1 Q. So I'm moving through this with you, sir. But
2 the -- did you come to purchase a unit at The Oaks?
3 A. I had previously purchased, with my wife, a town
4 home at Daniel Island Park.
5 Q. And how did you -- and did you actually move
6 into that town home?
7 A. On April 15th, 2005.
8 Q. And how did you come from living in that town
9 home on April 15, 2005, to purchasing The Oaks?
10 A. Well, we're still in that town home.
11 Q. Okay.
12 A. Okay. Since April 15th, 2005.
13 We spoke with the realtor, Angie Johnson, who
14 had sole us the town home. And my wife is disabled. She
15 has both visual problems and mobility problems and she
16 can't drive. And The Oaks looked very appealing to us
17 because at some point we're going to have to be all on one
18 floor. So the intent in buying The Oaks was for it to be
19 our permanent residence, but not short term.
20 Q. And were -- did you, in fact, purchase a unit at
21 The Oaks?
22 A. Yes, we did.
23 Q. And did you -- and you never moved into that
24 unit, did you?
25 A. Correct.

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1 Q. And what brought that about, why you decided not
2 to move into the unit at The Oaks?
3 A. For one thing, we're very comfortable in the
4 town home and there's no immediate need for us to be all
5 on one floor.
6 Q. So the purchase of the unit at The Oaks was kind
7 of in the future with regard to medical issues that may or
8 may not arise?
9 A. Yeah. We're pretty sure they're going to but
10 hope -- maybe they won't.
11 Q. I'm an optimist.
12 In the -- did you try and rent it after you
13 purchased it?
14 A. We rented it within sixty days of purchasing it.
15 Q. And you purchased it from Daniel Island
16 Riverside Developers on April 5th of 2006; correct?
17 A. I think the closing date was a different date,
18 like April maybe 29th, 27th. I think that's what the --
19 Q. So in April of 2006?
20 A. That's correct.
21 Q. And you were able to rent it you said within
22 sixty days of closing?
23 A. That's right.
24 Q. And what happened? Were you able to rent it
25 continuously?

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1 A. Well, we were able to rent it for $2900 a month,
2 because it's a top-floor unit, from July 1st of 2006
3 through August 30th, 2007, to the same couple.
4 Q. Okay. From July 1st, 2006 to August 30th of
5 2007?
6 A. That's correct.
7 Q. And what happened? Why did that couple move
8 out? Do you know?
9 A. Yeah. They had a home that was being built for
10 them in Mount Pleasant.
11 Q. And did you try to find a new renter?
12 A. No, I did not.
13 Q. Okay. And why not?
14 A. Well, because at that time there was near
15 hysteria amongst the owners of The Oaks about mold. And I
16 hired a mold specialist, a Mr. Gould, and paid him $450 to
17 inspect my unit. And when I read his report, I was very
18 concerned about the morality of renting that unit so I
19 took it off the market. In other words, I did not seek
20 another tenant because of the content of Mr. Gould's
21 report.
22 Q. And that would have been in August of 2007?
23 A. It was September, after the unit was vacated by
24 the tenant. That's when Mr. Gould did his work.
25 Q. And were you ever able to ultimately rent it

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1 again?
2 A. Yeah. I was able to rent it, quite
3 surreptitiously, about a year later, just for two months,
4 to a government employee that was in for a short-term
5 assignment. And that involved renting furniture, et
6 cetera, et cetera. So that was a short-term rental.
7 And in April of 2010, I put it on the market
8 because at that point there had been absolutely no
9 evidence of mold, decay, bad smells, rotting walls. The
10 apartment looked like it had survived the chaos that was
11 surrounding us in building six. And soon after putting it
12 on the market, we rented it until we sold it. So we
13 rented it beginning May 1st, 2010, and we sold it in
14 February of 2012.
15 Q. And you sold it for?
16 A. $330,000.
17 Q. And you paid 667,000?
18 A. -- six hundred -- well, a little bit more
19 because we had some extras. It was like six seventy-five.
20 Q. Some of the options.
21 All right. And why did you sell it in March of
22 2012?
23 A. We could no longer carry it. We were getting
24 about $2300 a month, less ten percent to a broker. I had
25 been retired for eight years. We have no income other

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1 than investment income and social security. It was
2 bleeding me dry.
3 Q. And have you hired Mr. Donato to determine what
4 your individual damages may be?
5 A. Absolutely.
6 Q. And other than the damages which you hired
7 Mr. Donato to determine, have you -- are you asking this
8 Court for any other damages?
9 A. I'm asking for loss of rental income and --
10 Q. Why are you asking for loss of rental income?
11 A. Because I had to take it off the market because
12 of the problems we had with the building -- buildings.
13 Q. Okay. How much lost rent are you asking this
14 Court for?
15 A. I believe the number is approximately $43,000.
16 Q. And do you have any out-of-pocket expenses?
17 A. Approximately $2,000 for repairs that were
18 absolutely necessary, plus the fee to Mr. Gould, the mold
19 man.
20 MR. MCDONALD: Beg the Court's indulgence.
21 Mr. Graham, please answer any questions the
22 defense may have of you.
23 THE WITNESS: Certainly.
24 THE COURT: Cross-examination?
25 MR. MAYBANK: Yes, Your Honor.

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1 Good afternoon, Mr. Graham.
2 THE WITNESS: Hello, Mr. Maybank.
3 MR. MAYBANK: How are you today?
4 THE WITNESS: Fine. Thank you.
5 MR. MAYBANK: Good.
6 CROSS-EXAMINATION
7 BY MR. MAYBANK:
8 Q. The town home: where on Daniel Island is that?
9 A. It's in Daniel Island Park, Rose Lane.
10 Q. Is it a part of a group of town homes?
11 A. Yes, it is.
12 Q. Was that built by Trammell Crow?
13 A. No, thank goodness. It was built by Donnie
14 Smith. J.D. Smith.
15 Q. Why do you say, no, thank goodness, it wasn't
16 built by Trammell Crow?
17 A. Because I should have said more correctly, I'm
18 very happy to say Donnie Smith built it. He's a terrific
19 builder.
20 Q. But why did you say you're glad that it wasn't a
21 Trammell Crow development?
22 A. Because I'm happy that Donnie Smith built it.
23 Q. Do you know anything about Trammell Crow?
24 A. Hardly anything.
25 Q. Do you know that they've been in litigation on

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1 Daniel Island?
2 A. No, I do not.
3 Q. So on August of 2007, Mr. Gould did a mold
4 report for you?
5 A. Actually, it was September of 2007, Mr. Maybank.
6 Q. Did you give that report to the Daniel Island
7 Riverside Developers representative?
8 A. No.
9 Q. Did you give that report to anybody at Daniel
10 Island or Carriage Hill?
11 A. No, I did not.
12 Q. What steps, other than getting that report, did
13 you take to address the mold issue?
14 A. None, other than keeping the place vacant.
15 Q. Did the -- and at some point in 2010, your
16 morality then turned and you put it back on the market, as
17 you no longer saw evidence of mold decay?
18 A. Correct.
19 Q. So you're asking this Court to award you $43,000
20 in lost rents on a unit that you voluntarily withdrew from
21 a rental program on a medical or some type of an
22 investigative report that you did not share with my
23 clients?
24 A. That's correct.
25 Q. If you were the builder or developer and

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1 somebody had a problem that you are now claiming $43,000
2 for lost rents, wouldn't you want to know that that person
3 was having that problem?
4 A. If I were the builder, I would want to know.
5 Q. So wouldn't you think it would have been the
6 more prudent thing to advise Carriage Hill or Daniel
7 Island of the problem?
8 A. Not in light of the lack of responsiveness that
9 many of my friends and neighbors had encountered.
10 Q. No. That's not asking about them. I'm asking
11 about you.
12 A. Maybe you should ask me again, please.
13 Q. Sure.
14 You're asking for $43,000 on a problem you never
15 even told my clients about; correct?
16 A. That's correct.
17 Q. On a unit that you could no longer carry that
18 was bleeding you dry; correct?
19 A. Correct.
20 Q. And you would agree with me that the reason why
21 you could no longer carry it and you sold it when you did
22 is because you, as you said, didn't have the income to
23 afford it?
24 A. That's also correct.
25 Q. When the first renters left, they left not

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1 because of the mold problem; correct?
2 A. That's correct.
3 Q. All right. And each time you have put it on the
4 market you have been able to rent it successfully;
5 correct?
6 A. On the two occasions that I did, yes.
7 Q. When you sold your unit, did you sell it as a
8 short sale?
9 A. Yes, I did.
10 Q. Did you disclose to the subsequent purchaser the
11 litigation problems through a --
12 A. I'm quite sure we did, yes.
13 Q. Do you have a copy of the South Carolina
14 residential disclosure form?
15 A. No, I do not.
16 Q. Do you recall filling one out?
17 A. I'm quite certain I did because the agent we've
18 dealt with, we've dealt with for three years and she was
19 very familiar with the issues at The Oaks.
20 Q. And who is that agent?
21 A. Angie Johnson.
22 Q. I thought you were going to say Angela Black.
23 A. No.
24 Q. If, in fact, that information is out there,
25 would you expect it to be in the MLS -- in the MLS?

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1 A. I would certainly hope so.
2 Q. Do you know who purchased your unit?
3 A. I believe a couple from Seabrook Island named
4 Jones [phonetic].
5 Q. Did the bank file any type of deficiency
6 judgment against you?
7 A. No.
8 Q. Was the difference in what you paid versus what
9 you owed forgiven? And you don't have to --
10 A. Yes. I got a 1099.
11 Q. So they wrote that off?
12 A. Yes, they did.
13 Q. Did you pay taxes on the outstanding balance?
14 A. Well, I haven't filed my return for 2012 yet.
15 Q. Can you tell me what that 1099 value was?
16 A. It was close to $150,000.
17 Q. Okay. And with no income, as I believe you said
18 you were retired -- is that correct?
19 A. Investment income, social security.
20 Q. Do you know what percentage or what amount of
21 taxes that you will be required to pay on that 150,000?
22 A. My loses have been so significant that when I
23 checked with my accountant, he assured me that we would
24 have limited tax liability.
25 Q. I hate to say this, but I'm not an expert in --

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1 I don't know exactly what that means.
2 A. Well, it means the loses that we've incurred,
3 many of which are carry-over loses, will offset the 1099.
4 Q. I see. And those are loses on other
5 investments?
6 A. Correct.
7 Q. Not on this one?
8 A. I'm not exactly sure, because we haven't filed
9 the return.
10 MR. MAYBANK: Thank you, sir.
11 THE WITNESS: You're welcome, sir.
12 MR. MCDONALD: Plaintiffs call Mr. Wallace Barr.
13 THE COURT: Hold on a second.
14 Sir, let me ask you one question. Did you have
15 to take some money to the closing?
16 THE WITNESS: No, sir.
17 THE COURT: Okay. Thank you very much.
18 [Whereupon, Mr. Graham exits the witness stand]
19 THE COURT: We're going to -- how long is the
20 next witness going to take?
21 MR. MCDONALD: I can -- my understanding of the
22 stipulation, I can put him up in less than five
23 minutes.
24 THE COURT: Okay. Bring him on.
25 MR. MCDONALD: The plaintiffs call Mr. Wallace

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1 Barr.

2 [Whereupon, Mr. Barr comes forward]

3 [Whereupon, Mr. Barr is duly sworn by the clerk
4 of court as follows: do you swear or affirm that your
5 testimony will be the whole truth and nothing but the
6 truth, so help you God]

7 THE WITNESS: I do.

8 THE CLERK OF COURT: State your full name and
9 spell your last name.

10 THE WITNESS: Edward Wallace Barr, III. The
11 address is 2068 Ion Avenue [phonetic], Sullivans
12 Island, 2940 --

13 MR. MCDONALD: Mr. Barr, you were in the
14 courtroom earlier when the stipulation was made?

15 THE WITNESS: Yes.

16 MR. MCDONALD: We're going to move through this.

17 - - - - -

18 EDWARD WALLACE BARR, III,
19 Having Been First Duly Sworn,
20 was Examined and Testified as Follows:

21 DIRECT EXAMINATION

22 BY MR. MCDONALD:

23 Q. You, sir, where are you from?

24 A. Bowling Green, Kentucky.

25 Q. And how did you come to Charleston?

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A. We used to come to the beach when I was a child. And then moved to Nashville, Atlanta, and Camden -- I'm in the music business -- promoting several large touring acts across the southeast. And being in Camden, being close to Charleston, it just seemed like a natural -- come back here when I went out and started selling real estate.

Q. And you had an occasion to buy a unit at The Oaks at Rivers Edge, did you not?

A. I bought one myself and sold three to three other clients.

Q. And you're a real estate agent?

A. Yes.

Q. So when you say sold them: to a real estate agent?

A. I was representing the buyer side and Angela Black was representing the seller.

Q. And your business partner is named Thomas Keane?

A. Correct.

Q. And you-all purchased a unit in building three?

A. Building three, two -- I think we signed the contract on August 24 of '04, and it was finished two years later, and we closed on it on September 4 of '06.

Q. And are you on the second floor or the third floor?

A. Second floor.

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1 Q. And after purchasing at The Oaks in 2007 and
2 2008, did you have occasion to list your unit? I'll hand
3 you what's been marked as 112-G. If you would take a look
4 at 112-G.
5 A. Yes. And I had the listing -- the listing is
6 here. The first time I listed it was on 1/19/07 and we
7 withdrew it on 8/1/07. So it was listed for eight months.
8 Listed for eight forty-seven five.
9 Q. And when did you list it in 2008?
10 A. I listed it on 9/30/08 and, let's see, it was
11 withdrawn on 6/1/12. So I --
12 Q. And you had dropped the price in 2008 to seven
13 forty-nine nine; correct?
14 A. It started out -- well, I started out at seven
15 forty-nine nine, dropped it as low as five fifty-five and
16 no takers.
17 Q. And you tried to sell it in 2008?
18 A. '07, '08, '09, '10, '11 and '12, and then gave
19 up.
20 Q. And you hired Mr. Donato to determine what your
21 individual damage may be in this lawsuit; correct?
22 A. Correct.
23 MR. MCDONALD: That's all I have, Your Honor.
24 THE COURT: How much did you pay for the unit?
25 THE WITNESS: Right under 700. Like six ninety-

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1 seven five, something of that nature.
2 THE COURT: How long is your cross?
3 MR. MAYBANK: Brief, Your Honor.
4 THE COURT: Brief? About five minutes?
5 MR. MAYBANK: I'll try to be, yes, sir.
6 THE COURT: Well, in about seven we're going to
7 stop talking and leave. Okay?
8 MR. MAYBANK: I understand.
9 THE COURT: If you can finish, great. If not,
10 we're leaving.
11 MR. MAYBANK: I'll end up talking to myself.
12 Mr. Barr, my name is Roy Maybank. I represent
13 Daniel Island Riverside Developers and Carriage Hill.
14 How are you?
15 THE WITNESS: Fine. How are you?
16 MR. MAYBANK: I am well. Thank you.
17 CROSS-EXAMINATION
18 BY MR. MAYBANK:
19 Q. You currently live on Sullivans Island?
20 A. Correct. In a rental property.
21 Q. You have a -- you rent?
22 A. Yes.
23 Q. Is it your property or are you renting from
24 someone?
25 A. I'm renting from Kenneth Jones.

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1 Q. And who is Kenneth Jones?
2 A. He owns the property. He and his wife own Jones
3 Real Estate.
4 Q. Got you.
5 How much do you pay a month on Sullivans Island?
6 A. Sixteen fifty.
7 Q. $1,650?
8 A. Correct.
9 Q. That residence that you're renting, is that a
10 single-bedroom apartment?
11 A. It's an old house built in 1920. I've got the
12 downstairs, and then the upstairs is a separate apartment.
13 Q. Do you have a kitchen?
14 A. Yes.
15 Q. Do you have a bathroom?
16 A. Yes.
17 Q. Do you have a shower?
18 A. Yes.
19 Q. And you're getting all that on Sullivans at
20 $1650 a month?
21 A. I should be paying about $1,000 more.
22 Q. That's not what I'm asking.
23 A. Yes. I'm paying --
24 Q. I asked you if you were paying $1650 a month.
25 A. Exactly.

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1 Q. Now, you sold three units; is that correct?
2 A. Three other units to clients. I bought one
3 myself. Tom Keane and I bought one. And then I sold
4 three of the units to three other real estate clients.
5 Q. When did you sell those units to those clients?
6 A. We all contracted about the same time. I really
7 don't know exactly what the contract dates were. They
8 bought in buildings one and two, I believe, so they
9 probably went up earlier. I believe building two started
10 first, because there were some issues with the concrete
11 construction and building one was supposed to be -- as a
12 matter of fact, all of the units, when I first saw these I
13 was told by John Behringer, were going to be concrete
14 buildings. And I asked the agent, Angela Black, I said,
15 how do you they do this. And she said, well, let's go out
16 to the trailer and find out. So we marched out to the
17 little trailer. And John basically said they were going
18 to pour the sides of the building out of concrete and
19 stand them up with a crane like this [indicates], attach
20 them together, and then do concrete floors. Based on that
21 I figured, you know, hotels are built that way, hotels are
22 quiet, these ought to be quiet. I've been in hundreds.
23 Q. I just ask you when you bought the three units.
24 I didn't --
25 A. I understand.

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1 Q. -- say anything about --
2 A. Well, it's about -- it's about that time.
3 The -- I only bought one myself.
4 Q. But then you sold the other three?
5 A. Well, I was the buyer's agency -- agent for the
6 other three buyers.
7 Q. And at some point, you would go out there and
8 look at construction?
9 A. Early on, yes. I had pretty much free access to
10 the building. I knew where a key was in the construction
11 trailer, so I was allowed to go in there when I had other
12 clients coming out.
13 And then towards the end, it tightened up. I
14 went out there with clients one afternoon -- I think it
15 was on a Sunday. The armed whatever was there, would not
16 let me in. I said, look, I'm a real estate agent, I want
17 to show -- these people want to see what the units look
18 like. He said we couldn't go. I said, is the street -- I
19 said, is this not a public street. He said, don't push
20 me, you don't want to go there. So obviously we didn't
21 drive in.
22 Q. And so at some point before you sold those three
23 units, you knew that they were going to be stick-built.
24 Did you ever look at a set of the plans?
25 A. I never knew they were going to be stick-built

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1 because they were -- I didn't see the plans, no. I did
2 not know they were going to be stick-built. I was told by
3 Behringer they were going to be concrete. And shortly
4 after the deals were ratified and I already got these
5 people under contract, that they began to build number
6 two, which is a stick-built building, as well as the rest
7 of them were. Number one, my understanding, was going to
8 be built first.
9 Q. Do you know which plans were submitted to the
10 County for approval?
11 A. I don't know which plans were submitted to the
12 County. But I --
13 Q. Did you go down to the County?
14 A. -- but I do know what I was told by John
15 Behringer.
16 Q. Did you go down to the County and look?
17 A. No.
18 Q. Did you go down and look at the master deed when
19 it was filed?
20 A. No.
21 Q. Certainly, as a unit owner, you would think that
22 you would have some responsibility to go down there and do
23 that, wouldn't you?
24 A. No. I had --
25 Q. Okay.

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1 A. I had done probably 200 real estate
2 transactions. Nor to my knowledge have any of my buyers
3 or sellers done that.
4 Q. Now, you purchased your unit sometime in '06; is
5 that correct?
6 A. Early -- it closed I think on the 4th of
7 September of '06.
8 Q. So September you bought it for 697?
9 A. Ballpark. Yes.
10 Q. October, November, December. January you popped
11 that baby back on the sales market for $847,000?
12 A. Correct.
13 Q. I mean, was it Los Vegas out there on Daniel
14 Island? I mean, these -- I hear -- all the testimony I've
15 heard, there was a lot of speculation going on out there,
16 wasn't it?
17 A. I don't know if you would consider it a lot of
18 speculation. Daniel Island was very hot at that time. It
19 was brand new, people were moving out there with the
20 population and housing moving up further up 17 North. You
21 know, it kind of won. It got to be a very hot spot, by
22 default of its location, because everything else was so
23 far away.
24 Q. Are you -- you haven't sold your unit yet, have
25 you?

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A. No, not --

Q. Do you still own it?

A. I still own it.

Q. I'm looking at your -- did you get back -- how much did you put down on this unit; do you know?

A. I think we put down either five or ten percent.

Q. All right. Do you recall --

A. I think we put down ten. I don't know. Five or ten.

Q. And did you get back money at closing?

A. If we put down ten percent, then we probably did a ninety-five percent financing and took back -- I think that's what we did. I'm not positive. We took back -- we financed -- we put down ten percent, which means we had to come up with a ninety-percent loan. I think we came up with a ninety-five percent loan, took my commission, threw it into the pot, took the extra five percent and threw that in the pot to make the mortgage payments for a year with the idea of either I was going to consider buying it from the corporation within a year or we were going to sell it within a year.

Q. All right. Did you make money on the three units you sold?

A. I made a commission off of them, yes.

Q. And did you give that commission back to

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1 anybody?
2 A. No.
3 Q. So it looks to me like, from your closing
4 statement, you received back $30,000 of the 69,000 you put
5 down. Is that about right?
6 A. That came back to the two of us to our LLC.
7 Q. So y'all financed ninety-five percent and you
8 have no out-of-pocket actual loss. And you understand
9 that the property values on Daniel Island have plummeted
10 rather precipitously over the last five years?
11 A. I do have out-of-pocket loses.
12 Q. What were those, sir?
13 A. The cost --
14 MR. MAYBANK: Were those agreed to in
15 stipulation?
16 MR. MCDONALD: They're on the chart.
17 MR. MAYBANK: Has he got some on the chart? I
18 didn't see. I apologize.
19 [Whereupon, Mr. McDonald reviews documents]
20 THE COURT: All right. The Court will see you
21 in the morning.
22 MR. MAYBANK: Thank you, Your Honor.
23 THE COURT: All right. We'll recess until 9:30
24 in the morning.
25 [BENCH TRIAL ADJOURNS AT 4:32 P.M.]

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the bench trial held before the Honorable J.C. Nicholson, Jr., on Tuesday, April 9, 2013.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 12th day of October, 2013.

Mia Perron

Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

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STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY) CASE NO.: 2009-CP-08-3916

THE OAKS AT RIVERS EDGE PROPERTY OWNERS ASSOCIATION, INC., JOHN E. ATKINSON, JOAN D. STRANDQUIST, JOSEPH E. CHIOVAROU, JR., PEYTON H. COOK, JR., BRENDA COOK, JOHN W. EDELEN, KAREN A. NELSON, ROBERT J. GRAHAM, MAUREEN S. GRAHAM, NANCY K. JOHNSON as trustee for the Nancy K. Johnson Revocable Trust, WILLIAM JUNG, CHARLES MARAZITI, PATRICIA MARAZITI, GEORGE S. POLLARD, ELEANOR J. POLLARD, ROBERT REECE, GERALD M. RUVO AND SUE S. RUVO as trustees for the Ruvo 2006 Living Trust, CAROLYN M. JENNINGS, THOMAS EDWARD KEANE, EDWARD WALLACE BARR, III, RICHARD B. PEKRUHN, PAULINE PEKRUHN, MATTHEW J. SEVERANCE and ELIZABETH ASHLEY PHILLIPS SEVERANCE,

PLAINTIFFS,

VS.

DANIEL ISLAND RIVERSIDE DEVELOPERS, LLC, CARRIAGE HILL ASSOCIATES OF CHARLESTON, LLC,

DEFENDANTS.

BENCH TRIAL

VOLUME 3 OF 4

SUSAN "MIA" PERRON, CVR-CM-M
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 31865
Charleston, South Carolina 29417-1865
1-706-231-6028

FORM C-100 - LASER REPORTERS PAPER & MFG. CO 800-626-6313

held before the Honorable J.C. Nicholson, Jr.

Mia Perron, Circuit Court Reporter, 9th Judicial Circuit

in the Charleston County Courthouse

Charleston, South Carolina

on April 10, 2013, Commencing at 9:51 a.m.

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APPEARANCES OF COUNSEL

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[Exhibits pre-marked by counsel unless otherwise noted in the transcript]

MARKED/ADMITTED

PLAINTIFFS'

Plaintiffs' Exhibit Number 31-A / 764
[Cost Estimate - Southeast Construction]

Plaintiffs' Exhibit Number 31-B / 775
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Plaintiffs' Exhibit Number 49 / 722
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1 PROCEEDINGS

2 THE COURT: What were we on? Cross, I believe?

3 MR. MAYBANK: We were, Your Honor. At this

4 time, we are done with Mr. Barr.

5 THE COURT: You don't have any further

6 questions?

7 MR. MAYBANK: No, Your Honor.

8 THE COURT: Any redirect?

9 MR. MCDONALD: No redirect, Your Honor.

10 THE COURT: Mr. Barr, you may step down. Thank

11 you very much.

12 [Whereupon, Mr. Barr is excused and exits the

13 witness stand]

14 THE COURT: Call your next witness.

15 MR. MCDONALD: Your Honor, Brent McDonald, may

16 it please the Court, on behalf of the plaintiffs.

17 The plaintiffs call Ms. Ashley Severance.

18 [Whereupon, Ms. Severance comes forward]

19 THE CLERK OF COURT: Stand here and raise your

20 right hand.

21 [Whereupon, Ms. Severance is duly sworn by the

22 clerk of court as follows: do you swear or affirm

23 that your testimony will be the whole truth and

24 nothing but the truth, so help you God]

25 THE WITNESS: I do.

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1 THE CLERK OF COURT: State your full name and
2 spell your last.
3 [Whereupon, Ms. Severance takes the witness
4 stand]
5 THE WITNESS: Full name is Elizabeth Ashley
6 Phillips Severance. Last name is spelled S-E-V-E-R-A-
7 N-C-E.
8 MR. MCDONALD: Good morning, Ms. Severance. How
9 are you doing?
10 THE WITNESS: Good morning.
11 - - - - -
12 ELIZABETH A. SEVERANCE,
13 Having Been First Duly Sworn,
14 was Examined and Testified as Follows:
15 DIRECT EXAMINATION
16 BY MR. MCDONALD:
17 Q. Could you please state your address for the
18 record, as well?
19 A. 124 Fairbanks Oaks Alley, Unit 2-D.
20 Q. Ms. Severance, where are you originally from?
21 A. Lakeland, Florida.
22 Q. And how did you wind up in Charleston?
23 A. My husband was offered a job and so we moved
24 here in 2004. Spring of 2004.
25 Q. And did you look for a home?

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1 A. We did.
2 Q. And where did you look for a home?
3 A. We looked in several areas. My husband wanted
4 to be on the water, or near the water, and I wanted to be
5 downtown in the city. And we wanted to renovate and so we
6 found a home that we could renovate. It's a three-bedroom
7 home. And so we bought it downtown.
8 Q. With the intention of renovating; correct?
9 A. That's right. That's right.
10 Q. So where did you-all -- were you able to live in
11 the home while you were renovating it?
12 A. No. It was going to be a major renovation. We
13 bought an as-is, a fixer-upper and -- but we lived -- we
14 knew we were going to live in it for a period of time
15 because we needed to save for the renovation and plan for
16 it. So we bought -- we bought and moved in with the
17 intent to renovate a couple years down the road.
18 Q. And did you, in fact, start those renovations?
19 A. We did. It was a year-long renovation.
20 Q. And what did you do? If you couldn't live
21 there, what were you going to do?
22 A. Well, we were thinking about renting a place in
23 Daniel Island, and then I started to try to talk my
24 husband into maybe buying a place. I thought it might be
25 a good idea to pay somebody else rent -- to own a place

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1 and then to sell it.
2 Q. Okay. And is this how you got involved with The
3 Oaks project?
4 A. That's right.
5 Q. And how did you come to find out about The Oaks?
6 A. Lynn Barker was a real estate agent, at Daniel
7 Island Real Estate, and she told us about it.
8 Q. And did you, in fact -- I'll hand you what's
9 been marked as Plaintiffs' Exhibit 122-B. Do you
10 recognize that document?
11 A. That's right.
12 Q. What do you recognize it to be?
13 A. That was the mockup of what was going to be
14 built.
15 Q. Were these the marketing materials that you
16 received for The Oaks project?
17 A. It was.
18 Q. And did you ultimately sign a contract in order
19 to purchase --
20 A. We did.
21 Q. -- a unit at The Oaks?
22 A. We did.
23 Q. And you --
24 A. 2004.
25 Q. And you signed that contract in 2004; correct?

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1 A. We did.
2 Q. And the purchase price in 2004 was $753,176;
3 right?
4 A. That's correct.
5 Q. Okay. And the buildings were not constructed at
6 that time; correct?
7 A. They were not constructed.
8 Q. And did you ultimately close on the unit?
9 A. We did.
10 Q. And you closed somewhere around December of
11 2006; correct?
12 A. October of 2006.
13 Q. October of 2006. Okay.
14 And what did you do after you closed on the
15 unit?
16 A. We moved in right away because we were ready to
17 start the renovation.
18 Q. And was it just you and your husband? Did you
19 have any children at that time?
20 A. We had two children and I was pregnant with my
21 third child.
22 Q. And where is your unit? You're in unit --
23 A. 2.
24 Q. -- 2-A -- 2-B in building?
25 A. Building two, second floor, B.

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Q. So you're on the second floor?

A. That's right.

Q. And what was the experience upon moving into The Oaks?

A. Well, it was a good experience initially. They're beautiful condos from the exterior and the views were fantastic. We had a water view. I finally got my husband a water view that he had wanted. And so the experience was good initially.

Q. And what happened? You said it was good initially. What happened next?

A. Right. Well, we began to have trouble with the floors. They were buckling and cupping. And it was challenging because they would come in and fix them, but they used this glue that was really strong and I had to -- by this time, I had actually moved in and had my third child like a week later. By that time, I had an infant and two children. And so we had to move out during this process. It happened like maybe five, six, seven times, where we had to like leave for a day or two because the strong was really -- the smell was really strong.

Q. Where they were -- where the developer was attempting to fix your floors?

A. That's right.

Q. I'll hand you what's been marked as Plaintiffs'

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1 Exhibit 122-E, 122-R, and 122-J and ask if you recognize
2 those documents.
3 A. I do.
4 Q. Are those warranty claim forms that you filled
5 out and submitted to the developer after moving in?
6 A. They are.
7 MR. MCDONALD: I would move those into evidence,
8 Your Honor.
9 THE COURT: Any objection?
10 MR. ALTMAN: No objection.
11 THE COURT: 122. You say E, F and J? Is that
12 right?
13 MR. MCDONALD: I believe so. Let me just
14 double-check.
15 THE COURT: Admitted without objection.
16 MR. MCDONALD: E, F and J. You are correct.
17 Thank you, Your Honor.
18 [Whereupon, Plaintiffs' Exhibit Number 122-E is
19 admitted into evidence by the Court]
20 [Whereupon, Plaintiffs' Exhibit Number 122- F is
21 admitted into evidence by the Court]
22 [Whereupon, Plaintiffs' Exhibit Number 122-J is
23 admitted into evidence by the Court]
24 Q. [Mr. McDonald] So you actually filled out the
25 warranty claim forms and tried to have the developer come

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1 out and perform the repairs?
2 A. That's correct.
3 Q. And at least on the floors, it took many times
4 for them to get it done?
5 A. Many, many time. I remember leaving five or six
6 times, but they came more than five or six times to fix
7 the floors.
8 Q. Okay. And is it -- are the floors fixed today?
9 A. No.
10 Q. And other than -- so you filled out the warranty
11 items. And what was your next experience with The Oaks?
12 A. Well, the insulation problems were discussed,
13 and we had the same problem. On this warranty form I
14 wrote -- this is 12/19/06 -- no insulation between our
15 ceiling and the floor of the unit above us; it sounds like
16 drums when there are people walking upstairs; sometimes
17 it's hard to carry on a conversation because of the
18 loudness.
19 Q. Okay. And so that -- so you brought the sound
20 issue to their attention?
21 A. That's right. That was in December of 2006,
22 about two months after.
23 Q. And what did they tell you they were going to do
24 with the sound issue?
25 A. They said they were addressing it.

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Q. Did they say that they were going to fix the problems, with the sound, that you brought to their attention?

A. That's what I was led to believe.

Q. And did they ultimately perform a remediation on your unit?

A. They did.

Q. Okay.

A. Yeah.

Q. And were you still living there when they performed the remediation?

A. Well, we were not. We knew our renovation was going to last a year. And they came -- I can't remember the exact timing but when they came up with the plan to remediate, it was close to our move-out date. And at the time, I had two small children. I had a two-year-old, a one-year-old and -- actually, a three-year-old, a two-year-old and an almost one-year-old and I was pregnant with my fourth child. And so we knew we wanted to get out. It was not something we could stay in for. So we waited until we moved back to our primary home to have the remediation.

Q. Were you trying to sell the home at this time while they were doing the sound remediation?

A. No. I couldn't sell the home that way. I

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1 wanted to sell the home. I actually wanted to list the
2 home much earlier than we even moved out, but I couldn't.
3 Q. So you were waiting on them to fix the sound
4 problems they told you they were going to fix?
5 A. That's right. That's right.
6 Q. And did they ultimately perform the remediation
7 on your unit?
8 A. Yes, they did. They were supposed to do it
9 right after we moved out but for some reason there was a
10 delay. And I became very anxious about it because I knew
11 that listing -- I wanted to list the home. Each month
12 that passed was another mortgage I had to pay. I wanted
13 to list the home and sell it.
14 Q. And after they told you that the sound
15 remediation had been fixed, did you try to put it on the
16 market?
17 A. We did. It took three months -- three and a
18 half months to finish the sound remediation, and that put
19 us into the holidays.
20 Q. In the holidays of 2007; correct?
21 A. In the holidays of 2007.
22 We listed it in 2008, January of 2008, right
23 after the remediation was completed.
24 Q. And were you able to sell it at that time?
25 A. No. And January is a terrible time to try to

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1 sell a home. Right before the holidays is a terrible time
2 to sell a home.
3 But, no, we were not able to sell it. We had
4 buyers started looking in mid -- in the January time
5 frame, we had a very interested buyer that came back three
6 times. And I had had conversations with the realtor, the
7 selling realtor, the realtor that represented the buyer,
8 and they were going to put a contract down and we had
9 discussed verbally what that price would probably be and
10 what the contingencies would be.
11 Q. What was your understanding of the price?
12 A. That it would be about eight forty-nine.
13 Q. Okay. And did that buyer ultimately close on
14 your unit?
15 A. No. It was really sad. Just so frustrated.
16 The buyer came back, for the third visit, with their
17 spouse. And they were walking the grounds. They had
18 already been in the unit, evidently. And they were
19 walking the grounds and they ran into a disgruntle renter
20 in building number three -- we were in building number two
21 -- and the renter just went off on The Oaks and all the
22 problems.
23 And some of these problems that at the time
24 I -- I weren't even -- I wasn't even aware of, because our
25 building was one of the last to be completed and so these

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1 problems hadn't shown up at the time. The only problems I
2 had known about were the wood floors and the sound, the
3 remediation. So, ultimately, the buyer decided that they
4 would not buy and they walked.
5 Q. And the problems that you had brought to the
6 attention of the developer through your warranty claim
7 process, whatever that was?
8 A. What was that?
9 Q. And whatever problems, you brought to the
10 attention of the developer --
11 A. That's right. That's right.
12 Q. -- on the warranty problems?
13 All right. So what did you do next after you
14 lost that buyer in 2008? Did you keep trying to sell it?
15 A. I did. We needed -- well, I got -- I was
16 nervous, so I took it off the market and I just -- I was
17 scared, I didn't know what was going on, so I took it off
18 the market and then put it back on the market a couple of
19 weeks later.
20 Q. Okay. And what happened after that?
21 A. Well, we couldn't sell it. We -- you know,
22 nobody was interested in a defective product.
23 Q. And I'll hand you what's been marked as
24 Plaintiffs' 122-N and ask you if you recognize that
25 document.

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1 A. Yes.
2 Q. And is that the document that lists when you
3 tried to sell it and the sales prices you listed it for?
4 A. That's right. It's a market record.
5 MR. MCDONALD: And I would move 122-N into
6 evidence.
7 THE COURT: Any objection?
8 MR. ALTMAN: No objection.
9 THE COURT: 122-N admitted without objection.
10 [Whereupon, Plaintiffs' Exhibit Number 122-N is
11 admitted into evidence by the Court]
12 Q. [Mr. McDonald] And so after all these issues,
13 did you have an occasion to go back to the developer and
14 discuss a potential option that you presented to them?
15 A. That's right. I did.
16 Q. What did you do, Ms. Severance?
17 A. I went to the developer and I asked them if they
18 would buy it back for the price that I had bought. Not
19 even worried about the improvements we had made, the
20 California closets, all -- just buy it back for the price
21 that I bought it for.
22 Q. And that would have been the price you
23 contracted for, back in 2004, with them?
24 A. That's right.
25 Q. And the price you paid them for the unit?

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1 A. The price I paid for the unit.
2 Q. You offered the developer, listen, I don't
3 want the cheese, I just want out of the trap, okay,
4 and here's --
5 A. That's right.
6 Q. -- you take the money back; right?
7 A. That's right. I did.
8 Q. I'll hand you Plaintiffs' Exhibit 138 and ask if
9 you've ever seen that document before.
10 [Whereupon, the witness reviews documents]
11 A. Yes, I have.
12 Q. [Mr. McDonald] And what do you recognize that
13 document to be?
14 A. It's an e-mail correspondence from Meggan
15 Crocker.
16 Q. To who?
17 A. To Rich Behringer.
18 Q. Okay. And what is the substance of that e-mail
19 correspondence?
20 A. Well, it's in regards to her following up with
21 him. I had called so many times. I had been in the
22 trailer to ask them if they would be -- to entertain us,
23 and nobody was getting back to me. And I continued to
24 call Meggan Crocker. She said, I will connect with him
25 today. And so this is her message to Rich Behringer:

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1 Ashley Severance followed up with me again today to ask
2 whether you, they, have come to a decision about buying
3 back their home as indicated in my e-mail below. She said
4 that she just wanted to know either way so she could move
5 on, sell her home. Also, the second part is related to
6 it.
7 Q. So to that e-mail is an e-mail from Meggan
8 Crocker to Rich Behringer talking about your proposal to
9 sell it back to them --
10 A. That's right.
11 Q. -- for $749,000?
12 A. That's right.
13 Q. Which was your purchase price?
14 A. Uh-huh.
15 Q. And significantly lower than what you had an
16 offer to purchase it at?
17 A. That's right.
18 And in the other e-mail, she explains my
19 situation, how I was devastated at the loss of the sale.
20 MR. MCDONALD: I would move 138 into evidence,
21 Your Honor.
22 THE COURT: Any objection?
23 MR. ALTMAN: No objection.
24 Q. [Mr. McDonald] Hand you what's been marked
25 as --

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1 THE COURT: Admitted without objection.
2 [Whereupon, Plaintiffs' Exhibit Number 138 is
3 admitted into evidence by the Court]
4 Q. [Mr. McDonald] Hand you what's been marked as
5 Plaintiffs' Exhibit 139.
6 [Whereupon, the witness reviews documents]
7 Q. [Mr. McDonald] Do you recognize that document?
8 A. I do.
9 Q. What do you recognize it to be?
10 A. It's an e-mail from Meggan Crocker to me.
11 Q. And what's the date of it?
12 A. The date is August 18th, 2008.
13 Q. You mean September 18th, 2008?
14 A. I'm sorry. September.
15 Q. And what is the substance of that email?
16 A. The substance of the e-mail is basically Meggan
17 telling me that they were not interested in buying back
18 the unit.
19 Q. At the price that they had sold it to you?
20 A. At the price they sold it to me.
21 Q. Did they tell you why they weren't interested in
22 buying the unit?
23 A. No.
24 MR. MCDONALD: I would move Exhibit 139 into
25 evidence, Your Honor.

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1 THE COURT: Any objection?
2 MR. ALTMAN: No objection.
3 THE COURT: 139 admitted without objection.
4 [Whereupon, Plaintiffs' Exhibit Number 139 is
5 admitted into evidence by the Court]
6 Q. [Mr. McDonald] Ms. Severance, have you hired
7 Mr. Donato in this case to determine what your individual
8 damage would be relative to the --
9 A. Yes, I have.
10 Q. -- appraisal?
11 A. Uh-huh.
12 Q. And in addition to that, have you sustained any
13 loss of rent or any inability to rent at market price?
14 A. Yes, I have.
15 Q. And what is that number for your lost rent?
16 A. The lost rent is $23,400.
17 Q. Okay. And have you incurred any out-of-pocket
18 expenses?
19 A. I have.
20 Q. And what is the number on those out-of-pocket
21 expenses?
22 A. $235 for floors we had to fix, and $850 for a
23 leak, a pipe leak, that we had to fix, which I think is
24 eleven five -- eleven thirty-five.
25 Q. Say those numbers again, Ms. Severance.

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1 A. Two thirty-five plus eight fifty.
2 Q. $10,085 -- excuse me. $1,085?
3 A. That's right.
4 Q. Okay. Just to follow up on the wood-floor
5 issues: have your wood floors -- you're on the second
6 floor?
7 A. That's right.
8 THE COURT: How much did you say -- you said
9 lost rent is --
10 THE WITNESS: Loss of rent is $23,400.
11 THE COURT: 22,000 what?
12 THE WITNESS: $23,400.
13 THE COURT: Thank you very much. Go ahead.
14 MR. MCDONALD: And I misspoke, Your Honor. It
15 was 1,085, not 10,085, on the out-of-pocket expenses.
16 Q. [Mr. McDonald] And just as regards to the wood
17 floor, I'll hand you what's been marked as Plaintiffs'
18 Exhibit --
19 THE COURT: You corrected your math?
20 MR. MCDONALD: Excuse me?
21 THE COURT: You corrected your math?
22 MR. MCDONALD: Yes, sir.
23 THE COURT: Okay.
24 MR. MCDONALD: It's 1,085, yes, sir, out-of-
25 pocket.

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1 Q. [Mr. McDonald] I'll hand you what's been marked
2 as Plaintiffs' Exhibit 122-Q, 122-U, 122-V and 122-W and
3 ask if you recognize those photographs.
4 A. Yes, I do recognize those photographs.
5 Q. And are those photographs of your floor in your
6 unit?
7 A. They are.
8 Q. Who took those photographs?
9 A. I did.
10 Q. And when did you take them?
11 A. Those were taken when we were living in the
12 unit.
13 Q. And why did you -- why did you take those
14 photographs?
15 A. Because of I wanted to give Carriage Hill an
16 idea of what we were experiencing so that they would come
17 in and fix it.
18 Q. And as you testified earlier, they tried to fix
19 it and it's still not fixed?
20 A. That's right.
21 Q. And there's somebody holding a book on that,
22 just so you could explain --
23 A. Yeah. That's actually my grandmother. She
24 fell. She's fine. But she fell and she was telling me,
25 you've got to do something about this cupping, because it

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1 was uneven terrain. And so that's a magazine to show how
2 the floor is not even.
3 Q. Ms. Severance, let me ask you this, going back
4 to the sound remediation. When they -- you had a
5 discussion with the developer about the performing sound
6 remediation in your unit; correct?
7 A. That's correct.
8 Q. Did you propose to the developer that you would
9 just have them do it for the next owner?
10 A. Yeah, that's right. But it was only offered for
11 a specific time, for current owners, and so I felt like I
12 had to take the option.
13 Q. And so they told you if you sold it, they
14 weren't going to do the sound remediation?
15 A. That's right.
16 Q. So you had to do it, as a current owner, and
17 according to their terms?
18 A. That's right.
19 MR. MCDONALD: Ms. Severance, I appreciate your
20 time here today, and please answer any questions
21 these --
22 I would move those final pictures into evidence,
23 Your Honor.
24 THE COURT: Which ones? What number?
25 MR. MCDONALD: Plaintiffs' Exhibit --

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1 THE WITNESS: 122-V, U and Q.
2 MR. MCDONALD: -- 122-V, 122-U, 122-Q and 122-W.
3 THE COURT: Any objection?
4 MR. ALTMAN: No objection.
5 THE COURT: Okay. 122-V, U, Q and W admitted
6 without objection.
7 [Whereupon, Plaintiffs' Exhibit Numbers 122-Q,
8 122-U, 122-V, and 122-W are admitted into evidence by
9 the Court]
10 MR. MCDONALD: Ms. Severance, please answer any
11 questions these gentlemen may have for you.
12 THE COURT: Cross-examination.
13 MR. ALTMAN: Yes, sir.
14 Ms. Severance, I'm Charles Altman. I represent
15 Daniel Island Riverside and Carriage Hill of
16 Charleston.
17 CROSS-EXAMINATION
18 BY MR. ALTMAN:
19 Q. Do you have any listing agreements where you
20 were trying to sell the property?
21 A. I listed my property because I had a real estate
22 license.
23 Q. And you identified Exhibit 122-N I believe as
24 your listing prices?
25 A. Just give me a second here. There's a lot of

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1 paper.

