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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No.: 2012-CP-10-3857 and 2012-CP-10-3858

Appellate Case No.: 2015-001644

Shipwatch Condominium Association, Inc.,.....Appellant,

v.

Carolina Concrete Systems, Inc.; Sisroy Engineering, LLC; Robert G. Sisroy, individually;
Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Spectech, Inc.; Sonneborn, Inc.;
Chimney Sweeps, Inc.; Low Country Chimneys, Inc.; EFCO Corp.; W.C. Johnston Architectural
Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; Acrocrete Defendants,

Of Which, Carolina Concrete Systems, Inc.; Sisroy Engineering, LLC; Robert G. Sisroy,
individually; Terrence J. McKelvey; GlassTec, Inc.; Sonneborn, Inc.; EFCO Corp.; W.C.
Johnston Architectural Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; BASF
Corp.; Gary Freeman Architect, Inc.; Gary Freeman, individually, are Respondents

Oscar Mendiondo, individually and as representative of a class of similarly situated owners of
condominium units in the horizontal property regime known as Shipwatch Condominiums,
Appellants,

v.

Carolina Concrete Systems, Inc.; Sisroy Engineering, LLC; Robert G. Sisroy, individually;
Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Spectech Inc.; Sonneborn, Inc.;
Chimney Sweeps, Inc.; Low Country Chimneys, Inc.; EFCO Corp.; W.C. Johnston Architectural
Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; Acrocrete, Inc.; BASF Corp.;
Gary Freeman Architect, Inc.; Gary Freeman, individually; Defendants,

Of Which, Carolina Concrete Systems, Inc.; Sisroy Engineering, LLC; Robert G. Sisroy,
individually; Terrence J. McKelvey; GlassTec, Inc.; Sonneborn, Inc.; EFCO Corp.; W.C.
Johnston Architectural Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; BASF
Corp.; Gary Freeman Architect, Inc.; Gary Freeman, individually, are Respondents

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**RECORD ON APPEAL
VOLUME II of III
PAGES 448 - 761**

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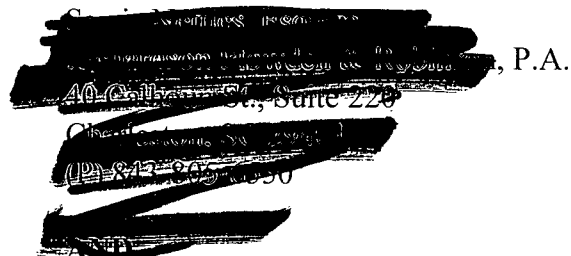
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A large block of text is completely redacted with heavy black ink. The redaction covers several lines of text, including what appears to be a name, a firm name, an address, and a phone number. The only legible text within the redacted area is "P.A." at the end of the first line.



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) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) CIVIL ACTION NO.: 2012-CP-10-3858

) CIVIL ACTION NO.: 2012-CP-10-3858

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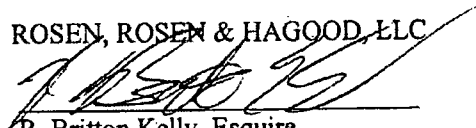
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Plaintiff claims in this case. The cross claims allege causes of action for (1) Negligence; (2) Breach of Warranty; (3) Breach of Contract; and (4) Indemnity. For the same and similar reasons that Plaintiff's claims fail, so do the cross claims of CCS. Therefore, the CCS claims should also be dismissed pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

In support of this motion, EFCO and WCJ rely upon the pleadings and matters filed in this action, memoranda of law to be submitted to the Court, subsequent Affidavits and documents, Plaintiff's expert witness designations (Exhibit A), and the following portions of depositions taken from witnesses, which are attached and marked as the Exhibits noted:

- (1) Jeff Miller, PE Deposition Transcript, Pages 347, 559-578; and 609-611 (collective Exhibit B);
- (2) Greg Isaacs, PE Deposition Transcript, Pages 301-315; and 541-549 (collective Exhibit C); and
- (3) Peter Sherratt, AIA Deposition Transcript, Pages 86, 93-142 (collective Exhibit D).

ROSEN, ROSEN & HAGOOD, LLC



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*Attorneys for Defendant EFCO*

*Corporation & WC Johnston Architectural  
Sales, Inc.*

Charleston, South Carolina  
December 4, 2014

# EXHIBIT A

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS  
) FOR THE NINTH JUDICIAL CIRCUIT  
) Case No. 2012-CP-10- 3857

Shipwatch Condominium Association, Inc. )

Plaintiff, )

vs. )

Carolina Concrete Systems, Inc.; Sisnroy )  
Engineering, LLC; Robert G. Sisnroy, )  
individually; Terrence J. McKelvey; )  
Glasgow Roofing, Inc.; GlassTec, Inc.; )  
Spectech, Inc.; Sonneborn, Inc.; Chimney )  
Sweeps, Inc.; Low Country Chimneys, Inc.; )  
EFCO Corp.; W.C. Johnston Architectural )  
Sales, Inc.; Charleston Glass Company, Inc.; )  
First Exteriors, LLC; Acrocrete, Inc.; )  
BASF Corp.; Gary Freeman Architect, Inc.; )  
Gary Freeman, individually; )

Defendants. )

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

**PLAINTIFFS' ANSWERS TO  
GLASSTEC, INC.'S INTERROGATORIES  
TO ALL PARTIES**

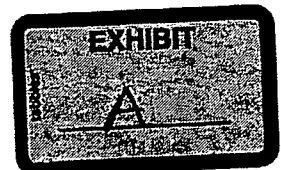
IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
Case No. 2012-CP-10- 3858

Oscar Mendiondo, individually and as )  
representative of a class of similarly )  
situated owners of condominiums units in )  
the horizontal property regime known as )  
Shipwatch Condominiums, )

Plaintiff, )

vs. )

Carolina Concrete Systems, Inc.; Sisnroy )  
Engineering, LLC; Robert G. Sisnroy, )  
individually; Terrence J. McKelvey; )  
Glasgow Roofing, Inc.; GlassTec, Inc.; )  
Spectech, Inc.; Sonneborn, Inc.; Chimney )



copies of documents obtained through discovery responses by various defendants in this matter, and that information will be made available at a mutually convenient time at the offices of Robertson Hollingsworth & Flynn, 177 Meeting Street, Suite 300, Charleston, South Carolina, 29401.

3. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

**ANSWER:** None of the Plaintiffs' liability insurance policies provide such coverage for these claims.

4. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case, state the subject matter on which the expert is expected to testify, and state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

**ANSWER:**

SKA Consulting Engineers, Inc.  
Jeffrey S. Miller PE  
Manager, Building Solutions Group  
4651 Charlotte Park Drive, Suite 150  
Charlotte, NC 28214  
(704) 424-9663

Mr. Miller and his colleagues at SKA Consulting Engineers have performed an engineering investigation into the damages present at the Shipwatch Condominiums, and are evaluating appropriate remedial measures relating to those damages. Information responsive to the sub-parts to the above Interrogatory including, but not limited to, locations of testing, methods, findings, and opinions, is included in the reports issued by Mr. Miller and SKA for this project, which reports are contained in the above-referenced CD containing Plaintiffs' file material. That CD was previously



served by response to Defendant Sisnroy's Requests for Production. Additionally, copies of Mr. Miller and SKA's file material have been provided to counsel pursuant to a subpoena earlier in 2013.

Peter Edwin Sherratt, AIA, Architect  
The Sherratt Company  
P.O. Box 5786  
Hilton Head Island, SC 29938  
(843) 689-9777

Mr. Sherratt is conducting an investigation into the damages present at the Shipwatch Condominiums, and is evaluating appropriate remedial measures relating to those damages. He has made several visits to the Shipwatch site since his engagement in or about June 2012. His most recent site visit to Shipwatch was on October 22, 2013 in which he observed conditions on the end walls and the beach-side wall of Building C. He has not produced any written reports at this time, but the requests for production will be supplemented upon receipt of any such reports.

Edward C. Porcher, P.E.  
Stantec Consulting Services, Inc.  
4969 Centre Pointe Drive, Suite 200  
North Charleston, SC 29418

Mr. Porcher and Stantec are serving in a capacity as a non-testifying consulting expert witness for the Plaintiffs at this time.

Commercial Building Consultants, LLC ("CBC")  
590 North Semoran Blvd.  
Orlando, FL 32807

CBC is serving in a capacity as a non-testifying consulting expert witness for the Plaintiffs at this time.

5. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts

# EXHIBIT B

THE COURT OF COMMON PLEAS

SHIPWATCH CONDOMINIUM  
ASSOCIATION,

Plaintiff,

-versus-

CAROLINA CONCRETE SYSTEMS,  
INC., et al.,

Defendants.

OSCAR MENDIONDO, Individually )  
and as representative of a )  
class of similarly situated )  
owners of condominium units in )  
the horizontal property regime )  
known as SHIPWATCH CONDOMINIUMS, )

Plaintiffs,

-versus-

CAROLINA CONCRETE SYSTEMS,  
INC., et al.,

Defendants.

THE CONTINUATION OF THE DEPOSITION OF JEFF MILLER was taken as a witness on behalf of the Defendants, pursuant to South Carolina Rules of Civil Procedure, at 9:30 a.m. on Thursday, the 1st day of May 2014, at the offices of Sutton-Kennerly & Associates, 4651 Charlotte Park Drive, Charlotte, North Carolina, before Janice O. Darby, Registered Professional Reporter and Notary Public in and for the State of South Carolina.