2 [Whereupon, the witness reviews documents]

3 A. Okay. Yes. It's in here.

4 Q. [Mr. Altman] And the first price you -- the

5 first date you have on here in January 16, 2008?

6 A. That's right.

7 Q. And how much were you trying to sell it for at

8 that time?

9 A. 879,000.

10 Q. And the most recent date you have is January

11 14th -- no, excuse me -- March 1st, 2009?

12 A. I'm sorry. Say that date again.

13 Q. March 1st, 2009.

14 A. March --

15 Q. It's at the very top.

16 A. That's right.

17 Q. How much were you trying to sell it for then?

18 A. Seven ninety-nine.

19 Q. Did you put the unit into the MLS? Multiple

20 Listing Service.

21 A. I did.

22 Q. Did you list any of the problems and the fact

23 that there was a lawsuit pending?

24 A. You know, it's been a long time and it was my

25 first listing, actually, my only listing, you know,

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1 buyer's agent. I don't typically list homes but since it
2 was mine, I listed it.
3 But I believe I filled out something called a
4 seller's disclosure. And I don't remember what I wrote in
5 it, but I imagine that I would have written that there was
6 sound remediation done.
7 Q. But you were still looking for a price greater
8 than what you paid for it; correct?
9 A. Well, that was what the market price would be,
10 based on the comps that were done.
11 Q. Even though you said that there were some
12 deficiencies in the unit? in the development?
13 A. Well, this is based -- the amount, the seven --
14 the eight seventy-nine was based on comps. You know, a
15 realtor, what they typically will do, will run a query and
16 then that's how they set the price. And so that's what I
17 did.
18 Q. But as of March, 2009, you were still looking
19 for more than what you had paid for it? paid for the unit?
20 A. That's right.
21 Q. And you were complaining of deficiencies in the
22 unit; correct?
23 A. Yeah. There were a lot of deficiencies that
24 were not known at that time. Actually, the majority of
25 them.

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1 Q. The majority of them?
2 A. Yeah. For instance --
3 Q. Do you --
4 A. -- for instance, there's significant water
5 intrusion in my windows right now, and the renter that we
6 have there has to caulk pretty routinely. I never saw
7 that when I was in the unit. I never saw the fogging.
8 Our building was one of the last to be built and so a lot
9 of the issues just didn't present themselves until later.
10 Q. You didn't know about the water problems with
11 the windows in 2009?
12 A. No. No, I did not. I didn't know about that.
13 I think it was -- it's hard to -- you know, it's -- it was
14 a while ago. I believe it maybe was towards the end of
15 2009 that I was made aware of that. We weren't living
16 there, so we didn't interact with many people, didn't --
17 you know, with four children, I didn't really have time to
18 go to the meetings and so I just -- I didn't know about
19 that until later.
20 Q. And so when you went to list it, you didn't
21 investigate to see what exactly the problems were, did
22 you?
23 A. You know, in my unit, yeah, I had a conversation
24 with the realtor -- I can't remember his name, Jason,
25 Jeremy -- the person that was representing the buyer that

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1 was very interested in our home. I had a conversation
2 with him about the sound remediation and that it had been
3 done, we had had problems and we had had the sound
4 remediation done but I had not lived in the unit after the
5 sound remediation was done, so I suggested that they check
6 that out because I knew I was liable for that.
7 Also, the wood floors, I had a conversation with
8 him about that. They had -- Carriage Hill had come in and
9 fixed them, done a big fix, I believe when we had moved
10 out. So they were fixed. But I had shared that with him.
11 The water infiltration that we had had, that you see on
12 Exhibit 122-J, that had been fixed.
13 So the things that I knew about, I disclosed to
14 the agent. There are a lot of things that, you know, that
15 we know now, the balusters that we see them splitting, the
16 water that's coming in, I just didn't know or see at that
17 time.
18 Q. You didn't go look, either, did you?
19 A. Well, you know, you don't know what to look for.
20 You know what I'm saying? Like you can't -- you look at
21 the balusters, they look great, you look at -- you know,
22 it's hard to know. When something on the exterior looks
23 fine, it's hard to know the interior is not right.
24 Q. Where is your real estate license? Who's it
25 with? Which company?

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1 A. Atlantic Properties.
2 Q. Did you talk to any of the other realtors who
3 were selling on Daniel Island?
4 A. Well, you see, it's quite small, Atlantic
5 Properties. I'm a partner with one other person, and they
6 do it part time. So it's fairly small. I have -- I work
7 outside of my home doing something else, and my real
8 estate is very small, on the side.
9 Q. You identified Exhibit 139 as being an e-mail
10 from Meggan Crocker to you?
11 A. That's right.
12 Q. And Mr. McDonald asked you a question that
13 alluded to the fact that Daniel Island did not buy it back
14 from you for the price -- wouldn't buy it back from you
15 for the price. Did they make a counteroffer to you?
16 A. No, they did not.
17 Q. They just said they weren't interested in buying
18 it back?
19 A. They just said they weren't interested.
20 Q. So it had nothing to do with the price?
21 A. No.
22 MR. ALTMAN: Bear with me one moment, please.
23 [Whereupon, Mr. Altman and Mr. Maybank confer]
24 Q. [Mr. Altman] Is the property currently listed
25 for sale?

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1 Q. Has it been rented since then?
2 A. Yes. There's been some times here and there
3 when we haven't had a renter, but for the most part it's
4 been rented.
5 Q. Okay. And you testified that there was a fairly
6 significant amount of lost rent that you were asking for?
7 A. That's right. We had to drop our price
8 significantly to get a renter.
9 Q. What were you trying to rent it for?
10 A. The exact number each year?
11 Q. Yes, ma'am.
12 A. Okay. So the first -- in 2008, we rented it for
13 twenty-four fifty, I believe.
14 Can I check my notes?
15 Q. Please.
16 A. Okay.
17 [Whereupon, the witness reviews documents]
18 A. Okay. I have a lot of rental contracts here.
19 Twenty-four fifty. So I was correct. And the
20 next year, it was 2200. The following year it was 2400.
21 And then we just renewed, started May 1, 2500.
22 Our unit overlooks the Wando River. It's a
23 really gorgeous view. You look underneath oaks and you
24 see the Wando.
25 We've made several upgrades. When we moved in,

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1 we installed California closets, with the paneling. We
2 did a lot of things that we thought would help the value
3 and from, you know, a design standpoint, make it
4 attractive to sell.
5 And so I believe that we should have gotten more
6 rental money each time. When we looked at the comparables
7 at places like the Tides, Renaissance, other units that
8 were similar with similar square footage, they were
9 getting over $3,000 for those type of views. And so
10 that's where our rental loss is, as well as our months we
11 didn't get rent.
12 Q. Are any of those other units overlooking the
13 Wando River?
14 A. They are looking at -- yes, they are looking at
15 the river.
16 Q. I said are any of the other units looking at the
17 Wando River.
18 A. Can you be -- which other units? The units at
19 The Oaks?
20 Q. You said the -- you said The tides. Is that
21 overlooking the Wando?
22 A. They are looking at the Cooper River, I believe.
23 Q. Does it overlook the Wando River?
24 A. No.
25 Q. Does it have trees in front of the Tides? Does

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1 it have trees to look at, Oak trees?
2 A. Not as many. Not as many, no.
3 Q. Isn't it overlooking the industrial area, the
4 Tides? the industrial area over the Cooper River and the
5 Wando?
6 A. I don't -- the units I was comparing to didn't
7 look at the industrial portion of the river.
8 Q. Were you here yesterday and the day before --
9 A. I was here Monday --
10 Q. -- the discussion about rent?
11 A. I was here Monday, but yesterday I had to work
12 and so I could not be here.
13 Q. Did you hear the testimony about how much rent
14 was being obtained for other units at The Oaks?
15 A. I don't know if I did. I don't remember that.
16 MR. ALTMAN: That's all. Thank you.
17 A. Can I say one other thing?
18 Q. [Mr. Altman] Sure.
19 A. You know, recently I took my four children to
20 Harris-Tetter and we bought a coconut. And we got home --
21 we bought a lot of other things, but one of the things was
22 a coconut. We got home, we opened it up, and it was black
23 inside. And we were disappointed. I said, gosh, we
24 really have to tell them, we've got to tell Harris-Teeter,
25 it might be a bad bunch. And we took it back and they

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1 said, we are so sorry for your inconvenience, would you
2 like another coconut or would you like your money back.
3 Q. So how much did that coconut cost you? How
4 much?
5 A. It's just good business.
6 Q. How much did the coconut cost you?
7 A. Oh, I don't know. I don't know how much.
8 Q. You don't know how much it cost you the other
9 day --
10 A. I believe --
11 Q. -- the other day, but you --
12 A. -- in the neighborhood of --
13 Q. -- the other day, but you --
14 A. -- two or three dollars.
15 Q. -- know everything about what's gone in the past
16 at The Oaks; right?
17 A. [No response]
18 MR. ALTMAN: Thank you, ma'am.
19 THE COURT: Any redirect?
20 MR. MCDONALD: No redirect, Your Honor.
21 THE COURT: You may step down. Thank you very
22 much.
23 [Whereupon, Ms. Severance is excused and exits
24 the witness stand]
25 MR. MCDONALD: The plaintiffs call Dr. Pekruhn.

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1 [Whereupon, Dr. Pekruhn comes forward]
2 THE CLERK OF COURT: Raise your right hand.
3 [Whereupon, Dr. Pekruhn is duly sworn by the
4 clerk of court as follows: do you swear or affirm
5 that your testimony will be the whole truth and
6 nothing but the truth, so help you God]
7 THE WITNESS: I do.
8 THE CLERK OF COURT: State your full name and
9 spell your last name.
10 THE WITNESS: First name Richard, last name
11 Pekruhn. P-E-K-R-U-H-N.
12 [Whereupon, Dr. Pekruhn takes the witness stand]
13 THE WITNESS: P-E-K-R-U-H-N.
14 MR. MCDONALD: Dr. Pekruhn, how are you doing
15 this morning?
16 THE WITNESS: I'm well. Thank you.
17 - - - - -
18 RICHARD PEKRUHN,
19 Having Been First Duly Sworn,
20 was Examined and Testified as Follows:
21 DIRECT EXAMINATION
22 BY MR. MCDONALD:
23 Q. Have you been in the courtroom when the various
24 stipulations have been made?
25 A. I have, indeed.

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1 Q. So we'll run through this. Okay?
2 Dr. Pekruhn, where are you originally from?
3 A. I'm from Steubenville, Ohio.
4 Q. And how did you wind up down in Charleston?
5 A. We retired here in 1995.
6 THE COURT: I'm sorry. What's his name?
7 MR. MCDONALD: Dr. Richard Pekruhn.
8 THE COURT: Okay. Thank you.
9 Q. [Mr. McDonald] You retired here in 1995?
10 A. That's correct.
11 Q. And where did you move when you retired here?
12 A. We moved to Kiawah Island.
13 Q. And did you -- did you have a house there?
14 A. We had a house, yes.
15 Q. And what is your current address now?
16 A. 136 Fairbanks Oak Alley, unit 4-B.
17 Q. And that's at The Oaks; right?
18 A. That is correct.
19 Q. And 4-B, that's a top unit; correct?
20 A. That is correct.
21 Q. And how did you come to move from Kiawah to The
22 Oaks?
23 THE COURT: What building is he in?
24 THE WITNESS: Building four, Your Honor.
25 THE COURT: Thank you.

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A. We had lived on Kiawah for a number of years, and my wife had some medical conditions that required more rigorous attention and we felt that driving from Kiawah into Charleston for medical care was going to be an issue. Secondly, as we had gotten older, we were getting tired of taking care of a house and all that that entailed. We thought that condominium living would something -- would be something and if we could find a place that was close to Charleston, that was in our best interest.

Q. And did you look on Daniel Island?

A. We did. We looked initially on Daniel Island and there were no properties that we found at the time that were commensurate with our desires.

Q. [Mr. McDonald] And that's because -- when were you looking on Daniel Island?

A. This was in 2003.

Q. So that was before The Oaks was constructed?

A. That's correct.

Q. How did you come to find out about The Oaks?

A. The realtor that we used in our property search, initially, brought to our attention that a new condominium project was being built and that we might find it interesting.

Q. And did you receive the marketing materials that have been talked about?

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1 A. We did.
2 Q. And in addition to the marketing materials that
3 have been talked about in this process, I'll hand you
4 what's been marked as Plaintiffs' Exhibit 109, sir, and
5 ask if this was another document in which you received
6 during the marketing process.
7 A. That is correct.
8 MR. MCDONALD: I would move Exhibit 109 into
9 evidence.
10 THE COURT: Any objection?
11 MR. ALTMAN: No objection.
12 THE COURT: All right. 109 admitted without
13 objection.
14 [Whereupon, Plaintiffs' Exhibit Number 109 is
15 admitted into evidence by the Court]
16 Q. [Mr. McDonald] And did you ultimately sign a
17 contract with --
18 A. We did.
19 Q. And that was in 2004?
20 A. That was in -- yeah, in the spring of 2004.
21 Q. And during the time after you signed the
22 construction -- after you signed your contract, the
23 construction commenced; correct?
24 A. That is correct.
25 Q. And then you ultimately bought -- or closed on

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1 the unit from Daniel Island Riverside Developers on or
2 about May of 2006?
3 A. That is correct.
4 Q. And you, sir, paid 746,300; correct?
5 A. Let me amend that. The total costs, with
6 upgrades and closing costs, was 752,000.
7 Q. So you received the options booklet?
8 A. We did.
9 Q. And you made certain selections during the
10 construction process?
11 A. That's correct.
12 Q. And did you move into The Oaks immediately?
13 A. We moved into The Oaks immediately.
14 Q. And was it your intention, at the time you moved
15 in, to live there?
16 A. It was always our intention to live there full
17 time. That is correct.
18 Q. And what -- when the -- what problems started
19 occurring as you moved into The Oaks?
20 A. I think it might be useful to walk through a
21 couple of things that occurred.
22 At the closing, Rich Behringer was present and
23 we had a conversation and he said, and I quote, we left a
24 lot of money on the table. And I responded, Rich, this is
25 my home; for you, this is a deal; for me, it's my home and

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1 that is important.
2 He then took us for our walkthrough. Long
3 delay, but we did have our walkthrough. At the time I
4 walked into the building -- I had been promised what was a
5 grand residence. I walked into the building and saw a
6 drainpipe running through the lobby. I saw cheap
7 construction stairs. I saw carpentry in which the wall
8 and the stair risers did not meet. There was a half-inch
9 caulk joint. I saw a storage cabinet in the basement that
10 was an open-mesh container in which dust and mold and
11 mildew could accumulate. The carpeting on the stairway
12 was cheap carpeting.
13 Q. And then as you continued to live at The Oaks,
14 did you experience additional problems?
15 A. We did. Punch list was generated and it was our
16 expectation that the items on the punch list would be
17 fulfilled.
18 Q. Did you also fill out warranty claim forms?
19 A. I did. I think it might be worthwhile to point
20 out that some of the warranty claim forms were filled out
21 by me, other warranty claim forms were filled out in the
22 Carriage Hill office.
23 Now, we had some problems. We had leaks in our
24 windows -- or around our windows, I should say -- because
25 our carpet in the front bedrooms was wet. Just to walk

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1 through you -- walk through with you for a moment on that:
2 we brought this to their attention. There were numerous
3 meetings in which the issues were not really addressed and
4 we had to go, first of all, to the person who sold the
5 windows, which was Muhler. And ultimately --
6 THE COURT: We don't need to get into all that.
7 Okay?
8 THE WITNESS: Okay. Yeah.
9 THE COURT: I don't want to hear about the
10 windows. That portion of this case --
11 THE WITNESS: Got you.
12 THE COURT: -- has settled. Okay?
13 Q. [Mr. McDonald] So at some point, based upon the
14 problems that you had --
15 It was your intention to live in this unit;
16 correct?
17 A. It was always our intention to live there.
18 Q. And at some point, based on the problems you
19 had, did you decide that you were going to sell it?
20 A. We did.
21 Q. And did you put it on the market?
22 A. We did.
23 Q. Were you able to sell it?
24 A. We were not.
25 Q. And you, sir, have not hired Mr. Donato to do an

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1 appraisal --
2 A. That is correct.
3 Q. -- for you; correct?
4 You hired a gentleman by the name of Mr. Sorrels
5 [phonetic]; correct?
6 A. That is correct.
7 Q. And do you have an opinion on what your unit
8 would have been worth without defects when you tried to
9 sell it?
10 A. When we tried to sell it, okay, we had no
11 offers. Even if I were willing to accept basically the
12 price that I had paid, plus my upgrades, it would have
13 been roughly $800,000. Mr. Sorrels appraised the property
14 at 600,000.
15 Q. And that's the -- so what you're asking this
16 Court for is the difference between the 800,000 and the
17 600,000?
18 A. That is correct.
19 Q. And Mr. Sorrels appraised the property at
20 600,000 -- what's your understanding? without defect?
21 A. That was without defects.
22 Q. In 2001; correct?
23 A. Correct.
24 Q. And do you have any lost rent?
25 A. I have none.

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1 Q. Because you live there; correct?
2 A. Correct.
3 Q. And did you have any out-of-pocket expenses?
4 A. We have out-of-pocket expenses of approximately
5 $3200.
6 THE COURT: I'm sorry. How much?
7 THE WITNESS: 3200, Your Honor.
8 THE COURT: Thank you, sir.
9 MR. MCDONALD: Mr. Pekruhn, please answer any
10 questions they may have for you.
11 THE WITNESS: Thank you.
12 MR. ALTMAN: I have no questions, Your Honor.
13 THE COURT: No questions?
14 MR. MCDONALD: Thank you very much, Dr. Pekruhn.
15 [Whereupon, Mr. Pekruhn is excused and exits the
16 witness stand]
17 MR. MCDONALD: Plaintiffs call Mr. Hayden
18 Jennings.
19 [Whereupon, Mr. Jennings comes forward]
20 THE CLERK OF COURT: Raise your right hand.
21 [Whereupon, Mr. Jennings is duly sworn by the
22 clerk of court as follows: do you swear or affirm
23 that your testimony will be the whole truth and
24 nothing but the truth, so help you God]
25 THE WITNESS: I do.

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1 THE CLERK OF COURT: State your full name and
2 spell your last name.
3 THE WITNESS: Hayden Leonard Jennings.
4 J-E-N-N-I-N-G-S.
5 [Whereupon, Mr. Jennings takes the witness
6 stand]
7 MR. MCDONALD: Good morning, Mr. Jennings.
8 - - - - -
9 HAYDEN JENNINGS,
10 Having Been First Duly Sworn,
11 was Examined and Testified as Follows:
12 DIRECT EXAMINATION
13 BY MR. MCDONALD:
14 Q. What is your current address?
15 A. 117 Ashley Avenue.
16 Q. And where are you originally from?
17 A. Hickory, North Carolina.
18 Q. And what brought you to Charleston?
19 A. I got married and moved to Charleston.
20 Q. And your mother actually owns the unit that
21 we're here about today?
22 A. That's correct.
23 Q. And what involvement do you have with that unit?
24 A. She rarely comes to Charleston and I've been the
25 defacto property manager for her, helping her manage the

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1 property in different aspects.
2 Q. So are you the most knowledgeable person about
3 the unit?
4 A. Yes. I've been in more than anyone.
5 Q. All right, sir. And your unit is located in
6 what building?
7 A. It's building six, unit 4-A.
8 Q. And that's the top floor; correct?
9 A. Yes.
10 Q. And have you recently -- tell the Court recently
11 what's gone on in your unit. We'll start there.
12 A. The latest event has been in the last couple of
13 weeks where the master shower was leaking to the unit
14 below, which was also having the same experience, I was
15 told from that unit's property manager. So the shower was
16 removed fully. And in the course of that, there was a lot
17 of soft wood and rot and potential mold discovered, so the
18 tenants actually moved out. They have a one-year-old baby
19 and they have asked to not pay April's rent and they are
20 not staying in the unit anymore.
21 Q. Why have they moved out? Because of the mold?
22 A. They're concerned for mold and the health of
23 their baby.
24 Q. And what were they paying in rent?
25 A. 2200 a month.

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1 Q. And are you aware, sir, that the repairs need to
2 be made project-wide to the shower pans? Is that your
3 understanding?
4 A. That's my understanding.
5 Q. But you've incurred costs -- I'll hand you
6 what's been marked as Plaintiffs' 113-C. You've incurred
7 out-of-pocket costs associated with that event; correct?
8 A. That's correct. This invoice has been paid.
9 Q. And what's the amount of that invoice?
10 A. $6,640.
11 Q. Okay, sir. And the renters have moved out. So
12 have you experienced any lost rent?
13 A. We have as of this month and then going forward.
14 And in discussions with the property -- it's a potential
15 twelve months of renovations through the project, which
16 will make it extremely difficult to rent, and that would
17 be a total of 26,400 in addition to the past repair
18 conditions of the property that have kept it from being
19 able to be rented.
20 Q. So you've lost rent with this tenant but you've
21 lost rent in the past, too?
22 A. I have. There was a time in between tenants
23 where the porch had a section of two-by-fours instead of
24 actual porch railing and every time I tried to show that,
25 nobody felt safe using that porch and renting the

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1 property.
2 Q. Okay, sir. And you and your mother have, in
3 fact, hired Mr. Donato to determine what other individual
4 damages you may have; correct?
5 A. That's right.
6 MR. MCDONALD: Thank you very much,
7 Mr. Jennings. Please answer any questions these
8 gentlemen may have.
9 THE COURT: You paid 850,000 [eight hundred for
10 it; is that correct?
11 THE WITNESS: That's correct.
12 THE COURT: Thank you very much.
13 MR. MAYBANK: Mr. Jennings, I just have a few
14 questions for you. My name is Roy Maybank. I
15 represent Daniel Island and Carriage Hill.
16 CROSS-EXAMINATION
17 BY MR. MAYBANK:
18 Q. You put up a figure of 26,400 [twenty-six
19 thousand four hundred]. Those are -- that's future rent
20 you're claiming?
21 A. That's a twelve-month period at $2200 [twenty-
22 two hundred dollars] a month.
23 Q. When was that period? Or has it not come yet?
24 A. It begins April 1st of this month when they are
25 not going to pay rent for April.

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1 Q. But you're asking the Court to award you damages
2 in the future that haven't existed today; correct?
3 A. That's correct. In addition to the period in
4 2009 that it was not able to be rented. That was ten
5 months at 2200 a month, so that would be another 22,000
6 that we would ask for.
7 Q. I understand that. But my question is simple.
8 You're asking this Court to award you future damages on
9 damages you don't even have yet?
10 A. That's correct. The damages are really unknown.
11 Q. That's -- exactly. Thank you.
12 You bought the unit for how much?
13 A. My mother purchased the unit for approximately
14 850,000. I believe that was --
15 Q. Did she buy it originally from Daniel Island or
16 Carriage Hill?
17 A. She purchased it from -- it was a re-sale --
18 from Brenda Cook.
19 Q. Brenda Cook --
20 A. Brenda Cook was an agent who also had a contract
21 to purchase that, and my mother purchased it from her.
22 Q. Yes. Ms. Cook took the stand yesterday. She
23 said that she had some units. My understanding is is that
24 she did not even move into that unit, she just sold your
25 mother the contract?

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A. That's -- no. She closed on it and sold it. If I understand correctly, she actually took possession of it. I don't think she had sold the contract for that.

Q. She never moved into the unit, did she?

A. She never lived in the unit. It had never been occupied.

Q. So y'all did a paper sale, in essence.

Do you know how much she paid for it originally?

A. I do not remember.

Q. So if you paid eight forty and she paid seven fifty, you don't know?

A. I don't know.

Q. That's all right.

The leak that you found was six to seven years after you purchased the unit?

A. We actually had leaks the first --

Q. I apologize. You're correct.

The leaks that you're talking about out-of-pocket is $6600?

A. That actually happened two weeks ago.

Q. Two weeks ago. Okay.

Did you have your pan on your shower replaced at that time?

A. We had it -- the entire shower had to be taken out. In taking the pan out, there was extensive wood rot

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1 and potential mold so the building manager, Steve
2 Sutterland, called and said stop the work, take everything
3 out and stop the work and let my people come in here and
4 look and see what's going on.
5 Q. So your bathroom has been fixed and remediated?
6 A. No. The bathroom actually has not been fixed.
7 They haven't given us permission to go back in there and
8 do the work.
9 Q. What did you pay $6600 for?
10 A. For the work that is to occur for purchasing of
11 tile. We are prepaid for the work. It's a workman -- I'm
12 very comfortable with that situation.
13 Q. Pardon me?
14 A. I'm very comfortable with prepaying for this
15 repair.
16 Q. And that repair -- you've already paid for a
17 repair that has not yet occurred and you're asking this
18 Court for money on damages that you have not occurred, as
19 well; correct?
20 A. The repair -- there is a hole where the shower
21 used to be --
22 Q. I'm just asking you, sir, a simple question.
23 A. Right. There's been time and materials spent in
24 deconstructing the shower. There has been money spent in
25 ordering the tile for reconstructing the shower. But

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1 according to the building manager, we are not able to
2 complete that yet. It is a job to be completed.
3 Q. At a cost of $6600?
4 A. Yes, sir.
5 [Whereupon, Mr. Maybank and Mr. Altman confer]
6 Q. [Mr. Maybank] When did -- I apologize. I
7 didn't write it down. When did you say you closed on your
8 unit?
9 A. I don't have the date in front of me.
10 Q. What year did your mother close on the unit?
11 A. It's in the records. I don't know, right off
12 the top of my head.
13 Q. My understanding is Ms. Cook paid $670,000 for
14 this unit. Do you know if that's correct?
15 A. The court records, the deeds, would be correct.
16 If that's what the deeds say, then that's correct.
17 Q. And I believe she closed on this sometime in
18 2006. But you don't know when your own mother closed on
19 her unit?
20 A. I do not remember the exact date. But, again,
21 it's --
22 Q. I'll just take a year.
23 A. I believe 2007. Or 2008, potentially. I don't
24 remember.
25 MR. MAYBANK: May I approach the witness, Your

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1 Honor?
2 THE COURT: Yes, sir.
3 Q. [Mr. Maybank] I would like for you to take a
4 look at that, that data up at the very top.
5 [Whereupon, the witness reviews documents]
6 Q. [Mr. Maybank] Does that help refresh your
7 memory about when you may have closed on the unit? Took
8 possession of it?
9 A. Sure. 28th of June, 2006.
10 Q. 2006. And I believe Ms. Cook closed on it three
11 months earlier. So in four months, Ms. Cook made $150,000
12 from selling the unit to your mother. Would that be about
13 right?
14 A. If that's what the records show, it's correct.
15 MR. MAYBANK: Thank you. No further questions,
16 Your Honor.
17 THE COURT: Mr. Jennings, let me just ask you
18 one question.
19 Referring to this DiMarzio's bill: he's already
20 torn it out; right?
21 THE WITNESS: Yes, sir.
22 THE COURT: And he's got to come back and saw
23 the cement board, the tile walls and the floor?
24 THE WITNESS: Yes, sir.
25 THE COURT: Have you paid him the total 6,640 or

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1 did you just pay him for work that's already been
2 completed?
3 THE WITNESS: We paid him the entire bill at the
4 time that the invoice was submitted.
5 THE COURT: So you've paid him for the work that
6 he's done, plus the future work to put it back
7 together?
8 Yes, sir.
9 THE COURT: Okay. Thank you very much.
10 Any questions?
11 MR. MCDONALD: No redirect, Your Honor.
12 THE COURT: All right. Thank you.
13 [Whereupon, Mr. Jennings is excused and exits
14 the witness stand]
15 MR. BUNDY: The plaintiff calls Christopher
16 Donato, Your Honor.
17 THE COURT: What number -- do you have any
18 exhibits for him? What number are they?
19 [Whereupon, Mr. Donato comes forward]
20 THE CLERK OF COURT: Raise your right hand.
21 [Whereupon, Mr. Donato is duly sworn by the
22 clerk of court as follows: do you swear or affirm
23 that your testimony will be the whole truth and
24 nothing but the truth, so help you God]
25 THE WITNESS: I do.

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1 THE CLERK OF COURT: Please be seated.
2 [Whereupon, Mr. Donato takes the witness stand]
3 THE CLERK OF COURT: State your full name and
4 spell your last name.
5 MR. BUNDY: His exhibits are 90 through --
6 THE COURT: 90?
7 MR. BUNDY: Ninety. 9-0 -- 90 through 101-A.
8 THE COURT: All right. 90.
9 [Whereupon, the Court reviews documents]
10 THE WITNESS: I'm Christopher Daniel Donato.
11 THE COURT: All right. We're talking about 90
12 through what, now?
13 MR. BUNDY: 101-A.
14 THE COURT: 101-A.
15 MR. BUNDY: Yes, Your Honor.
16 THE COURT: Now, is this -- do you have a
17 summary of his appraisals for the various units?
18 MR. BUNDY: We have a -- we have a -- Your
19 Honor, he is prepared --
20 THE COURT: Have you got something small I could
21 look at?
22 MR. BUNDY: -- a demonstrative exhibit.
23 THE COURT: Let me see it. I can read that. I
24 can't read it that far away, though.
25 MR. BUNDY: Don't have anything small. I think

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1 maybe he --
2 THE COURT: It's a duplicate of this?
3 [Off the record momentarily]
4 - - - - -
5 CHRISTOPHER DONATO,
6 Having Been First Duly Sworn,
7 was Examined and Testified as Follows:
8 DIRECT EXAMINATION
9 BY MR. BUNDY:
10 Q. Mr. Donato, where are you employed?
11 A. I'm employed with Parker and Valdridge
12]phonetic] Property Advisers/Atlantic Appraisals, LLC.
13 Q. And what is the business --
14 MR. ALTMAN: Your Honor, if I may, we'll
15 acknowledge he's an MAI appraiser as an expert. We
16 don't --
17 THE COURT: MAI? Okay.
18 MR. BUNDY: Okay. We concede -- y'all concede
19 Mr. Donato is an expert?
20 THE COURT: I'll find that he's an MAI appraisal
21 expert. Okay?
22 MR. BUNDY: Okay.
23 Q. [Mr. Bundy] Mr. Donato, what were you asked to
24 do in this case?
25 A. I was asked to prepare three appraisals. The

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1 first appraisal was to be a March, 2008 date, an estimate
2 of the value of the properties that I was appraising,
3 without any defects.
4 Q. And why was that date selected?
5 A. Well, it's my understanding that's the date that
6 the homeowner, as well as the property owners, received a
7 letter from Carriage Hill Associates, the developer, which
8 stated publically about all of the defects and the
9 problems that they were having. And of course at that
10 point in time, then it becomes -- the onus becomes on the
11 property owner to have to disclose all that information,
12 if, in fact, they try to sell their property.
13 Q. So that's the date of public notice of defects?
14 A. Yes, sir.
15 Q. And what was the second appraisal date,
16 Mr. Donato?
17 A. It was in December, 2011, which happened to be
18 the time period in which I was making these appraisals,
19 that you asked for a current appraisal at that time
20 without any defects.
21 THE COURT: I'm sorry. What?
22 THE WITNESS: December, 2011, without defects.
23 THE COURT: Without defects. Okay.
24 Q. [Mr. Bundy] And do you know why the December
25 2011 date was selected?

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A. Well, it was simply the period of time that I was working on the job. I thought, and I think you thought, the trial was going to be a little bit sooner but obviously it hasn't been.

Q. In fact, December was the original date for the trial of this case?

A. That's right.

Q. Or one of the original dates. It's had several original dates.

And what were -- and is there another appraisal date?

A. On that same December 2011 date, I was asked to estimate the value of the units with defects.

Q. And since that time, have some units actually been sold?

A. Yes, sir. And those are actual comparables we used to make that estimate.

THE COURT: You used the comparables with the defects?

THE WITNESS: There was enough units, sir, within --

THE COURT: For your comparables?

THE WITNESS: -- for comparables within --

THE COURT: That's with the defects?

THE WITNESS: With the defects.

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1 THE COURT: Okay.
2 Q. [Mr. Bundy] And you appraised each and every
3 unit, correct, that you were hired to appraise?
4 A. I was hired to appraise fifteen units.
5 Q. And those would be found in Plaintiffs' Exhibits
6 90 through 101-A?
7 MR. BUNDY: Which I would move to introduce into
8 evidence.
9 THE COURT: Any objection to 90 through 101-A?
10 MR. ALTMAN: No objection, Your Honor.
11 THE COURT: 90 through 101-A admitted without
12 objection.
13 [Plaintiffs' Exhibit Numbers 90 through 101-A
14 are admitted into evidence by the Court]
15 Q. [Mr. Bundy] Now, based upon your opinions
16 contained in the various appraisals 90 through 101-A, have
17 you compiled for the Court's convenience a chart of the
18 basic information that you needed to arrive at your
19 opinions of fact?
20 A. I have, sir.
21 Q. And would that be found in this chart right here
22 entitled The Oaks at Rivers Edge, Fairbanks Oaks, summary
23 of all values?
24 A. That's correct, sir.
25 Q. And this is just simply a larger version of your

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1 work product; correct?
2 A. Yes.
3 MR. BUNDY: Your Honor, do you want to wait for
4 the chart to come back?
5 THE COURT: Well, I'm like Mr. Jung, you're
6 going to have to move that close if you want me to see
7 it. Otherwise, I'll wait for the smaller one to look
8 at.
9 MR. BUNDY: Since I like my numbers, my vantage
10 numbers, in big numbers --
11 THE COURT: Pardon?
12 MR. BUNDY: -- I'm going to put it right over
13 here for you.
14 THE COURT: Well, that's fine. You either have
15 to move it closer or give me --
16 MR. ALTMAN: Your Honor, could we ask that he
17 wait? We would like to see it, too. I don't think --
18 THE COURT: Well, just come on up here and join
19 me and we'll share it.
20 Move it out here in the middle somewhere and he
21 can stand here and look at it. I'm not going to waste
22 time waiting on that.
23 MR. ALTMAN: Your Honor, I agree --
24 THE COURT: Just put it right out here in the
25 middle and I'll tell you when I can't see it any

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1 longer.
2 [Whereupon, Mr. Bundy complies]
3 THE COURT: And y'all can stand right here and
4 look at it.
5 All right. That's fine right there. Just stand
6 right here and look at it.
7 Thank you very much.
8 MR. BUNDY: Everybody happy? Okay.
9 Q. [Mr. Bundy] All right, sir. Looking at the
10 chart: the owners that you -- and I'm just going to, for
11 the record -- you did the following: 2-A, 2-B, 2-A, 2-B.
12 I guess we've got --
13 A. The chart is segregated into owners that
14 currently still own their units and those that have sold
15 their units.
16 Q. All right, sir. Let's talk about the owners
17 who've sold first. Explain your analysis to the Court on
18 how you -- before going into actual numbers, explain your
19 opinion and your analysis as to how you arrived at a
20 number and why.
21 A. Well, the three numbers were arrived at through
22 comparable sales. In the 2008 scenario, we used sales
23 from Pier View condominiums, which is on Daniel Island,
24 also, from Island Park Drive condominiums, also on Daniel
25 Island, and from the Tides. They believed -- I believed

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1 that they all had the same quality as the subject, at
2 least without defects.
3 Q. And these are all generally characterized as
4 luxury condominiums?
5 A. Generally characterized as luxury condominiums,
6 most of them multiple stories, all at least four stories.
7 THE COURT: Let me ask you one question so I'll
8 understand what we're looking at when he made these
9 appraisals with the defects. Does that include the
10 defects that the owners have been talking about, plus
11 the water from the windows? Both?
12 MR. BUNDY: Yes, sir.
13 Q. [Mr. Bundy] Go ahead, Mr. Donato.
14 A. So those comparables, of course, were not
15 exactly alike, was not exactly like Fairbanks Oaks, so we
16 had to make adjustments to those comparables to come up
17 with what we call indications of value and then we
18 correlated into an estimate value. Obviously, I can't see
19 it, and I don't have my sheet, but --
20 Q. And the details of each individual appraisals,
21 the comps and et cetera, are all contained in each one of
22 those exhibits that relate to each individual unit; is
23 that correct?
24 A. That's correct.
25 Q. So without going through each and every one, the

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1 analysis of how you got to that number is found in your
2 appraisal?
3 A. Right. The important thing is --
4 Q. What I want to talk about is the conclusions.
5 A. I'm sorry. The important thing is we had a
6 comparable date from other projects, outside of the
7 subject, for 2008 and 2011 without defects. We had
8 excellent data within Fairbanks Oaks that gave us an
9 indication of what a person was willing to pay for the
10 property, understanding all of the defects that it had.
11 Q. So as it related to the owners who sold, which
12 would be Nelson, Graham, Reece and Johnson, have you come
13 to an opinion to a reasonable degree of certainty and
14 within your profession as to what they lost in those sales
15 as a result of defective condominium units as opposed to
16 the decline in the market or the uptake in the market? It
17 really wouldn't matter whether the market was going up or
18 down, would it?
19 A. Probably not, no, sir.
20 Q. So how did you arrive -- tell the Court what
21 your analysis was. How did you go through the analysis?
22 A. Well, the individuals that sold, they -- on
23 2011, they had an estimated value, without defects, that
24 show in my chart, and this is what -- if there were no
25 defects, they should have been able to sell for that

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1 price. However, there was defects and we found out that
2 the defects probably created another discount of about
3 thirty to forty percent.
4 THE COURT: How much?
5 THE WITNESS: Thirty to forty percent.
6 THE COURT: Thirty to forty percent.
7 A. So you can see, also, on the owners who sold,
8 the -- are 2011 estimates of value with defects.
9 Q. [Mr. Bundy] Let's go through them. As to the
10 Nelsons, to a reasonable degree of certainty what do you
11 think they -- what is your opinion as to what they lost as
12 a result of these defective condominiums?
13 A. Well, it's the delta between the 2011 with the
14 no defects and the 2011 with defect, and that would be
15 $275,000.
16 Q. All right. To a reasonable degree of certainty,
17 what is your opinion as it relates to the Grahams?
18 A. $280,000.
19 Q. To a reasonable degree of certainty, what is it
20 as it relates to the Reeces?
21 A. $280,000.
22 Q. And, finally, to the Johnsons?
23 A. 290,000.
24 Q. Now, the value with the fix, the 2011 value with
25 the fix, some of those numbers changed a little bit from

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1 your appraisal, did they not, because of the actual sales
2 price?
3 A. Some of the sales were a little bit different,
4 but very close to what we had.
5 Q. Some of them were -- some of them were right on
6 the money, weren't they?
7 A. Some of them were right on the money.
8 Q. All right. Now, let's talk about the people who
9 still own the units. What is the analysis there?
10 A. The people who still own the units, they had
11 sort of a barrier to the entry to the market. And the
12 reason why they had this barrier is because they had to
13 disclose all of the problems associated with this unit, so
14 they were not capable of selling their property for market
15 value. They had two horrible choices: one, ride the
16 Titanic to the bottom, or, two, sell at these
17 extraordinary discounts to get the market interested in
18 buying a piece of property with defects. So my analysis
19 of their damage is the loss in value between the 2008
20 value without defects and the 2011 value without defects.
21 Q. Now, in this instance, the truth, in fact, the
22 market was going down?
23 A. It was.
24 Q. And so what you're saying is that
25 notwithstanding the fact that the market was going down,

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1 they were denied entry into the market; is that correct?
2 A. They were denied access to market value.
3 Q. Okay. And they had been able -- they had had
4 access to market, in your opinion, to a reasonable degree
5 of certainly, in 2008 the values with no defects would
6 have been as shown on your chart; correct?
7 A. That's correct.
8 MR. BUNDY: It might be helpful to move -- to
9 put this in evidence at this point just so we'll have
10 one exhibit that has it all. And I would like to put
11 a sticker on this, if that's okay with you. Or do you
12 want to put it on the piece of paper?
13 THE COURT: Well, it's hard for the clerk to
14 keep it. Why don't we put the paper copy? Mark the
15 paper copy.
16 [Whereupon, counsel confer]
17 THE COURT: What number would that be,
18 Mr. McDonald?
19 MR. MCDONALD: Your Honor, I believe that would
20 be Exhibit -- Plaintiffs' Exhibit 179.
21 THE COURT: Plaintiffs' Exhibit 179, which is a
22 summary of all the values by Mr. Donato. Any
23 objections?
24 MR. MAYBANK: We would object to the entry of
25 these at this time, Your Honor, as the damages are

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1 speculative, not --
2 THE COURT: Well, we can argue about the damages
3 later. But do you have any objections to his
4 presentation? I'm not saying these are the actual
5 damages.
6 MR. MAYBANK: Sure.
7 THE COURT: We're going to talk about that today
8 sometime, okay --
9 MR. MAYBANK: Okay.
10 THE COURT: -- from a legal standpoint.
11 MR. MAYBANK: Your Honor, there is a creation.
12 He's may have -- he's the expert, was qualified --
13 THE COURT: Right. And, I mean, I think if he
14 prepared it, he's the expert, I think it's admissible.
15 Now, whether it's proper or not, legally, that's a
16 different story and we're going to talk about that
17 later today when we get a chance. Okay?
18 MR. MAYBANK: Thank you, Your Honor.
19 THE COURT: All right. Go ahead.
20 MR. BUNDY: In without objection?
21 THE COURT: In without objection.
22 MR. BUNDY: Thank you, Your Honor. Exhibit 179,
23 for the record.
24 [Whereupon, Plaintiffs' Exhibit Number 179 is
25 admitted into evidence by the Court]

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1 Q. [Mr. Bundy] All right, sir. So as it relates
2 to the people who still own, you established a value in
3 2008 with no defects; is that correct?
4 A. I did, sir.
5 Q. All right. Now, let's just run through these
6 individuals one at a time and give me your opinion to a
7 reasonable degree of certainty what you think their loss
8 was by virtue of their inability to enter the market.
9 A. Yes, sir.
10 Q. All right. Maraziti?
11 A. 235,000.
12 Q. Severance?
13 A. $245,000.
14 Q. Keane?
15 A. Two thirty-five.
16 Q. Pollard?
17 A. 235,000.
18 Q. Chiovarou?
19 A. 235,000.
20 Q. Jung?
21 A. 245,000.
22 Q. Strandquist?
23 A. 245,000.
24 Q. Ruvo?
25 A. 240,000.

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1 Q. Jennings?
2 A. 290,000.
3 Q. Now, you do not opine as to Mr. Pekruhn because
4 he didn't hire you; right?
5 A. That's correct.
6 Q. But you -- I note here that you have a Sorrels
7 [phonetic] appraisal?
8 A. I did put Mr. Sorrels numbers in.
9 Q. Okay. Do you know Mr. Sorrels?
10 A. I do, sir. He used to work for me.
11 MR. BUNDY: The witness is with you.
12 MR. MAYBANK: I'm sorry, Bill. What did you
13 say? Oh. I apologize.
14 THE COURT: Your witness.
15 MR. MAYBANK: I'm sorry, Your Honor. I was
16 reading something.
17 [Off the record momentarily]
18 MR. MAYBANK: Mr. Donato, my name is Roy
19 Maybank. I represent the Carriage Hill folks.
20
21
22
23 - - -
24 - - -
25 - - -

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1 CROSS-EXAMINATION
2 BY MR. MAYBANK:
3 Q. My understanding is is that you have done work
4 on my client's behalf; correct?
5 A. I have done work on your client's behalf.
6 Actually -- yes, for an estate that one of his partners --
7 one of his partners passed away and it was his partner's
8 estate.
9 Q. All right. My understanding from your testimony
10 is that if, in fact, the units are repaired, these numbers
11 are gone; correct? The defect numbers are gone, according
12 to the testimony that you gave back on April 5th of 2012?
13 A. If the defects are repaired, then the value
14 should return to whatever that value is on that date.
15 Q. All right. So if back in 2011 the value repairs
16 were made -- and I'm looking at the column under 2011, no
17 defects. If the repairs were done at that time, this
18 value lost in this far right column would be zero all the
19 way down; correct?
20 A. That's if the repairs were made.
21 Q. Yeah. Back in 2011, there would be no lost
22 value; correct?
23 A. Right.
24 Q. So there would be --
25 THE COURT: Are you talking about the seven or

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1 eight, now? You keep saying seven.
2 MR. MAYBANK: Sorry, Your Honor.
3 THE COURT: It says eight up here.
4 MR. MAYBANK: No. 2011 is what I'm talking
5 about.
6 THE COURT: You're talking about 2011. Okay.
7 MR. MAYBANK: Yes, sir.
8 THE COURT: All right. I'm sorry. Go ahead.
9 MR. MAYBANK: Just to be clear for the Court,
10 the understanding is if the --
11 THE COURT: I understand. If the defects are
12 fixed and he's got a value for defects aren't fixed,
13 he's got a value and he's taken the value lost. Now,
14 we can talk about double recovery down the road, okay?
15 MR. MAYBANK: Right. But what he's saying --
16 THE COURT: But that's going to be a legal
17 question we've got to address. Okay?
18 MR. MAYBANK: That's correct, Your Honor. I
19 just wanted to establish that there is no value lost
20 if the units were repaired.
21 THE COURT: That's correct.
22 MR. MAYBANK: Okay.
23 THE COURT: If the defects are done properly.
24 MR. MAYBANK: That's correct. If they're fixed.
25 THE COURT: And that's -- you know, I'm sure

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1 with these folks out here, that's probably very
2 speculative in their minds.
3 MR. MAYBANK: I understand, Your Honor.
4 Q. [Mr. Maybank] Of that defect cost, did you pare
5 out what the economic loss --
6 THE COURT: Let me ask one question.
7 I guess, Mr. Bundy, am I going to hear from some
8 expert about these floors and the noise attenuation,
9 putting a dollar value of repair to this whole
10 complex?
11 MR. BUNDY: Yes, Your Honor.
12 THE COURT: Now, I know that will come from the
13 association, as far as damages are concerned.
14 MR. BUNDY: Yes, sir. There's going to be a --
15 there's going be a number introduced into evidence
16 what it's going to take to fix these floors, the
17 soundproofing, and everything else.
18 THE COURT: Okay. All right. Go ahead.
19 Let me ask you one more question. How about the
20 tub damages? Apparently --
21 MR. BUNDY: Yes, sir.
22 THE COURT: -- there's a tub-pan damage
23 throughout the complex?
24 MR. BUNDY: Yes, sir.
25 THE COURT: What else is throughout the complex

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1 that I can expect to hear from?
2 MR. BUNDY: Your Honor, you will hear about the
3 complex, the following damages. These are just heads
4 of damages: the stucco facade on the rear wall, no
5 damages regarding windows, then you will hear damages
6 regarding remove and replace all the stucco, remove
7 and replace all brick, replace the exterior trim,
8 paint trim and for ceilings, replace guardrails is not
9 going to be heard because that's already been taken
10 care of, the wall insulation, brick-entry steps,
11 garage-slab repair, repair of the wall, returns,
12 French-drain system, acoustic floor modifications,
13 acoustic ceiling repairs, shower waterproofing, trim
14 and paint, Gypsum-board remediation, mold remediation,
15 HVAC in lobby, carpet or stairs to garage, upper
16 landing repairs, project photographs. That number
17 will total, for all buildings, seven million nine
18 thirty-four seven zero four.
19 THE COURT: I'm sorry. What?
20 MR. BUNDY: Seven million nine thirty-four seven
21 zero four point zero six. And on top of that is the
22 engineering fee of ten percent, and the move-out
23 costs.
24 THE COURT: All right. And, theoretically, that
25 would put the project back to where it should have

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1 been in the beginning?
2 MR. BUNDY: Yes, sir.
3 THE COURT: Okay. Now, let me just ask you a
4 question. I'm not trying to cut off your cross.
5 MR. MAYBANK: I understand, Your Honor.
6 THE COURT: Do you have any questions about his
7 appraisals, per se?
8 MR. MAYBANK: I do.
9 THE COURT: Okay. Because at some point in
10 time, we're going to have to talk about damages
11 because if you start dealing in this area, plus the
12 7.9 mil, it's going to be a double recovery. At some
13 point in time, we've got to decide where we're headed.
14 And I'm going to listen to y'alls argument on that at
15 some point in time.
16 MR. MAYBANK: All right.
17 THE COURT: Okay? Now, I'm not saying you've
18 got to elect, but --
19 MR. BUNDY: I'm hoping I'm going to be able to
20 convince you it's not a double recovery. That would
21 be the first thing.
22 THE COURT: Well, that's very prevalent in my
23 mind right now and I need --
24 MR. BUNDY: I understand.
25 THE COURT: -- I would like to address it,

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1 because I think it may change the scope of his
2 argument -- or, excuse me, his cross.
3 Would it, or would it not?
4 MR. MAYBANK: Probably so, Your Honor, because
5 it's either A or B, I guess.
6 MR. BUNDY: Well, if I may, I think it's a
7 little bit --
8 THE COURT: Let me hear you. I mean, because, I
9 mean, if I give all these owners --
10 Now, obviously, this is not all the owners in
11 the units; right?
12 MR. MAYBANK: Right.
13 MR. BUNDY: Correct.
14 THE COURT: It's just the people that are
15 parties to this lawsuit?
16 MR. BUNDY: That's correct.
17 THE COURT: So there's other people that aren't
18 parties. And it's not a class action.
19 MR. BUNDY: No, it's not.
20 THE COURT: So we're not dealing with a class,
21 we're dealing with these individual plaintiffs on
22 their individual units. So tell me why, if I award
23 them just what the appraisal has said, value lost,
24 plus the 7.9 million three hundred and four -- thirty-
25 four seven hundred and four dollars, why would that

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1 not be a double recovery? Because, theoretically,
2 you're putting it back to the 2011 value for no
3 defects, which I'm assuming that figure is the fair-
4 market value at that time. So why wouldn't that be a
5 double recovery for these particular people?
6 MR. BUNDY: Well, let's start with the people
7 who sold. The people who sold are not going to get
8 the benefit of any of --
9 THE COURT: Okay. I'll concede that. Let's
10 talk about -- I'll concede that to you, okay? You
11 don't even need to make that argument.
12 MR. BUNDY: Thank you, sir.
13 THE COURT: All right. But tell me about the,
14 let me see, one, two, three, four, five, six, seven,
15 eight, nine, ten people, or ten units, I should say,
16 we're speaking of.
17 MR. BUNDY: As you'll recall yesterday from
18 Mr. Jung's cross-examination, Mr. Maybank properly
19 pointed out, astutely pointed out, that Mr. Jung --
20 and he bought a Renaissance unit -- paid the full
21 value. Because when he went down there, it was being
22 repaired by the developer. Okay? It was being
23 repaired. It was draped in whatever it was draped in.
24 He paid full market value because the purchasers knew
25 those defects were being repaired.

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1 Our position is is that these defendants had an
2 obligation, under law, to repair those units at or
3 about 2008 and begin repair. It is that breach of
4 their duty of implied habitability, their breach of
5 contract, and their duty -- breach of fiduciary duty,
6 that damaged my client at that point. They were
7 unable to sell their units.
8 Now, if this were a simple house case wherein
9 and whereby my house is messed up, I get it repaired
10 and I'm returned to the status quo and the house is
11 worth whatever it's worth, that's a pretty easy
12 analysis. In a condominium case, however, you've got
13 a dual ownership situation. The entity, the LLC,
14 which is responsible for the repair and maintenance of
15 this entity which is entitled to all of these monies
16 for the repair of the common elements, is distinctly
17 different from, an entirely different legal entity,
18 than the individuals who own these units. These
19 individuals sustained --
20 THE COURT: Let me interrupt you for just a
21 second, for my -- and it doesn't have anything what
22 we're talking about [phonetic], but if I don't ask you
23 now I'll forget it later.
24 MR. BUNDY: All right, sir.
25 THE COURT: We've got the association that's

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1 going to get this large amount of money.
2 Theoretically, they're going to repair the building.
3 MR. BUNDY: Right.
4 THE COURT: And some of that is going to be
5 inside individual condominiums. Okay?
6 MR. BUNDY: Right.
7 THE COURT: So when this money is distributed to
8 the homeowners association after attorneys fees and
9 costs, and they start their repairs, some of it is
10 common area and some of it's not, how are we going to
11 be assured that this, say, 144 Fairbanks 3-A, that
12 money is used to fix the tubs, fix the water, fix the
13 floors, fix the noise attenuation, since that's not
14 really common area, without a court order ordering the
15 homeowners association to do it? In other words, they
16 can pocket that money, go sell it for $310,000 --
17 MR. BUNDY: The sound attenuation --
18 THE COURT: -- is my question, as sort of a
19 procedural how we're going to deal with this down the
20 road to make sure these repairs are done. Because
21 it's not fair for one unit to pocket a portion of that
22 money, sell at a reduced price, and not do the
23 repairs, because it affects the whole project.
24 Yes, sir.
25 MR. BUNDY: The money that's going to be

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1 obtained -- hopefully all seven, eight or nine million
2 dollars -- is all going -- it's all the HOA's claim.
3 It is not the claim of the individuals. Okay? These
4 individuals are not going to get any of that money.
5 These individuals are not going to get any of that
6 money. That's an HOA claim because the sound
7 attenuation is, in fact, a common element because it's
8 the structure between floors. And the association
9 owns --
10 [Off the record momentarily]
11 MR. BUNDY: But the fact of the matter is is
12 that it is common elements. The Board has the
13 obligation to repair --
14 THE COURT: Shower tub is not.
15 MR. BUNDY: It is because --
16 THE COURT: Or the shower pan, I should say.
17 MR. BUNDY: -- it's damaging other units. Okay?
18 THE COURT: I understand that.
19 MR. BUNDY: And before -- just like a window
20 leak. Okay? It's just like a window leak. When the
21 HVAC goes down to another guy, the HOA is responsible
22 for that, or can accept responsibility for it.
23 There's nothing that says an HOA board, okay, can't
24 accept these funds and under their -- and it's the
25 better place for them to go, because they have a

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1 fiduciary obligation to fix everything. What I'm
2 talking about is the distinct damage.
3 THE COURT: All right. Go ahead and go on with
4 your damage argument. Okay?
5 MR. BUNDY: The distinct damage, which has been
6 sustained by these individuals for their inability to
7 be able to unload and get rid of this property at that
8 time --
9 THE COURT: The ones that wanted to sell.
10 MR. BUNDY: Yes, sir.
11 THE COURT: What if you award the ones that
12 didn't want to sell their rents?
13 MR. BUNDY: If the ones that --
14 THE COURT: The ones that want rents can't very
15 well -- you can't award them again for the loss in
16 value.
17 MR. BUNDY: All right, sir. I agree with you.
18 And I --
19 THE COURT: Okay.
20 MR. BUNDY: And I think it's a -- I think the
21 toughest argument. I think I can make it. But I
22 think the toughest argument to grasp is someone -- and
23 these are the people in the worst situation, really,
24 is they never sold and they just wanted to live there
25 and be done with it. And Mr. Pollard is a fine

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1 example. Okay? But I think he's still entitled to
2 damages, because they were negligent. And he's
3 entitled at least I think some damage from you, Your
4 Honor --
5 THE COURT: Well, I mean --
6 MR. BUNDY: -- for inconvenience and loss of --
7 THE COURT: I'll concede these, for lack of a
8 better word, in a personal injury case, pain and
9 suffering, so to speak.
10 MR. BUNDY: Exactly. Exactly.
11 THE COURT: It's not pain and suffering. But
12 inconvenience and other damages that were caused for
13 the inconvenience and the living conditions he lived
14 in.
15 MR. BUNDY: Exactly.
16 THE COURT: But that's not necessarily what
17 we're talking about here. That would be an arbitrary
18 figure that the finder of the fact would award.
19 MR. BUNDY: Right. Right.
20 But as to those people who actually tried to
21 sell, okay, they were denied market access. That was
22 300-and-some-odd -- let's see -- $270,000 that Ms.
23 Severance, just to pick an attractive witness, said
24 that she lost because she was unable to sell her unit
25 because the developer failed to do what he was

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1 supposed to do.

2 THE COURT: But then you come up and you bring

3 it up to the standard and she sells it for the market

4 value --

5 MR. BUNDY: But she's now --

6 THE COURT: -- and she's got it twice.

7 MR. BUNDY: She's now selling in a different

8 market. The market she's now selling in is farther

9 down. It's farther down. In other words, that market

10 was falling. If it was worth it here and if they had

11 stepped up to the plate, she could have gotten rid of

12 it and gotten her $275,000.

13 THE COURT: So your argument is the Court should

14 award the figure between the 2008 no defects and the

15 value with no defects of 2011 which he's testified to.

16 Is that your argument, basically?

17 MR. BUNDY: That's my argument.

18 THE COURT: And that's basically what he's put

19 down on the sheet.

20 MR. BUNDY: Right. And he's actually better at

21 explaining it than I am, from an appraisal standpoint,

22 to be honest with you.

23 THE COURT: Right.

24 MR. BUNDY: I will say to you this is a unique

25 argument.

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1 THE COURT: Well, I mean, doesn't the law pretty
2 well say that, as you have pointed out on a house,
3 it's the value of the house --
4 MR. BUNDY: That's correct.
5 THE COURT: -- as it is, or value if it had been
6 repaired, the difference in the two?
7 MR. BUNDY: And that's -- but this isn't a
8 house. They own the air space. They just own the air
9 space.
10 I would draw Your Honor's attention to the
11 Ledwood Bull [phonetic], which I took to the Supreme
12 Court and reversed the notion that we couldn't have
13 lost profits for a new business. And what the Supreme
14 Court basically recognized was there are certain
15 situations where people lose profits or lose money,
16 even though it's a brand new business or a brand-new
17 enterprise.
18 And so in an unusual situation, I think you have
19 to fashion a remedy to protect these people, because
20 they are not -- they have lost that money. That money
21 is gone. It'll never come back. And as long as this
22 market is on the way down -- these people put them in
23 this situation. My clients are blameless. There's
24 not going to be anything in this courtroom that blames
25 my client for buying or anything. They're blameless.

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1 They're in breach, my clients sustained damages at
2 that time and they'll never get it back, even if the
3 building is repaired by the HOA, which we hope it will
4 be on a full verdict of $9,000,000, we're going to fix
5 it all. And, yes, their building will be back. But
6 they would have still lost that money, because their
7 unit is worth whatever it's worth now. But back then,
8 when they had the ability to do the right thing, they
9 failed to do it.
10 MR. MAYBANK: Certainly, we take a --
11 THE COURT: Be glad to hear from you. I'm
12 sorry --
13 MR. MAYBANK: -- totally different --
14 THE COURT: -- I'm sorry, Mr. Bundy. I didn't
15 mean to cut you off. Are you finished?
16 MR. BUNDY: I'm finished. Thank you very much.
17 MR. MAYBANK: Your Honor, I think you pointed it
18 out right. I mean, we can go down this argument of
19 damages right now, but it's a double recovery. I
20 mean, that's -- you put them back in the position as
21 if it were repaired. Once you do that, there are no
22 damages. They haven't sold the unit --
23 THE COURT: Well, do you think that -- I mean,
24 his argument is sort of unique because a condominium
25 complex is unique and we probably need some -- we're

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1 in the first phase of condominiums in South Carolina,
2 but not in twenty years, with the upgrade -- but
3 that's neither here or there.
4 Under the common law, you don't think it should
5 be a difference in a condominium versus your private
6 home or my private home?
7 MR. MAYBANK: I do not.
8 THE COURT: Why not?
9 MR. MAYBANK: It is one and the same, other than
10 the fact that --
11 THE COURT: Because on my private home, you and
12 I can go mitigate damages a whole lot easier than they
13 can.
14 MR. MAYBANK: Well, they can act through their
15 board. That's what the board is there to do. The
16 board is there to make the fixes, through the
17 homeowners association, as to the common elements.
18 THE COURT: So you don't think it should be a
19 change because of the type of ownership?
20 MR. MAYBANK: No, not at all, Your Honor. I
21 think -- you know, and that is the duty under Goddard
22 and under Dunes West is that if there's a defect, then
23 it is to be put back in the condition -- in good, like
24 condition, because you have so many different people.
25 What Mr. Pollard says is allowed may not be what

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1 Mr. Maybank says is allowed. You've got so many
2 different competing interests and positions when
3 you're dealing in a condominium that it is a very
4 general term that the Supreme Court has used, and that
5 is that these are to be put in, quote, unquote, good
6 condition. That has not been defined. I believe that
7 the Court would interpret this to say that if you are
8 going to give them a value of repair and it is to put
9 them back and make them whole, then to compensate them
10 on top of that is making them doubly whole. I think
11 that -- I just don't think that the Supreme Court
12 would take that position that Mr. Bundy is trying to
13 push today.
14 THE COURT: All right. Mr. Bundy, rebuttal?
15 MR. BUNDY: With all due respect, the Dunes West
16 case -- that was also my case. And what they said was
17 that is a remedy, that's the duty at that time. It
18 did not exclude other damages for breach of contract
19 and other actions on behalf of the developer.
20 THE COURT: Well, see, I think those damages can
21 be addressed in, for lack of a better term, the
22 inconvenience and the hardship that they suffered
23 during the period of the breach, i.e., not having a
24 conversation sitting at the table because of the noise
25 or having to walk around in your socks so you don't

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1 bother your neighbor, those type of conveniences.
2 Shouldn't that be addressed in that context, not in
3 fair-market value?
4 MR. BUNDY: No, Your Honor, not in my humble
5 opinion.
6 THE COURT: Tell me -- simplify it for me why
7 you feel that way, because I'm not sure I agree with
8 you. Okay?
9 MR. BUNDY: I know you don't, but that's fine.
10 The developer, when they go out and decide to
11 develop a condominium with a Horizontal Property
12 Regime Act, accept and acknowledge the dual nature of
13 this ownership. And so it is foreseeable -- they
14 obviously owe a duty. It is foreseeable that if they
15 fail to meet their duty, that damages will be
16 sustained not only by the HOA, which has a duty to
17 repair and maintain, but also the individuals.
18 It is my position, very simply, that that duty
19 was breached and proximately resulted in these
20 individuals being injured. Specifically, it's easier
21 to understand the ones who sold, because that's pretty
22 straightforward. Those people had to sell. They sold
23 at a reduced value. And they'll never see the benefit
24 of any of this money. The money that these people
25 would have gotten had they been able to enter the

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1 market -- and there's no -- you know, they say don't
2 have appraisals.
3 Maybe we'll argue about the values. But the
4 testimony right now is if they had been able to get it
5 in the market at that time, they would have not lost
6 $235,000. We would still be here, we would still be
7 here, arguing about the HOA's claims for common
8 elements. Okay? But those people would have not lost
9 that much money. They had an opportunity. There's a
10 lost opportunity. It's almost like a lost opportunity
11 that was taken away from them. Because you always
12 should have an opportunity to be able to sell your
13 property.
14 THE COURT: Do you make that argument under a
15 negligence theory or a contract theory?
16 MR. BUNDY: Both. Negligence.
17 THE COURT: Negligence?
18 MR. BUNDY: Yes, sir.
19 MR. MAYBANK: Well, I mean, the problem that
20 we've got, you know, is that these units -- what
21 Mr. Donato is testifying to, he looks in the four
22 corners of the unit, what is the square footage,
23 what's the price, what's the comparables going. He's
24 not taking into account the socks, he's not taking
25 into account those issues, because he's looking at the

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1 Tides. Unless he went in there and talked to sock-
2 wearing, Tides-walking people, that shouldn't be a
3 part of these damages.
4 These are strictly the value of the units with
5 and without defects that he's testifying to. It's got
6 nothing to do with an individual owner's arguments.
7 And this value that goes from the '08 value --
8 THE COURT: Well, his argument, under these
9 conditions, that it's a lost opportunity, that they
10 could have bailed back in '08 if the building had been
11 built the way it was supposed to have been built. And
12 that's his argument, lost opportunity.
13 MR. MAYBANK: And I think that's speculative, at
14 best, looking back after the worst recession that this
15 country has gone through since the great depression,
16 if not worse than that, to say that all that value is
17 merely construction.
18 THE COURT: Well, isn't the actual market,
19 whatever they sell it for, that's going to affect
20 that? if the price is down, it's going to affect the
21 whatever they sell it for?
22 MR. MAYBANK: Exactly. And I've got some comps
23 that I was going to ask Mr. Donato about that I
24 haven't been able to ask him yet --
25 THE COURT: I understand.

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1 MR. MAYBANK: -- about --
2 THE COURT: But wouldn't that address your
3 argument?
4 MR. MAYBANK: I don't believe so, because I
5 don't believe that what he has listed as comparables,
6 Tides on one side, developed by Richard Cohen through
7 four bankruptcies now and maybe into a fifth
8 bankruptcy, I believe --
9 THE COURT: It's built like a fortress --
10 MR. MAYBANK: It is built like a fortress.
11 THE COURT: -- it's concrete. It's built
12 like -- it'll be there forever.
13 MR. MAYBANK: But the prices, that's what killed
14 them. These prices.
15 THE COURT: It's probably overbuilt. But that's
16 neither here or there.
17 MR. MAYBANK: And that's part of the market
18 conditions, absolutely.
19 And I think that's -- you're making very valid
20 points as to why these entire damages, as listed, are
21 speculative. Please -- you know, any other -- I mean,
22 and that's the problem with this. That's the problem
23 with this evaluation, under the value lost, is there
24 are so many different elements that are factored into
25 this, not just, you know, what they paid for it defect

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1 wise or non-defect wise.
2 THE COURT: All right.
3 MR. BUNDY: One more thing, if you might --
4 THE COURT: Yes, sir. Be glad to hear you.
5 MR. BUNDY: -- if you would indulge me.
6 Three points. One, I'm not required to prove my
7 damages to a mathematical certainty.
8 THE COURT: Yes, sir.
9 MR. BUNDY: Two --
10 THE COURT: I understand that.
11 MR. BUNDY: Two, it's not that they didn't have
12 it repaired in 2008, it's that they weren't in the
13 process or made no effort to do it. The best example
14 in this case is the Renaissance. If these people had
15 done what their obligation was in 2008, Chris Donato
16 would not be testifying, because they would have sold
17 for full market value at that time.
18 As a matter of public policy, a developer should
19 not be able to do what this developer did, which is to
20 make all this money, sell these things to my client,
21 and then blame all the subcontractors, the window
22 people, and everybody, and refuse to step up to the
23 plate and do the right thing like they did at the
24 Renaissance. That is the breach, that is the
25 negligence, that proximately resulted in these

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1 damages.

2 And with all due respect to opposing counsel,

3 these, in fact, are the values on those units.

4 They're owned in joint tenancy. You just buy --

5 that's what the air space is worth over there. And

6 you become a joint tenant in common, you own shares in

7 the LLC. So to me, to not allow these claims to go

8 forward and to not make these people pay for what

9 they've done to my clients simply allows his behavior

10 to go on without any ramifications.

11 If developers understand, if they understand,

12 that in South Carolina if you sell a defective product

13 you just can't say, well, it's defective, I'm sorry,

14 I'm going to figure it out with the window people, and

15 be bulletproof and not have to face the consequences

16 of that decision, then there's no incentive for them

17 to do the right thing. If they know at the end of the

18 day, at the end of the day, all they've got to do is

19 pay for what it costs to get it fixed -- and they know

20 that you've got to pay lawyers and everybody else --

21 they're never going to do the right thing ever.

22 MR. MAYBANK: I did not know we were doing the

23 closing arguments at this time, but --

24 THE COURT: That's fine. You can make yours, if

25 you want.

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1 When -- is it Mr. Lizzi, New York?
2 MR. BUNDY: Lizzi. Yes, sir.
3 THE COURT: Lizzi? When did he die?
4 MR. BUNDY: About three or four -- five or six
5 months ago.
6 THE COURT: Oh. Five or six months ago?
7 MR. BUNDY: No.
8 MR. ALTMAN: July will be two years, Your Honor.
9 THE COURT: July will be two years ago?
10 MR. ALTMAN: Yes, sir.
11 THE COURT: All right.
12 MR. MAYBANK: I mean, Your Honor --
13 THE COURT: I appreciate the argument. I wanted
14 to hear your thoughts on it. Please proceed on your
15 cross. And I understand it's not time for him to make
16 his motion to strike these damages, but we'll address
17 that at the time.
18 MR. BUNDY: Thank you --
19 THE COURT: I'll make my decision then.
20 MR. BUNDY: -- thank you, Your Honor.
21 THE COURT: But thank you very much for your
22 arguments.
23 MR. MAYBANK: Thank you, Your Honor.
24 THE COURT: At least I know where we're coming
25 from, where you're coming from, while I'm listening to

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his testimony. Okay?

MR. BUNDY: And I apologize. I'm usually talking to juries and so I get sort of wired up.

THE COURT: That's all right. You're welcome to be a preacher. I don't mind. I appreciate your animation.

CONTINUED CROSS-EXAMINATION

BY MR. MAYBANK:

Q. Mr. Donato, I just handed you an MLS listing. Have you ever -- are you familiar with MLS listings?

A. Yes, sir, I am, sir.

Q. All right. Can you look on that and tell me what that MLS listing is for?

A. What the list price is for?

Q. No. What is that? Is that a unit at The Oaks?

A. Oh. It's 124-2-4A Fairbanks Oaks.

Q. All right. And is that a unit at The Oaks, the same development we're here about?

A. That's correct, sir.

Q. And if you would, could you tell me what the sales price on that unit was?

A. $360,000.

Q. What's the list price?

A. 420,000.

Q. And when was it listed?

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A. The list date, September 6, 2011.

Q. Would you think that that would be a good comparable, or comp, as they say in your industry, as to what was being -- what is being sold there at The Oaks, and the market price, as you have said?

A. Well, this is a comparable with defects.

Q. Okay. Very good.

All right. Now, if you would, I looked on this and I couldn't find where any listing of any defects were noted. I noted that it said in the remarks, and I'll hold this -- and I'll give this back to you. Can you tell who the listing agent was on that?

[Whereupon, the witness reviews documents]

A. Brian Connolly.

Q. [Mr. Maybank] Do you know Mr. Connolly?

A. I do, sir.

Q. Do you believe him to be a reputable real estate agent in the community?

A. Yes, sir.

Q. All right. So if you would look for me under remarks, what's the first word on that that Mr. Connolly has put on there?

A. Luxurious.

Q. Luxurious brick and stucco. So in 2011, realtors in Charleston and sellers at The Oaks are

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1 marketing their property as luxurious; is that correct?
2 A. That's what these were supposed to be.
3 Q. I'm not asking what they were supposed to be.
4 On that remark, does it say luxurious?
5 A. It does say luxurious. And, Mr. Maybank, it's a
6 typical fluff real estate listing. You wouldn't expect
7 him to say inexpensive-don't-come condo.
8 Q. But it's marketing; correct?
9 A. It's marketing.
10 Q. All right. Very good.
11 THE COURT: We'll concede there's fluff in the
12 marketing.
13 MR. MAYBANK: Thank you, Your Honor.
14 THE COURT: Okay?
15 Q. [Mr. Maybank] If you would --
16 THE COURT: If he said it's cheap construction,
17 nobody would buy it; right?
18 MR. MAYBANK: Well, it sold.
19 THE COURT: Okay.
20 Q. [Mr. Maybank] If you would, can you tell me on
21 that form, anywhere under the realtor remarks or agent
22 notes, where it says that the property is being disclosed
23 as being defective in any way?
24 A. I don't see anything on this MLS listing. But
25 then it -- there has to be --

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1 Q. Seller disclosure.
2 A. -- some seller disclosure.
3 Q. Absolutely. It does. I'm going to hand this to
4 you.
5 A. All right, sir.
6 MR. MAYBANK: All right. I would like to move
7 this into evidence, Your Honor.
8 THE COURT: Okay. What number?
9 MR. MAYBANK: It would be 233.
10 MR. BUNDY: No objection.
11 THE COURT: Defendants' 233, without objection.
12 [Whereupon, Defendants' Exhibit Number 233 is
13 admitted into evidence by the Court]
14 THE COURT: What is it? MLS what?
15 MR. MAYBANK: It's an MLS listing from 2011.
16 THE COURT: On what?
17 MR. MAYBANK: On unit 124 -- 4-A at the
18 Fairbanks Oaks.
19 Q. [Mr. Maybank] Now, that's the top floor, isn't
20 it?
21 A. Four?
22 Q. Yes, sir.
23 A. Yes, it is.
24 Q. Top unit. Views over the Wando; right?
25 A. 124 had -- building had good views. Yes, sir.

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1 Q. Here is the accompanying seller disclosure form.
2 Take a look at that for me.
3 [Whereupon, the witness reviews documents]
4 MR. MAYBANK: Your Honor, if I may?
5 THE COURT: Yes, sir. That was the MLS on unit
6 4-A; is that right?
7 MR. MAYBANK: It's this one right here, Your
8 Honor. Here it is, the seller's disclosure form.
9 Q. [Mr. Maybank] Did you have a chance to read the
10 seller's disclosure form?
11 A. Yes, sir.
12 Q. Now, on the seller's disclosure form --
13 And this is dated September 1st, 2011; correct?
14 A. Yes, sir.
15 Q. -- anywhere on there does it disclose any
16 construction defects that you're aware of?
17 A. It does list balusters are rotting.
18 Q. Okay. Anything else?
19 A. That's the only thing I read.
20 Q. It doesn't have anything about sound attenuation
21 or noise problems; correct?
22 A. I didn't read anything about that, no, sir.
23 Q. It doesn't have anything about construction
24 defects, does it?
25 A. Well, it's certainly not written down in the

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1 seller disclosure, which I would agree that it should have
2 been. But --
3 Q. All right. So if we take the documents for what
4 they are, and that is a sale in 2011 listing at four
5 twenty, selling at three sixty, no disclosure as to any
6 construction defects noted in either the MLS listing or
7 the residential property disclosure, would you agree with
8 me, wouldn't you, that this would be a fair-market
9 representation in 2011 as to what the actual value of a
10 unit at The Oaks was, based on market conditions?
11 A. Well, we don't know what went on between
12 Mr. Connolly and the other agent.
13 Q. I'm not asking you to guess. I'm asking you --
14 A. Well, I know Mr. Connolly, and I know he's a
15 reputable agent. And I've had several conversations with
16 him about this particular project and it was his analysis,
17 which I agree with, that when these unit reached a certain
18 price, people were willing to pay for them, warts and all.
19 So everybody, including that 360,000 that was paid for it,
20 they knew about these defects but they thought they were
21 getting a good buy so they --
22 Q. Mr. Donato --
23 A. -- were willing to accept it.
24 Q. -- I didn't ask you what you thought other
25 people thought. I'm asking you to simply look at the MLS

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1 disclosure and the seller's sheet that they filled out and
2 signed in September of 2011. Is there any mention
3 anywhere, other than luxurious condominiums, about any
4 sound problem or attenuation problem?
5 A. Mr. Maybank, there's nothing written on those
6 things. But if all I looked at were those documents, then
7 I wouldn't be doing my job, which is why I talked with
8 Mr. Connolly and the other agents involved.
9 Q. Well, let me ask you this, then. Shouldn't the
10 general public be able to rely on the information put into
11 the Multiple Listing Service?
12 A. I think the general public knows that a Multiple
13 Listing Service is marketing information. You really
14 still need to go look at a piece of property. You need to
15 evaluate. You need to talk to other people, you need to
16 talk to agents.
17 Q. Mr. Donato, I'm simply asking you a question,
18 that if we take for fact, for truth, what is in these
19 documents, which is nothing disclosing -- no information
20 disclosing any construction defects as it relates to the
21 buildings themselves or to the sound problems, would you
22 agree with me that this would be a good indication of an
23 economic value of the units in 2011?
24 A. No, sir. I don't think it's economic value.
25 It's value with defects.

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1 THE COURT: Let me ask -- let me ask a question.
2 Are disclosure statements listed on an MLS?
3 MR. MAYBANK: Yes, they are, sir.
4 THE COURT: All right. Go ahead.
5 MR. MAYBANK: They are. They're in the remarks,
6 Your Honor.
7 Q. [Mr. Maybank] All right. Here's another one.
8 MR. MAYBANK: Oh. And I would like to move, if
9 I could, Your Honor, the disclosure from that sale
10 into evidence, as well.
11 THE COURT: Did this unit sell?
12 MR. MAYBANK: Yes, it did, Your Honor.
13 THE COURT: What did it sell for?
14 MR. MAYBANK: $360,000.
15 If you turn the page, Your Honor.
16 THE COURT: Where?
17 MR. MAYBANK: To the second page at the very,
18 very top. Right there.
19 THE COURT: Sold for -- all right. I got you.
20 MR. MAYBANK: I've attached the seller
21 disclosure for Exhibit 233 to the MLS listing.
22 THE COURT: Well, he said that's also part of
23 the MLS, so that's fine.
24 MR. MAYBANK: Yes, sir. That is in the MLS, as
25 well.

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1 Q. [Mr. Maybank] All right. Here's another one,
2 Mr. Donato, I would like to hand you. If you could take a
3 look at this for me.
4 [Whereupon, the witness reviews documents]
5 Q. [Mr. Maybank] Is that a report from the
6 Multiple Listing Service, as well?
7 A. Yes, it is, sir.
8 Q. And when is that one dated?
9 A. The list date?
10 Q. Yes, sir.
11 A. August 5th, 2011.
12 Q. So this is another 2011 sale; correct?
13 A. Yes, sir.
14 Q. Did you use either of the two that I've handed
15 you so far as a comp?
16 A. I did use the first one, yes.
17 Q. Okay. Do you see any disclosure on that MLS
18 form about any litigation having to do with The Oaks
19 development?
20 A. No, I don't, sir.
21 Q. I'm going to hand you the accompanying State of
22 South Carolina residential property condition disclosure
23 statement. Is that condition disclosure statement
24 required by law?
25 A. Yes, sir, it is.

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1 Q. And it is required that the seller, whoever that
2 person may or may not -- may be, or she, to fully -- to
3 the best of their ability answer those questions and
4 disclose to a potential buyer the known condition of the
5 property?
6 A. That's their obligation, yes, sir.
7 THE COURT: Is there any obligation on the real
8 estate agent?
9 MR. MAYBANK: Well, that's a good question.
10 Q. [Mr. Maybank] Is there any obligation on the
11 real estate agent?
12 A. Absolutely.
13 THE COURT: You know, if the Real Estate
14 Commission would put some teeth in it, they might have
15 more honest disclosures. I'll give you an example. I
16 took a guilty plea of a real estate agent for stealing
17 money out of trust. Pled guilty, grand larceny. The
18 real estate commission didn't even revoke his license.
19 Condition of probation, I made him surrender his
20 license.
21 MR. MAYBANK: Well, I believe that --
22 THE COURT: I mean, that's how absurd it's
23 gotten -- or it is.
24 MR. MAYBANK: If you look at the -- I believe
25 there's a recent case law that came out that says you

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1 don't have a right to rely on that real estate agent
2 because they're not there to tell you everything and
3 if they fail to disclose, so be it.
4 THE COURT: Well, I understand. That's what I
5 said. They need some teeth in the process.
6 MR. MAYBANK: I couldn't agree more with Your
7 Honor.
8 Q. [Mr. Maybank] Under that seller disclosure
9 statement -- and that's dated 2011; is that correct?
10 A. I didn't look at the date.
11 Q. July?
12 A. It's July 14th, 2011.
13 Q. So this is another unit at The Oaks. And this
14 was on unit 3-A in building 130. And this was sold by
15 Lynn Barber [phonetic]. And can you tell me who the
16 selling agent was on this project?
17 A. Merrill Crumby.
18 Q. And who does Merrill work for? Is it on there?
19 [Whereupon, the witness reviews documents]
20 A. Daniel Island Real Estate.
21 [Whereupon, the witness reviews documents]
22 Q. [Mr. Maybank] And in this sale listing of three
23 ninety-nine, it actually sold for more than it listed for,
24 didn't it? It sold for four zero five?
25 A. It sold for four zero five.

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1 Q. Did you see, in either the listing agreement or
2 the MLS, any information disclosing to any subsequent
3 purchaser the existence of any construction defects?
4 A. I did not. No, sir.
5 Q. The sound attenuation problems, either; correct?
6 A. I didn't read anything about construction
7 defects or litigation.
8 Q. So these are now two units that have sold in
9 2011 listed at three ninety-nine. On this one, it sold
10 for four zero five. Would you agree with me on this one
11 that based upon the information that we have out of the
12 MLS, at least as far as we can tell there was no
13 disclosure as to any construction defects of the actual
14 value of the unit? On July 11th -- on July of 2011 is the
15 value of the market price that it sold at?
16 A. No, I don't agree. We verified the first sale
17 that you gave me, so I know from conversations with Brian
18 Connolly that he discussed the litigation and the
19 construction defects with the agent representing the
20 buyer. And now what you have --
21 MR. MAYBANK: Your Honor, I would --
22 A. -- Mr. Maybank --
23 MR. MAYBANK: One moment.
24 I would move to strike that testimony, Your
25 Honor. He's bringing in third-party discussions that

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1 have no foundation.
2 THE WITNESS: May I respond?
3 THE COURT: Well, he's just testifying how he
4 arrived at his opinions. I think he can do that as an
5 expert.
6 THE WITNESS: Thank you.
7 MR. MAYBANK: Thank you, Your Honor.
8 THE COURT: You know, experts can consider
9 hearsay in arriving at their opinion.
10 A. Now, Mr. Maybank --
11 THE COURT: Sir --
12 THE WITNESS: I'm sorry. I hadn't finished my
13 question.
14 THE COURT: -- be quiet, please.
15 All right. Mr. Maybank, your motion is
16 overruled.
17 MR. MAYBANK: Thank you, Your Honor.
18 THE COURT: But please be responsive to the
19 questions, please, sir, if you would. Okay?
20 THE WITNESS: Yes, sir.
21 Q. [Mr. Maybank] Mr. Donato, I'm simply asking you
22 that on now two sales to which we have no disclosure, at
23 least on paper, no disclosure by the seller, either, as to
24 the construction defects, the unit sold. And wouldn't you
25 agree with me that that is a reflection of strictly the

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1 market condition of Daniel Island?
2 A. No, sir.
3 THE WITNESS: Do you want me to explain, Your
4 Honor?
5 MR. MAYBANK: I don't think --
6 THE COURT: Yes, sir. You can explain whatever
7 you want to explain --
8 THE WITNESS: Sure.
9 THE COURT: -- as far as your answer, yes, sir.
10 A. Again, I know the first sale that you handed me,
11 Mr. Maybank, that Mr. Connolly informed everybody -- he
12 discussed that with me when I was verifying the
13 transaction with him.
14 The second sale occurred late in 2012. Now you
15 have a history of all these low sales out there that
16 everybody else is relying on as being the market value
17 with these defects.
18 Q. [Mr. Maybank] I understand that.
19 But you're assuming that that's what they're
20 thinking, you don't know for sure, of all these
21 purchasers, do you? You didn't talk to them, did you?
22 A. I didn't talk to the last one you gave me
23 because that was so late in 2012 and I did my work at the
24 end of 2011.
25 Q. Let me ask you this. Here is another one.

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[Whereupon, Mr. Maybank reviews documents]

Q. [Mr. Maybank] Here is another one. This is 130 unit 2-B. And this has the Welford [phonetic] listing. And this is a third unit. Can you take a look at that one for me?

A. Yes, sir.

Q. Is that also an MLS listing?

A. Yes, sir.

Q. And when is the date of that listing?

A. November 9th, 2010.

Q. All right. So this is before your evaluation?

A. The listing. Yes, sir.

Q. What was the listing for? The amount. I'm sorry.

A. $490,000.

Q. All right. In the remarks, what does the first line say?

A. Luxurious brick-and-stucco condominiums situated among spectacular natural scenery along the marshes of the Wando River.

Q. And if you would, is there, on that 2010 listing, a disclosure in the agent's notes of construction defect or litigation?

A. No, sir.

Q. Behind that is a seller disclosure form. If you

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1 would, could you tell me the date that that disclosure
2 form has been listed?
3 A. October 25th, 2010.
4 Q. When did the unit actually sell? Can you tell
5 by the MLS?
6 A. Yes, sir. August 12, 2011, for 325,000.
7 Q. August 12th, 2011. So now we've got three sales
8 in 2011, of which we've got no disclosure and the MLS --
9 MR. BUNDY: Objection. Misstates the facts in
10 the record.
11 THE COURT: I'm sorry. What?
12 MR. BUNDY: I object. He's misstating the facts
13 that are in the record.
14 THE COURT: All right. Go ahead.
15 MR. MAYBANK: Thank you, Your Honor.
16 Q. [Mr. Maybank] As to the MLS listing, there were
17 no listed defects on this listing; correct?
18 A. That's correct.
19 Q. And you've read the date that the seller signed
20 the seller disclosure form, didn't you?
21 A. I did, sir.
22 Q. All right. I would ask you to look at the
23 seller disclosure form and ask -- and tell me: did the
24 seller disclose in this listing in 2011 for a sale in 2011
25 whether or not that unit was involved in any litigation?

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1 [Whereupon, the witness reviews documents]
2 A. I see nothing in the seller disclosure.
3 Q. [Mr. Maybank] All right. I will ask you once
4 again, then, Mr. Donato: we've not got three units, no
5 disclosure, all units being sold with market conditions in
6 play. You would agree with me that the sale or the price
7 that the unit sold for, which is $325,000, in August of
8 2011, that price reflects the proper market value of the
9 units in the economy at that time?
10 A. No, sir. This is the second property that
11 you've given me, that I also used as a comparable, which
12 we verified and we know that everybody was informed about
13 the defects.
14 Q. This is -- I don't understand it. If everybody
15 was informed, there's no disclosure on any of the forms.
16 I thought you had to physically write the disclosure on
17 these forms. Is this information kind of on an as-is-
18 needed basis?
19 A. I can't speak for who filled out those forms,
20 Mr. Maybank, but they should have put it in there.
21 MR. MAYBANK: If I could, Your Honor, I would
22 like to move this --
23 THE COURT: What number?
24 MR. MAYBANK: This will be 235. Along with
25 the --

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1 THE COURT: 235?

2 MR. MAYBANK: Yes, sir. Along with the -- it
3 will be the MLS listing, as well as the South Carolina
4 residential property disclosure statement.

5 THE COURT: What was 234?

6 MR. MAYBANK: 234 was the -- that is the sale
7 list price, three ninety-nine, of 3-A, unit 130, 3-A,
8 Fairbanks. These are three -- 233 was the --

9 THE COURT: 4-A. What is 235?

10 MR. MAYBANK: This is 2-B.

11 THE COURT: 2-B. What was the sales price?

12 MR. MAYBANK: List price was four ninety. Sale
13 price on August 12th, 2011, was $325,000.

14 THE COURT: Okay. What about 3-A? What was the
15 list on that?

16 MR. MAYBANK: 3-A the list was three ninety-nine
17 nine hundred. The sale price was four zero five. And
18 that sold on October 30th of 2012.