Janice Ohlendorf Darby, RPR  
(843) 814-7666 jodarby@comcast.net



|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">Page 556</p> <p>1 Q And you don't recall the substance of</p> <p>2 that conversation?</p> <p>3 A Unfortunately, no.</p> <p>4 Q I guess you said earlier that there was</p> <p>5 nothing substantive discussed. Is that correct?</p> <p>6 A I probably said that, yes.</p> <p>7 Q Sitting here today, you can't recall</p> <p>8 anything that you-all talked about yesterday. Is</p> <p>9 that correct? Do you think you talked about the</p> <p>10 Shipwatch project?</p> <p>11 A Obviously. The conversation was meant to</p> <p>12 be kind of an update prior to depositions. And</p> <p>13 obviously, I relayed to Pat that I had a hurt back</p> <p>14 and I was doped up. And I know he was going, I</p> <p>15 believe, through maybe some questions that the</p> <p>16 attorneys may be asking. But beyond that, I don't</p> <p>17 remember. A lot of talking. I probably said one or</p> <p>18 two words.</p> <p>19 Q You didn't receive anything in writing or</p> <p>20 any e-mails from Mr. Flynn?</p> <p>21 A No.</p> <p>22 Q Earlier in your prior deposition,</p> <p>23 specifically referenced on page 432 of that</p> <p>24 deposition, we talked about the process that took</p> <p>25 place in the drafting of your affidavit, the back</p>                                                                                                                                     | <p style="text-align: right;">Page 558</p> <p>1 think I have any more questions for you at this</p> <p>2 time.</p> <p>3 MR. FLYNN: Janice, just for the</p> <p>4 record, I believe he does have all the documents</p> <p>5 that he needs. So I'm not aware of any additional</p> <p>6 documents that I have that he would need. So when</p> <p>7 he goes through them, if he can't find something,</p> <p>8 I'm happy to provide it to him. But he has all the</p> <p>9 reports that I'm aware of.</p> <p>10 THE WITNESS: So there are no other</p> <p>11 documents other than what was given to me like two</p> <p>12 years ago?</p> <p>13 MR. FLYNN: As far as I -- Yeah.</p> <p>14 MR. WINTON: I didn't know if you</p> <p>15 were testifying for him or what's going on here,</p> <p>16 but --</p> <p>17 MR. FLYNN: I'm talking to you.</p> <p>18 Because you asked the question about documents, and</p> <p>19 I wanted to make sure you were aware for the record</p> <p>20 that I've provided whatever documents he has. It</p> <p>21 should be in his files.</p> <p>22 MR. WINTON: Oh, relative to the</p> <p>23 affidavit?</p> <p>24 MR. FLYNN: No. Just whatever</p> <p>25 documents that I have in my files, particularly</p> |
| <p style="text-align: right;">Page 557</p> <p>1 and forth between you and Mr. Flynn and the use of</p> <p>2 handwritten notes by you on a pdf document that you</p> <p>3 believe was attached and sent back and forth via</p> <p>4 e-mail. Do you recall that testimony?</p> <p>5 A Yes.</p> <p>6 Q I'll represent to you that I looked in</p> <p>7 the documents, and I could have missed it, but I did</p> <p>8 not find that correspondence or that pdf document</p> <p>9 with handwritten notes. Is that something that you</p> <p>10 may be able to more easily put your hands on or</p> <p>11 something that you could put your hands on if you</p> <p>12 looked within your database or a staff member could?</p> <p>13 A It probably would have been easier to</p> <p>14 find until Debbie gathered everything. I'm not sure</p> <p>15 how she's messed up my files. But depending upon</p> <p>16 the hard copy documents that she has assembled, that</p> <p>17 may or may not be easy to find.</p> <p>18 Q I won't tell Debbie you threw her under</p> <p>19 the bus today, but I'm going to go ahead this</p> <p>20 afternoon since we probably have some time, if we</p> <p>21 could talk with her about the possibility of where</p> <p>22 she thinks it might be, and I'll look with her for</p> <p>23 that document. Is that acceptable?</p> <p>24 A That's fine.</p> <p>25 MR. WINTON: Mr. Miller, I don't</p> | <p style="text-align: right;">Page 559</p> <p>1 relating to Mr. Sisroy. To my knowledge, I've</p> <p>2 provided everything that he needs. I'm not aware of</p> <p>3 anything additional that he needs at this time.</p> <p>4 MR. WINTON: Understood.</p> <p>5 THE WITNESS: That will be easier</p> <p>6 then. I've got a certain amount of papers to</p> <p>7 review.</p> <p>8 (Lunch recess taken.)</p> <p>9 E X A M I N A T I O N</p> <p>10 BY MR. KELLY:</p> <p>11 Q Mr. Miller, we're back from lunch. Are</p> <p>12 you ready to proceed?</p> <p>13 A Yes, sir.</p> <p>14 Q My name is Britt Kelly. I represent W.C.</p> <p>15 Johnston Architectural Sales and EFCO Corporation in</p> <p>16 this case. I assume you're familiar with EFCO?</p> <p>17 A I am familiar with both, yes.</p> <p>18 Q And you know Greg Johnston with W.C.</p> <p>19 Johnston Architectural Sales?</p> <p>20 A I know him well, yes.</p> <p>21 Q Do you hold any opinions relating to W.C.</p> <p>22 Johnston Architectural Sales' involvement in the</p> <p>23 Shipwatch project?</p> <p>24 A I don't -- Say that question again.</p> <p>25 Q Do you hold any opinions in this case</p>                                                               |

26 (Pages 556 to 559)

Janice Ohlendorf Darby, RPR  
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| <p style="text-align: right;">Page 560</p> <p>1 related to any fault of W.C. Johnston Architectural<br/> 2 Sales for the damages or the repair work that you<br/> 3 have specified at the project?<br/> 4 A Well, I guess the best way to answer the<br/> 5 question is that obviously we had EFCO<br/> 6 non-impact-rated doors and windows improperly<br/> 7 installed on this project. And to what<br/> 8 responsibility W.C. Johnston or EFCO had regarding<br/> 9 those particular units being put into this building<br/> 10 when they weren't supposed to is kind of a question<br/> 11 mark.<br/> 12 Q Let me try to make sure I fully<br/> 13 understand that. So you do not currently hold any<br/> 14 opinions relating to any fault of W.C. Johnston<br/> 15 Architectural Sales or EFCO may have relating to the<br/> 16 installation of non-impact-rated glass products in<br/> 17 the buildings at Shipwatch?<br/> 18 A Well, I think I said I don't have the<br/> 19 information to thoroughly state -- You know, I don't<br/> 20 know what W.C. Johnston or EFCO's role was in the<br/> 21 project that would place liability on them or not on<br/> 22 them. All I know is we've got an inferior, improper<br/> 23 code, non-code compliant product that was put in<br/> 24 when it shouldn't have been.<br/> 25 Q You realize you've been designated by Mr.</p> | <p style="text-align: right;">Page 562</p> <p>1 times, and I'll give you the same answer. Until I<br/> 2 have a chance --<br/> 3 Q Yes, sir. That question calls for a<br/> 4 yes-or-no answer. Can you please give me a<br/> 5 yes-or-no answer?<br/> 6 A I don't have an answer. I can give you<br/> 7 an answer once I review the documents.<br/> 8 Q Do you refuse to answer my question with<br/> 9 a yes or no?<br/> 10 A I think I said will be glad to provide<br/> 11 the answer once I have documents to be able to form<br/> 12 an opinion to give you a yes-or-no answer. I cannot<br/> 13 give you a yes-or-no answer now. I know what your<br/> 14 question is. You've said it ten times. Keep saying<br/> 15 it. We'll keep going over the same thing.<br/> 16 Q You don't have to read too much into it.<br/> 17 It's simply a question of do you currently hold an<br/> 18 opinion as to whether EFCO or W.C. Johnston<br/> 19 Architectural Sales did something improper that led<br/> 20 to the installation of non-impact-rated windows and<br/> 21 doors in the Shipwatch buildings?<br/> 22 A (No response.)<br/> 23 MR. ROOT: You're not going to<br/> 24 respond to him?<br/> 25 THE WITNESS: I've already responded</p> |
| <p style="text-align: right;">Page 561</p> <p>1 Flynn's office as an expert witness for the<br/> 2 plaintiffs in this case?<br/> 3 A Yes.<br/> 4 Q And this case has been pending for a<br/> 5 couple of years now?<br/> 6 A Whatever the time frame, yes.<br/> 7 Q As we sit here today, do you hold any<br/> 8 opinions that W.C. Johnston Architectural Sales or<br/> 9 EFCO did anything improper that resulted in the<br/> 10 installation of non-impact-rated glass in the<br/> 11 buildings at Shipwatch?<br/> 12 A I think you just asked me that question.<br/> 13 Q Yes, sir. You didn't answer it, so I<br/> 14 would like you to give me a direct answer. Do you<br/> 15 or do you not hold an opinion?<br/> 16 A I have not been able to form an opinion<br/> 17 without seeing the documentation associated with the<br/> 18 windows. Without reviewing the documentation,<br/> 19 everything is purely speculative until I see that.<br/> 20 Q So you do not hold an opinion as we sit<br/> 21 here today as to the fault, if any, of W.C. Johnston<br/> 22 Architectural Sales or EFCO related to the<br/> 23 installation of non-impact-rated windows or doors in<br/> 24 the buildings at Shipwatch?<br/> 25 A You can say your same sentence 20 more</p>                                                                                                        | <p style="text-align: right;">Page 563</p> <p>1 twice. I'm not going to respond again.<br/> 2 BY MR. KELLY:<br/> 3 Q Mr. Miller, did you understand my<br/> 4 question?<br/> 5 A I did. I responded to it twice.<br/> 6 Q A few minutes have gone by. Do you need<br/> 7 some additional time to consider my question to give<br/> 8 me a yes-or-no response?<br/> 9 A Yeah, I need to have the documents in<br/> 10 front of me for me to review, and then I'll answer<br/> 11 your question.<br/> 12 Q You need to have documents in front of<br/> 13 you to give me an answer as to whether or not you<br/> 14 hold an opinion related to those entities?<br/> 15 A I cannot provide an opinion until I<br/> 16 review the documents.<br/> 17 Q I'm not asking you to give me an opinion.<br/> 18 I'm asking you to tell me whether or not you have an<br/> 19 opinion.<br/> 20 A I've not reviewed any documents, so I<br/> 21 therefore have no opinion. How's that?<br/> 22 Q That is a perfectly fine answer. Thank<br/> 23 you.<br/> 24 A Thank you.<br/> 25 Q Do you have any opinions related to the</p>                                                                                                                               |

27 (Pages 560 to 563)