19 THE COURT: So that guy won the lottery, too,
20 huh?

21 MR. MAYBANK: He did.

22 And then the other one -- did you get 4-A, Your
23 Honor?

24 THE COURT: Yes. That sold for three sixty. I
25 didn't get the list. What was the list?

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1 MR. MAYBANK: This was four twenty, Your Honor.
2 THE COURT: Four twenty. Okay. Thank you very
3 much.
4 Q. [Mr. Maybank] Yesterday, we marked as an
5 exhibit 231.
6 THE COURT: On your sheet that shows site plans.
7 MR. MAYBANK: Then that is probably not my
8 sheet.
9 THE COURT: You introduced --
10 MR. MAYBANK: Yes, Your Honor. I believe I --
11 THE COURT: You introduced -- no, that's
12 Plaintiffs'. Let me find --
13 MR. MAYBANK: I think we may need to look at the
14 exhibit.
15 THE COURT: Review our numbers?
16 MR. MAYBANK: Yes, sir.
17 THE COURT: All right. Let me find it.
18 MR. MAYBANK: I may have inadvertently --
19 THE COURT: You did introduce something
20 yesterday.
21 MR. MAYBANK: I did.
22 THE COURT: Let me see. I'll find it for you.
23 [Off the record momentarily]
24 MR. MAYBANK: 229. Yes, ma'am. It started with
25 Quietly Making Noise. I think we may have jumped in

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1 front of those last two because I think they were put
2 on there at the last minute, Your Honor, and I may
3 have messed the numbers up. But I can certainly redo
4 that.
5 THE COURT: 231 was some kind of MLS and a
6 disclosure.
7 MR. MAYBANK: That is correct, Your Honor.
8 THE COURT: So this first one this morning will
9 be 232, then; right? You can get them straight later.
10 Okay? Just make sure we get them straight.
11 MR. MAYBANK: 233 was the first one this
12 morning, Your Honor.
13 THE COURT: 233 was the first one? Okay.
14 MR. MAYBANK: Yes, sir.
15 THE COURT: You introduced a 231 yesterday.
16 MR. MAYBANK: I did.
17 THE COURT: That was a disclosure form.
18 MR. MAYBANK: That is correct. That was
19 Ms. Nelson's.
20 THE COURT: Right.
21 MR. MAYBANK: And then the damages was 232 for
22 her. And then we've just introduced three MLS
23 listings.
24 THE COURT: So if you put those site plans in,
25 you'll have to change the number. Okay?

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1 MR. MAYBANK: We will do that, Your Honor.
2 THE COURT: We'll keep these the same, 233, 234
3 and 235.
4 [Whereupon, Defendants' Exhibit Numbers 233, 234
5 and 235 are admitted into evidence by the Court]
6 Mia, why don't you mark on your sheet the site
7 plans, if he puts them in, is -- we'll make it 231-A.
8 Okay?
9 THE COURT REPORTER: All right.
10 THE COURT: And then we've got a 231, which is
11 an MLS, disclosure, on Plaintiff Nelson.
12 All right. Go ahead.
13 Q. [Mr. Maybank] As to your valuations,
14 Mr. Donato, my understanding is -- well, first, you don't
15 agree with me, on any of the three exhibits that I have
16 entered, that they reflect the actual market condition and
17 pricing strictly as it relates to the market value, do
18 you?
19 A. No, sir. I believe they reflect the market
20 value of those units with the current defects.
21 Q. And none of -- and in each instance, either the
22 MLS nor the seller disclosure form indicated any
23 litigation or any problems with any of the units that
24 we're here in this courtroom today about; correct?
25 A. That's correct.

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1 Q. All right. If the units are repaired, I believe
2 you testified that if they are repaired, then the value
3 would revert back to what market value would be; is that
4 correct?
5 A. At the time they are repaired. Yes, sir, that
6 is correct.
7 Q. So if they're repaired next year, whatever the
8 market value is, that's what the value of each unit would
9 be?
10 A. That's correct.
11 Q. And you would expect, over time, the value of
12 those units to increase, wouldn't you?
13 A. After they're repaired?
14 Q. Correct.
15 A. After they are repaired, I would expect their
16 value to follow the market. And that could be up or down.
17 Q. Exactly.
18 Speculative, isn't it, to look at the future of
19 what the market will hold?
20 A. Well, that's sometimes what we have to do.
21 Q. But it speculative in nature, isn't it?
22 A. Well, not as an appraiser, no, sir. In the
23 appraisal business, value is the present worth of future
24 value. So --
25 Q. Present value -- and if I look at those

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1 three exhibits that I entered, that's the value on
2 those dates? what those units were worth?
3 A. That's my estimate of the value on those dates,
4 with and without defects.
5 Q. The loss of this value is a temporary condition,
6 isn't it?
7 A. Which loss are you talking about, sir?
8 Q. The current loss that you've got on this board.
9 That's a temporary loss until they are repaired; correct?
10 A. Well, the repairs have to happen.
11 Q. I understand that. But I'm just looking at your
12 testimony. You testified in the past that that is a
13 temporary loss, that it will be -- that value will be
14 brought back into the units once they are repaired?
15 A. Once they are repaired.
16 Q. And I believe you testified that if the problems
17 are fixed, the loss of value goes away, doesn't it?
18 A. I did testify to that, yes, sir.
19 Q. Since 2011, would this -- is it a fair statement
20 to say that the values of properties in Charleston County
21 have gone up?
22 A. When you say Charleston County, you open
23 yourself up to all kinds of different problems.
24 Q. Let me ask you this. I read in --
25 THE COURT: Why don't you just limit it to

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1 Daniel Island --

2 MR. MAYBANK: I'm about to do that.

3 Q. [Mr. Maybank] I read in the Charleston Business

4 Journal about three weeks ago that the values on Daniel

5 Island have been going up rapidly.

6 A. There are some values that are going up, mostly

7 in the lower price tiers. Other values are -- commercial

8 values are still down, commercial rents are still down.

9 And I think the luxury condominium market is

10 very static right there. There's still not a tremendous

11 amount of demand out there for those units. And you still

12 have places like the Tides and Anson Arms, I think, Anson

13 House --

14 Q. Is that Mr. Jervis' [phonetic] development?

15 A. Mr. Jervis' development. They're coming on the

16 market and they're at liquidation-type prices.

17 Q. Exactly. And that hurts the overall condominium

18 market, doesn't it?

19 A. It does.

20 Q. Because it floods the market with lower-priced

21 units below market value; right?

22 A. That's why I believe the value of these units

23 have been held down and they've just been static and they

24 haven't risen yet.

25 Q. Because of these condominiums that are being

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1 liquidated and sold at fire-sale prices?
2 A. Yes.
3 MR. MAYBANK: Thanks, Mr. Donato.
4 THE COURT: Any redirect?
5 MR. BUNDY: Just a little, Your Honor.
6 REDIRECT EXAMINATION
7 BY MR. BUNDY:
8 Q. Mr. Donato, will the opportunity that was lost
9 by my clients in 2008 be returned to them when these units
10 are fixed, if they ever are?
11 A. No, sir.
12 Q. So that opportunity, the ability to not loose
13 270,000, 330,000, whatever that number is, that train has
14 pulled out of the station; correct?
15 A. Yes, sir.
16 When you and I were feeling the effects of the
17 current real estate recession, we had the opportunity to
18 get out.
19 Q. Now, this litigation was filed in 2009. You're
20 aware of that; right?
21 A. Yes, sir. I am, sir.
22 Q. And do you have any experience with lawyers
23 doing closings on behalf of buyers and sellers?
24 A. I do, sir.
25 Q. Do you think a decent lawyer would go look in

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1 the courthouse and see if there was any pending litigation
2 over a condominium that his client was getting ready to
3 buy?
4 MR. MAYBANK: Your Honor, we would object.
5 That's all speculation.
6 THE COURT: Overruled.
7 A. I would expect that to happen, yes, sir.
8 Q. [Mr. Bundy] And if you, as an appraiser, were
9 asked to appraise something -- and let's suppose that you
10 saw this MLS listing that didn't have any disclosure on
11 it, you were representing the buyer and the buyer's lawyer
12 calls you up and says, you know, Chris, I got a forty-page
13 complaint alleging fraud, hundreds of thousands, millions,
14 of dollars worth of damages and it wasn't disclosed, but
15 since it wasn't on the disclosure report, we're just going
16 to figure it's all been fixed. Do you think that would be
17 pretty good advice all the way around?
18 A. No, sir.
19 Q. Now, so every sale that you were discussed with
20 on the cross-examination was after 2009, wasn't it?
21 A. It was, sir.
22 Q. So assuming that these people got a halfway
23 competent lawyer who went down --
24 Do they list mortgages on the disclosure form?
25 A. Yes, sir.

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1 Q. So if a halfway competent lawyer went down
2 there, it would have been a matter of public record;
3 right?
4 A. It would have been a matter of public --
5 Q. This lawsuit has all been a matter of public
6 record since 2009, okay -- and there are some pretty
7 serious allegations about how poor and badly these
8 buildings were constructed, is it not?
9 THE COURT: Was a les pendens filed?
10 MR. BUNDY: Sir?
11 THE COURT: Was there a les pendens filed?
12 MR. BUNDY: No, sir.
13 THE COURT: How would you find that, if you were
14 to examine the titles, since this hadn't been reduced
15 to judgment?
16 MR. BUNDY: I would assume you would find it by
17 looking at the condominiums, looking through it --
18 down there and looking through it. I don't know. I'm
19 no title searcher.
20 THE COURT: Pardon?
21 MR. BUNDY: I'm no title searcher, Judge.
22 THE COURT: Well, I mean, unless there's a les
23 pendens --
24 MR. BUNDY: Unless it's in the chain of title.
25 THE COURT: -- it's not much in the public

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1 record, so they would show it in the lawsuits actually
2 pending. Now, if there's a les pendens filed, that's
3 a different story.
4 MR. BUNDY: Point taken. Point well taken.
5 Q. [Mr. Bundy] Let's talk about your research.
6 When you went to determine what the value of the defects
7 were, did you actually discuss with the people who were
8 involved in the transactions -- that Mr. Maybank has
9 discussed with those people involved -- whether they knew
10 or did not know of the defects?
11 A. We either discussed with the party -- with a
12 party to the transaction. And a lot of times that party
13 to the transaction could be an agent who is representing
14 neither the buyer nor the seller. So in the two or three
15 instances that Mr. Maybank handed me comparables that we
16 actually used, we discussed whether or not they were
17 informed about the litigation, and we were informed that
18 they were through the agents that were representing the
19 buyers and the sellers.
20 Q. Given your experience on Daniel Island and real
21 estate transactions in Charleston County -- how much doubt
22 do you have that these purchasers, that Mr. Maybank
23 referred to in those transactions, knew or should have
24 known about these defects?
25 A. I don't think there was any doubt. I think they

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1 knew about the defects.
2 Q. If you went out and walked around the property
3 during that period of time, would you have seen
4 scaffolding and all kind of repairs going on?
5 A. No, sir.
6 MR. BUNDY: Thank you, sir.
7 THE COURT: Recross?
8 MR. MAYBANK: No, Your Honor.
9 THE COURT: Pardon?
10 MR. MAYBANK: No, sir.
11 THE COURT: Thank you so very much. Appreciate
12 your being here.
13 THE WITNESS: Thank you, sir.
14 THE COURT: Any reason he can't be excused?
15 MR. BUNDY: None, Your Honor.
16 THE COURT: You may be excused. Thank you so
17 very much.
18 THE WITNESS: Thank you, Your Honor.
19 [Whereupon, Mr. Donato is excused and exits the
20 witness stand]
21 THE COURT: We're going to take about a ten- or
22 fifteen-minute recess.
23 MR. BUNDY: Thank you, Your Honor.
24 MR. MAYBANK: Thank you, Your Honor.
25 [Whereupon, a recess is taken from 11:58 a.m. to

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1 12:30 p.m.]

2 [Whereupon, Plaintiffs' Exhibit Number 180 is

3 marked by the court reporter]

4 [Whereupon, Plaintiffs' Exhibit Number 181 is

5 marked by the court reporter]

6 THE COURT: What are we doing?

7 MR. BUNDY: Next witness, Your Honor. We have a

8 Power Point slide show to show you.

9 THE COURT: Okay. That's fine.

10 MR. BUNDY: The plaintiff calls Theodore

11 Padgett, Your Honor.

12 THE COURT: Theodore Padgett. This is the noise

13 man?

14 MR. BUNDY: No, Your Honor. This is my

15 engineer who designed -- who did the investigation of

16 the buildings. He's going to explain all the defects,

17 explain the scope of work.

18 THE COURT: Is he a design engineer?

19 MR. BUNDY: He's a professional engineer, Your

20 Honor, a structural engineer --

21 THE COURT: Structural engineer?

22 MR. BUNDY: Sir?

23 THE COURT: Structural?

24 MR. BUNDY: Yes, sir, structural. He's also --

25 I'm going to qualify him in several areas.

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1 THE COURT: Okay.
2 [Whereupon, Mr. Padgett comes forward]
3 THE CLERK OF COURT: Raise your right hand.
4 [Whereupon, Mr. Padgett is duly sworn by the
5 clerk of court as follows: do you swear or affirm
6 that your testimony will be the whole truth and
7 nothing but the truth, so help you God]
8 THE WITNESS: I do.
9 THE CLERK OF COURT: If you would be seated.
10 [Whereupon, Mr. Padgett takes the witness stand]
11 THE CLERK OF COURT: If you would state your
12 full name and spell your last name, please.
13 THE WITNESS: Theodore Glen Padgett, Jr.
14 THE COURT: Can y'all agree to his stipulation,
15 I mean, to his qualifications? If you --
16 MR. BUNDY: Your Honor, I think it might be
17 helpful for me to go over a little bit of background,
18 because I'm going to -- I would like for you to
19 understand his qualifications.
20 THE COURT: Well, I will. But will they agree
21 to his qualifications? Because I don't really care
22 about where he went to school and everything. I would
23 like to hear a little bit about his qualifications.
24 MR. MAYBANK: I think to the extent he's an
25 engineer, we certainly can't disagree with that. He's

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1 been in just about every case I've got in Charleston
2 County.
3 THE COURT: All right. Go ahead.
4 MR. BUNDY: Fair enough.
5 Your Honor, just a little housekeeping, if I
6 may, just to move things along.
7 Plaintiffs' Exhibit 181, which is in by consent,
8 Your Honor --
9 THE COURT: 181?
10 MR. BUNDY: Yes, Your Honor.
11 -- and what 181 is is a list of all the slides
12 you're going to see and all -- it's not in your book.
13 THE COURT: Okay.
14 MR. BUNDY: And all the -- so you can look at
15 them here or look at them here, whichever you prefer.
16 [Off the record momentarily]
17 MR. BUNDY: Your Honor, Exhibit 49, without
18 objection. Plaintiffs' Exhibit 49, without objection.
19 And that is the estimate done by Southeastern
20 Construction. I'm not going to be going through it
21 but I think defense counsel will be asking questions
22 so we went ahead and agree to put it in now for ease.
23 THE COURT: All right. Plaintiffs' Number 49,
24 without objection; is that correct?
25 MR. MAYBANK: Correct, Your Honor.

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1 THE COURT: 49 admitted without objection.
2 [Whereupon, Plaintiffs' Exhibit Number 49 is
3 admitted into evidence by the Court]
4 MR. BUNDY: Your Honor, Plaintiffs' Exhibit 180.
5 This is the estimate that was prepared by Southeastern
6 Construction. Of course, they'll be here later to
7 discuss their estimate in detail. It made it easier
8 to examine Mr. Padgett by going through the estimate
9 so we could sort of go through details --
10 THE COURT: Plaintiffs' Exhibit 180?
11 MR. BUNDY: Yes, Your Honor.
12 THE COURT: Any objection to 180?
13 MR. MAYBANK: No, sir.
14 THE COURT: All right. Plaintiffs' 180, without
15 objection.
16 [Whereupon, Plaintiffs' Exhibit Number 180
17 admitted into evidence by the Court]
18
19
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25 - - -

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1 THEODORE G. PADGETT, JR.,
2 Having Been First Duly Sworn,
3 was Examined and Testified as Follows:
4 DIRECT EXAMINATION
5 BY MR. BUNDY:
6 Q. All right. Mr. Padgett, you are a licensed
7 professional engineer in the state of South Carolina?
8 A. I am.
9 Q. And how long have you been so?
10 A. I was registered by the state of South Carolina
11 in 1980.
12 Q. And how many -- do you have any particular areas
13 of concentration or expertise under the auspices of your
14 professional engineering degree?
15 A. Degrees.
16 Q. Degrees. Whatever degrees do you have?
17 A. I have a bachelors in civil engineering in 1974,
18 a masters of engineering and structure of mechanics from
19 1975.
20 Q. Any particular areas of expertise based on your
21 experience?
22 A. Yes, sir. I started designing new condominiums
23 in 1984, starting investigating the repairing of
24 condominiums in 1985, and I've been doing that kind of
25 work ever since then.

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1 Q. So you have expertise in design and water-
2 intrusion investigation and that sort of stuff?
3 A. Yes, sir.
4 Q. Now, do you also have expertise in analyzing the
5 quality of construction in place, whether or not it's --
6 whether or not it was good and workmanlike?
7 A. Yes.
8 Q. Do you have experience to determine whether or
9 not work-in-place meets the plans and specifications?
10 A. Yes, sir.
11 Q. All right, sir. Mr. Padgett, when did you
12 first, and how did you first, get involved with The Oaks?
13 A. My very first involvement with The Oaks occurred
14 in 2007. The people at Carriage Hill had contacted me
15 regarding a problem they had found with the windows. It
16 seems the manufacturer had driven nails through the
17 corners of the glass, and they asked me to represent them
18 as a local engineer and get through that process.
19 Q. All right. And subsequent to that time, did you
20 become engaged by the plaintiff, the HOA, in this case to
21 look at these buildings to determine what, if anything,
22 was wrong with them, how to repair it, and your opinion as
23 to why it was in that situation?
24 A. Yes, sir.
25 Q. Okay. Would --

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1 A. I was contacted by Ravenel Associates in May
2 of -- excuse me -- April of 2008. When I did a
3 walkthrough -- Ravenel was a client of mine I've worked
4 with since 1988, by the way. When I did a walkthrough,
5 told them it looked like we had some major problems,
6 scheduled an investigation, performed this investigation
7 in May of 2008.
8 Q. And did you issue a report in May of 2008?
9 A. I did.
10 Q. And was the -- was your -- were your conclusions
11 and observations ended up in Plaintiffs' Exhibit 32?
12 A. That's correct.
13 Q. Very briefly -- because the judge clearly can
14 read it for himself later. But I would like you to at
15 least give the judge just a very brief outline of what it
16 was you did and what it was you discovered during that
17 time period. But as it relates to windows, there's no
18 reason to go into the windows --
19 A. I understand.
20 Q. -- or the balusters or anything like that; do
21 you understand?
22 A. Right.
23 THE WITNESS: Could I have my first slide,
24 please?
25 MR. BUNDY: Sure.

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1 [Off the record momentarily]
2 A. This first slide -- excuse me.
3 Q. [Mr. Bundy] Before we start -- before we start,
4 just to lay some foundation: you took all these
5 photographs?
6 A. I took all these photographs.
7 Q. And they are dated?
8 A. I have dates here, on my slide list, and where
9 they were taken.
10 Q. All right. And do they accurately depict what
11 you saw through the camera lens?
12 A. Yes, sir.
13 Q. All right. Go ahead.
14 A. This is -- the first picture I will show you is
15 really the first problem that we discovered over there.
16 This material here is the roof structure for the -- above
17 the balcony and on this side over here is the wall, the
18 end wall, of the building. All this is rotting, wet, OSB
19 strand-board wall sheathing.
20 This is lower down at that same location. All the
21 stains in the Tyvek indicate all this OSB is wet and
22 rotted.
23 And here, another location.
24 This is the soffit of Mr. Chiovarou's unit. And
25 we saw this brown crack in the stucco right here. This is

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1 what is referred to as a horizontal stucco return --
2 horizontal soffit return. I'm sorry. So I cut this open
3 and it's black with water damage and rot.
4 Q. Now, let me ask you when you took this. When
5 did you take these photographs? The date.
6 A. That was May 8th, 2008.
7 Q. So the buildings were how old at that time?
8 A. Three years.
9 Q. Would you expect to see that deterioration in
10 three years?
11 A. Advanced, very advanced, for what you would
12 expect.
13 As we continued around the back side of the
14 buildings, we started finding -- it's really kind of hard
15 to see in this, but all of this is wet and rotted wall-
16 sheathing materials. Here, again, you can see -- you can
17 see the little fingers of the fungi growing into the back
18 of the Tyvek. More of the same. Wet to the touch.
19 Saturated moisture content. My meter.
20 And then we came -- we got to this point. What
21 had happened up to this point -- all of those photographs,
22 the previous photographs, were taken in May of 2008. This
23 one was taken on November 17th, 2008.
24 Q. And the photograph number is?
25 A. This is number 11.

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1 MR. BUNDY: The number is on the back, Your
2 Honor.
3 A. Prior to this, Carriage Hill had gotten back
4 involved in this project. They had hired Mike Parker,
5 they had hired a contractor, and started repairing the
6 first problem, which was the roof-wall intersection
7 problem.
8 Q. [Mr. Bundy] All right. Who is Mike Parker?
9 A. Mike Parker is an engineer from North Carolina.
10 He's here in the courtroom.
11 So up until this was discovered, Carriage Hill
12 was in the process of making repairs to the stucco
13 problems on building five, at least, and on the other
14 roof-wall intersections of the other buildings.
15 Q. Who was paying you to do this work?
16 A. Who was paying who?
17 Q. Who was paying you.
18 A. The homeowners association was paying me.
19 Q. So Carriage Hill wasn't paying you to
20 investigate and determine what was wrong with these
21 buildings?
22 A. No, sir.
23 Q. They were paying Mr. Parker?
24 A. Parker. Right.
25 Q. And Mr. Parker didn't discover this, you did?

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1 A. I think Mr. Parker actually discovered this.
2 This is on the front of building five, I believe it is.
3 And this just shows -- the next two photographs
4 show up-close damage of this second photograph, first on
5 the right-hand side. That's wood in the advanced state of
6 deterioration.
7 Q. Do you have an opinion, as a structural
8 engineer, whether that's safe?
9 A. That's not worth saving right there. It's gone.
10 All that material has had it.
11 And this is, you know, the type of wall-stud
12 damage and so forth we found on the left-hand side of that
13 same building.
14 It was at this point that I believe that
15 Carriage Hill realized not only they had some problems but
16 realized they had big problems. And, of course, this
17 portends at least some window involvement.
18 This one is of damage to the wood sill after a
19 window was removed.
20 More exterior stucco damage above the windows.
21 This one is a previous repair that was -- I
22 can't tell whether that was 15 or 16.
23 THE COURT: 16.
24 A. 16. Okay. That was taken in January of 2012.
25 This is also on building five. And these deteriorating

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1 conditions were actually the subject of a 2008 repair by
2 Carriage Hill.
3 Q. [Mr. Bundy] So let me make sure I understand.
4 In 2008, that's when that brighter piece of strand board
5 was replaced?
6 A. That's correct.
7 Q. But the rest of it was not?
8 A. That's correct.
9 Q. Do you have an opinion as to whether or not that
10 was an adequate repair?
11 A. Well, when we opened it up, there was no -- I
12 mean, it was wet. There had been water damage to it. So
13 it was not adequate.
14 Q. So in 2008, the repair done by Carriage Hill was
15 not adequate?
16 A. Correct.
17 Q. It was not good and workmanlike?
18 A. Yes, that's correct.
19 Q. Okay.
20 A. This photograph was taken at building four.
21 These are the load-bearing studs. The stuff that looks
22 like charred wood here in the middle of the picture is
23 what's left of the load-bearing studs supporting a beam, a
24 large beam, that spans across the back of this building.
25 It carries two floors of exterior wall and part of the

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1 roof structure. Well, these are shot. These are gone.
2 Structurally, this was unsafe, the condition that I found
3 it in. We immediately, I'm talking about that afternoon,
4 shored this up to make sure nothing was going to fall
5 down.
6 Q. What's the date of that photograph?
7 A. That date is January 5th, 2012.
8 Q. So at that point, the buildings are six years
9 old?
10 A. Yes.
11 Q. Roughly?
12 A. Yes.
13 Q. And do you have an opinion as to whether or not
14 these buildings should be in this state after six years?
15 A. They should -- obviously, they should not be in
16 that state.
17 Q. Should they ever be in this state?
18 A. No. No, sir.
19 Q. I mean, a properly-constructed building should
20 not be in this state --
21 A. No.
22 Q. -- at any point in time?
23 A. That's correct.
24 Q. And you, as a licensed professional engineer, in
25 the state of South Carolina, required as a matter of law

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1 to protect the life and safety and health and welfare of
2 South Carolinians, stopped what was going on and made them
3 fix it --
4 A. That's correct.
5 Q. -- correct?
6 A. That's right.
7 This is some more damage we discovered during
8 2012. And here, again, that's the same stuff.
9 And as a result of stucco investigations that I
10 performed, I identified a number of defects.
11 Q. Let's talk about the stucco. What's wrong with
12 the stucco?
13 A. Well, the first thing is that there's no head
14 flashing at any of the windows or doors. The second is
15 there's no drainage feature provided at the bottom of --
16 at the bottom of any wall that I found. And those are
17 important because stucco is considered to be a wet
18 material; that is, it's going to absorb moisture from the
19 atmosphere and it's going to be wet on the back side.
20 What you have to do is provide an avenue for that water to
21 get out of the wall cross section. Those are code
22 requirements. Both of those are code requirements.
23 Q. So those two situations violated the building
24 codes?
25 A. Yes, sir, they did.

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1 Q. And by definition, then, are not good and
2 workmanlike?
3 A. That's correct.
4 We also found an inadequate number of control
5 joints. That's a violation of code. We found that there
6 were -- the control joints that were installed were
7 installed incorrectly, which is a violation of code.
8 These buildings use paperback lath. What that
9 is is a Kraft-type paper that the metal lath is glued to
10 the face of it and when you join the two you're supposed
11 to take it apart so the paper goes against the paper and
12 the lath against the lath. At The Oaks, that was not the
13 way it was done. It was paper to lath -- paper to lath,
14 paper and lath, paper to lath, which is, again, another
15 code violation. Now, the paperbacked lath was installed
16 vertically, which is a violation of code because that
17 stucco is meant to stand horizontally between the studs.
18 Q. Do you have an opinion to a reasonable degree of
19 engineering certainty whether or not the stucco on this
20 building, all of it, needs to be removed?
21 A. I do.
22 Q. And what is that opinion?
23 A. It needs to be removed.
24 Q. Now, hypothetically, I would like to ask you to
25 assume that the windows were put in properly, that the

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1 windows were great windows, that they were properly
2 caulked, and everything regarding the windows, the
3 balustrades, and everything else on this building was
4 absolutely perfect. Do you have an opinion to a
5 reasonable degree of engineering certainty whether or not
6 this stucco would still have to come off?
7 A. Yes, sir.
8 Q. Why is that?
9 A. You've got all this proliferation of
10 installation defects, code violations. The lack of
11 drainage is not -- drainage is not provided. There would
12 be damage otherwise. And the rest of these, the
13 installation of life goes to long-term performance in
14 things like wind, windstorms. So in order to get what
15 they were supposed to have, all the stucco has got to go.
16 Q. As a result, do you have an opinion to a
17 reasonable degree of engineering certainty whether or not
18 this defective stucco installation caused damage to other
19 products and materials and/or resulting damage to the
20 building?
21 A. There was damage to sheathing, to studs. There
22 was damage to insulation. And there were a couple more
23 codes, but there were a couple more violations associated
24 with the stucco, Mr. Bundy.
25 Q. Do you have an opinion to a reasonable degree of

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1 certainty whether or not at least part of the reason for
2 this defective installation was failure of the general
3 contractor or the construction manager to properly
4 supervise the installers of this material?
5 A. That would be my opinion, yes.
6 Q. Because you found these problems to be
7 widespread?
8 A. Yes, sir.
9 You know, while we started investigating stucco
10 in May of 2008, the stucco has been subject to
11 investigation by me, by Mark, and others, off an on for
12 five years now. I see the same defects every time walls
13 get opened.
14 Q. Do you have an opinion to a reasonable degree of
15 certainty whether or not a properly qualified general
16 contractor, building six individual buildings one right
17 after the other, should have seen these things at some
18 point in time?
19 A. They should have seen them, yes.
20 Q. Did you see any evidence at any time in any of
21 your investigations that the subcontractors, the general
22 contractor, or the construction manager ever got any
23 better at building these buildings?
24 A. No, sir.
25 Q. So instead of having experience of building six

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1 buildings, they just had six experiences one -- the same
2 experience six times; right?
3 A. That's what it looks like, yes.
4 Q. Do you think they learned anything over the six
5 buildings?
6 A. I couldn't tell you that, Mr. Bundy.
7 Q. Continue.
8 A. Okay. Brick veneer: the next four pictures I
9 have of brick veneer. In November of 2008, I investigated
10 portions of brick veneer in conjunction with Mr. Gary
11 Freeman, an architect. And that big knife is Mr.
12 Freeman's knife.
13 Q. It must be a pretty sharp knife to cut through
14 mortar.
15 A. Well, it didn't have to cut through. The joists
16 were open. And --
17 Q. Do you find that to be good and workmanlike?
18 A. Absolutely not.
19 You could lift the brick out. This didn't take
20 any effort. This is the way we found it. And the reason
21 this is not bonded is because this brick is laying here on
22 this silver peel-and-stick, just metal -- silvery-metal
23 flashing material. There's no bond that's going to happen
24 there. But that's the way we found it.
25 Q. Do you know if the plans -- was that detailed in

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1 the plans, or do you know?
2 A. I don't remember.
3 Q. That's not good and workmanlike, is it, that
4 previous --
5 A. No, sir. That represents a violation of the
6 building code. I mean, you simply should not be able to
7 handpick the brick off the side --
8 Q. How high off --
9 A. -- of the building.
10 Q. How high up off the ground is that?
11 A. That is at the juncture of the third and fourth
12 floors, right at the fourth-floor level.
13 Q. What sort of wind load or seismic event would it
14 take to pull that brick off of there and fall down on the
15 ground?
16 A. It would take, you know, a wind probably up in
17 the ninety-, hundred-mile-an-hour range. A very low-
18 magnitude earthquake.
19 The next picture -- the next two pictures are
20 the window-heads and the brick. And what they've done
21 here is you could see -- you could see the sag that's in
22 this flashing.
23 Q. What's missing from this picture, Mr. Padgett?
24 A. Well, what they did was they -- the steel angle,
25 which is nothing more than a piece of metal that's shaped

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like an L, the toe of it was too short so they had the brick sitting off the end of it.

Q. By toe you mean the --

A. Right off the toe --

Q. -- horizontal leg?

A. That's right.

And it gives that ugly appearance that you see here and again here. It might be a little bit more dramatic in that one.

Q. Is that structurally adequate?

A. I don't believe it is. You've basically got the brick sitting off on the very end of the angle so it maybe sits an inch off of the edge at seal angle.

Q. Would you -- let me ask you this. You've inspected construction projects, you've worked with architects and engineers; have you not?

A. Yes, sir.

Q. During a normal pay request, architects come out and look and see if things are done right for payment purposes; right?

A. That's correct.

Q. Would you expect a competent architect to have accepted that work that was open and obvious?

A. I can't imagine that happening.

Q. Do you think it would make any difference if the

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1 architect was unlicensed? I mean, would you expect less
2 of an unlicensed architect than one that maybe was?
3 A. Probably so, yeah.
4 Q. Okay. What else?
5 A. Well, there's two other problems that I found
6 with the brick veneer. These are code issues. When we
7 opened up the brick in numerous locations we did not find
8 any horizontal joint reinforcement. What that is is a
9 small, nine-gauge diameter wire that provides some measure
10 of ductility and it's got to be installed between the
11 bricks and the mortar joint and no more than eighteen
12 inches vertically.
13 Q. How much did you find on this job?
14 A. I didn't find any.
15 Q. Is it a code requirement?
16 A. Code requirement.
17 Q. Is that the sort of thing you would expect an
18 architect or a construction manager or a general
19 contractor to be looking for?
20 A. Yes. If they knew -- if they knew they had to
21 put it in, yes, they would have.
22 Q. Is it in the plans?
23 A. That's an earthquake-engineering aspect of these
24 buildings. There's too many times we see engineers from
25 out of state come in and design projects and they're not

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1 all that familiar with the earthquake stuff because they
2 don't do it every day like we do here. This engineer
3 actually had the wire-joint reinforcement specified. We
4 didn't find it out here anywhere. The second --
5 Q. Do you have -- do you know who was supposed to
6 provide the accessories as it related to the mason versus
7 the general contractor or the owner on this job?
8 A. I don't know.
9 Q. That would be an accessory, would it not,
10 typically referred to?
11 A. Yeah. That, in conjunction with things like
12 brick ties and those kinds of --
13 Q. In your experience, do masons working by the
14 hour typically provide those accessories? Or are they
15 typically provided by the general contractor?
16 A. Typically those are provided by the general
17 contractor, and masons provide only labor.
18 Q. Is it your experience that if you don't have it
19 there when it's time to put it in, the masons are going to
20 keep laying brick?
21 A. They're going to lay brick. That's right.
22 Q. They get paid by the brick; correct?
23 A. Correct. That's right. Per the thousand.
24 The other code violation associated with the
25 brick veneer is you are required, under the earthquake

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1 provision of ACI-530, to support the brick --
2 Q. That's the American Concrete Institute?
3 A. American Concrete Institute.
4 -- to support the brick at each floor -- the
5 reason for that is so when there's an earthquake, you
6 don't lose the entire brick wall, you might lose portions
7 of it. That was -- these buildings were not done that
8 way. So what you would see is a steel angle, a shelf at
9 each floor.
10 Q. And they don't have it?
11 A. It's just not there.
12 Q. Is that dangerous?
13 A. It would be in an earthquake.
14 Q. So these buildings clearly don't meet the
15 earthquake requirements?
16 A. That's right.
17 Q. But they're supposed to?
18 A. They should, yes.
19 Q. So in an earthquake, these buildings would be
20 unsafe and uninhabitable?
21 A. They would be inhabitable after an earthquake.
22 Q. So if the developer were able to predict
23 earthquakes, he could tell these people when to leave?
24 A. Well, that's true. But it still represents
25 violations of the building code, Mr. Bundy.

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1 Q. All right. Next?
2 A. The next issue I have to show you is -- has to
3 do with the porch waterproofing.
4 Q. The porch waterproofing. Okay.
5 A. The balconies. What you're looking at here is
6 this -- this is the horizontal bottom rail fo the
7 guardrail on the porches. And this is a two-by-four
8 that's used to provide support for it. And here it is
9 once we took the rail off. This is raw concrete, because
10 this is actually on the second floor. These porches were
11 waterproofed -- the handrails were put on these porches
12 before they were waterproofed. I mean, that is just --
13 it's unbelievable that anybody could think that's
14 acceptable.
15 Q. Well, that relates to sequence of operations,
16 doesn't it?
17 A. That's correct.
18 Q. And isn't that exactly what a construction
19 manager is supposed to do? sequence the operations of the
20 various subcontractors?
21 A. That's correct.
22 Q. And isn't that exactly what a general contractor
23 is supposed to do?
24 A. That's what a general contractor earns his money
25 doing.

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1 Q. And the only way to get the waterproofing
2 underneath the support magically is to pour the
3 waterproofing before you put the support up?
4 A. Got to do it.
5 Q. Does that give you evidence of just a basic
6 misunderstanding of construction?
7 A. Yes, sir.
8 Q. Is it more evidence of lack of supervision?
9 A. It could be both.
10 Q. Any excuse for it?
11 A. There's none.
12 Q. I mean, have you ever seen it before in your
13 experience?
14 A. I've not seen this before, no.
15 The next one, this is number 26. This
16 photograph was taken in 2008. And what you're looking at
17 here is up at the top, this is the top plate, this is the
18 second-third floor line --
19 Q. I hate to interrupt you, but let me -- I need to
20 close a few things up here.
21 As it relates to the brick --
22 A. Okay.
23 Q. -- do you have an opinion to a reasonable degree
24 of engineering certainty whether or not all the bricks on
25 all these buildings need to come off?

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A. Yes, sir.

Q. And that is what?

A. They need to be replaced.

Q. Okay. And they need to be replaced because they violate the building code in numerous particulars and are unsafe?

A. Yes, sir.

Q. So let me ask you this. Assuming that there was nothing else wrong with this building but the brick -- windows were put in right, everything was done, the stucco was right, perfect job except the brick that's out there was put in exactly like it is -- do you have an opinion to a reasonable degree of engineering certainty whether or not the brick would still have to come off?

A. Yes, sir. All the problems I just described to you don't depend on anything else, so, yes, it would still have to come off.

Q. Okay. Go ahead.

A. The wall insulation was actually -- is actually missing. This is the exterior. This is building five -- building five taken in November of 2008. Up here is the -- this is the fourth floor, third, fourth floor, and this is the lower floor. Anyway, this is the floor truss and you can see there's insulation here, which is like six-inch batt insulation.

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Q. Okay. So is this where the sound is going, from the top of this picture to the bottom of this picture?

A. I'm sorry. The what?

Q. The sound problem. That sound we've had problems with emanates from the top and goes down; is that --

A. Yes.

Q. So this is that flooring between that we're looking at; right?

A. This is the floor structure, yes.

Q. And looking straight in the middle, that's that truss --

A. That's right.

Q. -- that runs all the way out of the picture that way?

A. That's right.

Q. And to the left is another truss, to the right is another truss; correct?

A. Right.

Q. And all that's in there is what? Tell me what's in that cavity.

A. Six inches of batt insulation.

Q. And how big is the cavity?

A. Fourteen inches.

So you have -- this space here, you have an

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1 uninsulated wall.
2 Q. Where is the concrete floor in this picture?
3 A. There's no concrete on this floor.
4 Q. Where's the Gyp-Crete in this picture?
5 A. There's no Gyp-Crete.
6 Q. Do you have an opinion to a reasonable degree of
7 engineering certainty, based on your thirty years of
8 experience, whether or not this floor should have either
9 been solid concrete or have Gyp-Crete on it?
10 A. Thirty-six years experience, Mr. Bundy.
11 Q. Excuse me. You're older than you look, or
12 younger than you look. One or the other.
13 A. Thank you. You're awfully kind.
14 This is the first condominium project I have
15 ever seen that did not have a concrete floor top.
16 Q. The first?
17 A. The first. And I've been involved with probably
18 150 over the last twenty-eight years or so.
19 Q. And just out of curiosity, why would you want to
20 put a concrete floor in a luxury condominium or, if you
21 were too cheap to do that, at least put Gyp-Crete on the
22 floor? Why would you want to do that?
23 A. For sound. I mean, those floor toppings,
24 Gyp-Crete, light-weight concrete, are standard in this
25 industry. And they even put this stuff in moderately-

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1 priced apartments. So you go to Kiawah, you go to Isle of
2 Palms, you always see -- they always have floor toppings.
3 Q. And during your investigation, did you ever have
4 an opportunity to meet with the developer or any of its
5 representatives, architects, or otherwise?
6 A. Yes, sir.
7 Q. Do you know a gentleman named Rumplick?
8 A. Yes, I do.
9 Q. He's in the courtroom?
10 A. Yes, sir.
11 Q. Do you recall attending or being in
12 Mr. Rumplick's presence when he made a comment or
13 any comments about this lack of Gyp-Crete and the sound
14 problems?
15 A. I do.
16 Q. And what did he say?
17 A. Well, Mr. Rich Behringer asked him --
18 Q. And Rich Behringer is one of the developers?
19 A. He's with Carriage Hill.
20 -- asked Jerry why didn't we put the Gyp-Crete.
21 Q. And we would be who?
22 A. Carriage Hill.
23 Q. And Jerry is at least an architect licensed in
24 New York?
25 A. Yes.

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Q. Y'all were talking in South Carolina; correct?
A. I'm sorry?
Q. Y'all weren't in New York when you were talking, you were in South Carolina?
A. We were in South Carolina, yes.
Q. So when y'all were discussing this job in South Carolina with this New York architect, and it came up why didn't we put Gyp-Crete, what was the response from the architect?
A. Jerry said that they had never done a building like this and they didn't know it was required, didn't know it was needed.
Q. Didn't know it was needed. But it was needed, wasn't it?
A. It's very definitely needed.
Q. Sort of like the -- is it as basic as the water-proofing underneath that post?
A. Yes, sir, it is.
Q. To somebody who actually practices in this area?
A. It is.
Q. Is it as basic as putting the mortar in the brick so they don't fall on people's head?
A. The reinforcing wire in the brick joints. Yes.
Q. All right. So what's the problem with this picture?

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A. The walls are uninsulated for this ten-inch section.

Q. So there should have been at least insulation at the end of there?

A. That's right. But you have to take the stucco off and the brick off to get at this. You can't even touch it.

Q. So even if the brick and stucco were put on right, you would still have to pull them off, at least in this area, to insulate?

A. That's right.

Q. Is that a code violation?

A. It would be a code violation.

Q. And it also results in increased heating and cooling costs, doesn't it?

A. It does. Absolutely.

Q. All right. Next picture.

A. This next section has to do with the brick stairs built out there. This is just a typical what the entries look like. And there's all these nasty little cracks right along the edge. And here you see it again right through here. The reason --

Q. Back up one picture. Is that -- does that mortar joint meet the ACI standards?

A. You mean the thickness?

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1 Q. Thickness? Variability? Anything.
2 A. It certainly isn't very good workmanship,
3 Mr. Bundy.
4 Q. It's not very workmanlike, is it?
5 A. It's not neat. I mean, you can see this. That
6 looks like a cold joint there and another one here. That
7 might even be a patch. I'm not certain.
8 The front wall of the stairs, the one that you
9 actually see when you walk up to it, is here on the left.
10 That's this part of it. And that front wall is actually
11 more or less a brick veneer wall. It sits right on the
12 footing. Then on the right-hand side, these bricks of the
13 stairs themselves are actually supported by a caster-
14 placed reinforced concrete structure and you can see that
15 the brick supported by the concrete structure has moved
16 down relative to the one that's supported directly off the
17 foundation. And there you get this little -- nasty little
18 crack. And all of them are constructed that way.
19 And since there is no drainage provided in any
20 shape, form or fashion for these brick veneer -- for these
21 brick stairs, they just stay wet and they grow all this
22 black stuff and this green mold and all that kind of mess.
23 Q. Do those need to be repaired, replaced?
24 A. They do indeed.
25 Q. All right.

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A. Also a part of my investigation with Mr. Freeman in November of 2008, we got up on the roof. And this is what I refer to as a parapet return wall. This is a wall that just sits right on top of the roof deck, the plywood roof deck, with no other structural considerations given. Now, Mr. Freeman is not the smallest guy in the world, but he's able to move this parapet wall with a moderate amount of pressure, hand pressure. And as a structural engineer, I can tell you if you move -- able to move your building structure with your hand, it's not going to stand up to 130-mile-an-hour wind load.

Q. So this would be a code violation?

A. Yes, sir.

Q. Is that just purely decorative, or does it have a function other than just to be up there?

A. I think it's just decorative in nature.

Q. Do you know what -- do you know what it's constructed of or how it's constructed inside?

A. It's constructed of two-by-fours and plywood sheathing and it's covered with Tyvek and stucco on one side and the roofing membrane runs on the side.

Q. Would you be surprised if that structure became airborne during a hurricane?

A. I would not, no.

Q. Along with the brick?

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A. Absolutely not.

The next issue has to do with the pop-outs of the concrete. There's a lot of concrete at The Oaks that have contaminates in it and this is typically what you see. This is a normal-sized pop-out. It's about, oh, an inch and a half or so across. This looks like one that was previously redid.

This next slide is a -- basically a map of the slab of building two. And all the little green dots you see here, concrete pop-outs of an inch -- roughly an inch in diameter. So by my count, that's fifty-seven pop-outs.