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| <p style="text-align: right;">Page 564</p> <p>1 performance of the EFCO products that are installed<br/>2 in the Shipwatch buildings?<br/>3 A I do.<br/>4 Q What are those opinions, please?<br/>5 A The EFCO products do not meet impact<br/>6 resistance and therefore do not meet code.<br/>7 Q Do you hold any other opinions regarding<br/>8 the performance of the EFCO products that were<br/>9 installed or are currently installed at the<br/>10 Shipwatch buildings?<br/>11 A That the sliding glass doors were<br/>12 inadequately fastened. There were no jamb<br/>13 fasteners.<br/>14 Q Have you endeavored to assign fault to<br/>15 anyone for the fact that there are no jamb fasteners<br/>16 at the EFCO products you have observed at the<br/>17 Shipwatch buildings?<br/>18 A I have not assigned blame as of yet.<br/>19 Q Do you hold any other opinions regarding<br/>20 the performance of the EFCO products that were<br/>21 installed in buildings C and D at Shipwatch or<br/>22 currently installed at buildings A and B at<br/>23 Shipwatch?<br/>24 A Since I've not had a chance to review the<br/>25 file, I am going to reserve that there may be other</p> | <p style="text-align: right;">Page 566</p> <p>1 be published in my reports.<br/>2 Q Did any of the water testing performed by<br/>3 Sutton-Kennerly &amp; Associates at the Shipwatch<br/>4 buildings reveal failures with the EFCO products?<br/>5 A I don't believe they did.<br/>6 Q Are you aware of any failure of EFCO<br/>7 products that has led to water intrusion at the<br/>8 Shipwatch buildings?<br/>9 A Through the actual EFCO units, I am not.<br/>10 Q When Sutton-Kennerly &amp; Associates first<br/>11 designed a plan for remediating the issues it found<br/>12 at buildings C and D at Shipwatch, did it intend to<br/>13 reuse the EFCO products that were installed in those<br/>14 buildings?<br/>15 A That was one of the considerations that<br/>16 we had, is to reuse those units, yes.<br/>17 Q When that consideration was I guess still<br/>18 an option or being considered as an option, did the<br/>19 scope of work that Sutton-Kennerly &amp; Associates<br/>20 envision involve removing those windows or doors in<br/>21 order to fix the other problems surrounding the<br/>22 windows and doors?<br/>23 A In that scenario, yes, it was envisioned.<br/>24 That was one of the options that we looked at, if we<br/>25 could get the windows and doors grandfathered in</p> |
| <p style="text-align: right;">Page 565</p> <p>1 opinions. But for the time being, I'm going to say<br/>2 no.<br/>3 Q Sutton-Kennerly &amp; Associates had water<br/>4 testing performed at the Shipwatch buildings.<br/>5 Correct?<br/>6 A That's correct.<br/>7 Q Did you supervise the water testing at<br/>8 the Shipwatch buildings?<br/>9 A I was aware of all the testing. I didn't<br/>10 supervise it.<br/>11 Q Who did supervise the testing?<br/>12 A I had one of my engineers perform the<br/>13 testing.<br/>14 Q Who performed the testing at Shipwatch on<br/>15 your behalf?<br/>16 A I don't recall.<br/>17 Q Who compiled the reports as to whether or<br/>18 not a test resulted in a failure?<br/>19 A Who provided the reports?<br/>20 Q Yes, sir. Who compiled the reports?<br/>21 A The engineer that did the testing.<br/>22 Q What was Mr. Isaacs' role in that<br/>23 process?<br/>24 A He may have been one of the testers. I<br/>25 just don't recall. All of that information should</p>                                                                                                                                                                        | <p style="text-align: right;">Page 567</p> <p>1 and/or approved by the building official.<br/>2 Q Under that scenario when you're going to<br/>3 take the windows and doors out of their openings,<br/>4 were you then going to have to go in and beef up the<br/>5 surrounds of those openings?<br/>6 A We were going to have to beef up the<br/>7 surrounds as well as waterproof the surrounds that<br/>8 were not done properly.<br/>9 Q Did I understand you to tell me that you<br/>10 went to the building official at Isle of Palms and<br/>11 attempted to grandfather in those EFCO products so<br/>12 that you could use them?<br/>13 A To grandfather them in and allow them not<br/>14 to be impact rated, I tried that, yes.<br/>15 Q And what was the response from the<br/>16 building department?<br/>17 A That that was not acceptable. If it<br/>18 didn't meet code from an impact-rated standpoint,<br/>19 they had to come out and be replaced with<br/>20 code-compliant windows and doors.<br/>21 Q Did they explain to you why that was not<br/>22 acceptable?<br/>23 A Because these windows and doors do not<br/>24 meet code from an impact performance and they were<br/>25 not going to allow them in the building.</p>                                                                 |

28 (Pages 564 to 567)

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| <p style="text-align: right;">Page 568</p> <p>1 Q Is that the only explanation they gave to<br/>2 you?</p> <p>3 A Yes.</p> <p>4 Q Did they indicate whether or not that<br/>5 opinion that they gave to you held true for the<br/>6 windows and doors on floors four and five of the<br/>7 buildings?</p> <p>8 A That held true for every window and door<br/>9 on the project, yes.</p> <p>10 Q Did you attempt to have them grandfather<br/>11 in at least the doors on floors four and five even<br/>12 if they wouldn't accept the doors and windows on<br/>13 floors one through three?</p> <p>14 A Yes.</p> <p>15 Q Did they not agree to do that?</p> <p>16 A They did not.</p> <p>17 Q Did they give you a different explanation<br/>18 as to why they would not accept that?</p> <p>19 A The same reason.</p> <p>20 Q So their interpretation of today's code<br/>21 is that the doors on floors four and five had to be<br/>22 impact rated as well?</p> <p>23 A From small missile impact, yes.</p> <p>24 Q Do you share that belief?</p> <p>25 A I'm sorry?</p>                                                                                                                                             | <p style="text-align: right;">Page 570</p> <p>1 A Did I have a conversation with him as to<br/>2 how I knew that they were not impact rated?</p> <p>3 Q No, sir. Did you have a conversation<br/>4 with him as to how it came to be that that product<br/>5 was installed in the buildings?</p> <p>6 A My explanation to him was that we had<br/>7 windows put in during the '02 to 2010 time frame<br/>8 that were not impact rated.</p> <p>9 Q Did he indicate why that was or how that<br/>10 was permitted if it was permitted?</p> <p>11 A He didn't know how that got permitted.<br/>12 There was no permit.</p> <p>13 Q Why do you say there was no permit?</p> <p>14 A Because he had no record of a permit of<br/>15 that.</p> <p>16 Q Did you deal with anyone else at the Isle<br/>17 of Palms building department as to whether or not<br/>18 they would permit the EFCO products to be<br/>19 reinstalled?</p> <p>20 A I did have some conversations with -- I<br/>21 think the guy's name is Doug Carr, Kerr, something<br/>22 like that. It seems like initially I spoke with<br/>23 both of those two gentlemen.</p> <p>24 Q What was Mr. Carr's or Mr. Kerr's<br/>25 position at the Isle of Palms building department?</p>                                                                                                                         |
| <p style="text-align: right;">Page 569</p> <p>1 Q Do you share that opinion?</p> <p>2 A I'd have to go back and look at the<br/>3 particular language of 2012 IBC, but I'm pretty sure<br/>4 that's the case.</p> <p>5 Q Did Sutton-Kennerly &amp; Associates give any<br/>6 consideration to using hurricane shutters or some<br/>7 other method to protect the glass from impact?</p> <p>8 A That was also mentioned to the building<br/>9 official and denied.</p> <p>10 Q Was there an explanation as to why that<br/>11 was not going to be permitted?</p> <p>12 A There was, but I don't recall exactly<br/>13 what it was.</p> <p>14 Q Were any of those discussions in writing<br/>15 with the building official, or were they all oral?</p> <p>16 A I don't remember. It seems like I had a<br/>17 confirmation e-mail after my meeting with those<br/>18 guys, but I just can't remember.</p> <p>19 Q Who were you dealing with at the Isle of<br/>20 Palms building department?</p> <p>21 A William Seabrook.</p> <p>22 Q Did you have any discussions with<br/>23 Mr. Seabrook as to how it came to be that there was<br/>24 non-impact-rated products installed in the buildings<br/>25 to begin with?</p> | <p style="text-align: right;">Page 571</p> <p>1 A I don't have their titles in front of me.</p> <p>2 Q Did you gain an appreciation as to who<br/>3 was his superior or if they had the equivalent role?</p> <p>4 A I believe Mr. Kerr or Carr, I think, is<br/>5 the head of that division, and I think Seabrook<br/>6 reports to him.</p> <p>7 Q Is it one or both of them who told you<br/>8 you could not reuse the product?</p> <p>9 A I don't remember.</p> <p>10 Q Was consideration given to reglazing any<br/>11 of the EFCO products with impact-rated glass?</p> <p>12 A There was thought given to that, yes.</p> <p>13 Q Tell me what went into that thought. Was<br/>14 that something you were involved in or someone else<br/>15 at Sutton-Kennerly &amp; Associates was involved in?</p> <p>16 A It seems like we pursued every avenue<br/>17 that we felt that we could to try to keep these<br/>18 windows that were performing from a water-resistant<br/>19 standpoint. They just weren't impact rated.</p> <p>20 It seems like we looked and talked about<br/>21 switching the glass out and how the glass set or fit<br/>22 into the frame and that the glazing pocket was such<br/>23 that it may or may not facilitate that.</p> <p>24 But I know there was some research and<br/>25 looking to see what, if anything, could be done to</p> |

29 (Pages 568 to 571)

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| <p style="text-align: right;">Page 572</p> <p>1 facilitate that.</p> <p>2 Q Was anyone at EFCO consulted as to</p> <p>3 whether or not impact glass can be installed in any</p> <p>4 of the EFCO products at Shipwatch?</p> <p>5 A I believe there may have been. I believe</p> <p>6 we contacted somebody with EFCO to discuss that.</p> <p>7 Q Who was that, please?</p> <p>8 A I'd have to go back to the file. I don't</p> <p>9 remember.</p> <p>10 Q Do you believe that was done via e-mail</p> <p>11 or phone call?</p> <p>12 A I don't remember.</p> <p>13 Q Perhaps we should back up. Was that a</p> <p>14 phone call or a communication that you recall being</p> <p>15 involved in, or someone had that communication on</p> <p>16 your behalf?</p> <p>17 A I believe it was one of my staff</p> <p>18 engineers pursuing that for me.</p> <p>19 Q Who was that staff engineer?</p> <p>20 A I don't remember.</p> <p>21 Q Was there any discussion with the</p> <p>22 building official related to the inability to reuse</p> <p>23 EFCO products because of how much construction work</p> <p>24 was going to be performed because of the repairs?</p> <p>25 A I don't believe that weighed in on his</p>           | <p style="text-align: right;">Page 574</p> <p>1 EFCO sliding glass doors on projects very</p> <p>2 successfully, yes.</p> <p>3 Q And over the last, say, ten years, can</p> <p>4 you name the projects you can remember where you've</p> <p>5 spec'd that product?</p> <p>6 A I put it on the Windemere condominiums,</p> <p>7 North Myrtle Beach. I believe I put it on the</p> <p>8 Harbor Inn condos down in Wrightsville Beach. I'm</p> <p>9 sure there may be others, but those two come to</p> <p>10 mind.</p> <p>11 Q Was Windemere new construction or repair</p> <p>12 work?</p> <p>13 A It was a remediation project.</p> <p>14 Q What was scope of that remediation</p> <p>15 project?</p> <p>16 A Very similar to this particular scope:</p> <p>17 Replacement of the cladding, replacement of the</p> <p>18 windows and doors, coatings.</p> <p>19 Q All cladding and all windows and doors?</p> <p>20 A Yes.</p> <p>21 Q What about the Harbor Inn condos?</p> <p>22 A That was -- I think they had kind of a</p> <p>23 combination sliding glass door with fixed panes on</p> <p>24 the sides that got replaced, coatings, concrete</p> <p>25 balcony waffle slab repairs, maybe some handrails.</p>                                                                                      |
| <p style="text-align: right;">Page 573</p> <p>1 decision.</p> <p>2 Q Have you been involved in construction or</p> <p>3 remediation projects where you were able to reuse</p> <p>4 windows or doors?</p> <p>5 A I'm sure I have in the 25 years of my</p> <p>6 career. I just don't remember exactly when or</p> <p>7 where.</p> <p>8 Q In those cases where you have, do you</p> <p>9 recall whether or not there was a percentage of</p> <p>10 construction work that was important to the building</p> <p>11 official as to whether or not you could remove or</p> <p>12 replace windows and doors?</p> <p>13 A I don't recall. It's typically dictated</p> <p>14 by the entity with the county that you're actually</p> <p>15 working with. I just don't remember the specifics</p> <p>16 of these different projects.</p> <p>17 Q Are you familiar with the EFCO 3015</p> <p>18 Series sliding glass door?</p> <p>19 A Somewhat, yes.</p> <p>20 Q Have you specified it on projects?</p> <p>21 A I'm sorry. Say that again.</p> <p>22 Q Have you specified it on projects that</p> <p>23 you have designed?</p> <p>24 A I believe that is the model number. I</p> <p>25 don't have it in front of me. But I have spec'd</p> | <p style="text-align: right;">Page 575</p> <p>1 Q How long ago was that project done?</p> <p>2 A Harbor Inn, I think, was in '06.</p> <p>3 Q When you removed the sliding glass doors</p> <p>4 in the Harbor Inn condos, was the glass removed from</p> <p>5 every opening, or was some of the glass left in</p> <p>6 place?</p> <p>7 A No. The entire unit got removed and new</p> <p>8 units put in.</p> <p>9 Q And that was in every condo unit?</p> <p>10 A At Harbor Inn, I think there were only 12</p> <p>11 or 16 units, but yes.</p> <p>12 Q Have you ever provided a design that</p> <p>13 involved the installation of new EFCO sliding glass</p> <p>14 doors where not all sliding glass doors or all</p> <p>15 windows within a regime were being removed and</p> <p>16 replaced?</p> <p>17 A Let me think. Yeah, I think that's</p> <p>18 happened some. I just don't recall what or where.</p> <p>19 Q How would I figure out what or where</p> <p>20 those projects were?</p> <p>21 A I would have to go back through a list of</p> <p>22 our projects and figure out -- refresh my memory on</p> <p>23 projects as I look through the database that would</p> <p>24 involve windows and doors, and then either remember</p> <p>25 directly from the name of the project or actually</p> |

30 (Pages 572 to 575)

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1 try to find the electronic file and go through the  
2 scope of work that was performed.

3 Q Do you keep a list of such projects that  
4 you've worked on?

5 A We've got a database of all of our  
6 projects since about 1998. I don't know that we  
7 have the files for those, but we have a database.  
8 Some of those I'll be able to remember once I read  
9 through the database.

10 Q I'm just curious if in advance I can get  
11 a printed copy of whatever those projects are so  
12 that I know how extensive they are, if there's 40 or  
13 50 or 100 or whatever the number. I'm not asking  
14 you to give me a copy today. I'm just wondering if  
15 that's a possibility of something that can be done.

16 A No, not today. Are you looking for  
17 projects for SKA or projects that Jeff Miller was  
18 involved with?

19 Q Projects that you were involved with.  
20 So, for example, on my computer software at our law  
21 firm I can search by matters I'm assigned to, and I  
22 can look back at, say, a ten-year period and see all  
23 of the cases. I'm just curious if you have  
24 something similar where you can print a list of the  
25 projects that you were involved in over the last ten

1 years that would allow you to more easily look and  
2 determine if one of those met the criteria that  
3 we've been talking about.

4 A Yeah, our database. I should be able to  
5 go through the search engine somehow to narrow down  
6 remediation projects if they were coded correctly  
7 into the system. And then depending upon what they  
8 are, that may tell me -- refresh my memory as to  
9 what we did on each of those projects.

10 Q I would like to do that. I can make a  
11 formal request if necessary. I can follow up with a  
12 letter or e-mail, whatever is most convenient.

13 Does Mike Parker still work at  
14 Sutton-Kennerly & Associates?

15 A He does.

16 Q Have you had any contact with Mike about  
17 the Shipwatch project?

18 A I have not.

19 Q Have you had any contact with Mike about  
20 conversations he had with Linda Jernigan before you  
21 became involved in the Shipwatch project?

22 A I don't know what Mike and Linda may have  
23 conversed on.

24 MR. KELLY: Mr. Miller,  
25 understanding that you may have opinions you reach

1 in the future regarding this case, I'm going to  
2 reserve my right to ask you questions about those  
3 opinions. As of now, I believe I've asked all the  
4 questions I can ask of you today.

#### 5 EXAMINATION

6 BY MS. FERGUSON:

7 Q Mr. Miller, my name is Katherine  
8 Ferguson, and I represent Glasstec. I have been  
9 here all day listening to your answers, so I'm fully  
10 aware that you haven't had time to fully review your  
11 files before today's deposition. So some of my  
12 questions to you might seem redundant. I can  
13 promise you, I'm not trying to be difficult. I just  
14 want to ask you some questions as they pertain to my  
15 client. Is that okay?

16 A Sure.

17 Q Are you familiar with Glasstec?

18 A I am.

19 Q Do you know the scope of work that  
20 Glasstec performed at the Shipwatch project?

21 A I do not.

22 Q Is that because sitting here today you  
23 haven't had time to review your file, or you just  
24 have no information with regard to Glasstec?

25 A Well, I believe they put in the majority

1 of the glass on the project from '02 to 2010. But I  
2 also believe there may have been some other glass  
3 folks that put other pieces in. But I believe they  
4 put in the majority of the glass.

5 Q I'll represent to you that the last time  
6 they performed work at Shipwatch was in 2002.

7 A Okay.

8 Q So is it fair to say that sitting here  
9 today you don't really know the scope of the work  
10 performed by Glasstec at the Shipwatch project?

11 A I would say that's true.

12 Q And then sitting here today, do you have  
13 any opinion as to the work performed by Glasstec?

14 A Since I don't know specifically what they  
15 did, obviously I have no opinion.

16 Q Do you believe that you might have a  
17 future opinion as to Glasstec?

18 A I would assume if there are documents  
19 available that explain what they did during 2002, I  
20 can then form an opinion whether they failed to meet  
21 the standard of care in their performance. But I  
22 would have to review documents to be able to  
23 determine that.

24 Q Have you been able to determine if any  
25 damage or any alleged damage in the Shipwatch

1 mechanically anchored to the structural slab. So we  
2 found significant deficiencies in the attachment of  
3 the units to the framing structure.

4 Q Could you determine what the resulting  
5 damage was specifically from problems with the  
6 doors?

7 A Specifically with the door unit. The  
8 door units, at least one, maybe more, were isolated  
9 and water tested and successfully passed the water  
10 test performance that we did.

11 The problem with the doors was not the  
12 performance of the door units, but it was the  
13 impact, the attachment, and the lack or improper  
14 waterproofing around the door openings.

15 Q Right. Can you tell me what the  
16 resulting damage was with the attachment and lack of  
17 waterproofing of the door opening? Can you tell  
18 me --

19 A Well, the lack of proper waterproofing  
20 around the door openings resulted in staining and  
21 corrosion of stud framing and staining/deterioration  
22 of sheathing and finish components.

23 Q But there's also problems with the DEFS.  
24 Can you break out the damages, or can you  
25 determine -- Can you say this resulting damage is

1 document that summarizes 20 or so different  
2 requests.

3 And then change order No. 3 is something  
4 like 43 through 65, and it totals \$57,000 after  
5 sitting down with the contractor and working that  
6 out. That needs to be an official document. But  
7 the dollars and the scope and all the items have  
8 been gone through and vetted.

9 Change order No. 4, I'm waiting to get a  
10 handful of items that the contractor says is his  
11 last request.

12 Q So that change order No. 1 has always  
13 been the same?

14 A Yes.

15 MS. SMITH: That's it. Thank you.

16 E X A M I N A T I O N

17 BY MR. KELLY:

18 Q I have two questions and then I'll be  
19 done. Before we wrapped up, I wanted to ask a  
20 question.

21 A Yes, sir. Go ahead.

22 Q Mr. Miller, just for clarity purposes, I  
23 want to make sure I understand a couple of things.

24 The fact that buildings A and B have  
25 non-impact windows and doors installed in the

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1 buildings, is the fact that those windows and doors  
2 are non-impact causing any damage to the building?

3 A In and of itself, I would say no.

4 Q Same question. Prior to the time the  
5 windows and doors were removed from buildings C and  
6 D, it's my understanding you believe that the  
7 windows and doors had non-impact glass. Correct?

8 A That's correct.

9 Q Did the presence of non-impact glass in  
10 those windows and doors lead to any damage to  
11 buildings C and D?

12 A No damage, fortunately, because we had no  
13 hurricane blow through there. But no.

14 Q I think you indirectly answered this, so  
15 I want to ask you directly. Do you agree with me  
16 that the EFCO window and door products supplied to  
17 the Shipwatch project are not defective in design or  
18 fabrication?

19 A I think I would make the statement that  
20 there was no evidence that those units exhibited  
21 leakage during our water testing. I did not see  
22 shop drawings of those doors and windows from a  
23 design or install standpoint.

24 Obviously, from an install standpoint, if  
25 there are no fasteners in the jambs and you've got

1 fasteners in the sill to a member that's not  
2 connected to the structural slab mechanically, but  
3 the units themselves exhibited no evidence of water  
4 intrusion.