Q. And that's just in this one building?

A. That's in that one building.

Q. All right, sir. Does that need to be repaired?

A. It does, indeed. And the simplest way I found to repair stuff like that is just to take the concrete out, take the concrete slab out, and replace it.

We talked about the acoustics a good bit since I've been sitting in this room for the last day. This is the ceiling from a unit in building four that had to be taken out and repaired because of the fire-sprinkler leak. And you can see --

Q. You're in unit -- what unit are you in here? Three? A three? A third-floor unit?

A. This is a fourth-floor -- third-floor unit.

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1 Q. Okay. So you're looking at -- this is the
2 ceiling of the third floor, floor of the fourth-floor;
3 correct?
4 A. Correct.
5 Q. Okay. All right.
6 A. All right. And the lower elevations of
7 Sheetrock you see here on the remediated ceiling, the
8 lower ceiling --
9 Q. So this is after remediation?
10 A. After remediation.
11 And then up here you see elements of where -- of
12 the original ceiling. Okay?
13 The next slide is a closeup looking --
14 Q. Let me stop you a second.
15 This is the result of a leak; is that correct?
16 A. Having the fire sprinkler --
17 Q. The fire sprinkler. But what I want to ask you
18 is this. I noticed that the metal channels from which the
19 remediated ceiling are hanging are on straps that appear
20 to be nailed to or otherwise attached to the trusses; is
21 that correct?
22 A. Correct.
23 Q. It looks like holes were drilled in the --
24 A. Sheetrock.
25 Q. -- Sheetrock. But the Sheetrock has been

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1 removed to the right of that hole. Was that removed
2 because of the sprinkler?
3 A. That's right.
4 Q. Just so I -- just so we understand. If that had
5 not happened, what you would be seeing would be a strap
6 coming down through a hole. But the original Gyp-Crete is
7 still attached to the original ceiling in this remediated
8 repair?
9 A. Right.
10 Q. And the original ceiling was attached to --
11 those are hat channels, aren't they?
12 A. I was going to show you that, Mr. Bundy. Here
13 it is right here.
14 Q. All right. What is a hat channel?
15 A. Well, a hat channel is a piece of light-gauge
16 metal. You can see it right here. It's shaped like a
17 hat. It's got two flanges that come up and it has a flat
18 top. That's actually -- actually, that's upside down.
19 But at any rate, there's -- these -- the hat channels are
20 not acoustical hangers. Typically, those are referred to
21 as resilient channels because they only have -- you can
22 only connect those with one flange on the side.
23 Q. And why is that?
24 A. So that it actually suspends the Sheetrock from
25 the -- don't have it jammed, you know --

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1 Q. So in a drum analogy, this would be the strings
2 on a snare drum?
3 A. Right.
4 Q. These hat channels would be the -- what they
5 created was a drum, wasn't it?
6 A. Right.
7 Q. So now we're looking at the strings on a snare
8 drum?
9 A. Right, sir.
10 Q. Okay. Go ahead.
11 A. And what you see here is -- again, I mean, this
12 is the hat channel right here and it's been hard-nailed to
13 the truss here and there. What that does is that gives
14 you direct sound transmission from the floor above right
15 down through the ceiling. And they would have needed to
16 take all of this hat-channel system out in order to
17 properly acoustically treat this ceiling.
18 Q. Well, that would be the beginning thing to do.
19 A. Yes.
20 Q. You would at least have to get rid of it to
21 start with.
22 A. Yeah.
23 Q. That ain't going to solve the problem.
24 A. It would -- if you take it out -- I think you're
25 going to have to take out the existing -- the original

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1 ceiling and hat-channel system to be able to properly
2 acoustically support this -- a proper ceiling.
3 Q. Right. And then you've got to go to work on the
4 floor upstairs and put the Gyp-Crete in?
5 A. That's right.
6 Q. All right. What's next?
7 A. Then in 2010 --
8 Q. Let me ask you this. Do you have an opinion to
9 a reasonable degree of engineering certainty whether or
10 not the original design was adequate for soundproofing?
11 A. I don't believe it was, no.
12 Q. Do you have an opinion to a reasonable degree of
13 engineering certainty whether the remediation was adequate
14 for adequate soundproofing?
15 A. It was not.
16 Q. Is it your opinion to a reasonable degree of
17 engineering certainty that at a minimum, at a minimum,
18 this condominium should have had a Gyp-Crete floor and the
19 appropriate acoustical hanging ceiling?
20 A. Yes, sir.
21 Q. And in your opinion, to a reasonable degree of
22 engineering certainty, can that be achieved any way now
23 other than what you have proposed in your fix?
24 A. No, sir.
25 Q. Okay. Go ahead.

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1 A. Building one, June 2010, we discovered a mess in
2 the elevator pit. And what you see here is a
3 conglomeration of groundwater, infiltrating groundwater,
4 oil, grease, and hydraulic oil. And this was caused
5 because there were no water-stops provided between cast-
6 in-place-concrete foundation, the foundation wall, and
7 precast-concrete panels that were used as the elevator
8 shaft.
9 Q. Well, water-stops are pretty -- that's pretty
10 recent, isn't it, in the construction industry? using
11 water-stops?
12 A. No, sir. This goes back a long time.
13 Q. Do you think they would have had those available
14 in 2004?
15 A. Yes.
16 Q. Nothing particularly magic about that?
17 A. No, sir, it's not. It's just something that was
18 not done.
19 Q. Is that the sort of thing a general contractor,
20 construction manager ought to pick up on?
21 A. Yes, sir.
22 Q. Because they could be two different trades, and
23 somebody's got to figure out that intersection between
24 those two trades?
25 A. They do, indeed.

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1 Q. Sort of what a general contractor does, isn't
2 it?
3 A. I think so.
4 Q. Sort of what a construction manager does?
5 A. That's correct.
6 Q. An architect is supposed to see that stuff,
7 isn't he?
8 A. They should know that water-stops are needed,
9 yes.
10 Q. Is there any reason why the developer couldn't
11 have fixed this back in 2010?
12 THE COURT: Let me ask him a question.
13 Explain to me what a water-stop is and where it
14 would go in this picture.
15 THE WITNESS: Well, Your Honor, you can't see it
16 in this picture. But what you have --
17 THE COURT: Well, just explain to me what --
18 THE WITNESS: -- what you have here is a precast
19 panel. Precast concrete is made in a plant offsite
20 somewhere and it's brought in and set down on a cast-
21 in-place-concrete footing that's been preprepared.
22 There are ways to waterproof that with dentonite type
23 plugs that go between the two pieces of concrete and
24 expand once water comes in contact. Typically what's
25 done, cast-in-place concrete, a physical water-stop is

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1 a plastic accessory that is placed in the construction
2 joint between the footing and the walls, for example.
3 Okay?
4 THE COURT: Okay.
5 Q. [Mr. Bundy] So sort of like a key-way or
6 something?
7 A. Something like a key-way. That's exactly --
8 what you do is you actually -- in this application with
9 key-way in there and you precast concrete, what you
10 actually do is you put a key-way in there and you would
11 fill that with the dentonite.
12 Q. Or when you pour the cast-in-place slab, you can
13 put a key-way at the edge of the slab, couldn't you?
14 A. That's right.
15 Q. That's nothing but a two-by-four cut with a
16 little channel on it, right?
17 A. That's right.
18 Q. That's pretty complicated, isn't it?
19 A. That's not hard to do at all.
20 Q. All right. What's next?
21 A. The last thing we found was the tile, the shower
22 problem. Initially, in December of 2011, these are taken
23 from showers in building five. And what you're looking at
24 is that the tile, of course, is the white-and-gray
25 material, has been removed to expose the damaged OSB

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1 wall -- excuse me -- there, and again here. All of
2 this, all of what you see, is damaged OSB that's been
3 pulled out and laying down here on the ground.
4 What they did not do in the shower is -- what
5 they had was the tile with the setting bed placed right
6 directly against a cement board. Neither of those two are
7 water proof. They all absorb water. The only water-
8 resistant aspect of the installation was they actually
9 have a piece of tape over the joints of the backer board.
10 Q. Is that good and workmanlike?
11 A. You've got to have a waterproof layer.
12 Q. Does it meet industry standards?
13 A. No, sir.
14 Q. Does it meet the code?
15 A. No.
16 Q. Any excuse for this? Any explanation for it?
17 A. I don't have an explanation for it.
18 Q. You ever seen it, in your career, come this way?
19 A. I haven't seen it like this before.
20 Q. Would you expect to pay $700,000 for a unit
21 that -- to expect to have it done like this?
22 A. I would not.
23 Q. Well, this is really as a result and lack of a
24 homeowner maintaining his unit, isn't it? I mean, isn't
25 the homeowner supposed to maintain to prevent this from

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1 happening?
2 A. There's no maintenance that you could do.
3 Not only that, in building five in 2011, and
4 here just recently in building six, we've discovered a
5 second occurrence. There is no outward appearance of a
6 problem on the fourth floor, let's say. If you're on the
7 fourth-floor unit, you wouldn't see anything wrong. The
8 only time it starts becoming an issue is when you start
9 seeing it on the third floor, and then you have to go
10 and -- we found the fourth-floor floor was unsafe. And I
11 think the gentleman testified this morning it was actually
12 his mother's unit. I told the people that they didn't
13 need to use that bathroom. They subsequently moved out.
14 Q. I would like to show you Exhibit 31-A and ask
15 you if you could identify this.
16 A. Yes, sir. This is a cost-estimate proposal from
17 Carolina Builders and Reconstruction for cleaning the
18 elevator shaft, elevator pit, in building one. That cost
19 is $1850.
20 THE COURT: What number is that?
21 MR. BUNDY: 31-A, Your Honor. Is that it?
22 THE WITNESS: 31-A.
23 MR. BUNDY: We're going back to -- it was on
24 that -- since we were on that picture, I wanted to put
25 it in now.

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1 Q. [Mr. Bundy] This relates to that picture of the
2 elevator; right?
3 A. Yes.
4 Q. And what else is in there?
5 A. The second one is a proposal from Palmetto
6 Gunnite Construction to come in and inject this elevator
7 shaft with urethanes in order to reduce, stop the water.
8 And that amount of -- is $7500.
9 Q. Okay. To a reasonable degree of engineering
10 certainty, it needs to be done?
11 A. It does.
12 Q. And it was done because it was defectively done
13 to start out with?
14 A. That's correct.
15 Q. And it can be fixed for, as of April, 2013, for
16 roughly seventy-five, eighty-five, maybe under $10,000?
17 A. Almost. There's still about 10,000-dollars
18 worth of elevator-equipment repairs to be done because of
19 this water.
20 Q. I got you. Okay
21 Any reason why the developer couldn't have fixed
22 that?
23 A. No.
24 Q. Nothing to prevent -- I mean, there's nothing in
25 the way to get it done; right?

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1 A. No, there's nothing to prevent them to get it
2 done.
3 MR. BUNDY: Your Honor, at this time I would
4 move to introduce Exhibit 31-A into evidence.
5 THE COURT: Any objection?
6 MR. MAYBANK: No objection, Your Honor.
7 THE COURT: All right. 31-A admitted without
8 objection.
9 [Whereupon, Plaintiffs' Exhibit Number 31-A is
10 admitted into evidence by the Court]
11 Q. [Mr. Bundy] Mr. Padgett, are you done with the
12 pictures?
13 A. Yes, sir.
14 Q. What I would like to do now is direct your
15 attention to the estimate by Southeastern Construction.
16 Do you have that in front of you?
17 A. I do.
18 Q. And the exhibit number, please?
19 A. [No response]
20 Q. Exhibit number?
21 A. Exhibit number 180.
22 Q. 180.
23 MR. BUNDY: Exhibit number 180, Your Honor.
24 Q. [Mr. Bundy] Who is Southeastern Construction?
25 A. General contractor.

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1 Q. And have you ever done any work with them
2 before?
3 A. I have.
4 Q. And what's your experience with them?
5 A. I find them to be a very competent general
6 contractor.
7 Q. And this appears to be, and is, I believe, an
8 estimate titled cost estimate by building, revised date
9 April 2, 2013; is that correct?
10 A. Correct.
11 Q. And do you believe it to be based on your scope
12 of work repairing these buildings?
13 A. Yes.
14 Q. And how did you convey -- Davis Willis is the
15 one who runs the company; right?
16 A. That's right. David Willis.
17 Q. How did you convey to Mr. Willis what it was you
18 wanted done in order to repair these buildings? You've
19 already gone over why. Now I want to know what you want
20 to do and how you want to fix it.
21 A. I wrote a scope of work back in 2010, I believe
22 it was.
23 Q. 2010. That would be --
24 [Whereupon, Mr. Bundy reviews documents]
25 MR. MCDONALD: I believe it was April.

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1 MR. BUNDY: What is it?
2 THE COURT: That's number --
3 MR. MCDONALD: April of 2010.
4 MR. BUNDY: April of 2010.
5 One minute, Your Honor. I apologize. We'll
6 find it in a second.
7 [Whereupon, Mr. Bundy reviews documents]
8 Q. [Mr. Bundy] At any rate, there is a document
9 that you created, a scope of work document, for Mr. Willis
10 to price; is that correct?
11 A. Yes, sir.
12 Q. And in addition to pricing it, giving him the
13 scope of work in writing, I assume you also discussed it
14 with him?
15 A. Yes.
16 Q. Are you satisfied, based upon your discussions
17 with him, that he adequately understands what it is he's
18 bidding?
19 A. Yes.
20 Q. Okay. And estimating?
21 A. Yes.
22 Q. And do you understand he's willing to do the
23 work for this amount of money?
24 A. I do.
25 Q. Now, notwithstanding that you have a scope of

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1 work, is that enough to get the necessary permits and
2 documents that will be necessary in order to repair this
3 building?
4 A. We still need some plans.
5 Q. And who's going to prepare those?
6 A. Design professionals like myself.
7 MR. BUNDY: It's Exhibit Number 36, Your Honor,
8 is the Padgett repair scope.
9 THE COURT: Any objection to 36?
10 MR. MCDONALD: Your Honor, I believe it's
11 already in evidence.
12 MR. BUNDY: It's already in evidence?
13 MR. MCDONALD: Yes, Your Honor.
14 THE COURT: All right.
15 Q. [Mr. Bundy] Now, in addition to you or another
16 design professionals in conjunction with the preparing the
17 necessary plans, specifications, the details, et cetera,
18 et cetera, will there also be construction administration
19 involved?
20 A. Sure.
21 Q. Is construction administration different on a
22 restoration or a repair job than it is on new
23 construction?
24 A. No. You still have supervision. That's right.
25 Q. But, I mean, is it more intensive? Is it more

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1 work involved?
2 A. Repairing things is usually more complicated,
3 so, yeah, it becomes a little more intense.
4 Q. Well, does it also require multiple site visits
5 when a contractor opens a wall up and needs to have a
6 structural engineer tell me how much of the stud wall do I
7 need to take out; right?
8 A. Or how to shore it.
9 Q. Or how to shore it.
10 A. How many shores to put in or when to run, yes.
11 Q. Because the contractor is not going to make that
12 decision. He's going to call you and make you
13 responsible?
14 A. That's right.
15 Q. All right. And it's the same thing through when
16 you try to draw the drawings and repair drawings? They're
17 more detailed, complicated, than a new construction would
18 be?
19 A. That's right.
20 Q. And is that because you're working on somebody
21 else's work?
22 A. That's absolutely correct. You have to take
23 into account the existing conditions and go back to what's
24 good and start from there and do it right. That's what
25 you have to do.

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Q. You also have to make a determination as to whether or not what was on these plans, wherever they are for the construction, were actually followed by anybody?

A. Yeah.

Q. Because you can't rely on these plans if that's what's out there, can you?

A. That's right.

Q. Because have you seen any incidents in the last seven years of deviation in the plans and specifications and the actual construction as-built condition?

A. Yeah. Here's one right here. I mean, there were two sets of structural plans: one for cast-in-place built first-floor structure; the second one was post tension, which is just a different form. And this is precast. So that's a complete deviation. You know, it's not necessarily an unacceptable substitute, but there's no plans -- there's no precast shown in the plan.

Q. Is it fair to say that when you open up a wall at The Oaks condominiums, you don't know what you're going to find?

A. Well, that's -- it's been interesting, to say the least.

Q. And you're certainly not going to find what was called for in the plans and specifications? Or you might?

A. You might.

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1 Q. Now, what -- is there a fee you charge for your
2 work?
3 A. Most of my work is done hourly.
4 Q. Is there a fee associated on a percentage basis
5 with work of this type for drawing plans, specifications,
6 construction administrative, particularly in work of this
7 quality and type and difficulty?
8 A. Yes, sir. Generally that's around ten percent.
9 Q. Okay. So to this number, whatever the last
10 number is for the construction that Mr. Willis is going to
11 charge, we need to add ten percent of that amount;
12 correct?
13 A. Correct.
14 Q. To pay for the various engineers, architects, et
15 cetera, that need to be employed?
16 A. That's correct.
17 Q. Because apparently the last time they built this
18 building it didn't work too well with the ones they had,
19 so we need to get some different ones this time?
20 A. We're going to do it differently this time.
21 Q. Let's go to the item one that's on the second
22 page. It's item one, wall repair at rear stucco facade.
23 Now, describe for the judge this condition and how it
24 might be different from just a total stucco repair, if you
25 can.

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1 THE COURT: Let me ask you one question before
2 we get to that.
3 Going back to your pictures on the stucco and
4 the water damage and the rot and the mold: I know you
5 testified that the moisture collects behind the
6 stucco, you've got to have a way for it to drain out,
7 et cetera, et cetera. How much can you attribute to
8 that, versus the water coming in from the windows, as
9 far as the stucco is concerned? Or can that be
10 ascertained?
11 THE WITNESS: You cannot really ascertain it. I
12 mean, contribution from the windows are generally in
13 and around the window areas. There are other places
14 that we have damage. It's pretty hard to separate.
15 These buildings have multiple sources of water
16 intrusion.
17 THE COURT: What are some of the sources, other
18 than the windows?
19 THE WITNESS: Water gets behind the stucco and
20 it's allowed -- since there's no drainage, Your Honor,
21 there's no way for it to get out. It's able to get
22 around the various pieces of tape --
23 THE COURT: I mean, it's got to come in from the
24 windows or roof or improper insulation, doesn't it?
25 The water itself.

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1 THE WITNESS: Well, the stucco is a material
2 that's always considered wet on the back side.
3 THE COURT: Okay.
4 THE WITNESS: Okay. And when you -- you have
5 things like building felt, fifteen-pound felt, used
6 as --
7 THE COURT: What should they attach the stucco
8 to? I think you said they had felt here. What should
9 they have attached it to?
10 THE WITNESS: Let me finish and then I'll come
11 back to you.
12 THE COURT: Okay. All right.
13 A. What I was going to say is, I didn't get to
14 mention earlier, is we found places where the felt --
15 building felt was used as a weather-resistant barrier, but
16 it was all vertical, which --
17 THE COURT: Was that the --
18 THE WITNESS: -- does not make it waterproof.
19 Sir?
20 THE COURT: That was the kind -- what was used?
21 You know, they've got that black felt and they've got
22 some that's waterproof.
23 THE WITNESS: These buildings they mostly used
24 the Tyvek.
25 THE COURT: Okay. Is that proper or --

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1 THE WITNESS: Yes. Tyvek is fine.
2 THE COURT: Okay.
3 Q. [Mr. Bundy] But you have to use it
4 horizontally?
5 A. You have to install it -- if you have vertical
6 joints of Tyvek, you have the same problem. What it is is
7 you're going to have the building felt.
8 THE COURT: You've got to make the joints run in
9 the opposite direction?
10 THE WITNESS: Right.
11 THE COURT: What other sources of water would be
12 behind the stucco causing the problems, other than the
13 windows?
14 THE WITNESS: You can get water around --
15 through the stucco. Talked about the cracks in
16 stucco. You get water through brick veneer. Same
17 type of thing. You can get water around sealant
18 joints, through the sealant joint, because they're
19 never perfect and they shrink and crack and all those
20 kinds of things.
21 THE COURT: So the bottom line, you've just got
22 to have some way for it to get out?
23 THE WITNESS: You've got to have some way to get
24 it out.
25 THE COURT: Okay.

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1 Q. [Mr. Bundy] Was there a proper water-management
2 system installed in these buildings?
3 A. No.
4 Q. And is it presumed, when you design a building,
5 that water is going to get through the brick and through
6 the stucco?
7 A. Yes, it is.
8 Q. And so you have to have a secondary drainage
9 plane to collect and have the water exit out; correct?
10 A. That's right.
11 Q. And you didn't find that?
12 A. That's not there.
13 Q. Even if the windows hadn't leaked, you would
14 still have had all this water in this building or some
15 amount of it?
16 A. You would have some amount of it, yes, sir.
17 Q. Okay. Thank you.
18 THE COURT: Let me see. It's 1:30. Why don't
19 we take a break at this time. Okay? What time do you
20 want to start back?
21 MR. BUNDY: That's at your pleasure.
22 THE COURT: Well, what time --
23 MR. BUNDY: I'm always ready to go.
24 MR. MAYBANK: We would like to --
25 THE COURT: Pardon?

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1 MR. MAYBANK: -- I guess try to push it along
2 somewhat. We do have witnesses we would like to get
3 out of here.
4 THE COURT: How about 2:30?
5 MR. MAYBANK: That's more than fine, Your Honor.
6 THE COURT: We'll adjourn until 2:30. See you
7 then.
8 [Whereupon, a recess is taken from 1:27 p.m. to
9 2:32 p.m.]
10 THE COURT: Ready to proceed?
11 MR. BUNDY: Yes, Your Honor. Thank you very
12 much.
13 Your Honor, just a couple of housekeeping
14 matters. I inadvertently left out asking you to admit
15 31-B. I think there's no objection.
16 MR. MAYBANK: What is it?
17 THE COURT: Pardon?
18 MR. BUNDY: It's the rest of the proposal to fix
19 the elevator pit. It just had a letter on top as A,
20 and B was behind it. I neglected to --
21 [Off the record momentarily]
22 THE COURT: All right. 31-B admitted without
23 objection.
24 MR. BUNDY: Thank you, Your Honor.
25 [Whereupon, Plaintiffs' Exhibit Number 31-B is

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1 admitted into evidence by the Court]
2 MR. BUNDY: Additionally, Your Honor, there's a
3 new exhibit, 182, which is the cost from Southeastern
4 Construction to replace the unit -- the floors in the
5 units 2-A and 2-B.
6 THE COURT: What's the number?
7 MR. BUNDY: It will be Plaintiffs' Exhibit
8 Number 182.
9 THE COURT: Any objection?
10 MR. MAYBANK: Your Honor, not at this point.
11 Pardon me. Not at this time. I believe he'll have
12 someone testify about it. We'll take it up at the
13 damages portion.
14 THE COURT: 182 without objection.
15 [Whereupon, Plaintiffs' Exhibit Number 182 is
16 admitted into evidence by the Court]
17 THE COURT: That's the flooring?
18 MR. BUNDY: Yes, Your Honor. This is the floors
19 where there's no acoustical problem because they're
20 above the -- they're above the garage. But these are
21 the floors that are popping up.
22 THE COURT: The floors that are coming up?
23 MR. BUNDY: Off the concrete where it's bare
24 concrete. And it's just to those units --
25 THE COURT: Above the garage.

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1 MR. BUNDY: Right. Yes, Your Honor.
2 Q. [Mr. Bundy] Mr. Padgett, I believe where we
3 were -- because we were going to go through, quickly, the
4 Southeastern estimate, which has previously been marked
5 and I believe --
6 What is that number again, please, for the
7 record?
8 A. 180.
9 Q. 180. The first page of the estimate is just
10 simply the contractor general overhead and markup and that
11 sort of thing.
12 So let's move on to the wall repair at rear
13 stucco facade. Can you explain why that work needs to be
14 done and briefly explain the scope of work, please?
15 THE COURT: Is this all of the buildings, or is
16 it broken down by building?
17 MR. BUNDY: What this is, Your Honor, is he did
18 it by one building and then they multiply it by six.
19 And then some of the buildings -- like one building
20 has a different repair than another in the bottom and
21 so it's a little bit different when we get to the
22 back.
23 THE COURT: Okay.
24 MR. BUNDY: Thank you.
25 Q. [Mr. Bundy] If you would, sir.

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A. This item one refers to the rear diningroom walls. These are stucco walls, that I showed you pictures of, that have the extreme damage associated with them. And this repair is one-hundred percent replacement of sheathing, wall sheathing, and fifty percent of the studs.

Q. And that's just an estimate, fifty percent; right?

A. That's right. It's just a guess, guesstimate.

Q. Based upon what your experience has been?

A. Yes.

Q. Mr. Padgett, since you started working on this project, how many hours have you spent on the site investigating or trying to determine how to fix things?

A. I know you asked me to add all that up but I -- unfortunately, Mr. Bundy, I didn't have time to do that.

Q. Well, just give me an approximation. If you could just give me the approximate number of hours you've spent on this job since you started working on it.

A. Hundreds of hours.

Q. So you feel like you're fairly familiar with the project?

A. I'm very familiar with the project.

Q. On a firsthand basis?

A. Yes, sir.

Q. And you're also familiar, are you not, based on

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1 your experience with pricing of contractors, whether
2 prices are reasonable and within the reasonable range; is
3 that correct?
4 A. Yes.
5 Q. And, in fact, part of what people in your
6 profession do is while they may not estimate jobs, they do
7 give probable statements of construction costs so that the
8 owner-representatives know the contractor is not too far
9 out of line?
10 A. That's right.
11 Q. And even before you bid jobs sometimes you'll
12 give an estimate as to what you think it ought to cost --
13 A. That's right.
14 Q. -- within reason?
15 You've had a chance to review this estimate?
16 A. I have.
17 Q. Do you find it to be within a reasonable range
18 of estimates for the work that is involved in this case?
19 A. I do, yes.
20 Q. All right, sir. So this first item, is there
21 anything else you can say about that?
22 A. No.
23 And item number three basically entailed the
24 removal and replacement of all the stucco.
25 Q. Right.

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A. The difference in item number three is where we don't expect the advance stage of deterioration of the wall structure.

Q. So you think that the rear-stucco facade is the worse facade on all buildings?

A. No question.

Q. All right. Now, we move through the estimate because what was in this estimate is no longer in this estimate, which is replace all windows and exterior doors, not in estimate, not in scope. I guess that's -- NIS is not in scope?

A. Right.

Q. So we now turn to page six, item three. That's what you were just discussing, removal and replacement of all stucco?

A. That's right.

Q. And, briefly, just tell the judge what it is involved in this.

A. Well, what you have to do is you have to strip the walls. You have to put scaffolding up, strip the walls down, replace all the damaged wood, new weather-resistant barrier, new lathe, new stucco accessories, and three coats of plaster.

Q. Is this what should have been done to start out with?

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A. Yes.

Q. So it's not any different from what they should have had to start out with?

A. It's really no different, except we're not going to mess up the lathe paper joints and we're going to put proper control joints in and we're going to --

Q. You're going to do it right?

A. We're going to do it the right way.

We're going to provide drainage at the bottom of the walls.

Q. The next one is remove and replace the brick. I think we discussed that.

A. We did.

Q. And you're just simply going to put it up like it ought to be put up --

A. That's right.

Q. -- with the appropriate accessories and seismic accessories --

A. That's right.

Q. -- is that correct?

A. That's correct.

Q. Replace the exterior trim. What's the nature of that?

A. Item five, paint trim, paint porch ceilings, those items are all associated with the fact that you're

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1 going to declad and reclad these buildings and, you know,
2 you're just going to mess up the trim.
3 Q. So when you do all this work, you're going to go
4 back and paint it all over?
5 A. That's right.
6 Q. The guardrails are not in the scope; correct?
7 A. Correct.
8 Q. Item number nine, wall insulation, what's that
9 about?
10 A. That was that eight-inch section of wall that
11 occurs at each floor, all the way around these buildings,
12 where there's no wall insulation.
13 Q. Brick entry steps?
14 A. Yes, sir.
15 Q. And we talked about that --
16 A. Yes, sir.
17 Q. -- and the rationale. And all these things in
18 your opinion need to be done to a reasonable degree of
19 engineering certainty?
20 A. They do.
21 Q. Garage slab repairs?
22 A. Garage slab repair is for building two only.
23 Q. And that's that note under item eleven which
24 says, note, item eleven occurs at building two only?
25 A. That's correct.

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1 MR. BUNDY: And that, Your Honor, is one of the
2 reasons you'll see different numbers at the end for
3 the cost of these buildings, some of them.
4 Q. [Mr. Bundy] Mr. Padgett, let me ask you. Have
5 you recently discovered or determined that some of the
6 work that was done by Carriage Hill early on to repair
7 deficiencies has once again failed?
8 A. Yes. In the last three weeks or so, we
9 discovered another shower problem in building six.
10 A-stack, I believe it is. And you heard the gentleman
11 testify this morning about that was his mother's unit.
12 They had to take the tile out. He had his contractor take
13 the tile out so the homeowners association contractor
14 could make all the structural repairs. During that
15 process, the ceiling was removed and we discovered that we
16 had roof damage above the shower unrelated to the shower
17 problems themselves. And that is a location where the
18 balcony roofs tie into the exterior building walls, which
19 was the subject of a 2008 repair by Carriage Hill.
20 Scaffolding is going up over there this week to take care
21 of that.
22 Q. So 2008, repair by Carriage Hill has once again
23 failed?
24 A. Yes, sir.
25 Q. The next one is the parapet-wall returns.

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1 A. Right.
2 Q. What was that?
3 A. That was the picture you saw of Mr. Freeman
4 pushing on the walls that were just sitting on top of the
5 roof deck. They had to put some braces in there to rework
6 the roofing to make that --
7 Q. Item thirteen is the French drain system. Why
8 is that necessary?
9 A. Well, if you've been on the site after it's
10 rained, there's a lot of part you really can't walk
11 around. I mean, you will sink in the clay up to your tops
12 of your shoes. What they've done is they're created a
13 perched-water condition. That's where you have an
14 impervious layer of soil sitting over the free-draining
15 soil, the sandy type of soil, so when it rains, water goes
16 through the sod and it just sits there. So it's always
17 mushy around those buildings.
18 Q. Is that a function of the way the site was
19 originally grubbed and cleared?
20 A. That's right.
21 Q. So it wasn't done properly?
22 A. No question. That's right.
23 Q. They removed all the topsoil and never put it
24 back, basically?
25 A. Yeah. Right. Yeah.

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Q. And that's a 3,000-dollar item?

A. Yes, sir.

Q. The next item is the item fourteen, which is the acoustic modifications to the floors. And I noticed that fifteen is the acoustic ceiling repair. So there are two aspects to this sound remediation or sound correction, I guess?

A. That's right.

Q. Let's talk about the modifications to the floors, first, if you will. I believe you've already testified you believe it would be necessary?

A. Yes.

Q. Tell me what is involved in repairing these floors from above for purposes of sound.

A. The floors you're asking about?

Q. Yes.

A. What you have to do is you have to of course strip off the finished floor, whatever it is that's there. You have to get to every corner of these units to be able to adequately do this, which means kitchen cabinets have to come out, refrigerators have to come out, all the furniture has to come out, base trim has to come off the walls, you have to expose the floors right down to the structural wood.

Q. And I believe these items 14.1 through 14.20

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1 outline those things that have to be removed?
2 A. That's right.
3 And then you're going to be adding an inch and a
4 half of Gyp-Crete, and probably an acoustical underlayment
5 board, so you're raising the floor. So now your back-
6 splashes on your kitchen counters have to be raised. All
7 the doors have to be undercut to actually fit in there
8 again.
9 Q. And none of this would have been necessary had
10 Mr. Rumplick realized -- or had known that it was needed?
11 A. Correct.
12 Q. It could have been done in the normal sequence
13 of events?
14 A. Right.
15 Q. You wouldn't do this like they did the porch?
16 A. Right.
17 Q. Right?
18 A. That's correct.
19 Q. All right, sir. Now, during this period of time
20 I assume you wouldn't be able to live there, would you?
21 A. You can't because you've got no facilities. You
22 can't cook, you can't use the bathrooms, you've got to --
23 Q. So you're going to have to hire a mover to come
24 get your furniture and store it?
25 A. That's right.

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Q. Bring it back when you're done and find a place to live while it's going on?

A. That's right.

Q. Now, in terms of the repair, are they going to be able to do -- or do you know whether the plan is to do it all at one time, all six buildings?

A. Reasonably, you would want to do them sequentially. But I would not want to go start and do them all right at one time.

Q. Well, would there be --

A. So you would go building by building.

Q. Would there be enough staging area to stage a construction project redoing six buildings at one time?

A. That would be hard to do.

Q. Now, when you perform this repair that you have provided the scope of work for, what building code will be required to be followed?

A. It would be the building code in effect when we start the work.

Q. Let's assume you start before July of this year. What would it be?

A. 2006 IBC.

Q. And you have designed it for that?

A. Yes. None of this would change.

Q. And if it's after that time, it will be what?

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1 A. It will go -- after July of this year, it will
2 go to the 2012 IBC.
3 Q. Have you had a chance to review that code to see
4 if it --
5 A. Not as yet.
6 Q. But your assumption is that there are not going
7 to be any changes that would increase the cost?
8 A. Yes, sir. That's correct.
9 Q. Is it your experience that the code ever gets
10 less strict as time goes on?
11 A. I've never seen that happen. When I first
12 started in this business back in the late '70s, the
13 building code was a little small book about an inch, inch
14 and a half thick, about this size. Now it's --
15 Q. We saw the code --
16 A. -- 15,000 pages. And if you had to print all
17 the performance specifications of all the ASTMs, it would
18 be more papers than you have in this room.
19 Q. So it's reasonable to assume that the cost of
20 construction is not going to go down under the new code?
21 A. It's not going to go down.
22 Q. It's possible it could go up, but it's certainly
23 not going to go down?
24 A. It's not going to go down.
25 Q. Now, there's been some discussion about what

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1 code applied to these buildings when they were
2 constructed. Okay? Your code analysis here today related
3 to the brick, stucco, et cetera, all the code opinions you
4 have given. Does it matter, for purposes of your opinion,
5 whether the code was the 2000 IBC or the 2003 or whichever
6 one it was?
7 A. No, because when I did this work I did it for
8 the 2000 and the 2003.
9 Q. So under either code, 2000, 2003, violates the
10 code?
11 A. Yes, sir.
12 Q. And it probably violates previous codes, doesn't
13 it?
14 A. I would have to think about that a little bit,
15 but I'm almost certain most -- ninety-nine percent of what
16 we talked about would have been in a previous --
17 Q. Let's go to item fifteen, the acoustical ceiling
18 repairs, the other half of the sound remediation
19 correction. What's involved in that?
20 A. Well, again, I mean, you have to get -- you have
21 to clean the ceilings up all the way to the underside of
22 the original roof -- the floor trusses. And so that means
23 taking the ceilings down, the grids down, taking all that
24 stuff out of there. Have to take the crown molding from
25 around the side of the rooms and all those kinds of

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1 things. Light fixtures. Everything.
2 Q. So you take out the remediation done by Carriage
3 Hill --
4 A. Right.
5 Q. -- and you even go further and take out the
6 Gyp-Crete, which is mechanically affixed to the trusses,
7 and the hat channels; correct?
8 A. That's right.
9 Q. None of which was done in the remediation by
10 Carriage Hill?
11 A. [No response]
12 Q. Those things were not removed by Carriage Hill?
13 A. They were not removed, no.
14 Q. They should have been removed?
15 A. They should have been removed.
16 Q. All right. And then what do you do after you
17 take all that out and get back to where you should have
18 been?
19 A. Well, then you put in the new grid, hang the
20 grid from the existing structures, install the acoustic
21 insulation, lower the sprinkler heads, put in the new
22 Sheetrock, light fixtures, all those things, all those --
23 just basically putting everything back, and paint it.
24 Q. Put aside the issue of the Gypsum a minute. Is
25 it fair to say that the minimal sound remediation should

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1 have been done -- or certainly the only correct sound
2 remediation that should have been done by Carriage Hill to
3 the ceiling would be what's outlined in this exhibit?
4 A. Exactly.
5 Q. What they did was just wrong?
6 A. It really didn't -- you heard the testimony. I
7 mean, it really didn't help much.
8 Q. In fact, I think Ms. Severance referred to it in
9 one of her complaints as a drum, it sounded like someone
10 was beating on a drum?
11 A. I think I heard her say that.
12 Q. Item sixteen, shower waterproofing. Let's talk
13 about that.
14 A. Yes, sir. Basically, what you've got to do is
15 you've got to take the glass doors off the showers, remove
16 all the tile, remove the backer-board that's there,
17 replace whatever damaged wood structured is inside behind
18 the tile that you can't see, and you basically come back
19 out again. New waterproofing system, new backer boards,
20 new tile --
21 Q. And all you --
22 A. -- and new shower pan.
23 Q. And all you end up with is what you should have
24 had in the first place?
25 A. That's right.

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1 Q. Okay. Trim and paint?
2 A. Yes, sir. Reinstall the doors.
3 Q. Gypsum remediation, B.D. remediation. What is
4 that?
5 A. I think this -- I think what they were referring
6 to here is the mold issue that we have seen where we've
7 taken the tile out of these showers. The one I was in in
8 building six a few weeks ago, I mean, I walked in there,
9 everything is black, I get a headache. I mean, it's --
10 you just can't do that. I mean, you've got to close these
11 things off and have mold remediation protocol with the
12 plastic and the zipper doors and have negative air
13 machines going and air scrubbers and all that kind of
14 stuff.
15 Q. Do you expect to a reasonable degree of
16 engineering certainty, based on what you've seen in your
17 experience, that's going to be necessary in every one of
18 these units?
19 A. There'll be seventy-two -- there were seventy-
20 two showers all together, yes.
21 Q. But all of them are going to have to have this
22 same care --
23 A. Yes.
24 Q. -- taken; correct?
25 A. Yes.

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1 Q. Window treatments are not in the scope.
2 HVAC in lobby. What's that about?
3 A. Well, there's I guess what they call a package
4 unit, the HVAC unit that cools and heats the stair towers.
5 Q. This is part of the common elements?
6 A. Yes. You walk in the brick stairs through glass
7 doors and you come to the stairs. In the summertime it
8 might be sixty-eight, seventy degrees at the top -- at the
9 bottom level. By the time you get up to the top level,
10 it's like ninety or ninety-two degrees. And that's just
11 not what you expect in buildings like that.
12 Q. Well, the space -- it's an interior space, isn't
13 it?
14 A. Yes, it's an interior space.
15 Q. And it should be properly heated and air-
16 conditioned?
17 A. That's right.
18 Q. In your opinion, is it?
19 A. It's not.
20 Q. And what needs to be done to fix it?
21 A. Well, you've got to hire a mechanical engineer,
22 somebody that knows a lot more about air-conditioning than
23 I do, to fix that problem.
24 Q. The next one is carpet of stairs to garage.
25 A. Yes, sir. That's a set of wood stairs that goes

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1 from that same stair lobby downstairs into the garage.
2 It's just made out of raw wood. That's incompatible with
3 the style of buildings these are supposed to be.
4 Q. Upper landing repairs?
5 A. Upper landings: we had so many problems with
6 the roofs back in the day. Before those were fixed, so
7 many people up and down the ladders that the carpet on
8 those fourth floors right at the base of those ladders
9 were in very poor shape, so we were asking that those be
10 replaced.
11 Q. And then there's project photographs. What's
12 the necessity of that? Why do you need project
13 photographs?
14 A. Documentation. These owners are going to have
15 to disclose what's been done to their buildings later on,
16 so you need to get photographic records of what's done.
17 Q. So when you make a disclosure, try to sell,
18 you'll be able to give your perspective purchaser not only
19 Ted Padgett's certificate that it was done properly but
20 these are photographs of what was done?
21 A. Absolutely.
22 Q. Then we have a summary, I believe, that follows,
23 for the various buildings; is that correct?
24 A. Yes, sir.
25 Q. Okay. We don't need to go through all of that.

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1 And then we have two -- then me finish up with
2 the -- thank you, Mr. Padgett. That's all I have on that
3 issue.
4 MR. BUNDY: I believe that's all I have, Your
5 Honor. Thank you very much. The witness is with you.
6 THE COURT: Okay. Cross-examination.
7 MR. MAYBANK: Good afternoon, Mr. Padgett.
8 THE WITNESS: Mr. Maybank.
9 MR. MAYBANK: How are you today?
10 THE WITNESS: Wonderful.
11 CROSS-EXAMINATION
12 BY MR. MAYBANK:
13 Q. This elevator shaft problem, what building was
14 that in?
15 A. Building one.
16 Q. That's the only building that had a problem with
17 that?
18 A. Yes, sir.
19 Q. So that's not systemwide, that's just a singular
20 incident in that elevator shaft?
21 A. Yeah. Building one was the only one that I've
22 seen that was constructed with precast wall panels.
23 Q. The other buildings were fine?
24 A. Yes, sir.
25 Q. I understand you're an engineer?

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1 A. That's correct.
2 Q. What type of engineer are you?
3 A. I'm a structural engineer.
4 Q. Are you a member of -- you've given opinions as
5 to the acoustical issues as they exist on this project;
6 correct?
7 A. I have.
8 Q. And your opinions have been that the acoustical
9 issues, as built, does not meet what, specifically?
10 A. Well, we had -- of course, we had an acoustical
11 engineer run tests.
12 Q. Were you there for those tests?
13 A. I was not there for the tests but I do have a
14 copy of the report. And --
15 Q. Let me ask you this. When you say we had an
16 acoustical engineer, are you talking about the acoustical
17 engineer hired by the homeowners association or by
18 Carriage Hill Associates?
19 A. Homeowners association.
20 Q. And that is the --
21 A. Lisa Schott.
22 Q. Lisa Schott out of Florida?
23 A. That's correct.
24 Q. And are you relying on her report and the
25 conclusions in that report to form your opinion as to the

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1 acoustical soundness of this project?
2 A. Understanding your questions: only
3 peripherally. Her work was specific. Do the test, make
4 the comparison, code analysis, so on.
5 I have never seen this as a code issue. You
6 know, if the installation met or did not meet a very low
7 code requirement, that would be completely inconsistent
8 with the type of buildings these are supposed to be.
9 Q. I don't understand what you mean by low-code
10 compliant, because the gentleman from the City got up
11 there and said, here's the code. Didn't say high code,
12 low code, medium code, or any code, just said here's the
13 code. And my understanding is in that IBC building, there
14 are a couple of paragraphs regarding the standards by
15 which you have to design and build these buildings from an
16 acoustical perspective; correct?
17 A. That's right.
18 Q. And other than that, that's it. No more mention
19 in that code about the acoustical levels that you have to
20 have in that project.
21 A. I was trying to explain that.
22 Again, the acoustics only made it into the code,
23 fairly recent development. It's not been -- they don't go
24 back forty years or anything like that. As things go into
25 the code, they generally come in at very basic low levels.

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1 They're not going to all of a sudden spring this
2 requirement -- the code writer is not going to spring this
3 requirement on the construction industry and expect them
4 to change everything overnight. So as I said, these are
5 very recent additions to the code, maybe as little as ten
6 years or so possibly. So what you're -- what the code
7 requirements are are minimum necessities.
8 Q. Well, you testified today nothing but to code,
9 whether it be the brick, the stucco. All that's to that
10 minimum code. But all of a sudden you've got a different
11 definition of code as a minimum as it relates to
12 acoustical issue
13 A. I explained that to you. I was trying to get to
14 the end of it.
15 What Ms. Schott found was that from impact
16 standpoint, the buildings didn't meet that code, didn't
17 meet it as they were constructed, And I'm of the opinion
18 --
19 Q. I'm sorry. They did not meet as constructed
20 defect?
21 A. That's right.
22 Q. I don't think we disagree there.
23 A. Yeah.
24 Q. I don't -- and that's why the buildings were
25 remediated, isn't it?

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1 A. Yeah. And, you know, we're going to split some
2 very fine hairs here, which is fine with me. But she
3 detected a level of forty-nine. The actual code is fifty.
4 Although if you test it, the allowable code requirements
5 would be reduced to forty-five.
6 Q. In the field.
7 A. In the field. I understand.
8 But, you know, the physical characterization of
9 what you're hearing is it barely -- it didn't -- still
10 didn't meet what the original code required. Now, all --
11 MR. BUNDY: Your Honor --
12 Q. [Mr. Maybank] Wouldn't --
13 A. One second.
14 MR. BUNDY: -- he's interrupting the witness.
15 If he would let him finish, I think he could get you
16 through this thing.
17 MR. MAYBANK: I thought he was finished. I
18 apologize.
19 THE COURT: Okay. Go ahead. Finish your
20 answer.
21 THE WITNESS: I'm trying to, Your Honor.
22 A. Now, as far as I'm concerned, in my experience
23 with these style condominiums, this is the only one that's
24 ever had this problem.
25 Q. [Mr. Maybank] Have you ever been retained by

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1 any developers to design acoustical portions of their
2 plans?
3 A. No.
4 Q. Are you a member of the Technical Committee on
5 Architectural Acoustics?
6 A. I am not.
7 Q. Are you a member of the Acoustical Society of
8 America?
9 A. No.
10 Q. Are you a member of the Technical Committee on
11 Noise?
12 A. No.
13 Q. Are you on the Council of Acoustical
14 Consultants?
15 A. No.
16 Q. Have you ever designed, for any building,
17 acoustical standards from an engineering perspective?
18 A. No.
19 Q. Are you, or have been, a member of the Institute
20 of Noise Control Engineering?
21 A. No.
22 Q. Have you had any papers, any review, any peer
23 review, on any writings, as it relates to acoustical
24 construction in buildings?
25 A. No.

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1 Q. I apologize. I think I'm going to ask the same
2 question, because I can't remember what I asked you.
3 Have you been peer-reviewed by any engineers in
4 South Carolina, or nationally, as to your opinions as they
5 relate to whether or not a building has been acoustically
6 built in a sound manner?
7 A. No.
8 Q. We'll get back to the acoustical issue. Okay?
9 MR. MAYBANK: At this time I would ask the Court
10 to strike any testimony Mr. Padgett has offered as an
11 acoustical -- from an acoustical perspective as not
12 being qualified in the field of acoustical technology,
13 drafting, and installation on any buildings.
14 THE COURT: Mr. Maybank, I think he testified as
15 to what type of construction should be appropriate
16 between floors and ceiling between apartments, not as
17 to the sound in the apartments. Now, I'm not sure
18 where we're -- you're drawing the line between
19 acoustical and actual what is standard in the industry
20 in preventing some sound between apartments. I
21 thought he testified that this is what was needed to
22 prevent sound and normal in the industry when he
23 testified earlier. Now you're trying to move it over
24 to noise level.
25 MR. MAYBANK: Well, acoustical. I will go with

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1 either one.

2 THE COURT: I mean, what's the standard in the

3 industry? That's what the question is, not what the

4 decibel levels are or not. I understand where you're

5 coming from, but I don't think he testified to that,

6 so your motion is denied.

7 MR. MAYBANK: Thank you, Your Honor.

8 Q. [Mr. Maybank] Is there a difference between

9 airborne and impact noise?

10 A. Yes, sir.

11 Q. And as these buildings stand today, do they meet

12 or exceed the code for airborne noise?

13 A. I think they're okay for that.

14 Q. And as they exist today, do they meet and exceed

15 the code for impact noise?

16 A. Not -- no, sir.

17 Q. Can you specifically point out to me what report

18 shows that -- well, let me ask you this. What portion of

19 the unit fails to meet the impact-noise criteria under the

20 code guidelines?

21 THE COURT: Let me ask one question so I can

22 understand the next motion. Is it the defense's

23 position that the code itself is industry standard,

24 period?

25 MR. MAYBANK: It will be the defense --

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1 THE COURT: Or is it just one thing that you
2 look at when you determine an industry standard? I
3 never have thought that an industry standard has got
4 to actually be the code. Is that correct or
5 incorrect?
6 MR. MAYBANK: I will let my expert speak to
7 that, Your Honor, as it relates to --
8 THE COURT: Well, what do you say legally? I'm
9 asking you legally.
10 MR. MAYBANK: I believe that you have to
11 probably comply with the code.
12 THE COURT: Right. As a minimal level. Then
13 there can be an industry standard different from that.
14 Is that correct or incorrect, legally?
15 MR. MAYBANK: You know, I don't know, because I
16 don't know every industry and I don't know under the
17 acoustical. I mean, I can certainly ask.
18 But I certainly think you have to at least meet
19 code and then --
20 THE COURT: That's fair enough.
21 MR. MAYBANK: -- and then you can go from there.
22 I say that -- well, that's a beginning point, yes,
23 Your Honor.
24 THE COURT: A beginning. That sounds better for
25 you. Bare minimum sounds better for the plaintiff.

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1 MR. MAYBANK: I understand.
2 THE COURT: Okay. Thank you very much.
3 MR. MAYBANK: Thank you, Your Honor.
4 Q. [Mr. Maybank] Were you able to find in the
5 report -- and where in the units is the code not compliant
6 for impact noise?
7 A. It would be the -- make sure I get this right --
8 the floors, the third floor and the fourth floor. Those
9 two floors would be subject to impact violations, if you
10 want to call them that.
11 Q. And are you taking your opinion, and through
12 your interpretation of that report, to mean that every
13 floor for all surface areas between the third and fourth
14 floor is not meeting the impact rating as required by
15 code?
16 A. Let me make sure I understand what you're
17 asking, Mr. Maybank. Are you suggesting that maybe if the
18 machines were put at point A and it didn't meet, is there
19 a point B that they can be placed in that room and would
20 meet it? Is that what you're asking me?
21 Q. Yes.
22 A. I don't think so. But, I mean, I wasn't there
23 for the test so I don't know that.
24 Q. So it's possible that that is correct and that
25 there are areas that do meet the code?

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A. That's your statement. I'm not saying that at all. I'm saying it's possible that you might be able to test it in that fashion. But I don't know that fact.

Q. But your testimony, then, today, is the entire floor surface, ceiling surface, between the third and fourth floor just doesn't meet the code?

A. That is similar, yes.

Q. How about in the rooms that have carpet?

A. I don't think there's any testing done there. I don't know.

Q. All right. Fair answer.

You were asked a pretty pointed question by the judge and I would like to follow up on it. In your estimate, on the estimate done by Mr. Willis that you've now reviewed with the plaintiff, you have pulling out all of the windows; correct?

A. Yeah.

Q. And all of the doors?

A. Yes.

Q. My understanding is is that the windows and doors on this project were inherently defective and manufactured in an incorrect way; is that correct?

A. Yes, sir.

Q. And that manufacturing and defect allowed water to penetrate from around --

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1 MR. MAYBANK: I shouldn't touch this --
2 THE WITNESS: You shouldn't hijack my
3 presentation.
4 Q. [Mr. Maybank] But what I'm trying to figure out
5 is does the -- with the water coming in from around the
6 brick mold -- is that where it was coming in into these
7 windows?
8 A. There's a lot of water penetration around the
9 brick mold. That's correct.
10 Q. I agree with that. There is a lot of water
11 penetration around the brick mold. And my understanding
12 is is that there's also a lot of water coming in around
13 the French doors, false French doors?
14 A. Correct.
15 Q. And as I look at those buildings in the
16 background --
17 MR. MAYBANK: And, frankly, I don't know if the
18 judge can see that.
19 Q. [Mr. Maybank] -- but I'm looking at the removal
20 and replacement of most of the -- if all the windows and
21 doors are coming out, I'm looking at the square -- just
22 the square area on those buildings. What percentage of
23 the square area on these buildings, when you remove the
24 windows and the doors, will that consist of?
25 A. You're asking me if you take a window and door

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1 out, what are you -- how much are you left with?
2 Q. That's right.
3 A. It's probably in the order of seventy-five
4 percent.
5 Q. And then if you are to remove the windows and
6 the -- if you're to remove the stucco around the windows
7 and doors, as shown in this clip from the damage that
8 looks like is a result of the water coming down the
9 windows getting into the substrate, once you remove then
10 that additional brick and stucco, what are you left with?
11 A. Well, obviously you would be left with less
12 percentage but probably more than you -- my point is this.
13 When you take -- when you take one of these French doors
14 out of the third floor, let's say, you've got -- or the
15 second floor, you've got to remove a lot of brick above
16 that, simply because there's not enough brick there to be
17 able to arch over the opening. You take a window out of
18 the brick wall on the third floor, you have to take all
19 the brick all the way up to the fourth-floor level. So,
20 you know, you have to take a lot of wall out to be able to
21 get these windows and doors out.
22 Q. They're big, aren't they?
23 A. It's a pretty good size.
24 Q. You and I were out there when they took what I
25 believe -- I don't see Mr. Reece. Didn't we take one out

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1 of Mr. Reece's unit?
2 A. It was Mr. Moran's [phonetic] unit, was it not?
3 Q. I can't remember. But it was large.
4 A. No. You're talking about Mr. Bill Jung's.
5 Q. Maybe that's who it was.
6 A. Yeah.
7 Q. So if you're taking out this specific French-
8 door combination here, you're going to have to take out
9 the brick below it and then you're going -- and since
10 you're going all the way up that building, you're taking
11 all the brick off above it, too; right? All this has to
12 come out?
13 A. Well, what you have to do is you have to take
14 off the sill, of course, below this window to be able
15 to -- this French door right here.
16 Q. Sure. That's gone.
17 A. And then you have to take the band between the
18 two doors out. You've got to take enough off each jamb to
19 physically get them out.
20 Q. Yes.
21 A. And then if you went up, you would have to take
22 the brick above that.
23 Q. I agree.
24 A. Okay.
25 Q. So when we take out all these windows and all

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1 these doors, we're taking a heck of a lot of this cladding
2 off the side of these buildings, aren't we?
3 A. Yes.
4 Q. And we're taking all that off because of the
5 water penetration from the improperly manufactured and
6 designed Weather Shield windows; correct?
7 A. Yes.
8 Q. All right.
9 THE COURT: And you said that would be what
10 percentage of the total brick?
11 THE WITNESS: I don't know, Your Honor. I would
12 be guessing, but, I mean --
13 THE COURT: I understand it's a guess, but --
14 THE WITNESS: You're probably --
15 THE COURT: -- your educated guess is better
16 than mine.
17 THE WITNESS: Well, you're probably still left
18 with seventy-five percent.
19 THE COURT: So it'll take out twenty-five
20 percent of --
21 THE WITNESS: Yes.
22 THE COURT: -- the total brick?
23 THE WITNESS: Yes, sir.
24 Q. [Mr. Maybank] How about -- so you're telling
25 me -- just so I understand. So if I look at these

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1 buildings back here, you're telling me -- and I'll get
2 that --
3 THE COURT: Why don't you make it a big picture
4 so we can all see it?
5 MR. MAYBANK: I don't know how to do that. I've
6 been trying to do that.
7 THE COURT: Get with Mr. McDonald. Somebody
8 over there can figure it out.
9 THE WITNESS: Do you want the pictures out of
10 the front of my notebook?
11 MR. MAYBANK: Well, that would be great.
12 [Off the record momentarily]
13 [Whereupon, Mr. Maybank proffers documents to
14 the Court]
15 MR. MAYBANK: All right. I've handed the judge
16 the photograph that you have. Can we mark that, Ted?
17 Do you mind?
18 THE WITNESS: Yes. I have more copies of that.
19 THE COURT: What number? 236?
20 THE COURT REPORTER: 236.
21 [Whereupon, Defendants' Exhibit Number 236 is
22 marked by the court reporter]
23 MR. MAYBANK: 236, Your Honor.
24 THE COURT: Any objections?
25 MR. BUNDY: [No response]

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1 THE COURT: Any objections?
2 MR. BUNDY: No objection.
3 THE COURT: All right. 236 admitted without
4 objection.
5 [Whereupon, Defendants' Exhibit Number 236 is
6 admitted into evidence by the Court]
7 THE COURT: That's a picture of the front of --
8 what building is that? Or does it matter? Are they
9 all the same front?
10 MR. MAYBANK: I don't think they -- I think
11 they've all got the same front, Your Honor.
12 THE COURT: Same front? Okay.
13 Q. [Mr. Maybank] So if you were to take on this --
14 on page 236 -- and I've got the French doors on four
15 separate planes going up three stories; correct?
16 A. Right.
17 Q. You would have to take the brick between each
18 one of these; correct?
19 A. Right.
20 Q. Then you would have to take the stucco around
21 this French-door window, as well; correct?
22 A. Right.
23 Q. So you would literally be left with nothing on
24 these four vertical --
25 A. Well, what you just said is true. But you also

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1 have to understand the return wall's here, here. And as
2 you go around the side of the building, you can see in
3 this picture here there are large areas of wall without
4 any windows in it. So it's not like these buildings are
5 windows with a little bit of brick and stucco around them.
6 THE COURT: Have you got any pictures of the
7 side and the front?
8 MR. MAYBANK: We do. We've got those through
9 another expert, Your Honor. We'll bring those in.
10 Q. [Mr. Maybank] So, then, is it your testimony,
11 then, if we were to listen and take as truth what you're
12 saying, Mr. Padgett, that seventy percent of the skin
13 would still be on there? Would that be seventy percent of
14 the brick, or seventy percent of the stucco, or everything
15 together?
16 A. Well, something like that. It would be, you
17 know, seventy percent of the exterior skin would still be
18 there, sixty-five, seventy, something like that. I don't
19 know. I haven't sat down and tried to go through the
20 whole thing like that.
21 Q. So if somebody else had a different opinion on
22 that, who has looked at that, you would defer to that
23 person?
24 A. If somebody's actually sat down to take it off,
25 yeah.

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1 Q. And as a result of the water penetration, then,
2 on these numbers, as we've been going through them, you
3 would then have to defer -- or cost would then be shifted
4 off of these problems and onto the windows and doors;
5 correct? And by that, I mean the brick -- you say all the
6 brick has got to come off, all the stucco has got to come
7 off. And my understanding is is irrespective of the
8 windows, you gave the opinion that it was going to have to
9 come off because of the code violations?
10 A. It would have to come off anyway, yeah.
11 Q. Would you agree with me that it's got to come
12 off anyway because of the water and door problems?
13 A. You have to replace the doors and windows
14 because of the problems they created. No --
15 Q. I understand. So let's --
16 A. You've got it -- you've got it both ways,
17 counselor. If you want it, you've got it. The windows
18 have to be replaced and the exterior cladding has to be
19 replaced.
20 Q. Do the -- does the exterior cladding have to be
21 replaced because of the improperly manufactured windows
22 and doors?
23 A. No.
24 Q. And that's your opinion?
25 A. That's my opinion. You were here. I saw you

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1 sitting here when I went through the code violations in
2 the stucco and in the brick.
3 Q. I understand that.
4 And I'm going to do the flip side of what
5 Mr. Bundy did. Let's assume --
6 A. I understand.
7 Q. -- there were no violations, code violations, in
8 the stucco and in the brick and that the only thing we're
9 dealing with are improperly manufactured windows, doors,
10 that are allowing large amounts of water, as you
11 testified, to come into these buildings. Would you agree
12 with me that because of that, that may be just as good
13 enough reason why the stucco and the brick has to come
14 off?
15 A. No code violations in the stucco, no code
16 violations in the brick, you would only have to take out
17 the parts to get the windows out.
18 Q. Is it cheaper to strip and reclad this building,
19 if that was the problem, or is it easier to match the
20 brick that you're going to be putting back, or is that not
21 an issue?
22 A. Well, surgical repairs in stucco are very
23 difficult.
24 Q. Uh-huh.
25 A. Surgical repairs in brick become a matching

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1 problem.
2 Q. Yes.
3 A. The economical way to deal with this problem is
4 reclad.
5 Q. I agree.
6 So that I bring that full statement all the way
7 around: if we're going to remove the windows, remove the
8 doors, instead of surgically trying to chip away each
9 brick, wipe it clean and let's do it all over again?
10 A. We'll do it right this time.
11 Q. But is the answer yes?
12 A. Yes.
13 Q. You've been -- you were originally hired by my
14 clients; correct?
15 A. Yes.
16 Q. What were you hired to do, Ted?
17 A. I was to be their local professional engineer,
18 consulting with them on this cracked-glass problem.
19 Q. And that was the initial problems that we had at
20 The Oaks were these manufacturing defects in the windows?
21 A. Yeah. They drove nails through the edge of the
22 glass.
23 Q. The manufacturer did; correct?
24 A. The manufacturer did.
25 Q. And that led to glass breaking and water

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1 intrusion into the units?
2 A. Cracked glass. I think the water intrusion was
3 a different issue, we came to find out later.
4 Q. At all times when my clients became aware of
5 these problems, did they express concerns to you about
6 trying to fix the problems for the homeowners?
7 A. I'm not quite sure how to answer that. I mean,
8 Carriage Hill, Rich Behringer, and Jerry, they met with
9 us -- met with the homeowners for, I don't know, almost
10 two years. And there were repairs. Repairs were started
11 out there on the roof-wall intersections, the initial
12 catastrophic damages the building were receiving at that
13 time. But all that stopped in November of 2008 when they
14 realized there were bigger issues, mostly associated with
15 windows and window installations and so on.
16 Q. Did they hide any of those findings from you?
17 A. Pretty hard to hide them. I mean, I was out
18 there on the site when their people, Mike Parker and his
19 company, were doing the investigations.
20 Q. Everything that they found, did they -- as far
21 as you know, they disclosed to you through Mr. Parker?
22 A. I'm not aware of anything that was hidden from
23 me, if that's what you're asking.
24 Q. It is. I want to -- I want to make sure that as
25 far as you dealt with in dealing with my clients, when

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1 they were going involving -- investigating they either
2 hired you, or through Mr. Parker, let the homeowners
3 association know what they were finding?
4 A. As far as I know, yes.
5 Q. My understanding on the roof, Derek Hodgen -- do
6 you know Mr. Hodgen?
7 A. I do.
8 Q. He's with Construction Science Engineering?
9 A. That's correct.
10 Q. And Mr. Hodgen came out there after Mr. Parker
11 designed a retrofix for the problems with the roof, didn't
12 he?
13 THE COURT: Is the roof a part of this?
14 MR. MAYBANK: I don't think it -- I didn't think
15 it was, until --
16 THE COURT: The only thing he talked about with
17 the roof, that wall was about to fall.
18 THE WITNESS: That's right. It's not a roofing
19 issue, per se.
20 THE COURT: That wasn't a roofing issue, that
21 was just a structure --
22 MR. MAYBANK: Was that the parapet?
23 THE COURT: Yeah. That's the only thing he
24 talked about on the roof, that he needs to stabilize
25 that so it won't blow off. Is that right or wrong?

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1 THE WITNESS: That's correct, Your Honor.
2 MR. MAYBANK: I think that's correct.
3 THE COURT: I mean, that's the only thing I
4 heard about the roof. So, I mean, why are we on the
5 roof?
6 MR. MAYBANK: We're not. I thought that he had
7 found water intrusion recently from a --
8 THE WITNESS: I have, yes.
9 MR. MAYBANK: -- repair he did.
10 THE WITNESS: I have. I found it.
11 Q. [Mr. Maybank] And is that from the roof-wall
12 intersection repairs that were originally a problem out
13 there?
14 A. Yes, sir. That's what it looks like to me.
15 MR. MAYBANK: And this is where I'm going with
16 that, Your Honor, because my understanding is the fix
17 that was done was under the direction of Derek Hodgen,
18 who was hired by the homeowners association.
19 A. That's wrong. August, 2008, Sutton-Kennerly
20 came on site, Mike Parker and his company. It wasn't
21 until October of 2008 that Derek Hodgen come in to do --
22 but Hodgen's work was only associated with the roofing
23 membrane and it's superfluous. It had nothing to do with
24 the stucco wall-roof problem that we've already addressed.
25 Q. [Mr. Maybank] Are you sure about that, Ted?

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1 A. Yeah, I'm pretty sure.
2 Q. If that's different from what Mr. Parker recalls
3 in interacting with Mr. Hodgen, would you defer to
4 Mr. Parker on that?
5 A. Let me make sure we know -- that I understand
6 what you're talking about. Mr. Hodgen was not involved in
7 the repair design for this original stucco problem.
8 Q. Not the stucco, Ted. The roof, the wall,
9 intersection area.
10 A. The balcony roofs --
11 Q. No, sir.
12 A. -- as they intersect at the building walls?
13 Q. Yes. In the corners.
14 A. Yes.
15 THE COURT: Mr. Bundy, let me interrupt for a
16 second. Is there anything on this estimate on this
17 recently-found problem that's -- I don't even think
18 that's a part of this.
19 MR. BUNDY: No. No, Your Honor. It's hard to
20 keep the estimate --
21 THE COURT: I understand what you're saying. I
22 remember seeing the picture where it split. But
23 there's nothing there in -- that I've heard so far
24 concerning that, at least from this witness.
25 MR. MAYBANK: As far as I know -- I thought it

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had all been repaired. That's why when he brought it back up, I wanted to clear it up. But it's nothing being claimed.

THE COURT: Well, if they're not asking for money on it, why do you care?

MR. BUNDY: I can try to get you an estimate this afternoon.

MR. MAYBANK: I appreciate that.

THE COURT: I'm sure he can come in in the morning with an estimate for you, if you want.

MR. MAYBANK: I'm sure he will.

Q. [Mr. Maybank] Did you participate in the remediation of buildings four and five?

A. Building five I -- the rear of building five Carriage Hill repaired. And I did not participate in the design or anything. I observed some of the repairs. There was a shower problem in building five, which we did participate in.

Q. I apologize. I should have said the exterior --

A. Yes, sir.

Q. -- window problems on building four or five. Did you participate in that?

A. Again, the rear of building five, the stucco-diningroom areas, that was Carriage Hill and Parker on that. The shower issues, exterior cladding in those

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1 areas, was also a problem, window leaks, so on and so
2 forth, we did those repairs. Back of building four, we
3 did the repairs, including window replacement, stucco
4 replacement, back of building four.
5 Q. How much of the brick and stucco did you leave
6 on the back of building five -- four when you remediated
7 that work?
8 A. Well, that's only a stucco wall. We --
9 Q. Okay. How much of the stucco --
10 A. -- we didn't leave any of it. We went all the
11 way -- you know, from the exposed wall, all the way around
12 the corners, to be able to do that one -- do that one.
13 Q. And that would be the same type of removal and
14 remediation you would need to do for each building as
15 you're replacing and repairing these windows?
16 A. You would do stucco complete.
17 Q. The weather barrier around the buildings: my
18 understanding is it's a two-part weather-barrier system;
19 is that correct?
20 A. The original weather barrier is Tyvek. Stucco
21 also is applied with paperback lathe.
22 Q. So if I've got the stucco, the paperback lathe
23 and the Tyvek and then the substraight, is that the order
24 of the barrier that I've got up?
25 A. Stucco, paperback lathe, Tyvek, wood. Yes.

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1 Q. And would that be a double weather-barrier
2 system on that -- in that design?
3 A. Well, in some ways of looking at it. But the
4 code also requires a certain level of vapor transmission
5 resistance under stucco. It generally requires more than
6 one layer. But, yes.
7 Q. Yes, what?
8 A. It would in some respects, yes.
9 Q. Be a double weather-barrier system?
10 A. Yes.
11 Q. Exceeding code; correct?
12 A. Not necessarily. Meeting code, if it was
13 installed properly, which it's not.
14 Q. Did you design the acoustical repair estimate
15 for this building?
16 A. No.
17 Q. Who did that?
18 A. Mr. Willis.
19 Q. In terms of the design of the acoustical springs
20 to hang on the ceilings, who designed that? Do you know?
21 A. I don't remember whether I pulled those out or
22 whether John Dumah [phonetic], who's an architect that
23 works on David's staff -- it could have been him.
24 Q. Do you believe that that is a requirement if the
25 floor system is properly installed?

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A. To have -- are you asking whether those hangers have to be there?

Q. That's right.

A. Some form of acoustical hanger, yes.

Q. You think that's required if the floor is properly installed?

A. If the floor is properly installed?

Q. Yes, sir.

A. Yes. I think you still have to have an acoustical ceiling hanger, yes.

Q. Using these springs to hang the ceiling?

A. Yes, sir.

Q. Is that often -- do you often see that in construction?

A. There's different ways to do it. Usually you see what's called a resilient channel. That's typically used in buildings. A resilient channel is like half a hat channel, like taking a hat channel and cutting it in half.

Q. Are you using a resilient channel in this design -- or is it a hat channel?

A. We're taking the hat channels out. We're using an acoustical hanger here.

Q. Are you familiar with the acoustical hangers that were used in the retrofix of this project?

A. I saw them. Otherwise, I'm not familiar with

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1 them.
2 THE COURT: What does an acoustical hanger do?
3 THE WITNESS: It basically is a spring that
4 allows -- prevents sound transmission going through.
5 For hard surfaces.
6 THE COURT: I mean, it's a -- what is it made --
7 I mean, what's it made of?
8 THE WITNESS: It's physically metal.
9 THE COURT: Metal?
10 THE WITNESS: Yes, sir.
11 THE COURT: Is it a solid piece of metal or --
12 THE WITNESS: There's a part that connects to
13 the wood structure and it has like a spiral and
14 then a --
15 THE COURT: Is it supposed to absorb the noise?
16 THE WITNESS: It's supposed -- what it's
17 supposed to do is provide a spring support for the
18 Sheetrock ceiling so the sound=pressure waves aren't
19 transmitted directly through --
20 THE COURT: Transmitted directly into the
21 Sheetrock into the place it was?
22 THE WITNESS: Exactly. That's right.
23 Q. [Mr. Maybank] All right. Well, let me ask you
24 this. Is it possible, then, to eliminate all noise
25 between units, based on your retrofix?

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1 A. You're not going to eliminate all of it. You're
2 not going to soundproof these buildings with this. This
3 would only get -- this will only get you to the normal
4 level that you -- I'm used to seeing in buildings like
5 this.
6 Q. In your opinion, is it possible to soundproof a
7 building between floors?
8 A. No, sir.
9 Q. So no matter what's going to be done, impact
10 noise will be heard between the units?
11 A. You're going to be able to hear something, yes.
12 THE COURT: Does that go to concrete buildings,
13 also?
14 THE WITNESS: Even with concrete buildings and
15 hard finishes, tile and things like that, in a typical
16 condominium construction you can hear things. If you
17 had a real --
18 THE COURT: Depends on the thickness of the
19 concrete?
20 THE WITNESS: It does.
21 And a lot of times, in a lot of modern
22 structures they use post tension, which is the more
23 economical way to do it. You have thinner concrete
24 sections and you can hear through those. The old
25 typical reinforced, where you have an eight- or ten-

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1 inch floor slab, you're not going to be able to hear
2 much through those. But those are uneconomical for
3 these kinds of structures.
4 THE COURT: Right.
5 Q. [Mr. Maybank] Ted, I've looked through these
6 photographs. I don't see any pictures of any damage
7 behind the brick area that shows that there was any rot or
8 damage other than around the window area. Do you have any
9 photographs of that?
10 A. Well, there's -- there were high-up photographs,
11 in my file, adjacent to some of these French doors.
12 Q. Adjacent? Around the window area?
13 A. Right. Yeah.
14 Q. And as well as the stucco, the area that is
15 damaged around these windows is where most of that is?
16 Because I've looked at these photographs and it goes back
17 to the window issue, I think, where most of the water came
18 through the -- into these buildings; correct?
19 A. Obviously, we have experienced significant water
20 intrusion associated with these windows.
21 MR. MAYBANK: I don't have any further
22 questions, Your Honor.
23 THE COURT: You're through?
24 [Off the record momentarily]
25 - - -

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1 REDIRECT EXAMINATION

2 BY MR. BUNDY:

3 Q. Mr. Padgett, is it your opinion to a reasonable
4 degree of engineering certainty that the floors as
5 constructed did not meet industry standards?
6 A. Yes, it is.
7 Q. Is it your opinion to a reasonable degree of
8 engineering certainty that the floors as remediated by
9 Carriage Hill did not meet industry standards?
10 A. Yes.
11 Q. Is it your opinion to a reasonable degree of
12 engineering certainty that the brick, all the brick, on
13 this building needs to come out because it was installed
14 contrary to the building code?
15 A. Yes, sir.
16 Q. Is it your opinion all the stucco needs to come
17 off because it was installed contrary to the building
18 code?
19 A. Yes, sir.
20 MR. BUNDY: Thank you very much.
21 THE COURT: How do you determine industry
22 standards when you answer his question in the
23 affirmative?
24 THE WITNESS: Well, Your Honor, this is not the
25 first condo. And dating back to the '80s, condos at

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1 Kiawah, Isle of Palms, other -- Hilton Head, all were
2 constructed in the fashion which I'm talking about:
3 Gyp-Crete, floor toppings, acoustical ceilings.
4 That's really all I'm talking about in that regard.
5 THE COURT: Any party have a question, based
6 upon the Court's question?
7 MR. MAYBANK: Not from the defense, Your Honor.
8 MR. BUNDY: None from the plaintiff, Your Honor.
9 THE COURT: Pardon?
10 MR. BUNDY: None from the plaintiff.
11 MR. MAYBANK: And, Your Honor, nothing from the
12 defendant.
13 THE COURT: Do you want him excused or do you
14 want him under subpoena?
15 MR. BUNDY: With your permission, that will be
16 fine.
17 THE COURT: Thank you so very much.
18 THE WITNESS: Thank you.
19 THE COURT: Do you want to keep him under
20 subpoena for redirect if you need him?
21 MR. BUNDY: That's okay. I think we're okay.
22 THE COURT: All right. Thank you very much.
23 THE WITNESS: Thank you.
24 [Whereupon, Mr. Padgett is excused and exits the
25 witness stand]

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1 MR. BUNDY: Your Honor, we have -- Mr. Maybank
2 wants to call a witness out of order because his
3 witness needs to leave.
4 THE COURT: That's fine.
5 MR. BUNDY: We have agreed between and among
6 ourselves, with your permission, that since we're
7 doing it this way, we're going to reserve all motions
8 for directed verdict until the end of the case when
9 all the evidence goes in, since he's putting a witness
10 in --
11 THE COURT: Both sides?
12 MR. MAYBANK: Yes.
13 MR. BUNDY: On both sides. Without anybody
14 waiving any rights --
15 THE COURT: That's fine.
16 MR. BUNDY: -- but since he's putting witnesses
17 in in my case --
18 THE COURT: That's fine.
19 MR. BUNDY: -- I don't figure --
20 THE COURT: That's fine.
21 MR. BUNDY: Thank you, Your Honor.
22 MR. MAYBANK: Thank you, Your Honor.
23 Your Honor, the defense would call Dr. Noral
24 Stewart to the stand.
25 THE COURT: Who? I'm sorry.

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1 MR. MAYBANK: Noral, N-O-R-A-L, Stewart,
2 S-T-E-W-A-R-T.
3 [Whereupon, Mr. Stewart comes forward]
4 THE CLERK OF COURT: Place your left hand here
5 and raise your right hand.
6 [Whereupon, Mr. Stewart is duly sworn by the
7 clerk of court as follows: do you swear or affirm
8 that your testimony will be the truth, the whole
9 truth, and nothing but the truth, so help you God]
10 THE WITNESS: I do.
11 THE CLERK OF COURT: Please have a seat.
12 [Off the record momentarily]
13 THE CLERK OF COURT: Please have a seat.
14 [Whereupon, Mr. Stewart takes the witness stand]
15 THE CLERK OF COURT: State your full name,
16 spelling your last name for the record.
17 THE WITNESS: Okay. Noral Garner Stewart.
18 S-T-E-W-A-R-T.
19 [Whereupon, Mr. Stewart takes the witness stand]
20 MR. MAYBANK: Good afternoon, Dr. Stewart. How
21 are you today?
22 THE WITNESS: Doing good.
23 MR. MAYBANK: As you know, my name is Roy
24 Maybank. I represent Carriage Hill Associates and
25 Daniel Island Real Estate in this construction defect

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1 case.

2 - - - - -

3 NORAL STEWART,

4 Having Been First Duly Sworn,

5 was Examined and Testified as Follows:

6 DIRECT EXAMINATION

7 BY MR. MAYBANK:

8 Q. Dr. Stewart, if you would, can you tell the

9 Court a little bit about who you are and your background?

10 A. I am a consultant in acoustics and noise

11 control. Have been for over thirty-two years. Thirty-two

12 years full time, and part time before that. Have degrees

13 through a doctorate in the mechanical engineering

14 department at North Carolina State University with

15 specialization in acoustics and noise control. Member of

16 the Acoustical -- fellow of the Acoustical Society of

17 America, a member of the Institute of Noise Control

18 Engineering, a fellow of ASTM International, the standards

19 writing organization, vice chairman of the committee that

20 writes these standards for acoustical ratings and tests in

21 buildings and so forth, and past president of the National

22 Council of Acoustical Consultants.

23 Q. Are you a member of the --

24 THE COURT: What are you going to offer him for?

25 MR. MAYBANK: We're going to offer him as an

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1 expert, but I haven't finished that yet. I can --
2 THE COURT: What type of expert?
3 MR. MAYBANK: Expert in acoustical noise.
4 THE COURT: Okay. Do you agree?
5 MR. BUNDY: I agree.
6 THE COURT: The Court so finds.
7 Now, I'm not trying to cut you off from
8 introducing him, because I would like to hear a little
9 bit about his background in acoustics, construction.
10 MR. MAYBANK: Sure.
11 Q. [Mr. Maybank] And that leads me, then, I guess
12 to the question that the judge would like to hear your
13 background on acoustics and construction, if you would.
14 A. Well, as I said, I've been consulting for --
15 full time for thirty-two years. In our firm the majority
16 of the work that we do does involve buildings, building
17 acoustics, noise control, in buildings of various kinds.
18 The remainder of the work is environmental community noise
19 type work and a little bit of work in industrial plants
20 for hearing protection.
21 Historically, most of our architectural
22 acoustics in building noise has not been residential over
23 the long period of time that we've been in business. It's
24 been mostly schools, churches, courthouses, government
25 buildings of various kinds, commercial buildings. But

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1 over the last several years, there's been increased
2 emphasis on residential multifamily residential
3 construction.
4 Q. Is that shift in the recent --
5 MR. BUNDY: May I voir dire the witness one
6 question?
7 THE COURT: Yes, sir. Yeah. Please do. You've
8 already said he's an expert, but I'll let you voir
9 dire him.
10 MR. BUNDY: Well, he's an expert, but we went
11 into the construction. The construction aspect is
12 what I want to clear up a little bit.
13 THE COURT: Okay.
14 VOIR DIRE EXAMINATION
15 BY MR. BUNDY:
16 Q. Are you -- do you consider yourself qualified to
17 give an opinion, to a reasonable degree of certainty, as
18 to the industry standards for floor construction in this
19 locale?
20 A. Specifically, I can talk about, among acoustical
21 consultants, what our standard is, what we would normally
22 recommend.
23 Q. Standard in the industry in this locale.
24 A. But in Charleston I have not made a study of
25 what's done in Charleston, what historically has been

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1 done, what is here now, so I can't really with a lot of
2 knowledge say what is present in this location.
3 Q. Nor can you testify to what the industry
4 standard is as to condominium construction between floors
5 in Charleston County or in this area?
6 A. Not from knowledge of a large number of
7 condominiums. I have a limited --
8 Q. Thank you very much.
9 A. -- I have a knowledge of a few, but not a large
10 number.
11 MR. BUNDY: Thank you very much.
12 CONTINUED DIRECT EXAMINATION
13 BY MR. MAYBANK:
14 Q. And that information would be based on the 2003
15 International Building Code? Can you testify as to what's
16 found in the code and what is expected in general
17 construction?
18 A. I can testify as to what's regarding the code,
19 yes.
20 Q. Can you tell me a little bit of the history and
21 background of acoustical requirements that are in the
22 International Building Code?
23 A. Well, to my knowledge, those originated in the
24 1970s. And back in those days there were three or four
25 different competing codes around the country and at least

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one or two of them began to include requirements like that in them. Those requirements were not in the codes that were adopted in North Carolina, for instance, back in those days. I don't know the history of South Carolina that well. But I know that until the decade of the 2000s, they had these three or four different codes, around the country, competing. They all got together and decided to make one code. They put these acoustical requirements in that code and all the states started adopting that code. So at that time North Carolina adopted that code -- I presume South Carolina did, too -- and we started seeing greater interest in acoustical performance in residential structures.

THE COURT: Let me interrupt you just a second. I've got to talk to this gentleman.

MR. MAYBANK: Please go ahead.

[Off the record momentarily]

THE COURT: Okay. Whenever you're ready.

Q. [Mr. Maybank] You were giving the history of the code -- of the requirements in the International Building Code. Would those requirements have been in the code in 2003?

A. I do not know specifically what was in the South Carolina code. I know that they were in the International Building Code, had been in the model code.

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1 Q. So if Charleston had adopted the --
2 A. Yes.
3 Q. -- International Building Code in 2003, you
4 would expect it to have been in there?
5 A. If they had adopted it without modification,
6 without taking them out or anything, yes, they would have
7 been there.
8 Q. Your history on this project: when did you
9 first become involved in this project?
10 A. In January of 2007. I may have been contacted
11 in December of 2006, I'm not sure. But my first real
12 involvement, January of 2007, I was asked to come down and
13 inspect the situation with regard to the floor-ceilings,
14 isolation between units vertically, and to do some initial
15 tests of where we stood, and discuss options for
16 improvement.
17 Q. Who called you?
18 A. I believe it was Rich Behringer.
19 Q. And he was with Carriage Hill?
20 A. Yes.
21 Q. And did he voice concern to you that there were
22 complaints by homeowners that they were having noise
23 problems between the units?
24 A. Yes. He was concerned. There appeared to be
25 problems and he described the construction to me, and

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1 based on that description I told him I suspect there were
2 problems.
3 Q. And did you hold yourself out as somebody who
4 could come down to Charleston, test the units, and give
5 them an opinion as to what the problems were and a
6 possible solution to the problems?
7 A. Yes.
8 Q. Okay. Did they have a right to rely on you,
9 Dr. Stewart, in retaining your services specifically for
10 this retrofix?
11 A. A right to rely upon me --
12 Q. Yes.
13 A. -- to give them proper advice and so forth?
14 Q. Absolutely.
15 A. Yes.
16 Q. And you came down. Did you come down and do an
17 initial diagnostic test?
18 A. Yes. We did some initial testing just to verify
19 what the situation was. I did some limited airborne
20 testing. That's the testing of sound such as speech or
21 television going through a floor-ceiling. Did more
22 extensive testing of the impact sound because that's where
23 the more serious problem was expected. And we documented,
24 and it was like we expected.
25 Q. And over what period of time did you run the

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1 the design meets what is called the STC and the IIC for
2 impact and airborne noise and sound?
3 A. Yes. The STC is the airborne methods.
4 Q. STC is the airborne. STC is what you measure in
5 a laboratory for a wall. In the field, we call it the
6 apparent STC. It's apparent because the actual STC is not
7 supposed to include any sound that passes between spaces
8 by any route other than through the partition, whereas
9 when you're in the field, you know some sound gets around
10 it in some ways. So you call that the apparent result.
11 There's also a metric we used back then and
12 still use, for the airborne, called the noise isolation
13 class. And that's all I actually measured for the
14 airborne sound in the January test. I did not do
15 reverberation times measurements and adjust it, I just
16 measured noise isolation class, which is what you actually
17 hear is you measure upstairs, you measure downstairs, you
18 take the difference. That's what you've actually heard.
19 The STC or the ASTC is a standardized metric that you are
20 adjusting out the effects of room absorption, effects of
21 the size of the partition, to get a more standardized
22 number that originates from the laboratory test where
23 you're trying to standardize everything.
24 Q. All right. And so my understanding is that you
25 went into a unit and you tested the unit without and with

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1 testing?
2 A. Well, the initial testing in January was done on
3 a one-day visit. I was here for one day to do the testing
4 and discussions with them. As a result of that, we
5 discussed some ideas and options for remediation. We came
6 back in March to do some what you might call experimental
7 testing, evaluation of ideas, and after that made
8 decisions on the direction they were going to go. They
9 implemented their remediaton in some units. We came back
10 in I believe June and did more extensive further testing
11 of the results of that remediation.
12 Q. All right. Can you explain to the Court exactly
13 what it was that you -- the process by which you went
14 through to come into the units to test the units and
15 determine whether or not they met code at the time you
16 initially came in?
17 A. The process used to do those tests --
18 If you want me to describe the tests?
19 Q. Please.
20 A. -- is to test according to the ASTM Standard
21 E-1007. The test involves using a machine, called a
22 tapping machine, which has little hammers on it and it
23 sits there and goes [indicates] tapping on the floor. And
24 you go downstairs and you measure the sound level down
25 there. You take that resulting sound level and you also

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1 measure for some of the metrics that we use, including the
2 one that's specified in the code. We have to measure, in
3 the room downstairs, a measure of the sound absorption in
4 the space; that is, is this space all hard and echoey or
5 does it have a lot of carpet and acoustical ceiling or
6 soft furniture in it that influences the sound that you're
7 going to make. Because if you run that machine, what
8 you're going to measure is going to be influenced by that
9 condition. So we have to do as we call reverberation time
10 measurement, which allows us to quantify that absorption
11 in the space. And then from those measurements, we can
12 calculate certain ratings. Back in those days, we only
13 had one official rating available to us in the standard
14 and the one that's used in the code, which was then called
15 the FIIC or Field Impact Insulation Class. It's been
16 renamed now as the Apparent Impact Insulation Class. So
17 you see FIIC, AAIC, are the same thing. And that is
18 adjusted. Once you make the measurement, you adjust the
19 sound levels you measured for what they would have been if
20 the room was very hard, had very little absorption in it.
21 So you actually adjust those sound levels upwards and that
22 causes the rating to come down. And the higher the
23 rating, the better. So it's inverse to the sound level
24 you hear.
25 Q. Let me ask you this. Are they testing to see if

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1 modifications --
2 A. Correct. We tested multiple units, in fact. At
3 least two with several rooms in each.
4 Q. Who were you working in conjunction with at
5 Carriage Hill? Was it Rich Behringer?
6 A. Rich was there. I believe on the very first
7 visit Jerry was there, also.
8 Q. Jerry Rumplick?
9 A. Yes.
10 Q. And the three of y'all tried to work through --
11 well, based on your findings from your initial study did
12 the buildings, as we're talking, meet code?
13 A. With regard to the impact sound, they definitely
14 did not.
15 Q. It did not.
16 A. With regard to the airborne sound, I believe it
17 did.
18 Q. So it was apparent from you from the beginning
19 that there was a problem with the noise attenuation
20 between the units?
21 A. Yes.
22 Q. Was that acknowledged, that problem
23 acknowledged, by Carriage Hill?
24 A. Yes. They recognized they were having problems.
25 There was no argument or anything. During that first

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1 visit that day I remember we went to lunch and sat down
2 and talked about how can we fix this thing, or some of the
3 ideas and options and things available to us that we can
4 do, and sort of had a brainstorming session.
5 Q. And did you have multiple sessions in discussing
6 the issues in how to fix the sound attenuation problems at
7 this development?
8 A. We narrowed our discussions later, after that
9 initial visit, and came up with a couple of ideas to try.
10 And as I said, we came back in March and did some
11 subsequent additional testing before they finalized the
12 plan.
13 Q. Would you agree with me that each situation
14 calls for a possible different solution? There is no one
15 fix to any problem like this?
16 A. Certainly, when you have a situation where
17 something was not done right in the first place and you've
18 got to come back and fix it, you're always going to run
19 into unique circumstances and things that have to be
20 addressed.
21 Q. And that kind of dovetails into your prior
22 testimony that this problem is a recent phenomenon that
23 you are experiencing more and more in these condominium
24 communities?
25 A. The experience that we have had, we started