5 Q Do the units themselves exhibit any  
6 evidence of a defect?

7 A None that I recall.

8 MR. KELLY: Those are all the  
9 questions I have. Thank you, sir.

10 MR. ROOT: This is David Root,  
11 counsel for BASF, noting on the record that  
12 Mr. Miller's deposition was noticed for today,  
13 Wednesday, the 27th, and Friday, the 29th, and that  
14 defense counsel have agreed to withdraw the notice  
15 for the 29th on the basis that Mr. Miller's  
16 testimony today has indicated he's not been able to  
17 get to a point to render final opinions on a number  
18 of issues and won't be able to get to that point  
19 tomorrow. So that notice is withdrawn and Friday is  
20 open.

21 (End of deposition.)

22

23

24

25

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# EXHIBIT C

THE COURT OF COMMON PLEAS

SHIPWATCH CONDOMINIUM  
ASSOCIATION,

Plaintiff,

-versus-

CAROLINA CONCRETE SYSTEMS,  
INC., et al.,

Defendants.

OSCAR MENDIONDO, Individually )  
and as representative of a )  
class of similarly situated )  
owners of condominium units in )  
the horizontal property regime )  
known as SHIPWATCH CONDOMINIUMS,)

Plaintiffs,

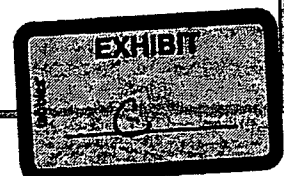
-versus-

CAROLINA CONCRETE SYSTEMS,  
INC., et al.,

Defendants.

THE CONTINUATION OF THE DEPOSITION OF GREG ISAACS was taken as a witness on behalf of the Defendants, pursuant to South Carolina Rules of Civil Procedure, at 9:30 a.m. on Thursday, the 28th day of August 2014, at the offices of Sutton-Kennerly & Associates, 4651 Charlotte Park Drive, Charlotte, North Carolina, before Janice O. Darby, Registered Professional Reporter and Notary Public in and for the State of South Carolina.

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|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">Page 538</p> <p>1 when you did your more full report and then started<br/>2 work, do you know of any work that was done between<br/>3 that era or in that era?<br/>4 A I'm unaware of that.<br/>5 Q Have you reviewed your reports, the<br/>6 primary reports? By that, I mean the January and<br/>7 April reports. What have you-all been referring to<br/>8 today? The April report?<br/>9 A Yes, April 2012.<br/>10 Q Which I think encompasses most of the<br/>11 findings from the January report as well.<br/>12 In any event, Exhibit 59, did you review<br/>13 that report prior to your deposition today, in<br/>14 preparation for the deposition?<br/>15 A I did not.<br/>16 Q You are familiar with the findings in<br/>17 that report. Correct?<br/>18 A Yes.<br/>19 Q Do you now deviate or have an opinion<br/>20 contrary to any of those findings?<br/>21 A I do not.<br/>22 Q Pro-Tec has been about two or so months<br/>23 late, for lack of a better term, in getting the job<br/>24 done. Correct?<br/>25 A Yes.</p>                                       | <p style="text-align: right;">Page 540</p> <p>1 expense allocation?<br/>2 A We've had change orders, and we've had to<br/>3 address all of those.<br/>4 Q As far as what would be responsive to<br/>5 that question, meaning something that was an<br/>6 atypical problem that was not perhaps anticipated<br/>7 when the project began, all of those type issues<br/>8 would be incorporated or encompassed within the<br/>9 change orders. Is that correct?<br/>10 A Yeah, that's fine.<br/>11 Q Is that fair enough?<br/>12 A Okay.<br/>13 Q Well, I'm asking you. Is that fair?<br/>14 A Yes, that's fine.<br/>15 Q You keep saying "that's fine." I'm<br/>16 trying to make the most succinct way to get about<br/>17 this, besides from going through all the change<br/>18 orders. If there's something else outside that<br/>19 realm, I wanted to speak about it. But if the<br/>20 change orders encompass the material changes to the<br/>21 work versus what was anticipated on the front end,<br/>22 then we are good. And you're saying yes?<br/>23 A Yes.<br/>24 Q Have you come to form any opinions that<br/>25 there was anything wrong with the DEFS as a product?</p> |
| <p style="text-align: right;">Page 539</p> <p>1 Q They were supposed to be done May 31st.<br/>2 Correct?<br/>3 A Correct.<br/>4 Q And it's my understanding that they got<br/>5 to substantial completion, in quotes, around August<br/>6 1st?<br/>7 A Correct.<br/>8 Q Do you know what the cause is for that<br/>9 delay?<br/>10 A Allocating their resources, project<br/>11 management, getting people scheduled to do the right<br/>12 things at the right time. Just planning and<br/>13 scheduling.<br/>14 Q On Pro-Tec's behalf?<br/>15 A Correct.<br/>16 Q Have there been any particular problems<br/>17 that you-all have experienced during the course of<br/>18 the construction or the remediation?<br/>19 A Can you be more specific?<br/>20 Q No, because I'm looking for anything that<br/>21 you've experienced. I don't mean just something<br/>22 that's a one-off or atypical, but something that was<br/>23 just simply not anticipated and has caused a great<br/>24 deal of-- I know there have been change orders, but<br/>25 a great deal of change in either time allocation or</p> | <p style="text-align: right;">Page 541</p> <p>1 Meaning not related to installation, but as to it as<br/>2 a product, in its manufacture or design, anything of<br/>3 that nature?<br/>4 A No. That's more Jeff Miller's realm.<br/>5 Q Same question as to the deck coating. Do<br/>6 you have any opinion that there are any deficiencies<br/>7 or problems in a general sense with the deck coating<br/>8 as a product, as it's designed or manufactured?<br/>9 A In terms of the deck coating material<br/>10 itself?<br/>11 Q Yes, sir.<br/>12 A No.<br/>13 Q Have you done any product literature<br/>14 review since we last spoke?<br/>15 A No. Just I've been working on any new<br/>16 products that we use, but nothing previous.<br/>17 Q Had any discussions with anyone from BASF<br/>18 since we last met?<br/>19 A No.<br/>20 MR. ROOT: Mr. Isaacs, those are all<br/>21 the questions I have for you. I appreciate your<br/>22 time.<br/>23 EXAMINATION<br/>24 BY MR. KELLY:<br/>25 Q Mr. Isaacs, I'm on the phone. I've got</p>                                                                                                                                         |

26 (Pages 538 to 541)

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| <p style="text-align: right;">Page 542</p> <p>1 my kids in the car. This is probably going to be<br/> 2 the worst deposition experience ever, but I'm going<br/> 3 to give it a shot. I represent EFCO and W.C.<br/> 4 Johnston Architectural Sales.<br/> 5 I asked you some questions the last time<br/> 6 we had your deposition scheduled. And I heard some<br/> 7 things today that made me want to clarify some of<br/> 8 the testimony today and testimony previously. That<br/> 9 will be the basis for my questioning today, and then<br/> 10 we'll see how far we have to go.<br/> 11 At some point in coming up with repair<br/> 12 plans for buildings C and D at Shipwatch, did<br/> 13 Sutton-Kennerly &amp; Associates consider reusing the<br/> 14 EFCO products that were installed at those<br/> 15 buildings?<br/> 16 A We did.<br/> 17 Q And if there were performance problems<br/> 18 with the EFCO product installed at buildings C and<br/> 19 D, would Sutton-Kennerly &amp; Associates have<br/> 20 considered reusing those products?<br/> 21 A Say that again.<br/> 22 Q If there were performance problems with<br/> 23 the EFCO products that had been installed at<br/> 24 buildings C and D, would Sutton-Kennerly &amp;<br/> 25 Associates have considered reusing those products?</p> | <p style="text-align: right;">Page 544</p> <p>1 photographs 6 and 7, but it was a small amount that<br/> 2 is contained and, according to the AAMA guidelines,<br/> 3 is not considered a leak.<br/> 4 Q I think you've referred to that at some<br/> 5 point as spitting?<br/> 6 A Correct.<br/> 7 Q And you ended up passing that particular<br/> 8 product that had been tested?<br/> 9 A That's correct.<br/> 10 Q Did any of the product you tested with<br/> 11 water fail at Shipwatch?<br/> 12 A Can you repeat that question again as I<br/> 13 look through these notes?<br/> 14 Q Yes, sir. I want to be very careful and<br/> 15 precise with our language. So I want to make sure<br/> 16 that I understand and everyone else understands that<br/> 17 when you were testing window and door products at<br/> 18 Shipwatch whether you were testing the window and<br/> 19 door surrounds as far as how the product was<br/> 20 installed or whether you were testing the product<br/> 21 itself. Do you follow me?<br/> 22 A Yeah. We did a variety. Sometimes we<br/> 23 would isolate the window or door itself and only<br/> 24 test that manufactured product. Other times we<br/> 25 would do the reverse and test only the surrounding</p> |
| <p style="text-align: right;">Page 543</p> <p>1 A No.<br/> 2 Q Did you administer the water testing that<br/> 3 took place at Shipwatch?<br/> 4 A Yes. I participated in it with Eric<br/> 5 Couch.<br/> 6 Q Did you compile the results, or was that<br/> 7 Eric?<br/> 8 A It was both of us.<br/> 9 Q And it's my understanding from your prior<br/> 10 testimony that you tested the EFCO product in<br/> 11 isolation from the installation of the EFCO<br/> 12 products. Is that correct?<br/> 13 A Yes, I believe so.<br/> 14 Q In testing the EFCO products in isolation<br/> 15 from the installation methods, did you determine<br/> 16 whether or not the EFCO product passed or failed the<br/> 17 water testing?<br/> 18 A The EFCO product passed on -- Let's see.<br/> 19 Q Did you observe water penetrating through<br/> 20 any of the EFCO product during the water test?<br/> 21 A Yes. I'm looking at test area 14. That<br/> 22 is where we isolated just a new EFCO sliding door,<br/> 23 covered up the surrounding facade. And we did not<br/> 24 have a technical failure of the EFCO product.<br/> 25 We did have some water shown in</p>                                                                                                                                                     | <p style="text-align: right;">Page 545</p> <p>1 cladding. And then other times we would test both<br/> 2 at the same time.<br/> 3 Q When you're considering testing a<br/> 4 product, are you considering the way the product is<br/> 5 installed or the way in which it has been<br/> 6 manufactured?<br/> 7 A We are looking at the manufactured<br/> 8 component, yes.<br/> 9 Q So when you tested the product to<br/> 10 determine whether there were any failures of the<br/> 11 manufacturing of the product, did you conclude that<br/> 12 any of the tests were failures?<br/> 13 A I'm flipping through our report here.<br/> 14 No.<br/> 15 Q Isn't it in fact only the installation<br/> 16 methods that failed when you tested the product?<br/> 17 A That's correct.<br/> 18 Q So at various times in your deposition<br/> 19 today when you have indicated that the window or<br/> 20 door itself leaked, what do you mean by that?<br/> 21 A Do you have a specific location that we<br/> 22 were talking about at the time, or are you just kind<br/> 23 of saying in general?<br/> 24 Q I don't have anything written down. And<br/> 25 I'll tell you my recollection is Mr. Elliott asked</p>                                                |