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1 seeing two things, really. One was experience with
2 condominiums that have been built to have problems, as
3 well as architects beginning to call us and say, hey, we
4 need help before we build another one type of thing. And
5 this all started developing ten to twelve years ago as we
6 started seeing that kind of activity that had not been
7 there before, except maybe on a very sporadic basis.
8 Q. And so as it relates to the meetings that you
9 had with the Carriage Hill folks, did you come up with
10 what you believe was a solution to the acoustical problems
11 at The Oaks?
12 A. We came up with a remediation plan to achieve a
13 substantial improvement consistent with the type of thing
14 I have seen done in other similar situations.
15 Q. If you would, could you explain to the Court
16 what that was? Or would it be better for you to come down
17 and draw a model of what you did? Or is it better to look
18 at the photograph that we had up prior?
19 A. Well, the photograph might be useful, since it's
20 cut away and shows some of the stuff that was there.
21 Q. If you would, could you move over to the jury
22 box for me?
23 A. And it would be better than any attempt I would
24 make at drawing. I'm not an architect.
25 [Off the record momentarily]

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1 MR. MAYBANK: While he's doing that, Your Honor,
2 I would like to move, at this time, into evidence the
3 reports created by Dr. Stewart that have been pre-
4 marked as Exhibit 173, 174, 175, 176, 177, 178, 179,
5 180, 181, 183, 183, 184, and a letter, 187.
6 THE COURT: All right. 173 through 184, and
7 187. Any objections?
8 MR. BUNDY: None at all, Your Honor.
9 THE COURT: All right. 173 through 184 and 187
10 admitted without objection. Defense exhibits.
11 MR. MAYBANK: Thank you, Your Honor.
12 [Whereupon, Defendants' Exhibit Numbers 173
13 through 184 are admitted into evidence by the Court]
14 [Whereupon, Defendants' Exhibit Number 187 is
15 admitted into evidence by the Court]
16 MR. MAYBANK: Thank you, Your Honor.
17 Q. [Mr. Maybank] So at the time that you came to
18 the project, were the units already sold?
19 A. Some of them were, at least.
20 Q. Or at least moved into?
21 A. There were some occupied; some still unoccupied.
22 Q. But the interior was already up with the
23 cabinets, the windows, and doors?
24 A. Yes.
25 Q. All right. So what plan did y'all devise in

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1 terms of remediating the sound impact noise as between the
2 different units?
3 A. And this would also improve the airborne sound,
4 too.
5 MR. MAYBANK: There's a pointer on here that's
6 that --
7 THE WITNESS: Okay. Thank you. Thank you.
8 A. Well, as has been mentioned, one of the problems
9 was that the ceiling had been installed with a hat
10 channel. That is a common problem we see, either by
11 design or by construction error.
12 Q. [Mr. Maybank] Let me ask you -- let me stop you
13 there. Do you know if, as designed, a hat channel was
14 called for in the original plans?
15 A. My understanding is the design actually called
16 for a resilient channel.
17 Q. Which would have been the proper channel --
18 A. Correct.
19 Q. -- to use if installed that way?
20 A. Correct.
21 Q. But it was not built that way?
22 A. That is correct.
23 Q. Go ahead. I apologize.
24 A. So this resulted in a very poor situation,
25 especially for the impact sound. It also influences the

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1 airborne sound. It has a greater effect on the impact
2 sound because it's going to transmit directly through that
3 hat channel, which is a relatively rigid element. The
4 resilient channel, as has been mentioned, is more
5 springlike. It's got one side connected to the truss
6 and the gypboard is connected to the other side and it
7 sort of acts as a three-leg spring. So we were faced with
8 the problem -- and this is not the first time this has
9 been faced. I've had other clients with the same problem
10 and issue, including another one right here on Daniel
11 Island -- where the gypsum is up there on the hat channel.
12 It is --
13 Q. Now, let me stop you there so the Court can
14 understand you. Gypsum on the hat channel: and that
15 would be the ceiling --
16 A. The ceiling.
17 Q. -- of the floor underneath? Say if it's between
18 the third and fourth floor, the ceiling of the third floor
19 is what you're talking about?
20 A. Yes.
21 Q. Okay.
22 A. Okay? So if you're going to go in there and get
23 rid of the hat channel and replace it with resilient
24 channel, it means tearing the complete ceiling out, taking
25 down the hat channel, putting in the resilient channel,

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1 putting the ceiling back. One problem with that is
2 there's an awful lot of gypboard that somehow has to come
3 out of the place and be taken somewhere, and that's no
4 easy matter in itself. The other issue, as has been
5 mentioned, is that the floors have some issues with them.
6 So --
7 Q. And that would be the floor of the ceiling --
8 A. Unit above.
9 Q. -- above what you're talking about?
10 A. Right. We're going to talk about that some
11 probably later.
12 But with the issues in the floors: to have just
13 gone back with resilient channel probably would not have
14 given enough improvement to be worth the effort hardly.
15 It would have given improvement, but it would have not
16 been what we would have wanted to do if we're not working
17 on the floor. And we'll talk a little later about the
18 floors. But if we're not going to work on the floor, we
19 want to do something better.
20 And we have the problem of, well, we could take
21 all this existing ceiling down but it's a lot of trouble.
22 So the first thing that people usually say to me, and I
23 think Rich or somebody said this, is can we not just put
24 the resilient channel up on that gypsum and then put
25 another layer of gypsum up there. People are always

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1 trying to do that. We call that the infamous resilient-
2 channel sandwich. It don't work. You've got too small a
3 space there. It just -- it resonates and it causes -- it
4 just doesn't work. I can explain it in more detail, but I
5 don't need to. I said, if we are going to leave that
6 gypsum up there --
7 Q. And you're talking about the preexisting --
8 A. Preexisting --
9 Q. -- can you highlight -- can you put the pointer
10 on that?
11 A. You can see this area here. Some of it's been
12 taken down in this case, but this is what remains here. I
13 said that, we're going to leave that there. And one of
14 the things we had in this case was -- that we don't always
15 have, is the existing ceilings were ten-feet high. They
16 had room to possibly come down a little bit. I said, I
17 need at least five inches there, five inches of space, if
18 we're going to leave it there, or otherwise we're going to
19 have problems.
20 And so how can we do all this. I think Rich or
21 Jerry one came up with the idea of hanging it on wires.
22 That's something that's been done in other types of
23 buildings. I had not seen it done in wood-frame
24 structures. And I said, yes, that can probably work but I
25 would also add in there an acoustical isolator. And let

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1 me point that out. These devices right here are where --
2 I'm not sure about that one, but here's a couple of them.
3 That is a spring-like device. It's made of rubber. It is
4 what is called a double deflection neoprene isolator. It
5 is similar to a spring but made of rubber.
6 And if you're going to do something like this,
7 especially where there are issues with the floor upstairs,
8 you do not want to use just a metal spring. You have to
9 have some rubber in there to take care of higher
10 frequencies because a metal spring will not take care of
11 the higher frequencies where a lot of this initial problem
12 is.
13 There are some spring systems that's been
14 mentioned, but the -- some of those spring systems have a
15 rubber element in them and in a situation like this, if
16 you have some issues with the floor, you have to have that
17 rubber element there.
18 Q. Did they install that element that you're
19 referring to?
20 A. Yes. Yes. And that rubber element, with these
21 wires, is superior to the typical resilient channel.
22 Q. Okay.
23 A. Okay? And then having the air space. And the
24 other important thing is with this additional air space,
25 they went back and put a -- we put additional batt

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1 insulation between the -- you can't see it here, but the
2 existing original insulation is up here. And I believe it
3 was typical low-density fiberglass in the cavity here
4 between the two ceilings. I would have been pretty happy
5 with the same thing, but Rich and company decided that
6 they were going to use a higher-density memorable type
7 insulation, which is a little bit superior. So we also
8 took care around the perimeter where this is now hung on
9 these spring-like devices --
10 Q. Let me ask you this. So there is actually two
11 layers of insulation --
12 A. Yes.
13 Q. -- between the ceiling of say the third floor
14 and the bottom of the fourth floor?
15 A. Yes. There's one between the two layers of
16 gypsum and another above the original gypsum ceiling.
17 Q. And the other one that we see is the yellow --
18 A. Is the original one.
19 Q. Okay.
20 A. Okay? Another important factor when you do this
21 -- and it's important, even with a resilient channel
22 system or any resiliently-hung ceiling, is you have to be
23 careful around the edges because if you just go in and
24 after doing all this tie that ceiling directly to the
25 wall, you're going to have some sound that can come down

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1 from above into that wall and then in the ceiling and come
2 out here and then radiate from the ceiling. So you have
3 to take care to leave a small gap between the ceiling and
4 the wall. And then in this case it's covered with this
5 crown molding, which is attached to the wall and not the
6 ceiling, to cover that up, to preserve that performance of
7 the ceiling.
8 Q. All right. So there is a bead of caulking that
9 goes around --
10 A. Caulking or acoustical sealant around the
11 perimeter.
12 Q. It's an acoustical sealant that goes around the
13 perimeter of that dropped ceiling --
14 A. Yes.
15 Q. -- so that any noise, as it spreads from the
16 fourth floor down, does not transmit through the walls?
17 A. It's transmitting from -- it keeps it from
18 transmitting from the wall into the ceiling where it might
19 be radiated back. It doesn't stop it from getting into
20 the walls.
21 Q. And based on the design and the fix as created,
22 was it implemented?
23 A. Yes. This is the fix that was implemented in,
24 as far as I know, most of the units. I understand there
25 may be one where it was not implemented.

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1 Q. To your knowledge, what was the result of this
2 implementation of this retrofix to these units?
3 A. We achieved substantial improvements in both the
4 impact isolation and the airborne isolation on the order
5 of 10 dB or 10 points, bringing the average impact results
6 from down around in the thirties or forty up to around the
7 fifty or --
8 One of the things you have to understand, these
9 tests, they're not absolutely repeatable the same thing
10 everywhere every time. If I take exactly the same
11 structure, what I think is nominally the same structure,
12 and test it ten times, I'll get six or seven different
13 results. And some of those may be significantly above or
14 below a medium result. So it's not exactly precisely
15 repeatable and predictable every time.
16 But we got some varying results. But for the
17 impact sound in the wood areas, wood-floor areas, I
18 believe the average was around fifty and the airborne ASTC
19 was I think fifty-nine. It was on up there. It was
20 really good on the airborne sound. But the impact sound
21 we got a substantial improvement but not as good.
22 Q. And so in terms of the retrofix as designed,
23 installed by Carriage Hill, as it sits there today in
24 accordance with the International Building Code
25 requirements, does the sound attenuation meet the code?

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A. In my opinion, it meets the code.

Q. Did you have a chance to review the report, as generated by the homeowners association, Quietly Making Noise?

A. Yes.

Q. And that report by their expert, did she or he have an opinion as to the retrofix and how that turned out?

A. Yes. It was her opinion, also, that it met the code.

Q. Do you know who she is?

A. Lisa Schott. Yes.

Q. And she is a colleague of yours in the acoustical industry?

A. Yes.

Q. And is your opinion, as we sit here today, as an engineer -- you're in the department of mechanical and aerospace engineering at North Carolina State University?

A. Well, that's where my degrees were from. I'm not a faculty member or anything in the department.

Q. As an engineer, to a reasonable degree of engineering --

THE COURT: Did you say aeronautical?

MR. MAYBANK: Yes, sir. Aerospace engineering.

THE COURT: Okay. All right.

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1 MR. MAYBANK: Pretty neat.
2 Q. [Mr. Maybank] So is your opinion to a
3 reasonable degree of engineering specificity as to the
4 retrofix, complying with the code as required by the
5 International Building Code?
6 A. It's my opinion that it does comply with the
7 code.
8 Q. Is there any way to totally soundproof this
9 building?
10 A. Anytime -- well, no building is totally
11 soundproof. All you can do -- and the word soundproof is
12 sort of one I dislike. But all you can ever do is improve
13 the sound isolation. You might improve it to the point
14 that what sound comes through is covered up or masked by
15 the other sound that's present in the space so you don't
16 notice any sound coming through. Or it might get down
17 below the threshold of hearing, but that's very rare.
18 What you're trying to do is to reduce it down to
19 where it's very rarely a problem. And as a wood-frame
20 structure you have an issue, in particular, with footstep
21 sound that you never can totally eliminate a footstep
22 sound from a wood-frame structure.
23 Q. The retrofix as designed and installed by you,
24 Rich and Jerry, was that a reasonable fix to the problem
25 that exists out there?

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1 A. In my experience, it's the kind of thing that is
2 done. We worked on the ceiling. We encountered the
3 situations where they're problems with the ceilings and
4 the floors. And the common, normal thing is to work on
5 the ceiling. I have never experienced a situation where
6 anyone has chosen to work on the floors.
7 Q. And are your opinions to a reasonable degree of
8 engineering certainty?
9 A. I hesitate to use the word engineering, only
10 because I'm not a licensed engineer in the state of South
11 Carolina.
12 Q. Okay. How about acoustical?
13 A. Within the standards of my profession, yes.
14 MR. MAYBANK: Dr. Stewart, if you'll give me one
15 moment, please.
16 [Whereupon, Mr. Maybank and Mr. Altman confer]
17 Q. [Mr. Maybank] My understanding, Dr. Stewart, is
18 based on the retrofix as done, as it exists out there
19 today, would you agree with me that not only does it meet
20 code, it also exceeds code?
21 A. Yes.
22 Q. Did you hear Mr. Padgett's testimony about the
23 fix that he would suggest be implemented?
24 A. Yes.
25 Q. Is there any -- if that proposal were adopted,

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1 would there be any significant increase --
2 THE COURT: Increase or decrease in the noise?
3 Q. [Mr. Maybank] Increase -- well, I guess
4 decrease in the noise?
5 A. Increase in the ratings and the performance.
6 Q. That's right. That's -- yes, sir.
7 A. There were two parts I heard that he was
8 suggesting. One was to do the ceiling a different way --
9 Q. Yes, sir.
10 A. -- and the other was work on the floors. And I
11 would strongly disagree with anything different on the
12 ceiling. That is, what we did here is about as good as
13 you're going to do for the ceiling. And to start trying
14 to take it down and redo it, even with springs, which he
15 had in his estimate, my position would be that you're not
16 going to get anything significantly better and could, in
17 fact, run some risks of not getting as well.
18 So I would strongly disagree with any idea about
19 trying -- any need for or idea about trying to redo the
20 ceiling beyond what we have done.
21 Q. Let me ask you this. There was also -- in the
22 initial phase of trying to remediate these problems, did
23 you, in fact, try to go through the floor initially to see
24 if that would improve the problem?
25 A. We looked at the floor. As has been discussed,

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1 there are major impediments in your way to try to work on
2 the floors. We did, though, even knowing that, did some
3 testing when we were there in March, on a small scale,
4 sort of a mock-up session of the floors, to look at what
5 improvement might be obtained if we just had a simple
6 acoustical mat with a glue-down type of engineered wood
7 floor, I believe it was, on top of that.
8 Q. Yes, sir.
9 A. And that, when tested by itself, did not give a
10 very big improvement. And, in fact, if you were to just
11 do something about that, without the Gyp-Crete that's been
12 mentioned and so forth, you would not get a very great
13 improvement even combined with a good ceiling and so
14 forth. You would get some improvement.
15 The basic problems with the floor that's there
16 in the wood areas is is that they put a mat down under the
17 floor but they nailed through it, so the nails shorted
18 through that mat or you would have had at least some
19 degree of resilient isolation in the floor to cushion the
20 impacts at that point. But they lost most of that with
21 the nails that went through. So we could -- if we could
22 eliminate the nail problem and still have a resilient mat
23 with just the floor on top of it, in that case the mat has
24 to be firmer than it would with Gyp-Crete, for instance,
25 but you would get a little bit of improvement. But it's

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1 not -- certainly not worth the trouble with all of -- even
2 with doing that, you would have a thickened floor. So it
3 creates a lot of problems.
4 Q. Mr. Bundy had asked you earlier about whether or
5 not you knew the building code or standard here in
6 Charleston County. If, in fact, Charleston County adopted
7 the 2003 IBC code and that code had a provision in there
8 for acoustical standards and that was called for in the
9 plans, you would agree with me that that standard is in
10 effect in North Carolina, Georgia, or South Carolina --
11 MR. BUNDY: I object --
12 Q. [Mr. Maybank] -- you can testify to that?
13 MR. BUNDY: Objection. It's about fifteen
14 questions in one and it misstates my objection. Thank
15 you very much.
16 THE COURT: It was sort of a compound question.
17 Go ahead and rephrase your question.
18 MR. MAYBANK: It was.
19 Q. [Mr. Maybank] If Charleston County -- are you
20 familiar that in 2000 that this building may have been
21 constructed under the 2003 International Building Code?
22 A. It may have been.
23 Q. And if, in fact, the 2003 International Building
24 Code was adopted in Charleston County for buildings such
25 as this, there was an acoustical component to that

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1 building code; correct?
2 A. Yes.
3 MR. BUNDY: Objection. Speculation. May have
4 been and -- you know, I don't know how this --
5 THE COURT: Overruled. Go ahead.
6 Q. [Mr. Maybank] And if it was, in fact, adopted
7 and implemented in 2003, that would have been the -- there
8 would have been an acoustical component to the
9 International Building Code at that point?
10 A. Yes.
11 Q. And so if the structure was designed to meet the
12 2003 International Building Code and the acoustical
13 portion was called for, you could offer opinions as to
14 that standard; correct?
15 A. Opinions as to whether or not the design would
16 meet the code?
17 Q. Yes.
18 A. Yes. An opinion, yes, sir.
19 Q. And as well as for the retrofix that you --
20 A. Yes.
21 Q. -- have presented?
22 MR. MAYBANK: No further questions. If you
23 would --
24 THE COURT: Cross-examination.
25 MR. MAYBANK: Could you move back to the jury

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1 box [sic].
2 Do you want him back over there or --
3 THE WITNESS: Just turn the light off out of my
4 eyes.
5 [Whereupon, the witness retakes the witness
6 stand]
7 CROSS-EXAMINATION
8 BY MR. BUNDY:
9 Q. Dr. Stewart --
10 A. Yes.
11 Q. -- you're not an architect?
12 A. No, sir.
13 Q. And you haven't been illegally practicing
14 architecture in the state of South Carolina, have you?
15 A. Not to my knowledge.
16 Q. Well, have you designed anything in the state of
17 South Carolina?
18 A. Not what I would call design in the context of
19 the way it is used in the engineering and architectural
20 worlds. We consult to architects and engineers who design
21 buildings.
22 Q. So by that you are telling me that you have read
23 the South Carolina architectural licensing requirement and
24 you understand what the state of South Carolina's
25 licencing requirements are and the definition of

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1 practicing architecture in the state of South Carolina?
2 Have you done that?
3 A. No, I have not.
4 Q. So you, in fact, do not know what the practice
5 of architecture is in the state of South Carolina as
6 defined by the Architectural Review Board, do you?
7 A. Not with real firsthand knowledge with the state
8 of South Carolina, no.
9 Q. You have no knowledge; correct?
10 A. Correct.
11 Q. So let's back up. You don't know whether you
12 were practicing architecture in the state of South
13 Carolina in this case or not without a license? You know
14 you didn't have a license, but you don't know whether you
15 were practicing architecture in the state without a
16 license, do you? Or were you not? You can simply say you
17 weren't.
18 A. In my opinion, I was not. I was practicing
19 acoustical consulting, as all the members of the National
20 Council of Acoustical Consultants do --
21 Q. Exactly.
22 A. -- in various states, typically all around the
23 country. And I am not aware of anyone being challenged on
24 it.
25 Q. Well, you understand the rules are different in

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1 different states?
2 A. Yes, they can be.
3 Q. Because apparently in New York they let you do a
4 lot of different things they won't let you do in South
5 Carolina. Are you aware of that?
6 A. May be. I am not sure.
7 Q. Who was the architect on this job?
8 A. I was not involved during the design phase, so I
9 am not absolutely sure who was considered the architect of
10 record. The one I have met is Mr. Rumplick.
11 Q. Well, is Mr. Rumplick the architect on this job
12 or not?
13 A. I am not qualified to state that.
14 Q. As an engineer, a professional engineer, and a
15 Ph.D., you can't tell me whether somebody was the
16 architect on this job?
17 A. I have not seen the records to say -- you may
18 have some records out there somewhere that say so-and-so
19 is the architect of record for the job. He is the one
20 that I know that was introduced to me, when I came down to
21 visit, that I provided guidance to and talked to about the
22 situation. I presumed he was the architect --
23 Q. There you go --
24 A. -- for the project.
25 Q. -- you presumed he was the architect, based upon

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1 what he told you; right? I'm the architect, I'm Jerry
2 Rumplick?
3 MR. MAYBANK: Object to the form, Your Honor.
4 Q. [Mr. Bundy] Is that what he said?
5 MR. MAYBANK: Objection.
6 THE COURT: I'm sorry. What's your legal
7 objection?
8 MR. MAYBANK: Yes, sir. Hearsay. He's talking
9 about what Mr. Rumplick said. I don't know if
10 Mr. Bundy knows what Mr. Rumplick said. He hasn't
11 testified about that.
12 THE COURT: Well, he just said he presumed he
13 was the architect.
14 MR. BUNDY: I'm asking him --
15 THE COURT: Hold on a second.
16 I'm not sure I understand your objection. Your
17 witness just testified, I presume that he was the
18 architect. That's all he said. What's objectable?
19 MR. MAYBANK: I believe it was what he testified
20 Mr. Rumplick said to him, which is hearsay.
21 THE COURT: Well, isn't he one of your agents?
22 MR. MAYBANK: He is, Your Honor.
23 THE COURT: Well, then, why wouldn't it apply to
24 you under the exception to hearsay rule? Declaration
25 against interest, or whatever you want to refer to it.

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1 MR. MAYBANK: Statement against party interest,
2 Your Honor.
3 THE COURT: Right. Is that correct or
4 incorrect?
5 MR. MAYBANK: That is correct.
6 THE COURT: Objection overruled.
7 MR. MAYBANK: Thank you, Your Honor.
8 THE COURT: Please proceed.
9 Q. [Mr. Bundy] Mr. Rumplick told you he was the
10 architect on this job, didn't he?
11 A. I do not know -- remember if he specifically
12 said that. But when we met, my understanding was he was
13 the architect involved in the project. Whether he was the
14 main architect of record, I did not know. But I knew he
15 was an architect involved in the project, who we were
16 discussing it with.
17 Q. Do you know whether he was an architect with a
18 license to practice architecture in the state of South
19 Carolina?
20 A. I did not know that at the time or anything.
21 Q. Do you know as you sit here today?
22 A. Well, I understand there is some controversy
23 about it, but I don't know the details.
24 Q. Well, tell me what you understand about the
25 controversy surrounding Mr. Rumplick's practice of

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1 architecture in the state of South Carolina.
2 A. From what I have heard, he may not have had a
3 South Carolina license until some point in time after
4 these buildings were designed or something. I'm not sure
5 exactly how that all came together.
6 Q. As a professional engineer being hired by these
7 people to render an opinion, did it cause you any concern
8 that you were meeting with people who allegedly have been
9 practicing architecture without a license in the state of
10 South Carolina?
11 A. Well, I had no idea when I met with them that
12 there were any issues in that regard. Okay? It had never
13 come up or any questions or anything.
14 Q. Does it concern you as you sit here today?
15 A. Well, it's something that apparently you're
16 concerned with. It's not something -- and it's something
17 you attribute to me that's not true. As you said, I was a
18 professional engineer. I am not a registered professional
19 engineer.
20 Q. I'm sorry.
21 A. Okay?
22 Q. I apologize. I was giving you more credit than
23 you were due.
24 But you are a Ph.D.?
25 A. Yes.

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1 Q. At some point in time, though, you did become
2 aware that Mr. Rumplick was not licensed?
3 A. Recently, as this litigation has come about, I
4 have become aware that there were some questions raised
5 about it.
6 Q. Does that cause you any concern now, that you
7 were associated with and collaborating with an architect
8 unlicensed to practice law [sic] in the state of South
9 Carolina, to come up with a fix for the building these
10 people built? Does that bother you as you sit here today?
11 MR. MAYBANK: Objection. Mischaracterization of
12 the facts, Your Honor. Mr. Rumplick had an
13 architectural license, at the time, in South Carolina.
14 THE COURT: Well, I'll -- I don't know. What's
15 the relevancy of all this? Okay?
16 MR. BUNDY: I'll withdraw the question.
17 THE COURT: I mean --
18 MR. BUNDY: I'll withdraw the question.
19 THE COURT: -- I understand that was an issue in
20 the trial, but we don't have a jury here and I'm not
21 sure of the relevancy, as far as what he's testified
22 to. Okay?
23 MR. BUNDY: Thank you.
24 Q. [Mr. Bundy] Did you ever meet Mr. Ed DiMarzio?
25 A. Not to my knowledge.

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1 Q. Okay. Have you ever reviewed the plans?
2 A. It may be that when I was here in that first
3 visit in January, we may have looked at some of the
4 drawings. But I have not had a copy of them in my flies
5 or anything. Have not looked at them in great detail or
6 anything.
7 Q. Did anybody represent to you or show you a set
8 of plans that they represented were the sealed and signed
9 documents? the building plans?
10 A. As I said, I believe we may have looked at some
11 sheets of some of the drawings when I was here in that
12 January visit, but I have not -- it was a brief cursory
13 look at maybe a detail here or there or something, and I
14 don't remember that detail as to what exactly was on those
15 drawings.
16 Q. And the details you would have been interested
17 in wouldn't have been the reinforcing in the brick and the
18 stucco, you would have been interested in the details
19 regarding what elements of the building --
20 A. The floors and the ceilings.
21 Q. The floors and the ceilings.
22 And did you form an opinion at that time as to
23 the adequacy of the details in the floors and the ceilings
24 in those plans that they showed you?
25 A. Whether it was based on the drawings or a

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1 combination of that and our discussions of what was there
2 in the buildings, I did have an opinion at the time as to
3 the situation.
4 Q. And what was that opinion?
5 A. That it was not adequate, would not meet code,
6 would not meet expectations, and so forth.
7 Q. Well, it would fall below the average standard
8 of care --
9 A. Yes.
10 Q. -- in the industry and be negligent, would it
11 not?
12 MR. MAYBANK: Object to the form. It calls for
13 a legal conclusion.
14 THE COURT: Rephrase your question.
15 Q. [Mr. Bundy] Would the plans and specifications
16 that you saw, as it related to those elements in the
17 building which you are interested in, in your opinion fall
18 below the average standard of care in the industry?
19 A. They would fall below the average standard of
20 care, well below the standard of care, in acoustical
21 consultant, someone in my profession. I would not want to
22 speak in terms of the standard of care for an architect.
23 Q. Okay.
24 A. Okay?
25 Q. Fair enough. Fair enough.

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1 In your testimony you said that your goal -- I
2 believe, and you correct me if I'm wrong -- was to reduce
3 the noise where it wouldn't be a problem? That was the
4 goal?
5 A. Well, it was to achieve a substantial
6 improvement, what we could achieve under the
7 circumstances, and make it a substantial, noticeable
8 improvement. I'm not going to say -- and I clearly said
9 we could not achieve a point where you would not hear
10 anything --
11 Q. That's not quite my --
12 A. -- you're going to hear some things.
13 Q. Nobody has contended, have they, that you were
14 supposed to create a soundproof wall or ceiling or floor,
15 have they? Has anybody asked you to do that?
16 A. No.
17 Q. Have you heard anybody in this courtroom make
18 that contention that that's what my clients --
19 A. No.
20 Q. -- are entitled to?
21 A. No.
22 Q. So your goal, your charge, was to improve what
23 was there; correct?
24 A. Yes.
25 Q. But was there a goal involved? Was there a

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1 finish line? In other words, when you play football you
2 can run six yards and you're farther along than you were.
3 But the goal is to get across the goal line and score some
4 points; right?
5 A. Yes.
6 Q. Because if you don't do it within four plays,
7 you lose the ball; right?
8 A. Yes.
9 Q. So with that analogy in mind, okay, where was
10 the goal line when they hired you?
11 A. Well, the absolute goal was to meet the code.
12 Q. Okay. And that was it?
13 A. That was the primary goal.
14 Q. And if meeting that goad did not result in a
15 sound situation that was liveable in this circumstance, or
16 not very rarely a problem, to use your words, I believe,
17 do you still think you achieved what needed to be
18 achieved?
19 A. We achieved the kind of result that is typically
20 achieved in these retrofit situations, not up to a new
21 construction type of --
22 Q. Right.
23 A. -- goal.
24 Q. You were delivered a wrecked automobile and
25 asked to fix it as best you could; right?

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1 A. Yes.
2 Q. Now, they sold my client a Ferrari. Did you
3 give them a Ferrari when you fixed that wrecked
4 automobile?
5 A. Well, no, I would not call it a Ferrari, not
6 a -- not the absolute best that could be done under new
7 construction type of situation.
8 Q. You did the best you could do; right? You're
9 satisfied, Dr. Stewart, I did the best I could do, right,
10 with what I was given?
11 A. With the situation you have in hand, with the
12 limitations of working on the ceiling and not the floor,
13 which is the common situation that's done in these
14 retrofit situations, every one I have ever been involved
15 in, that's been what the situation has been.
16 Q. Did you give them luxury? Have my clients got
17 luxury in terms of soundproofing over there? They living
18 in luxury?
19 A. Well, somebody would have to define the luxury
20 standard.
21 Q. How long have you been in the courtroom? Just
22 today?
23 A. Just today.
24 Q. So you didn't get to hear any of the plaintiffs'
25 talk about what it's like living in the best you could do,

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1 did you?
2 A. No.
3 Q. I understand you've got a machine that goes
4 bump, bump, bump, bump, and you've got all this fancy
5 equipment, right, and you can give us a bunch of numbers.
6 Did you ever think about moving in one of these condos and
7 trying to live in one after your retrofit? Ever ask you
8 to do that?
9 A. No. I've never thought about moving to
10 Charleston.
11 Q. How would you like to be awoken every night when
12 your neighbor gets home -- in a condominium you paid
13 $700,000 for -- after your retrofit?
14 A. Well, I probably wouldn't enjoy it, if that was
15 actually happening.
16 Q. Do you think you would bring a lawsuit if you
17 had to go to bed when your neighbors went to bed, wake up
18 when they went to bed, and you knew everything intimate
19 about their life that made sound? Do you think that would
20 be worth $700,000?
21 A. In my case it probably wouldn't be.
22 Q. You wouldn't want to live that way?
23 A. I would probably be looking for a little higher
24 standard with regard to the impact sound. The airborne
25 sound is quite good in these units.

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1 Q. We're very happy to hear it.
2 A. Yeah.
3 Q. Very happy.
4 A. And the impact sound is substantially better
5 than what it was. It's not --
6 Q. The car --
7 A. -- may not be up to my normal standard of what I
8 would try to achieve.
9 Q. The car that would not run at all now runs.
10 That's basically what we've got. We can get from point A
11 to point B. It's now at least liveable. And as long as
12 you don't have anybody living above you or below you, it's
13 a great place; right?
14 A. [No response]
15 Q. Now, you say that y'all met. Let me back up a
16 second. Let's talk about some time frames here. You got
17 hired in December of 2006; right?
18 A. December -- either then or January. I don't
19 remember the exact date, but in that time frame.
20 Q. And then you issued your first report when?
21 A. Probably late January, 2007.
22 Q. Okay. Late January, 2007.
23 And before that time, who had you met with?
24 What individuals had you met with?
25 A. When I came down in January, I met with Rich and

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1 Jerry. That's who I remember.
2 Q. Rich Behringer and Jerry Rumplick?
3 A. Right.
4 Q. And it was your feeling, based on the totality
5 of the circumstances, that Mr. Rumplick was the architect;
6 right?
7 A. Yes.
8 Q. And that would be the architect of record, as
9 far as you knew?
10 A. As far as I knew.
11 Q. Sure. Sure.
12 And nobody talked about DiMarzio; right?
13 A. Not that I remember.
14 Q. Don't even remember his name, do you?
15 A. No.
16 Q. And Behringer: which Behringer was this?
17 A. This was Rich. I met Bob at some point along
18 the way in one of these three trips. I don't remember
19 which one. There's a chance that he may have been there
20 in January. But I know Rich was. He was my primary
21 contact most of the time.
22 Q. And what was Mr. Rich Behringer's title or job,
23 or what was your understanding about his role in this
24 process based on the totality of the circumstance? Or
25 what did he tell you what he was?

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1 A. That he was -- my understanding was that he was
2 one of the owners or partners of Carriage Hill Associates,
3 the developer.
4 Q. Did he tell you what role he played in the
5 construction?
6 A. I don't remember that we discussed it.
7 Q. Was the construction in place, that you saw, the
8 same as the construction required in the documents you
9 saw? Was the as-built the same as the as-planned?
10 A. My understanding and memory is that the design
11 actually included the resilient channel, that the
12 substitution of the hat channel was a construction issue.
13 Q. And did anybody have anybody to blame about
14 that, or was there an explanation for that?
15 A. I don't remember any explanation or any finger-
16 pointing, or where it came from, as to how it happened.
17 Q. Just one of those things on this job that
18 happened. What was specified just didn't get done?
19 A. It's not the first time it's happened. It's
20 happened --
21 Q. No, sir. It's happened multiple times.
22 A. It's happened before.
23 Q. Yes, sir. Yes, sir.
24 Now, what was the topic of discussion the first
25 time? What did y'all discuss, the goals, what you -- what

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1 they wanted to get done?
2 A. Well, it was more discussing what are our
3 options, what kinds of things can we do so we can start
4 talking about what we might be able to do and how
5 difficult it would be and how much improvement we could
6 get and to make some decisions on directions we could go.
7 Q. Right. Right.
8 Did cost come into play, how much it was going
9 to cost? Did they care how much it cost?
10 A. Well, I'm sure that was a concern. It always
11 is.
12 Q. Now, was Gyp-Crete discussed and the cost of
13 Gyp-Crete?
14 A. I am sure we discussed it at least briefly.
15 Q. Yeah. And was the general discussion it should
16 have been put in but it's too expensive to put in now?
17 A. I'm sure my position would have been that, yes,
18 I would have liked to have had -- excuse me -- had it
19 there.
20 Q. Particularly if you had been living there.
21 A. Yeah.
22 Q. Yeah. There you go.
23 A. The -- but I remember we discussed the problems
24 of trying to put it in basically as has been outlined
25 earlier today. All the issues with the doors, the

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1 cabinets, and everything else, it is an extremely
2 difficult situation.
3 Q. I don't know that it's necessarily difficult.
4 It's just expensive; right?
5 A. Well, it goes forth hand and hand, difficult and
6 expensive. So difficult.
7 Q. I don't know that the contractor is going to
8 find it particularly difficult if you pay him.
9 A. If you pay enough, yes, you can do it. It's
10 physically possible to do it.
11 Q. Let's just get down to it. Gyp-Crete, in the
12 opinion of the people that hired you, was simply too
13 expensive even though you understood at that time that's
14 what should have been put in initially?
15 A. One, yes, I would have recommended it initially.
16 And, two, we knew it would be extremely expensive to go
17 back and do it at this stage.
18 Q. Because Gyp-Crete is standard in the industry if
19 you don't have solid -- if you don't have solid concrete
20 floors; right?
21 A. Right. And it's not the -- it's not the cost of
22 the gypsum, it's the cost of everything else you've got to
23 do to put it in, would have been the issue here.
24 Q. But let me see if I understand. You're talking
25 about a retrofit?

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1 A. In a retrofit situation.
2 Q. I'm talking about original construction. I'm
3 talking about original construction. In the original
4 construction in this type of condominiums, this type of
5 expense, this kind of price point, it's either solid
6 concrete floors or gypsum over wood floors. That's just
7 the standard in the industry, isn't it?
8 A. In terms of what I would recommend, in terms of
9 what other acoustical consultants would recommend, yes,
10 with --
11 Q. Absolutely.
12 A. -- with a resilient material --
13 Q. Absolutely.
14 And in all deference to you, it doesn't take a
15 Ph.D. to know that, does it?
16 A. No. But it takes somebody who's got some
17 knowledge in this stuff.
18 Q. Or an architect who knows what he's doing?
19 A. To be frank with you, it's the rare architect
20 who really knows this stuff very well.
21 Q. Well, it's been my lifelong business. I can't
22 disagree on that.
23 A. Okay.
24 Q. Now, at this meeting -- so cost was a factor?
25 A. I don't remember us trying to talk dollars or

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1 anything, but certainly it was recognized that if you're
2 going to start modifying the floor --
3 Q. Right.
4 A. -- it's not necessarily the cost of the Gyp-
5 Crete and other materials, it's the cost of the fact that
6 it's a retrofit and you've got all these complications.
7 Q. Yeah. Because you put all the furniture and all
8 the appliances and everything in before you put the Gyp-
9 Crete down. It's always expensive to do things out of
10 sequence, isn't it?
11 A. Yes.
12 Q. And after you've sold it, after people have
13 moved in, telling them they were in luxury condominiums,
14 of course it's going to be expensive.
15 Now, so you didn't have carte blanche, okay? As
16 it relates to the Gyp-Crete, Mr. Rumplick told you that he
17 just didn't -- had never done this before and he wished he
18 had put it in, too, at the same time? Hindsight being
19 what it is, he turned to you and said, you know, I
20 probably should have put in Gyp-Crete?
21 A. That's possible he did that. I do not
22 specifically remember the statement.
23 Q. Well, that would certainly be reasonable from a
24 guy who led you to believe he was the architect; right?
25 A. Reasonable? I've worked with many architects

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1 who it would not have crossed their mind to have done it,
2 so --
3 Q. Well, how many architects, how many cases have
4 you been in, where they left the Gyp-Crete out entirely in
5 this kind of a condominium in this kind of situation?
6 A. I don't have a real count, but I know -- I can
7 think of one off the top of my head, and I'm sure there's
8 others, where there was no Gyp-Crete involved in the
9 floor.
10 Q. You mentioned that you had another case on
11 Daniel Island?
12 A. Yes.
13 Q. What case was that?
14 A. It was the Trammell Crow case. Your firm may
15 have been involved in it, too.
16 Q. No. That was stolen from us. We didn't get in
17 on it.
18 A. Okay.
19 Q. So what was the problem there?
20 A. Similar situation. Somebody substituted hat
21 channel for resilient channel and also made a substitution
22 in the resilient mat that was used in the floor from what
23 was originally specified.
24 Q. Did they use Gyp-Crete?
25 A. I believe the Gyp-Crete was there but it was --

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1 Q. At last Trammell Crow has got the sense to put
2 Gyp-Crete in; right?
3 A. Yeah. But it just wasn't the right mat under
4 it.
5 Q. I got you.
6 So they must have had the same guy over there at
7 Trammell Crow. Even though they knew to put Gyp-Crete in,
8 he was still driving nails through the mat; right?
9 A. No. Over there they did not have the problem
10 with the -- to my knowledge, with the nails through the
11 mat or anything.
12 Q. We learned in opening statement that some guy
13 from Trammell Crow was actually the guy that built this
14 thing. Do you know if it's the same guy that built these
15 over --
16 A. I do not know.
17 Q. -- the other project?
18 A. I do not know.
19 Q. Now, did you have a sense when you were meeting
20 with Mr. Behringer and Mr. Rumplick, Mr. Rumplick being
21 the architect, that he was embarrassed by the notion that
22 he had designed six condominiums in South Carolina and
23 didn't have the good sense to put Gyp-Crete on wood
24 floors?
25 A. I do not remember.

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Q. Would you have been embarrassed by that?

A. Well, I know -- I mean --

Q. You know better?

A. Yeah. But I've been in this business thirty years. I've known a lot of architects and it's not that unusual for architects not to know some of these things.

Q. You were in the phone book in 2004, weren't you? You were available for consulting?

A. Yeah.

Q. If these fine gentlemen had called you, you would have been available in 2004? When Mr. Rumplick was designing this building and had no experience with this type of construction, you would have been glad to have helped him if he had called; right?

A. Yes.

Q. Okay. And we're both pretty sure that's not what you would have recommended, what's over there in those drawings; right?

A. I am pretty sure I would have -- at that time I would have probably recommended the resilient channel -- that would have been an acceptable alternative to me -- for suspending the ceiling. I would have recommended Gyp-Crete, or some other material, over a resilient mat on the floors.