27 (Pages 542 to 545)

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1 you some leading questions that ended with the word  
 2 "correct," and you agreed with him, and asked  
 3 whether or not the door or window leaked. So what  
 4 I'm trying to understand is, what did you mean in  
 5 agreeing to those questions asked whether or not the  
 6 door or window itself leaked?  
 7 MR. ELLIOTT: Object to the form.  
 8 A Okay. So we had some -- You know, that  
 9 includes the installation of the surrounding  
 10 cladding and the installation of the manufactured  
 11 unit.  
 12 BY MR. KELLY:  
 13 Q Did you in any way intend to say that the  
 14 product itself is permitting water to enter the  
 15 building?  
 16 A We had water come through one of those  
 17 bay windows, but I believe that was at a drilled  
 18 hole on the inside, if my memory is correct.  
 19 Q Are those bay windows EFCO products?  
 20 A I don't know.  
 21 Q I didn't mean to cut you off. If you  
 22 aren't finished with your testimony as to that  
 23 drilling in the bay window, please continue.  
 24 A Just that the leaks are associated with  
 25 the installation around the window or door.

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1 Q So if someone were to use your testimony,  
 2 your deposition transcript at a later date to  
 3 suggest that the product supplied by EFCO for the  
 4 Shipwatch buildings are leaking, the products  
 5 themselves as opposed to installation, would that be  
 6 an incorrect suggestion?  
 7 MR. FLYNN: Object to the form.  
 8 A The EFCO sliding door we tested did not  
 9 leak. The manufactured unit did not leak in that  
 10 test area 14.  
 11 BY MR. KELLY:  
 12 Q Did any EFCO product that you tested  
 13 leak?  
 14 A Again, I'm not aware of -- didn't go back  
 15 and dig back through manufacturers of who did what.  
 16 But the newer door did not leak.  
 17 Q Would it make sense that Sutton-Kennerly  
 18 was going to reuse EFCO products if it found that  
 19 the EFCO products themselves leaked?  
 20 A Right. If we found a unit that was  
 21 leaking, we would not want to reuse that. Correct.  
 22 Q But you had envisioned reusing the EFCO  
 23 product that had been installed in buildings C and D  
 24 as part of the repairs at Shipwatch. Right?  
 25 A That's correct.

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1 Q So is it not fair for me to assume that  
 2 you do not believe that the EFCO products themselves  
 3 were permitting water to enter the building  
 4 envelope?  
 5 A That's correct.  
 6 MR. KELLY: I believe those are all  
 7 the questions I have for you. I appreciate your  
 8 patience with me. Sorry if it's too hectic here.  
 9 EXAMINATION  
 10 BY MR. ELLIOTT:  
 11 Q Mr. Isaacs, the sliding glass doors and  
 12 the storefront windows, I asked you if -- We talked  
 13 about your water test and the DEFS, whether or not  
 14 it leaked. And I asked another question, did the  
 15 doors leak. And you said yes. New sliding glass  
 16 doors leak and new storefront windows leaked. And  
 17 then I asked you further why are the new sliding  
 18 glass doors and windows being replaced, and you  
 19 agreed that it was because they leaked and because  
 20 of the impact rating.  
 21 Now, the sliding glass doors, and we  
 22 covered the oceanfront, tell me what is it you were  
 23 talking about that leaked when you said the doors  
 24 leaked.  
 25 A I guess I was using "doors" as too broad

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1 of a term and not precise enough.  
 2 Q Let me ask you this. You tested doors  
 3 and you tested the cladding. You separated the two.  
 4 Right?  
 5 A Correct.  
 6 Q And water intrusion occurred when you  
 7 tested the doors. What part of the door leaked?  
 8 A The components at the perimeter of the  
 9 door.  
 10 Q What components?  
 11 A For example, test area 14, photograph 4,  
 12 the water simply went underneath the sliding door  
 13 unit.  
 14 Q Let me get to that real quick, because I  
 15 remember we talked about it. It leaked under the  
 16 door where the door meets the built-up --  
 17 A That's correct, curb.  
 18 Q So something about how the door was  
 19 installed in a curb allowed the water intrusion to  
 20 occur?  
 21 A Correct.  
 22 Q What about the installation, if you can  
 23 tell me in that detail, caused the leak?  
 24 A Photographs 4 and 5, you can see a gap  
 25 between the door and curb, and it goes through to

28 (Pages 546 to 549)

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| <p style="text-align: right;">Page 299</p> <p>1 Carolina Concrete and its subs during the work with<br/>2 regards to when they discovered a corroded stud what<br/>3 to do?<br/>4 A I'm not aware of that.<br/>5 Q So you're not aware of the instructions<br/>6 that the Shipwatch folks gave to Carolina Concrete<br/>7 about that?<br/>8 A No, I'm not.<br/>9 Q With regards to the chimney framing<br/>10 issue, what is the problem with the chimneys that<br/>11 necessitated a complete rebuild?<br/>12 A Our structural engineer, Tim Cook,<br/>13 determined that they would not adequately meet the<br/>14 wind load requirements.<br/>15 Q And why not?<br/>16 A Just the framing components and<br/>17 connections were inadequate.<br/>18 Q Did you-all test the original<br/>19 construction of the chimneys, or are these<br/>20 remediated chimneys?<br/>21 A These are the chimneys as we found them<br/>22 in this phase of work.<br/>23 Q Do you know whether they were original to<br/>24 the building or whether or not they were at some<br/>25 point added later?</p>                                                                                       | <p style="text-align: right;">Page 301</p> <p>1 A I do not know.<br/>2 Q It would be safe to assume that she<br/>3 didn't climb up and inspect that area. Correct?<br/>4 A That's a reasonable assumption.<br/>5 MR. COBB: Since we finally agree on<br/>6 something, I'll quit asking you questions. Thank<br/>7 you for your time.<br/>8 (Recess taken.)<br/>9 EXAMINATION<br/>10 BY MR. KELLY:<br/>11 Q Mr. Isaacs, my name is Britt Kelly. I'm<br/>12 down in Charleston. I'm sorry I couldn't be there<br/>13 with you today, but I'll try to do my best over the<br/>14 phone.<br/>15 If you would, please allow me to finish<br/>16 my question before you begin to respond and<br/>17 hopefully we'll be okay.<br/>18 A Okay.<br/>19 Q My first question for you, have you ever<br/>20 worked for a window manufacturer or distributor?<br/>21 A I have not.<br/>22 Q Have you ever worked for any product<br/>23 supplier?<br/>24 A I have not.<br/>25 Q Do you believe you're an expert</p>                                                                                                                                                                                                      |
| <p style="text-align: right;">Page 300</p> <p>1 A I do not.<br/>2 Q Did it appear that they were added later?<br/>3 A It's hard to tell. I don't know.<br/>4 Q Did anybody do any type of investigation<br/>5 about the chimney caps, whether or not they were<br/>6 leaking or whether or not they needed to be replaced<br/>7 as well?<br/>8 A Chimney caps?<br/>9 Q Or the spark arrestor or whatever the<br/>10 apparatus is.<br/>11 A Oh, those are being replaced. They were<br/>12 corroded and had broken components -- broken metal<br/>13 pieces on them. The caps themselves, I'm not sure<br/>14 if we did water testing on those.<br/>15 Q Are you aware of any warnings given by<br/>16 Bob Wiggins to Shipwatch about the chimneys, the cap<br/>17 and the spark arrestors during the history of<br/>18 Carolina Concrete's work at the project?<br/>19 A It's my understanding that Linda Jernigan<br/>20 prior to our work, our design work beginning, was<br/>21 aware of the problems associated with the spark<br/>22 arrestor pieces.<br/>23 Q And what was she aware of?<br/>24 A That they needed to be replaced.<br/>25 Q And who told her about that?</p> | <p style="text-align: right;">Page 302</p> <p>1 concerning the duties and responsibilities of a<br/>2 product manufacturer or a distributor?<br/>3 A I am not.<br/>4 Q At various points during your examination<br/>5 by Mr. Cobb you referenced -- I think your term was<br/>6 "impact-glass concerns." Do you remember that?<br/>7 A Yes, sir.<br/>8 Q Can you describe that for me, please?<br/>9 What exactly are you talking about there?<br/>10 A When we were looking into information on<br/>11 the sliding doors and windows, our research led us<br/>12 to believe that the sliders are not impact rated. I<br/>13 don't have the notes in front of me, but I think<br/>14 that came from discussions with EFCO technical<br/>15 services and finding out what actual units were on<br/>16 the building.<br/>17 Q Did you have those discussions with the<br/>18 EFCO technical services people?<br/>19 A I can't recall. That sounds correct. We<br/>20 could look -- I'm not sure if we have notes on that.<br/>21 Q Do you typically take notes like that?<br/>22 A Yeah, we should have something related to<br/>23 that.<br/>24 Q Do you have your entire file in front of<br/>25 you?</p> |

14 (Pages 299 to 302)

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1 A We do.

2 Q Not right now, but maybe at some point we

3 can pull those out. But my question, I guess, what

4 I'm trying to get at is, do you know if the phone

5 call was with the EFCO people at one of their

6 locations or W.C. Johnston folks?

7 A I can't recall specifically.

8 Q How long do you think it would take you

9 to put your hands on that note?

10 A We've got a big pile here. I'm just not

11 sure. I could take some time and start digging.

12 Q Why don't we table that for a second and

13 we'll come back to that before we wrap up.

14 Was there any other research that you did

15 to determine whether or not any of the EFCO products

16 was impact rated?

17 A We did not. I don't think so.

18 Q Your concern about the impact rated or

19 impact ratings of the glass of the EFCO product, is

20 that limited just to the sliding glass doors, or

21 does it relate to other products?

22 A I believe it relates to the other

23 products.

24 Q What other products at Shipwatch do you

25 believe EFCO manufactured and distributed?

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1 A I'm not sure. Off the top of my head,

2 I'm not sure. I guess I was under the assumption

3 that most of the new materials that we discussed in

4 the previous questioning were generally EFCO

5 products -- sliding windows and fixed windows and

6 bay windows. It's my understanding that those were

7 also EFCO. But I don't have notes on that in front

8 of me.

9 Q How did you gain the understanding that

10 the bay windows were EFCO products?

11 A Again, I'm not sure. I would have to

12 look in my notes to see if they are or not.

13 Q What type of notes did you make to show

14 the manufacturer of a product?

15 A I know on several of the products there

16 are some notes from the manufacturers, either

17 stamped on the aluminum frame or perhaps on the

18 glass.

19 We've also had some -- I guess some

20 verbal communication with the owner indicating that

21 in general most of the products were EFCO products.

22 Q Who is the owner you're referring to?

23 A Linda Jernigan.

24 Q Mr. Cobb referenced a number of original

25 door and window units on the project. I'm trying to

Page 305

1 use his language as best I can. You know when

2 you're out there -- I guess buildings C and D are

3 undergoing the repairs now. But before they did, if

4 you were in one of the units in the living room,

5 there's a sliding glass door and then some fixed

6 windows next to that sliding glass door. Does that

7 sound familiar?

8 A Yes.

9 Q The majority of those units, at least you

10 believe that the sliding glass doors and the fixed

11 windows that were installed prior to this latest

12 round of construction work were original to the

13 building?

14 A I'll pull up that sheet that I just had.

15 It looks like based on these notes -- I forget what

16 exhibit that was, but these elevation drawings of

17 making notes of old versus new, it appears that in

18 the family room most of those sliding doors are old.

19 Q What about the fixed windows that are

20 next to those sliders on floors one through three of

21 buildings C and D?

22 A Buildings C and D, those fixed windows

23 are all old according to these notes.

24 Q Did you gain an appreciation for how old

25 those fixed windows and sliding glass doors in the

Page 306

1 living rooms of floors one through three of

2 buildings C and D were?

3 A Again, what we're calling new was

4 probably within the last eight to ten years

5 approximately. And then what we're calling old,

6 based on the color and things we discussed

7 previously, definitely more than that. 20 plus

8 years would be a reasonable approximation.

9 Q Remind me how you described the

10 differences between the new product and the old

11 product.

12 A For these notes, you know, taken from the

13 ground and looking up at the building, and in

14 general when we did go to actual units on balconies

15 and end units, the new windows had a much darker

16 bronze frame with much wider aluminum frame

17 components, and the older units had a noticeably

18 faded color to a lighter brown and more narrow

19 aluminum components.

20 Q How would you describe the difference, if

21 any, in the glass between the new and the old

22 product?

23 A I'm not sure I looked too closely at the

24 glass itself. There is a slightly different color

25 in terms of thickness. I'd have to refer back to

15 (Pages 303 to 306)

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| <p style="text-align: right;">Page 307</p> <p>1 photographs.</p> <p>2 Q Based on your experience and your</p> <p>3 observations in the field at Shipwatch on buildings</p> <p>4 C and D on floors one through three, you believe</p> <p>5 that the old doors and fixed units have impact glass</p> <p>6 within them?</p> <p>7 A I do not believe that they had that.</p> <p>8 Q When was the decision made to replace all</p> <p>9 the windows and doors at Shipwatch with impact-rated</p> <p>10 glass product?</p> <p>11 A I guess that would be after our</p> <p>12 investigative reports. So our last one was April</p> <p>13 12th. And after that April 12th report, we met with</p> <p>14 the Shipwatch HOA and discussed remediation.</p> <p>15 Specifically a date, I'm not sure of a specific</p> <p>16 date.</p> <p>17 Q Who was at that meeting?</p> <p>18 A These were telephone calls and site</p> <p>19 meetings between Jeff Miller and Shipwatch.</p> <p>20 Q Were you part of those?</p> <p>21 A I was not an integral part. I may have</p> <p>22 listened into some phone calls or attended one or</p> <p>23 two meetings that I don't remember specifically.</p> <p>24 But Jeff was in charge of leading those discussions.</p> <p>25 Q What do you remember about the first</p>                                   | <p style="text-align: right;">Page 309</p> <p>1 Q How were you under that impression?</p> <p>2 A We were told by Shipwatch.</p> <p>3 Q Do you recall if the suggestion to</p> <p>4 replace all the windows and doors was raised by</p> <p>5 someone at Sutton-Kennerly or raised by the owners?</p> <p>6 A That was likely an SKA decision. I think</p> <p>7 we considered the idea. I think we tried to find</p> <p>8 out if we could improve the existing newer products,</p> <p>9 and I think the conclusion was that that was not a</p> <p>10 preferred method of repairs in terms of, I guess,</p> <p>11 cost and time. I can't remember if it could or</p> <p>12 could not have been done at all.</p> <p>13 Q It sounds like to me someone reached a</p> <p>14 conclusion that windows and doors that may not be</p> <p>15 impact rated could not remain in the buildings at</p> <p>16 Shipwatch. Is that accurate?</p> <p>17 A That's correct.</p> <p>18 Q Who made that determination?</p> <p>19 A Sutton-Kennerly.</p> <p>20 Q Did you participate in that analysis?</p> <p>21 A I assisted Jeff Miller in that analysis.</p> <p>22 Q How was that determination made that</p> <p>23 non-impact rated product could not remain in the</p> <p>24 buildings at Shipwatch?</p> <p>25 A Because they are in a wind region that</p> |
| <p style="text-align: right;">Page 308</p> <p>1 meeting or phone call you had where an issue was</p> <p>2 brought up about removing and replacing the windows</p> <p>3 and doors at Shipwatch because of impact glazing?</p> <p>4 A What's the question about the impact</p> <p>5 glazing?</p> <p>6 Q What do you recall about the first</p> <p>7 meeting or phone call that you participated in where</p> <p>8 an issue was brought up about replacing the windows</p> <p>9 and doors because of impact-rating concerns?</p> <p>10 A I don't recall specifically. I'm sure</p> <p>11 after we discovered they were not impact rated, we</p> <p>12 mentioned that to them. I don't specifically</p> <p>13 remember doing that or when it happened.</p> <p>14 Q In 2009, you authored a report with</p> <p>15 Mr. Parker about the conditions of the building.</p> <p>16 Correct?</p> <p>17 A That's correct.</p> <p>18 Q And those same old windows and doors were</p> <p>19 installed in the building at that time. Right?</p> <p>20 A That's correct.</p> <p>21 Q And an observation could have been made</p> <p>22 to determine that those windows and doors did not</p> <p>23 have impact glazing. Correct?</p> <p>24 A Yeah. We were under the impression that</p> <p>25 the owner had a schedule in place to replace those.</p> | <p style="text-align: right;">Page 310</p> <p>1 requires impact-rated components.</p> <p>2 Q For new product?</p> <p>3 A Yes. That's my understanding.</p> <p>4 Q And what standard or authority are you</p> <p>5 relying upon for that proposition?</p> <p>6 A I believe that's in the IBC,</p> <p>7 International Building Code.</p> <p>8 Q What version of the IBC?</p> <p>9 A I don't have those in front of me. Like</p> <p>10 we mentioned earlier, several phases of work were</p> <p>11 done at different times. So there may be different</p> <p>12 codes applicable at different times of work being</p> <p>13 performed.</p> <p>14 Q What I'm talking about is what standard</p> <p>15 you believe governs the decision Sutton-Kennerly</p> <p>16 made to remove and replace all the product with an</p> <p>17 impact-rated product?</p> <p>18 A I believe that was the building code. We</p> <p>19 have a structural engineer. I do not personally do</p> <p>20 structural engineering. And he is more familiar</p> <p>21 with the building code, and he also assisted Jeff</p> <p>22 Miller in reaching that conclusion. And he is more</p> <p>23 familiar with the building code and how it applies</p> <p>24 to wind-related items than myself.</p> <p>25 Q What is his name?</p>                                        |

16 (Pages 307 to 310)

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| <p style="text-align: right;">Page 311</p> <p>1 A Tim Cook, C-o-o-k.<br/> 2 Q It seems that over 50 percent of the<br/> 3 building had what was known to everyone as<br/> 4 non-impact glazing product within it for a number of<br/> 5 years and no recommendation was made to replace all<br/> 6 of that product with impact-rated glazing. So how<br/> 7 did it come about in 2012 that a decision was made,<br/> 8 okay, now we need to replace everything with<br/> 9 impact-glazed product?<br/> 10 A Again, we were under the impression in<br/> 11 2009 that a plan was in place already to update<br/> 12 those products.<br/> 13 Q So is it acceptable for non-impact rated<br/> 14 product to be in the building between 2000 and<br/> 15 2009?<br/> 16 A For it to be in the building at all?<br/> 17 Again, I'm not as familiar with the wind<br/> 18 requirements in the building code. I believe it<br/> 19 applies to the time of installation and repairs.<br/> 20 I'm just not sure.<br/> 21 Q What jurisdiction had authority over the<br/> 22 replacement work that was performed at Shipwatch in<br/> 23 the 2000s?<br/> 24 A Can you repeat that, please?<br/> 25 Q What jurisdiction relative to the</p> | <p style="text-align: right;">Page 313</p> <p>1 Q Have you reviewed any of the project<br/> 2 documents produced by Carolina Concrete?<br/> 3 A I have not.<br/> 4 Q Same question for Charleston Glass. Have<br/> 5 you reviewed any of their project documents?<br/> 6 A I have not.<br/> 7 Q What about EFCO or W.C. Johnston<br/> 8 Architectural Sales?<br/> 9 A I have not.<br/> 10 Q Did the 1997 Standard Building Code<br/> 11 require impact glazing in window and door products?<br/> 12 A I do not know for sure. I do not believe<br/> 13 that it did.<br/> 14 Q I've reviewed your reports and it looks<br/> 15 to me like Sutton-Kennerly &amp; Associates water tested<br/> 16 several EFCO products, some windows and doors. Do<br/> 17 you believe that to be the case?<br/> 18 A Yes.<br/> 19 Q Did any of the water testing performed by<br/> 20 Sutton-Kennerly &amp; Associates reveal failures with<br/> 21 the EFCO products?<br/> 22 A No. We had some -- a small amount of<br/> 23 water come in on one sliding door while applying<br/> 24 pressure, but that water did not drip over the edge<br/> 25 in order to constitute a leak. So, no, there was</p> |
| <p style="text-align: right;">Page 312</p> <p>1 building department had authority over the<br/> 2 replacement work at Shipwatch that occurred in the<br/> 3 2000s?<br/> 4 A Well, they would have used South<br/> 5 Carolina -- State of South Carolina adopts the<br/> 6 International Building Code, and whatever building<br/> 7 code they had adopted at that time would be their<br/> 8 governing code. And then the Isle of Palms -- the<br/> 9 City of Isle of Palms also has a building department<br/> 10 for construction work.<br/> 11 Q Do you know what the Isle of Palms' code<br/> 12 adoption history is?<br/> 13 A I do not.<br/> 14 Q Do you know if the Isle of Palms building<br/> 15 department had authority to permit work at Shipwatch<br/> 16 during the 2000s?<br/> 17 A I do not know that for sure, but that<br/> 18 seems reasonable.<br/> 19 Q The building official has the ability to<br/> 20 permit work under a certain version of the code?<br/> 21 A Yes. I would say, yes, that sounds<br/> 22 correct.<br/> 23 Q What building code was the Shipwatch<br/> 24 window and door replacement work permitted under?<br/> 25 A I'm not aware.</p>                                              | <p style="text-align: right;">Page 314</p> <p>1 not a failure.<br/> 2 Q Is that the one you referred to in the<br/> 3 report as spitting in the glass?<br/> 4 A That's correct.<br/> 5 Q But you deemed that to pass the test?<br/> 6 A I believe so. Let me look up that actual<br/> 7 area to remember.<br/> 8 That's correct. Test area 14, no water<br/> 9 intrusion was attributed to the manufactured door<br/> 10 unit.<br/> 11 Q Are you aware of any failures of the EFCO<br/> 12 products that have led to water intrusion into the<br/> 13 building or the building cavity?<br/> 14 A I'm not aware of that.<br/> 15 Q And I should specify or should clarify<br/> 16 that. I said building. I'm referring to all four<br/> 17 buildings at Shipwatch. Are you aware of any<br/> 18 failures of EFCO products that have led to water<br/> 19 intrusion into any of the four buildings or the<br/> 20 building cavity of the four buildings?<br/> 21 A I'm not aware of that.<br/> 22 Q Do you hold any opinions that the EFCO<br/> 23 products supplied at the project are defective in<br/> 24 design or fabrication?<br/> 25 A I do not have an opinion on that.</p>      |