Q. Sure. And the reason you would have is so

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1 people, when they go to bed at night, don't have to wake
2 up when their neighbors come home --
3 A. Well, even with that I couldn't guarantee you
4 you wouldn't hear anything.
5 Q. Okay. Now, after this first meeting --
6 And another issue -- another cost issue. As I
7 understand it --
8 Let me ask you this. Ideally, in your retrofit
9 you would have removed all the existing gypsum; right?
10 A. Not necessarily.
11 Q. You don't think the existing gypsum creates
12 additional sound that would not otherwise be -- or sound
13 transmissions that would otherwise not be there --
14 A. Not with the way we did it with the five-inch
15 airspace and so forth.
16 Q. So you --
17 A. If somebody had tried to go up there and put a
18 half inch between it and a new layer of gypsum, yes, there
19 would have been a serious problem. But with the five-inch
20 airspace and the mineral wool [phonetic] in there, and the
21 resilient hangers and the wires, I believe that retrofit
22 is superior to having simply gypsum on resilient channel,
23 which would have been the original ceiling.
24 Q. I apologize. That wasn't really my question.
25 My question is this: take exactly what you

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1 recommended and in addition to that, remove the gypsum
2 that was existing on the hat channel, would you have
3 gotten a different result?
4 A. What you would expect in that case is that you
5 would have gotten, at low frequencies, a little better
6 result. At high frequencies you would not have gotten as
7 good a result.
8 Q. And the reason -- I thought the reason you said
9 you didn't take it out was because it was going to be
10 expensive and messy to get all that gypsum out --
11 A. Well, that was the reason not to take it out.
12 Q. Money?
13 A. And we believed we could do a reasonable job
14 leaving it in there with a proper plan, if we had the
15 space to give ourselves five inches between it and the new
16 gypsum, and to properly suspend the new gypsum and
17 everything. I really don't think it's a problem, what was
18 left there.
19 Q. But the reason the gypsum wasn't put down was
20 because of money and the reason the existing Sheetrock
21 wasn't removed was because of money?
22 A. The -- yes, I guess so.
23 Q. Okay. All right. After the first meeting, what
24 was your charge? What were you directed to do?
25 A. Well, the second thing was that we were going to

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1 come back and do some testing of some of the ideas we had
2 and we would do that in March. And the next thing was
3 once we had done that and they had made the -- Mr.
4 Behringer, Mr. Rumplick, others involved in it, made their
5 decision on okay, this is the retrofit we're going to do,
6 they did that. And I was to come back and document those
7 results in June.
8 Q. Who were the others besides Rumplick and --
9 A. The only three people that I remember meeting at
10 various times in this were the two Behringer brothers,
11 Rich and Bob --
12 Q. Bob?
13 A. -- and Mr. Rumplick.
14 Q. And explain to me -- was there ever a drawing
15 created, or any document created, to specify what was
16 going to be done?
17 A. If there was, I did not create it. There may --
18 I think there may have been one. I may have seen it. I
19 do not -- no, I do not have a copy with me and I don't
20 remember having a copy.
21 Q. Well, you wouldn't have created the document
22 because that would have been the practice of the
23 architecture [phonetic] in the state of South Carolina.
24 A. Well, to advise the architect that it's okay
25 with me that this is what he's doing and that this is my

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1 advice to him.
2 Q. How much did all this cost? Got any idea?
3 A. Oh, let me think a moment, because I have not
4 added it up. But I would say my total bills to them
5 through the testing in June would have been probably
6 somewhere on the order of $15,000.
7 Q. $15,000.
8 How much do you think it cost to do the
9 construction? You got any idea?
10 A. I have no idea.
11 Q. How much did it cost to move the furniture and
12 move people out?
13 A. I have no expertise in that.
14 Q. You didn't produce any drawings; right?
15 A. No.
16 Q. You didn't design -- you didn't design --
17 A. We normally do not produce any drawings.
18 Q. You didn't design anything?
19 A. We normally do not use the word design in what
20 we do. We are advising the architects in their design.
21 Q. Pretty simple question. You did not design
22 anything. Yes or no.
23 A. I'll say no.
24 Q. Because if you design something in the state of
25 South Carolina, you would be practicing architecture

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1 without a license; right? We're right back where we
2 started.
3 A. That's why I try not to use that word design,
4 because I know in North Carolina --
5 Q. That's exactly right. And that's why we have an
6 LLR to take care of the people that do design.
7 Now, when did you see the drawing that was the
8 design that was going to be implemented?
9 A. If I saw a drawing, and I believe I may have but
10 I'm not absolutely sure -- I know we discussed it and I
11 understood what it was going to be from that discussion --
12 it would have been in probably March of 2007.
13 Q. 2007.
14 So the -- and that was done by Mr. Rumplick?
15 He's the one who did the design; right?
16 A. Well, he's the one that I was working with, and,
17 yes.
18 Q. He was the architect you were working with in
19 the state of South Carolina and he designed this fix?
20 A. Yes.
21 Q. And did you get a building permit for all this
22 work?
23 A. The contractor, building contractor,
24 construction people, usually take care of building
25 permits. Acoustical consultants never get involved in

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1 that.
2 Q. Was not your job?
3 A. Not my job, no.
4 Q. But you assumed that somebody was going to do
5 all this work pretty -- it must have been at least over,
6 what, a couple thousand dollars worth of work? I mean, it
7 must have been a pretty substantial amount of work. Have
8 you got any idea what it would be worth?
9 A. Well, yeah. It's more than that. As far as the
10 building permits, I really do not know what the
11 requirements there are.
12 Q. I'm not asking you about building permits. I'm
13 asking you about cost again. How many units did you
14 remediate? Twenty-something?
15 A. I do not know the full count.
16 Q. There are thirty-six units, eighteen of them --
17 twelve of them don't have to be remediated, so you've got
18 twenty-four left. Six people did not get it done. So
19 twenty-one units got done. Can we work with that, you
20 and I?
21 A. Okay. I do not know that for a fact but --
22 Q. Do you anticipate it would cost at least $20,000
23 to do a unit, based upon Mr. Rumplick's design?
24 A. I could see that. I'm not an expert in general
25 construction costs, so I really don't know --

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1 Q. Would you be --
2 A. -- and would not want to be --
3 Q. I apologize.
4 A. -- stating an expert opinion on that.
5 Q. I apologize. I didn't mean to interrupt you.
6 Would a building permit -- in North Carolina --
7 let's go to what you do know something about. Permitting.
8 You know about permitting in North Carolina, don't you?
9 A. Not particularly, because I'm not involved in
10 construction.
11 Q. I got you. Okay.
12 A. Construction contractors normally --
13 Q. I got you. You're not involved --
14 A. -- handle that, so that's not something that I
15 normally have to worry about.
16 Q. One thing we do know: that Mr. Rumplick
17 sometime between January of 2007 and April 1st, 2007,
18 designed this fix for this remediation; correct? We know
19 that.
20 A. Pretty much so. I'm not absolutely sure about
21 April 1st. It may have been a little bit after before it
22 was finalized. But somewhere in that range.
23 Q. Well, when was the last time you were on the
24 job? You left and came back and tested it; right?
25 A. Well, I was down here in January and March and

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1 in June, three days.
2 Q. When you were here in March, was the work -- had
3 you already seen the design by then?
4 A. We had some tentative ideas. We had not
5 finalized for sure what the final decision was going to
6 be.
7 Q. Was Mr. Rumplick's design ninety percent
8 finished in March?
9 A. That's probably a good assumption. In other
10 words, basically that's what we were testing was the
11 ceiling part of the test that we did in March. And that's
12 the option that was gone with so --
13 Q. He was certainly collaborating with you, as an
14 architect, to create a design for this fix between January
15 and April of 2007, without question; is that correct?
16 A. He was collaborating with me and I was working
17 with him and Mr. Behringer and I was presuming he was the
18 architect.
19 MR. BUNDY: Your Honor, I would like to turn to
20 Defendants' Exhibit 217, please.
21 [Whereupon, the Court reviews documents]
22 Q. [Mr. Bundy] I have here an order before the
23 South Carolina Board of Architectural Examiners,
24 Defendants' Exhibit 217.
25 MR. MAYBANK: Your Honor, we would object to the

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1 use of this order in this proceeding.
2 MR. BUNDY: It's his exhibit, Your Honor. A
3 Defendants' Exhibit.
4 THE COURT: I mean, it's your exhibit. I know
5 you haven't offered it yet, but it's in your exhibit
6 book. I'm not trying to --
7 MR. MAYBANK: I understand that, Your Honor.
8 THE COURT: Let me see the attorneys up here
9 just a second.
10 Will y'all flick off that machine?
11 [Whereupon, an off-the-record bench conference
12 is held]
13 Q. [Mr. Bundy] Are you familiar with U.S. Gypsum?
14 A. Yes.
15 Q. What are they or what is it?
16 A. Well, it's a major manufacturer of gypsum
17 products.
18 Q. And do they have any recommendations about
19 soundproofing system for floors?
20 A. They, among others, probably do.
21 Q. There are places which a qualified architect can
22 go to on the internet and see recognized assemblies for
23 floors; right?
24 A. Yes.
25 Q. Just like they can find recognized assemblies

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for fire ratings and everything else; right?

A. Yes. I would caution some of that data is misleading. But it's out there.

Q. Nowhere in any recognized assembly do you find what was in these plans, do you?

A. You are speaking of our retrofit plans?

Q. Let's talk about the original plans first.

A. The original one?

MR. BUNDY: Sir?

THE COURT: Never mind. I was just talking to the law clerk.

[Off the record momentarily]

MR. BUNDY: That's all I have.

THE COURT: Anymore questions?

MR. BUNDY: No, Your Honor.

THE COURT: Do you have any redirect?

MR. MAYBANK: Briefly. Briefly. Briefly.

THE COURT: Make it very brief.

MR. MAYBANK: It is.

REDIRECT EXAMINATION

BY MR. MAYBANK:

Q. Dr. Stewart, I understand and heard all the questions Mr. Bundy asked you. But at the end of the day, the bottom line is is that the retrofix as designed, installed, and built, meets or exceeds the code in these

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1 units; correct?
2 A. Yes.
3 MR. MAYBANK: No further questions.
4 THE COURT: All right. I want to make sure I
5 understand. First of all, do you have -- could
6 somebody hand him a copy of Plaintiffs' Number 180?
7 That is the cost estimate prepared by Southeastern.
8 If somebody could hand him that, please. I want to
9 ask him a couple of questions about it.
10 [Whereupon, Mr. Maybank proffers documents to
11 the witness]
12 EXAMINATION
13 BY THE COURT:
14 Q. Mr. Stewart, would you look at page 11 where it
15 has acoustical ceiling repairs, number 15. Do you find --
16 do you see that?
17 [Whereupon, the witness reviews documents]
18 A. Oh. Down at the very bottom?
19 Q. [The Court] At the very bottom. Okay. I just
20 want to make --
21 First of all, explain -- I'm not quite sure I
22 understand what you're talking about when you're talking
23 about resilient-channel design versus hat channels --
24 A. Okay.
25 Q. -- versus, you know, for noise reduction.

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1 A. Okay. If I had a piece of paper, I could draw
2 you a --
3 MR. MAYBANK: Your Honor, if I could -- if I
4 could approach, I'll pull his easel out. Dr. Stewart
5 can draw it for you pretty easy.
6 Q. [The Court] Well, just tell me. Okay?
7 A. If you can visualize, first of all, a hat
8 channel. Visualize a hat channel --
9 Q. Well, that picture shows the hat channel; right?
10 A. It's got legs on each side, then it comes out.
11 You fasten those legs on each side. It's relatively
12 rigid; okay?
13 Q. And that transmits sound?
14 A. That'll transmit the sound, yes. Okay?
15 The resilient channel, if you can visualize
16 cutting off the leg on one side that attaches to the truss
17 so it only attaches on one side, and then it comes down
18 and across and it does not go up and touch the truss on
19 the other side --
20 Q. Okay.
21 A. Okay? Then, also, in the angled web portion
22 that's coming down, we cut a bunch of slots in there so
23 that it's not solid.
24 Q. Where it sort of absorbs the sound?
25 A. Yeah. So that when you cut it up properly, then

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1 those slots are put up against the joist and there's a
2 slot wherever the joist is and a solid piece where there's
3 not a joist, then it performs a spring-like function to
4 help act as a spring to minimize the transmission of the
5 sound and the impact sound.
6 MR. MAYBANK: The top is the resilient and the
7 bottom is the hat channel.
8 THE COURT: Oh. Okay. Thank you.
9 Is this the way he drew it out for you?
10 MR. MAYBANK: It is, Your Honor. Yes, sir.
11 THE COURT: Okay.
12 MR. MAYBANK: It's confusing.
13 Q. [The Court] Now, if you would look at
14 Plaintiffs' Exhibit Number 180, as I referred you to, at
15 15.1 through 15.12 --
16 A. Yes.
17 Q. -- would you review that?
18 A. Yes. I reviewed this an hour or so ago.
19 Mr. Maybank handed it to me to look at.
20 Q. Take a few minutes to refresh. I want to ask
21 you a couple of questions -- a couple of questions.
22 A. Okay.
23 [Whereupon, the witness reviews documents]
24 Q. [The Court] That design is not converting it to
25 a resilient channel's design, is it?

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A. Correct. This is not a plan using resilient channel. This is a plan using what are called coiled springs. You know what a coiled spring is, sort of like a spring on your car that's coiled? There are a couple of companies that make systems to hang ceilings on a coiled-spring system. It's sort of the rarely-done ultimate, very rarely used, but that product is out there.

Q. Based upon the fix that you had -- I understand the hat channel are in there, you can't rip them out and that's impossible at this point in time. I assume that's correct. Is that incorrect or correct?

A. Well, the hat channels that are in the ceiling now --

Q. Right.

A. -- well, we would have to tear everything else out to take them out --

Q. Right.

A. -- and I don't see any real need to.

Q. So my question to you: based upon what Mr. Padgett has recommended the fix for the acoustical ceiling repairs versus what you have done, how much improvement do you think there would be in the air sound?

A. Airborne sound?

Q. Airborne sound.

A. I really don't think there would be any.

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1 Q. How about impact sound?
2 A. The bathrooms there would definitely be -- the
3 smaller bedrooms and smaller rooms, I think it's unlikely
4 there would be much improvement. There is a chance that
5 in the big livingroom-diningroom-kitchen area there could
6 be some -- maybe a little bit of improvement using this
7 system, but not enough to justify tearing it out and
8 redoing it or anything.
9 Q. Would it make a difference on the impact versus
10 the airborne sounds?
11 A. The --
12 Q. The mod that they are recommending in 15, the
13 acoustic --
14 A. Now, I -- I really would not recommend undoing
15 what was done and doing this. I do not think that would
16 make any significant improvement.
17 Q. In either sound, either airborne or impact?
18 A. Right. The isolators we used are made by the
19 same company that makes these springs. They are a rubber
20 isolator. And with the overall results we got and so
21 forth, I just --
22 Q. I guess you --
23 A. -- I do not believe it would be worthwhile
24 trying to do this.
25 Q. The only other thing I wanted to ask you, and

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1 Mr. Bundy asked you about it. The gypsum board that's
2 attached -- the original gypsum board is attached to the
3 original ceiling?
4 A. Yes.
5 Q. How much transmission of sound does that do, the
6 board itself?
7 A. What is -- the situation you have there is that
8 that board is, in terms of to some extent both the
9 airborne and impact sound, it is providing some degree of
10 benefit. It always did some degree of benefit. Okay?
11 Where it would be detrimental, in particular, to have it
12 left there if we had tried to put up a new gypsum ceiling
13 just one inch from it or less, or even two inches or so,
14 then the two layers of gypsum interacting with one another
15 would create a problem, particularly down at the lower
16 frequencies. And this is why I insisted on that space
17 being at least five inches, because the -- having that
18 extra layer of gypsum there is helping at high
19 frequencies, but you have a potential problem --
20 Q. And when you say high frequencies --
21 A. I'm talking about --
22 Q. -- what type of noise are you talking -- I know
23 what high frequencies is. But what type of noise
24 generated are you talking about?
25 A. Well, that could either be the airborne sound,

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1 the higher pitches in your voice, the music, the higher
2 treble sounds, the higher-frequency sounds, as opposed to
3 the low base. Okay. And the same sort of thing happens
4 with the impact sounds. You have a tap, tap and you have
5 a thump, thump. Okay? The trapped air between -- and
6 what we call the resonance effect, between those two
7 layers of gypsum, you always --
8 Anytime you create a cavity, even in the
9 original floor-ceiling structure where you had a cavity
10 there, there is some frequency of which that cavity is
11 resonant where the structure is somewhat weak. And we try
12 to make that cavity deep enough that that frequency is way
13 down low, where there's not much problem or issue.
14 When you start making that cavity smaller and
15 smaller -- this is one reason why a common stud wall is
16 three and a half inches thick. When you start getting
17 much thinner, you start running into these problems. We
18 need to have enough space there that any resonance between
19 those two layers of gypsum is at low enough frequency that
20 it's not a particularly bad problem. So this is where I
21 insisted on the five inches.
22 In normal construction practice, new
23 construction or anything, we try to avoid double cavities
24 like that altogether and make a single cavity as big as we
25 can so that we do not have any -- so we minimize this low-

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1 frequency situation. But in a situation like this where
2 we're able to get five inches space there, I feel very
3 comfortable with it that it is doing about as well as we
4 could do.
5 Q. But, primarily, I think you testified earlier,
6 that's just going to attenuate the airborne sound, not do
7 much with impact?
8 A. The -- I don't see it as having much -- any
9 effect one way or the other on the impact sound.
10 Q. Okay. All right.
11 THE COURT: Anybody have any questions based
12 upon the questions the Court has asked? I was trying
13 to get a clear understanding --
14 MR. BUNDY: I had one question.
15 THE COURT: -- of what he was saying.
16 MR. BUNDY: I have one question.
17 THE COURT: Either party can ask questions.
18 MR. BUNDY: Thank you. To follow up with His
19 Honor.
20 FURTHER RECROSS-EXAMINATION
21 BY MR. BUNDY:
22 Q. Are you saying that if the decision had been
23 made to remove that original gypsum, that my clients would
24 not have lost nearly as much ceiling space? You could
25 have moved that ceiling out --

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1 A. That is correct.
2 Q. So in order to save money, the developer left it
3 up there and deprived my client of the ceilings they
4 purchased, the height of the original purchase, and had
5 they taken it out my client would have the original
6 ceiling height?
7 A. They may have lost a little bit, but not the
8 five inches.
9 MR. BUNDY: Thank you very much.
10 THE COURT: Mr. Maybank, anything you would like
11 to ask?
12 MR. MAYBANK: Maybe I was confused on this, Your
13 Honor.
14 FURTHER REDIRECT EXAMINATION
15 BY MR. MAYBANK:
16 Q. As to the second ceiling, so to speak, there is
17 a layer of insulation between the original ceiling and
18 that ceiling and as is built, that has lowered the impact
19 sound from one floor to another?
20 A. With the remediated design, we did add in the
21 extra batts between the two layers of gypsum. That's good
22 practice. Anytime you have a cavity issue, you want to
23 put the batts in there to avoid risk of problems. And my
24 belief is that the system we have now with the remediated
25 ceiling with the airspace -- with the extra batts, the

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1 rubber isolator hangers, the original ceiling plus the new
2 ceiling, it's my opinion that that is better than what the
3 original designed ceiling would have been as a ceiling;
4 that is, just a layer of gypsum on the resilient channel
5 would not be as good as what we have now.
6 Q. What would have been -- with the isolation clip
7 from the original design, how far down -- I guess if you
8 were to go back up, would you, what, get back another
9 three inches of height in the ceiling?
10 A. If we had taken down the original gypsum and
11 been able -- and then installed a ceiling without that
12 restriction of having to have five inches between two
13 layers of gypsum, we would have gotten the -- we could
14 have gotten the new ceiling at essentially where the
15 original ceiling was. It might have varied a half inch
16 one way the other, or something, but would have been
17 essentially about that level.
18 MR. MAYBANK: Okay. Thank you.
19 MR. BUNDY: Nothing further, Your Honor.
20 THE COURT: Okay. Any reason he can't be
21 excused --
22 MR. BUNDY: None.
23 THE COURT: -- and back to the triangle?
24 MR. BUNDY: No, Your Honor.
25 THE COURT: Okay. Thank you so very much.

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1 MR. MAYBANK: You've got to fight the traffic at
2 this time of day.
3 THE COURT: You're going back tonight, Dr.
4 Stewart? Have a safe --
5 THE WITNESS: Trying to get out of town.
6 THE COURT: Have a safe trip.
7 MR. BUNDY: Good to see you.
8 MR. MAYBANK: Thank you, Dr. Stewart.
9 [Whereupon, Dr. Stewart is excused and exits the
10 witness stand]
11 THE COURT: Do you have any other witness you
12 have to call today, Mr. Maybank? You said you have
13 some flying in.
14 MR. MAYBANK: No, Your Honor. We were going to
15 but it's just too --
16 THE COURT: Pardon?
17 MR. MAYBANK: No, Your Honor.
18 THE COURT: Do you?
19 MR. MAYBANK: No.
20 MR. BUNDY: Not that I have to call, no, Your
21 Honor.
22 THE COURT: All right. See you at 9:30.
23 MR. BUNDY: Thank you, sir.
24 MR. MAYBANK: Thank you, Your Honor.
25 [BENCH TRIAL ADJOURNS AT 5:06 P.M.]

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the bench trial held before the Honorable J.C. Nicholson, Jr., on Wednesday, April 10, 2013.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 12th day of October, 2013.

Mia Perron

Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

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STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY) CASE NO.: 2009-CP-08-3916

THE OAKS AT RIVERS EDGE PROPERTY OWNERS ASSOCIATION, INC., JOHN E. ATKINSON, JOAN D. STRANDQUIST, JOSEPH E. CHIOVAROU, JR., PEYTON H. COOK, JR., BRENDA COOK, JOHN W. EDELEN, KAREN A. NELSON, ROBERT J. GRAHAM, MAUREEN S. GRAHAM, NANCY K. JOHNSON as trustee for the Nancy K. Johnson Revocable Trust, WILLIAM JUNG, CHARLES MARAZITI, PATRICIA MARAZITI, GEORGE S. POLLARD, ELEANOR J. POLLARD, ROBERT REESE, GERALD M. RUVO AND SUE S. RUVO as trustees for the Ruvo 2006 Living Trust, CAROLYN M. JENNINGS, THOMAS EDWARD KEANE, EDWARD WALLACE BARR, III, RICHARD B. PEKRUHN, PAULINE PEKRUHN, MATTHEW J. SEVERANCE and ELIZABETH ASHLEY PHILLIPS SEVERANCE,

PLAINTIFFS,

VS.

DANIEL ISLAND RIVERSIDE DEVELOPERS, LLC, CARRIAGE HILL ASSOCIATES OF CHARLESTON, LLC,

DEFENDANTS.

BENCH TRIAL

VOLUME 4 OF 4

SUSAN "MIA" PERRON, CVR-CM-M
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 31865
Charleston, South Carolina 29417-1865
1-706-231-6028

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held before the Honorable J.C. Nicholson, Jr.

Mia Perron, Circuit Court Reporter, 9th Judicial Circuit

in the Charleston County Courthouse

Charleston, South Carolina

on April 11th, 2013, Commencing at 10:16 a.m.

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APPEARANCES OF COUNSEL

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[Exhibits pre-marked by counsel unless otherwise noted in the transcript]

MARKED/ADMITTED

PLAINTIFFS'

Plaintiffs' Exhibit Number 183 / 1027, 1038
[Mr. Parker's Plans]

Plaintiffs' Exhibit Number 184 / 1038
[Building Plans]

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Defendants' Exhibit Number 218 [Order against Rumplick]	/ 1040
Defendants' Exhibit Number 237 [Photograph]	975 /
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[Exhibits pre-marked by counsel unless otherwise noted in the transcript]

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1 PROCEEDINGS

2 THE COURT: All right. Mr. Bundy, are you ready
3 to call your next witness?
4 MR. BUNDY: The plaintiff is ready, Your Honor.
5 THE COURT: If you'll call your next witness.
6 MR. BUNDY: I call Davis Willis.
7 [Whereupon, Mr. Willis comes forward]
8 THE CLERK OF COURT: Raise your right hand.
9 Raise your right hand.
10 [Whereupon, Mr. Willis is duly sworn by the
11 clerk of court as follows: do you swear or affirm
12 that your testimony will be the whole truth and
13 nothing but the truth, so help you God]
14 THE WITNESS: I do.
15 THE CLERK OF COURT: State your full name and
16 spell your last.
17 THE WITNESS: David Willis, Jr. W-I-L-L-I-S.
18 THE COURT: Please be seated.
19 [Whereupon, Mr. Willis takes the witness stand]
20
21
22
23 - - -
24 - - -
25 - - -

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1 DAVID WILLIS, JR,
2 Having Been First Duly Sworn,
3 was Examined and Testified as Follows:
4 DIRECT EXAMINATION
5 BY MR. BUNDY:
6 Q. Mr. Willis, where do you live?
7 A. 141 Briarwood Lane, Summerville, South Carolina.
8 Q. Are you related by blood or marriage to anybody
9 in this courtroom?
10 A. Related by marriage to Mr. McDonald.
11 Q. This gentleman here?
12 A. Yes, sir.
13 Q. So your sister picked him, not you?
14 A. That's correct. Thank you for the
15 clarification.
16 Q. And have you ever done any business with me?
17 A. We have in the past. You represented my father
18 years ago, and we've done some construction projects
19 together over the years.
20 Q. How did you come to be engaged or hired by the
21 HOA to provide the services you provided?
22 A. Mr. Padgett contacted me and asked me if we
23 would be interested in pricing -- or providing a proposal
24 to provide a cost estimate for some repair work at the
25 site.

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Q. Do you have any reason to believe either myself or Mr. McDonald had anything to do with you getting this job?

A. No, sir.

Q. And did the fact -- does the fact that that's your brother-in-law, and I've done business with you and represented your father, does that affect your estimate in any way?

A. Not at all.

Q. You're still going to have to do the work to get paid; right?

A. That's correct.

Q. All right. Mr. Willis, just very briefly tell us what your work history is, your educational background.

A. I started with Southeastern Construction, which is a family company, when I was a child and worked up through the ranks, general labor, foreman, superintendent, project manager, during my schooling here in Charleston and then during the summer breaks and other college breaks when I attended USC. After I graduated from the University of South Carolina, I came back and --

Q. What year did you graduate?

A. 2001.

Q. How old were you?

A. -- came back and started in a project manager of

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1 project managers' role in the company, and then upon my
2 father's death in 2002 assumed control of the company.
3 Q. All right. Are you licensed?
4 A. I am licensed with a B.D. 5 unlimited general
5 contractor's license and a construction manager's license
6 in the state of South Carolina.
7 Q. Are you bondable?
8 A. Yes, sir.
9 Q. Have you ever built any condominiums?
10 A. Yes, sir.
11 Q. Tell us which ones you built.
12 A. We built Belk Hall [phonetic] condominiums, the
13 first phase of that project. It's an eighteen-unit
14 building in Mount Pleasant.
15 Q. Have you ever done any large restoration jobs or
16 repair jobs?
17 A. Yes, sir. We just completed the Barnwell County
18 Administration repairs several months ago.
19 Q. Okay. And how much was that contract?
20 A. A little over $3,000,000.
21 Q. And what did that involve?
22 A. It's a complete stucco declad, window
23 replacement, remove the entire wood frame group, replace
24 that, made a number of structural repairs -- connection
25 remediation, electrical repairs, and then all the

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1 subsequent fit and finishes that went back as collateral
2 damage from the structural repairs.
3 Q. Did you do a cost estimate on that job?
4 A. I did.
5 Q. And then you did the work thereafter?
6 A. That's correct.
7 Q. How did your estimate compare with the cost of
8 your work and final analysis?
9 A. Within five percent.
10 Q. And did you know a Mr. Steve Watkins?
11 A. I've met Mr. Watkins. I believe he was actually
12 involved in the Barnwell case, as well.
13 Q. He's since passed away.
14 A. I was aware of it, yes, sir.
15 Q. Are you aware that he also did some estimating
16 on this job?
17 A. Yes, sir.
18 Q. All right, sir. If we could, I would like to
19 talk to you a minute about the licensing procedure. You
20 are -- you hold an unlimited general contractor's license?
21 A. That's correct.
22 Q. Very briefly tell the judge what's involved in
23 getting such a license.
24 A. It's actually from the State of South Carolina
25 and requires that the qualifying party for the general

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1 contractor's license be -- have a work history requirement
2 for the similar type of work that he is trying to be
3 licensed for. Once that's been established, from a letter
4 or some other kind of proof of employment, then said
5 qualifier would need to pass a business-law exam with the
6 State, which apprizes him of all the statutory regulations
7 that the LLR has imposed upon a general contractor as far
8 as what he's allowed to do legally.
9 Q. All right. Let's --
10 A. Once -- sir?
11 Q. Let's talk about the business-law exam. You
12 have to take the business-law exam, before you take the
13 exam, to determine whether you actually know how to build
14 anything; right?
15 A. That's correct.
16 Q. And before you get to take the business-law
17 exam, you have to have worked for somebody for how long?
18 A. I believe it's twelve months.
19 Q. Twelve months. Okay.
20 Now, the business-law exam is a take-home exam?
21 A. That's correct.
22 Q. So they give you the test and you go back and
23 you look in the books, or whatever materials, and you fill
24 out the exam and send it in; right?
25 A. That's correct.

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1 Q. Are there any questions on that business-law
2 exam that relate to the law surrounding the requirement
3 that the licensee, the person who takes the test, has to
4 be on the job during construction?
5 A. It does. But the general contractor's license
6 can be held by an entity or an individual. If it's held
7 by an entity, then there's a qualifying party for that
8 entity.
9 Q. And by entity you mean a corporation --
10 A. Correct.
11 Q. -- or LLC?
12 A. LLC.
13 That qualifying party is the responsible party
14 for the contractor's license, regardless of who it's held
15 by. So that individual is who's ultimately responsible.
16 If there's any kind of issues with the construction that
17 were regulatory or by code, or a failure thereof, that
18 gentleman's or female's knowledge of building codes and
19 the law, as it relates to the general contractor, would
20 come into play. That particular fault-line party is
21 responsible to supervise construction. And in order to
22 supervise construction, one would have to be in the field;
23 therefore, they would have to be present on the job site.
24 Q. Basically, the LLR wants to be able to go to a
25 human being, not some -- not a corporation, and say, you

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1 are responsible for this work, you're the one who takes
2 the test?
3 A. Correct. And that's who is subject to lose
4 their license or be fined, based on the fine.
5 Q. And if the qualifying party loses their license,
6 by definition, then the corporate entity they were working
7 for would no longer be licensed?
8 A. Unless they had a second qualifying party.
9 Q. How does it -- what happens if a qualifying
10 party dies, as it relates to the corporate entity?
11 A. If the qualifying party is no longer able to be
12 the qualifying party for an entity, whether it's from
13 dismissal or death --
14 Q. Or not being there?
15 A. Correct. Correct.
16 -- they no longer work for the entity,
17 notification needs to be provided to the LLR within
18 fifteen days of said event. Obviously, if someone has
19 died, then notification would need to be given by the
20 corporation. Typically, if it is just a departure between
21 the employee and employer, the qualifying party would
22 notify the LLR and the entity that holds the license would
23 have to notify the LLR within fifteen days. If that was
24 done, then there is a ninety-day grace period that allows
25 the holder of the license to substitute a new qualifying

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1 party to make sure that the license stays in effect.
2 Q. And if that notification is not given, then the
3 license is just void?
4 A. It's revoked.
5 Q. Okay. As a matter of --
6 A. As a matter of statute.
7 Q. -- matter of law. Statute. Okay.
8 Assuming that Mr. Paturalski was the qualifying
9 party, came down from New York, took the test, became the
10 qualifying party for Charleston -- Carriage Hill of
11 Charleston, LLC, and then went back to New York and never
12 came back to the job to supervise, would that -- as you
13 understand the licensing law that you are governed by
14 under the LLR, would that revoke that license?
15 MR. MAYBANK: Your Honor, we would object as to
16 relevance and hearsay.
17 THE COURT: Overruled. Go ahead.
18 A. If he was not there to supervise it, then he's
19 in breach of his obligation as a qualifying party. I
20 don't know if it would automatically revoke the license,
21 except for the fact that he is supposed to maintain a
22 position in the area. I mean, if he's no longer the
23 qualifying party of that entity and he's moved back to New
24 York and there's no qualifying party, then, yes, the
25 license is automatically revoked.

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1 Q. [Mr. Bundy] Now, let's assume that he moved,
2 okay? And we've heard in opening statements that Carriage
3 Hill of New York got somebody else who had a license under
4 another name to come in and oversee the work. Would that
5 qualify that person as the qualifying party for Carriage
6 Hill of New York if they work for another entity?
7 A. The licensing requirements are very specific
8 regarding the qualifying party's responsibilities of duty.
9 You can have a qualifying party that can qualify for more
10 than one entity, but there are regulations that go along
11 with that. Both of the entities would have to be out of
12 the same office or general location and the qualifying
13 party would have to have a minimum of fifty percent
14 interest in one of those two entities.
15 Q. Now, if -- another way to have done -- another
16 way to do it would be if the qualified party leaves and
17 you've got another guy who works for another construction
18 company. You could go down and just replace that general
19 contractor's name with the previous general contractor on
20 the permit; right?
21 A. Yes. You can go down to the municipality that
22 issued the building permit and substitute general
23 contractors, as long as they're qualified to perform the
24 scope.
25 MR. BUNDY: Your Honor, at this time I would

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1 offer Mr. Willis as an expert as a licensed general
2 contractor and estimating in general contracting.
3 THE COURT: Any objection? Do you want to ask
4 questions concerning his qualifications?
5 MR. MAYBANK: Let me ask a few questions, I
6 guess, Your Honor.
7 THE COURT: Okay.
8 VOIR DIRE EXAMINATION
9 BY MR. MAYBANK:
10 Q. Mr. Willis, have you ever testified on behalf of
11 the LLR before for licensing purposes?
12 A. I have not.
13 Q. Have you ever been asked to give any testimony,
14 as to the standards of the Department of Labor and
15 Licensing, regarding general contractor's licenses?
16 A. No, sir.
17 Q. All right. Have you ever given deposition
18 testimony as to whether or not parties are qualified
19 through the interpretation of the licensure process in
20 South Carolina?
21 A. I have not.
22 Q. And how long have you been licensed?
23 A. Since 2002.
24 Q. Have you ever been appointed to be on the board
25 or the rules-writing committee for the Department of Labor

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1 and Licensing for the construction division?
2 A. No, sir. My testimony is based on experience I
3 went through to become a general contractor, and that is
4 what I testified to. I have no other testimony past that
5 point.
6 Q. So there could be other situations or operations
7 in which maybe there's different routes in which the
8 licensing can occur but you just don't know about it, you
9 only know what you went through?
10 A. Well, I know how you become a contractor, and
11 that's pretty spelled out in the LLR's regulations.
12 Q. Have you ever taught courses to general
13 contractors on -- for people looking to get their general
14 contractor's license, on how they are to do that and what
15 they are to do?
16 A. No, sir.
17 Q. How about in dealing with out-of-state entities
18 on how to go about becoming a licensed general contractor
19 in South Carolina?
20 A. No, sir.
21 MR. MAYBANK: Your Honor, we would be asking
22 that he be disqualified as any kind of expert in
23 rendering testimony as to the credentialing and the
24 process of becoming a licensed --
25 THE COURT: Well, let me find out specifically

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1 what he wants me --
2 What do you want me to find him an expert to do?
3 MR. BUNDY: An expert in estimating and general
4 contracting and a licensed general contractor. That's
5 it.
6 THE COURT: All right. I'll qualify him as an
7 estimator, as a general contractor, and I'll also
8 qualify him -- now, he can testify as to what he
9 knows, of his own knowledge, that it takes to become a
10 licensed -- not what the LLR would do or not do.
11 Okay?
12 MR. MAYBANK: Thank you, Your Honor.
13 THE COURT: And so that's a partial sustaining
14 your objection but also a partial overruling. Okay?
15 MR. MAYBANK: Thank you.
16 THE COURT: All right. Please proceed.
17 MR. BUNDY: Thank you.
18 CONTINUED DIRECT EXAMINATION
19 BY MR. BUNDY:
20 Q. And you also have a construction manager's
21 license?
22 A. That's correct.
23 Q. And is that a separate license?
24 A. It is.
25 Q. What's the difference between a construction

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1 manager and a general contractor?
2 A. A construction manager is strictly a supervisory
3 component of construction. They are there to observe, to
4 coordinate, to help determine, which subcontractors will
5 perform work. They can issue contracts to subcontractors.
6 Typically, there is contract issues between subcontractors
7 and owners under a multi-prime situation when a
8 construction manager is involved. The definition of a
9 construction manager, per the LLR, is that they manage and
10 they don't actually perform work. If a construction
11 manager self-performs work, then it's not a true
12 construction management situation. So very seldom do we
13 see that particular avenue taken with construction.
14 Q. You've obtained building permits before?
15 A. I have.
16 Q. And you've obtained building permits as both the
17 general contractor and construction manager?
18 A. Only as a general contractor.
19 Q. Is there a difference between the permitting
20 requirements, as you understand, and between obtaining a
21 general contractor's permit to build a building, and a
22 construction manager's?
23 A. Yes, sir.
24 Q. Can you tell us what that is?
25 A. Yes, sir. A general contractor's ability to

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1 pull a permit is based on his classification as a
2 contractor and subsequent financial and testing procedures
3 that he went through to get his license. The construction
4 manager doesn't have to prove a value of his company and a
5 construction manager can either be a licensed engineer,
6 architect, or a contractor. So when a construction
7 manager goes to get a permit, it's a multi-prime permit,
8 which means every one of the subcontractors has to be
9 licensed in his or her own trade. So you would have to
10 have an electrician that would have an electrical license,
11 you would have to have a plumber that would have a plumber
12 license. And those are pretty standard, because they're a
13 specialty license. But you would also have to have a
14 framer with a framing license and a concrete contractor
15 with a concrete license and a site contractor with a site
16 license. And certain trades will fall under the egis of a
17 general contractor's license because he could self-perform
18 that work.
19 For example, you could have a specialty license
20 from the state, or a business license, but that's not the
21 same as a specific trade license for a subcontractor. So
22 to clarify, in the event -- in the situation of a
23 construction manager scenario, all of the subcontractors
24 would have to be individually licensed with the State of
25 South Carolina to perform their tasks. In the instance of

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1 a general contractor pulling the license, only particular
2 subs would have to have that licensing.
3 Q. In a construction-manager situation, are those
4 subcontractors listed with the building department?
5 A. They are with both. Yes. I mean, you're
6 required to provide your list of subcontractors to the
7 municipality that you obtained your permit and for
8 primarily for business licensing and also for them to make
9 sure that the subs you used are licensed to --
10 Q. And on the building permit it tells you whether
11 the contractor was presenting itself as a construction
12 manager or a general contractor, does it not?
13 A. That's correct.
14 Q. And they've got different numbers? All these
15 licenses have different numbers; is that correct?
16 A. That's correct.
17 Q. And if someone was actually a construction
18 manager and went down to get a license and that's the only
19 license they had, that would be -- that would be what the
20 permit said; right?
21 A. It would be the license of -- yes, sir.
22 Q. Okay. And they would have to have -- it would
23 be -- in starting the job, they would have to have a
24 license -- somebody listed with a license to pour the
25 concrete, do the foundation work; right?

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1 A. That's correct.
2 Q. And everybody else? All the other trades that
3 would normally be included under general contractor?
4 A. Yes, sir.
5 Q. And if you go in as a general contractor with an
6 unlimited license, that takes care of everything except
7 what? the electrical, mechanical, and plumbing?
8 A. Correct.
9 Q. So would be -- those are the separate ones no
10 matter what?
11 A. No matter what.
12 Q. But a construction manager, since he's not
13 really building anything, would have to list all the rest
14 of them?
15 A. That's correct.
16 Q. Now, what were you asked to do in this case?
17 A. I was tasked to prepare a cost estimate that
18 would reflect the costs associated with a scope of work
19 that was prescribed by Ted Padgett.
20 Q. You've ever -- you've worked with Mr. Padgett
21 before?
22 A. I have.
23 Q. And you didn't decide what needed to be done;
24 right?
25 A. No, sir.

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1 Q. You just decided -- you just determined how much
2 it was going to cost to do it?
3 A. Yes, sir.
4 Q. And you're willing and able to do the job for
5 this price?
6 A. Yes, sir.
7 Q. Do you have a copy of the estimate with you?
8 A. Back at my seat.
9 Q. For the record, I'm going to hand you what's
10 been marked and in evidence as Plaintiffs' Exhibit 180.
11 Do you recognize that document?
12 A. Yes, sir.
13 Q. What I want to do is very briefly just go
14 through these items, based upon what you understood Ted
15 Padgett wanted scoped. Okay?
16 A. Yes, sir.
17 Q. First off, after the scope -- did you meet with
18 Mr. Padgett after you got the written scope?
19 A. Met with Mr. Padgett several times.
20 Q. And you're satisfied this captures what he
21 wanted done?
22 A. Yes, sir.
23 Q. Now, subsequent to this, when you get the job
24 and go forward, he's going to have to prepare plans and
25 specifications and all those things; right?

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1 A. That's correct.
2 Q. But you didn't need that in order to do this?
3 A. No, sir. We had -- yeah. No, sir.
4 Q. And this is similar to what you did in Barnwell;
5 right?
6 A. Exactly what I did in Barnwell.
7 Q. Let's talk about division one. What is division
8 one?
9 A. Division one is our general requirements for
10 this project. And they are site-specific costs to the
11 project that don't necessarily fall into any one
12 architectural division.
13 Q. And then the next one is wall repair at rear
14 stucco facade. Just very briefly tell the Court why you
15 priced this separately and what's involved.
16 A. This is just an isolated area on the building
17 and it was removal of a section of stucco replacing the
18 sheathing behind it, re-waterproofing it, and reinstalling
19 it.
20 Q. And you made an assumption here that you're
21 going to have to remove fifty percent of the studs?
22 A. That was prescribed by Mr. Padgett's scope.
23 Q. Is there any contingency in your contract for
24 unforeseen events?
25 A. There's a ten percent contingency buried in this

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1 cost estimate.
2 Q. So if it ended up being sixty percent, the
3 contingency would be reduced by that amount?
4 A. Yes, sir. The contingency, in its nature, is
5 ten percent of the global cost of the project. So unless
6 every single item went over a hundred percent, it should
7 cover it.
8 Q. All right. And do you find that to be a
9 reasonable -- this is -- are these prices standard in the
10 industry in this locale?
11 A. Yes, sir.
12 Q. Are they based upon your actual cost incurred in
13 other projects of a similar nature?
14 A. Yes, sir.
15 Q. All right. The next thing is replace all
16 windows and doors. That is not in this estimate; is that
17 correct?
18 A. That is removed.
19 Q. So that's not damages being replaced in this
20 case.
21 Let's move over to remove and replace all
22 stucco. This is for the complete removal of all stucco?
23 A. Yes, sir.
24 Q. And, again, is that pricing consistent with
25 pricing that you've actually experienced?

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A. Yes, sir.

Q. And, in fact, you just got through with a stucco job down in Barnwell; right?

A. Yes, sir.

Q. So is this based upon that actual experience?

A. It's actually less than what that is because of where it was. We have a declad job going on in West Ashley now and it's indicative of the cost there.

Q. So you're able to do work a little bit more efficiently and cheaper down here than you are in Barnwell based upon its rural nature; is that correct?

A. That and it's 200 miles away.

Q. Now, in your office you also have a full-time architect; is that correct?

A. That's correct.

Q. And did the full time -- let me -- and who is that? Mr. Duma?

A. John Duma. Yes, sir.

Q. And how long has he been in the business?

A. Thirty, forty years.

Q. Is he licensed in the state of South Carolina?

A. He's a licensed architect, yes, sir.

Q. And does he do work for governmental bodies?

A. All the time.

Q. Dorchester County, Charleston County?

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A. Yes, sir.

Q. Next is remove and replace the brick. Does this estimate remove and replace all of the brick?

A. No, sir.

Q. All right. How much does it remove and replace?

A. Removes and replaces 6,180 square feet of brick.

Q. And can you give me any idea of what percentage of the building -- the total brick that would be?

A. It's the majority of the brick. Seventy.

Q. Seventy percent?

A. Seventy, eighty percent, yeah.

Q. And that was what Mr. Padgett asked you to price?

A. Mr. Padgett's scope was a narrative, it wasn't a set of drawings or plans, so his scope terminology was replace the majority of the brick but replace all of the rowlocks and all the sill brick in its entirety. And then also to replace portions of brick needed for definistration.

Q. Okay. And what if you -- what if you run into brick that's not properly anchored that was not a part of this 6,000-square-foot of brick?

A. It was covered in the scope in the sense that he said if you encounter it, it will have to be removed. But we relied on the contingency for that.

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1 Q. So, again, you've got a contingency in there for
2 that?
3 A. Yes, sir.
4 Q. And in these remediation type jobs which you've
5 done before, that's not unusual to have a contingency, is
6 it?
7 A. Ten percent is a pretty standard contingency for
8 this type of work.
9 Q. What was your experience in the remediation in
10 Barnwell, with regard to contingency, as estimated in the
11 actual cost that's incurred?
12 A. We got into the contingency in Barnwell but I
13 don't remember if we did use the whole thing.
14 Q. So the next one is exterior trim. Why are you
15 replacing exterior trim, other than because Mr. Padgett
16 wanted it? Is there a physical reason to do that?
17 A. Framing repairs and intersections with other
18 veneers.
19 Q. And painting the trim and painting the porch
20 ceiling, these are all functions of just things that are
21 going to occur or can be damaged?
22 A. Collateral damages from the main repairs.
23 Q. I don't need -- we don't need to go through all
24 of these, I don't think, if you're satisfied with the
25 prices. But I would like to talk to you about the

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

J. C. Nicholson, Jr., Circuit Court Judge

Trial Case No.'s 2009-CP-08-1068, 2009-CP-08-3916,
2009-CP-08-1413, 2008-CP-08-2714
Appellate Case No. 2014-002390

THE OAKS AT RIVERS EDGE PROPERTY OWNERS ASSOCIATION, INC., JOHN E. ATKINSON, JOAN D. STRANDQUIST, JOSEPH E. CHIOVAROU, JR., PEYTON H. COOK, JR., BRENDA COOK, JOHN W. EDELEN, KAREN A. NELSON, ROBERT J. GRAHAM, MAUREEN S. GRAHAM, NANCY K. JOHNSON as trustee for the Nancy K. Johnson Revocable Trust, WILLIAM JUNG, CHARLES MARAZITI, PATRICIA MARAZITI, GEORGE S. POLLARD, ELEANOR J. POLLARD, ROBERT REECE, GERARD M. RUVO AND SUE S. RUVO as trustees for the Ruvo 2006 Living Trust, CAROLYN M. JENNINGS, THOMAS EDWARD KEANE, EDWARD WALLACE BARR, III, RICHARD B. PEKRUHN, PAULINE PEKRUHN, MATTHEW J. SEVERANCE, and ELIZABETH ASHLEY PHILLIPS SEVERANCE,

Respondents,

v.

DANIEL ISLAND RIVERSIDE DEVELOPERS, LLC, CARRIAGE HILL ASSOCIATES OF CHARLESTON, LLC,

Appellants.

PROOF OF SERVICE

I certify that I have served the Record on Appeal Vol. I through Vol. VI, pursuant to the Order entered June 12, 2015, on Respondents on July 6, 2015, addressed to its attorneys of record,

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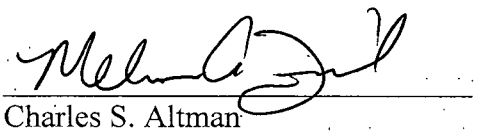
July 6, 2015



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