17 (Pages 311 to 314)

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|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">Page 315</p> <p>1 Q Do you know if anyone at SKA has an</p> <p>2 opinion as it relates to the products supplied to</p> <p>3 the Shipwatch job as to whether those EFCO products</p> <p>4 are defectively designed or fabricated?</p> <p>5 A Jeff Miller, the project manager, would</p> <p>6 have that.</p> <p>7 Q What do you believe Mr. Miller's opinion</p> <p>8 to be?</p> <p>9 A I can't speak for him. But the water --</p> <p>10 You know, the manufactured units passed the water</p> <p>11 testing. So in terms of water testing that I did,</p> <p>12 they are not defective in shedding water away from</p> <p>13 the building.</p> <p>14 Q Has Mr. Miller told you that he holds an</p> <p>15 opinion that the EFCO products supplied to the</p> <p>16 Shipwatch buildings are defective in some manner?</p> <p>17 A He has not told me that.</p> <p>18 Q But you believe he holds that opinion, or</p> <p>19 did I misunderstand you?</p> <p>20 A I don't know.</p> <p>21 MR. KELLY: If you don't mind, would</p> <p>22 you take a moment to look for those notes we talked</p> <p>23 about. If you find them, I would like to get the</p> <p>24 dates on them. I want to make sure they've been</p> <p>25 produced to us.</p> | <p style="text-align: right;">Page 317</p> <p>1 A October 24, 1983.</p> <p>2 Q And how long have you lived in the</p> <p>3 Charlotte area?</p> <p>4 A I moved here in June of 2006.</p> <p>5 Q Tell me about your education.</p> <p>6 A I have a bachelor's degree in civil</p> <p>7 engineering from Clemson University.</p> <p>8 Q When did you receive that?</p> <p>9 A That was the spring of 2006.</p> <p>10 Q Any formal education after that?</p> <p>11 A No.</p> <p>12 Q All of your registrations, licenses,</p> <p>13 certifications, could you list those for me?</p> <p>14 A I am a professional engineer in North</p> <p>15 Carolina and South Carolina.</p> <p>16 Q I am looking at Exhibit 58, and this is</p> <p>17 what you've handed to me in response to my request</p> <p>18 for a CV or resume. I think you gave it with the</p> <p>19 caveat that this may need updating.</p> <p>20 A Yeah, I haven't -- I didn't produce that.</p> <p>21 That was -- I'm not sure when that was produced.</p> <p>22 But I asked our administrative assistant for a</p> <p>23 recent resume, and I haven't had a chance to review</p> <p>24 it since we sat down.</p> <p>25 Q Is this something that is incorporated</p>                                                   |
| <p style="text-align: right;">Page 316</p> <p>1 (Lunch recess taken.)</p> <p>2 (Exhibit Nos. 58 and 59 marked</p> <p>3 for identification.)</p> <p>4 EXAMINATION</p> <p>5 BY MR. ROOT:</p> <p>6 Q Mr. Isaacs, my name is David Root. I</p> <p>7 represent BASF, which is a defendant in this lawsuit</p> <p>8 brought by the Shipwatch folks. I'll be asking you</p> <p>9 some questions today, as will these other attorneys.</p> <p>10 Because we're not going to finish your</p> <p>11 deposition in total today, I'm going to limit my</p> <p>12 questions to a certain span of time reserving the</p> <p>13 right to ask you questions at a later date. Because</p> <p>14 there are a lot of photographs, et cetera, that I</p> <p>15 want to go over and get in some more detail, but at</p> <p>16 least I can cover some of the general issues today.</p> <p>17 As I understood it from some of your</p> <p>18 earlier testimony, this is the first time you've</p> <p>19 been deposed?</p> <p>20 A That's correct.</p> <p>21 Q Let's do some background stuff, because I</p> <p>22 don't think we covered much of that. Where were you</p> <p>23 born?</p> <p>24 A I was born in New Haven, Connecticut.</p> <p>25 Q And when were you born?</p>                   | <p style="text-align: right;">Page 318</p> <p>1 within SKA's advertising, marketing-type materials?</p> <p>2 A Yes.</p> <p>3 Q When you speak of seven years of</p> <p>4 experience with SKA -- and we'll talk about that.</p> <p>5 We'll talk about it in reverse chronology. Have you</p> <p>6 had any jobs in the construction industry prior to</p> <p>7 SKA?</p> <p>8 A I did summer work at a surveying company.</p> <p>9 Q When was that?</p> <p>10 A I would have to look that up. I believe</p> <p>11 that was the summer after my freshman year in</p> <p>12 college. So that would be most likely the summer of</p> <p>13 2003.</p> <p>14 Q What was the nature of the surveying?</p> <p>15 A It was a small surveying company that had</p> <p>16 a contract to define the boundary of the Redstone</p> <p>17 Arsenal in Huntsville, Alabama, which is a 30-plus</p> <p>18 mile perimeter of federal property, and they wanted</p> <p>19 to establish their property lines for security</p> <p>20 reasons.</p> <p>21 Q When is the next job you held in the</p> <p>22 construction industry?</p> <p>23 A In the construction industry, I did</p> <p>24 some -- I had some summer work at the University of</p> <p>25 Alabama Huntsville where I assisted graduate</p> |

18 (Pages 315 to 318)

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# EXHIBIT D



1 STATE OF SOUTH CAROLINA ) THE COURT OF COMMON PLEAS  
2 )  
3 COUNTY OF CHARLESTON ) CASE NO. 2012-CP-10-3857  
4 SHIPWATCH CONDOMINIUM )  
5 ASSOCIATION, INC., )  
6 )  
7 Plaintiff, )  
8 )  
9 vs. )  
10 )  
11 CAROLINA CONCRETE )  
12 SYSTEMS, INC., et al., )  
13 )  
14 Defendants. )

9 STATE OF SOUTH CAROLINA ) THE COURT OF COMMON PLEAS  
10 )  
11 COUNTY OF CHARLESTON ) CASE NO. 2012-CP-10-3858  
12 )  
13 OSCAR MENDIONDO, et al., )  
14 )  
15 Plaintiffs, )  
16 )  
17 vs. )  
18 )  
19 CAROLINA CONCRETE )  
20 SYSTEMS, INC., et al., )  
21 )  
22 Defendants. )

17 \* \* \* \* \*  
18 VOLUME I DEPOSITION  
19 OF: PETER SHERRATT  
20 DATE TAKEN: Thursday, November 6, 2014  
21 TIME: 9:50 a.m.  
22 PLACE: Turner Padgett Graham & Laney  
23 40 Calhoun Street, Suite 200  
24 Charleston, South Carolina  
25 REPORTED BY: EVE WILBANKS  
Registered Professional  
Reporter, Certified LiveNote  
Reporter and Notary Public  
25 \* \* \* \* \*

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1 Q. Are you aware of any damage, either to  
2 the windows themselves or to any components of the  
3 windows or the framing?

4 A. No. We would have to go back and look  
5 at the SKA photos. I am aware of damage below the  
6 bay windows at C and D.

7 Q. Are those the new bay windows or the old  
8 bay windows?

9 A. "New" meaning what?

10 Q. "Old" meaning original to the building;  
11 "new" meaning replaced at some point in the decade  
12 of the 2000's.

13 A. They appear to be at least reflashed in  
14 something -- post-original construction.

15 Q. And you've not done any type of water  
16 testing?

17 A. No.

18 Q. Do you have any intentions or plans to  
19 do any water testing?

20 A. No.

21 Q. What criticisms do you have with regards  
22 to the design of the repairs by Sisnroy?

23 A. I don't know if there was a design of  
24 the repairs. It seems to me there should have  
25 been drawings showing how to install the doors,

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|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">Page 90</p> <p>1 Wiggins?</p> <p>2 A. No.</p> <p>3 Q. Do you have any opinions about Carolina</p> <p>4 Concrete Systems?</p> <p>5 A. No.</p> <p>6 Q. Have you had any conversations with</p> <p>7 anybody who said they worked with Carolina</p> <p>8 Concrete Systems?</p> <p>9 A. Not that I recall. I don't believe so.</p> <p>10 Q. Have you had any conversations with any</p> <p>11 of the subcontractors about Shipwatch?</p> <p>12 A. I've had conversations, but I don't</p> <p>13 think any of it pertained to Shipwatch.</p> <p>14 Q. Have you had any conversations with any</p> <p>15 of the experts identified by any of the Defendants</p> <p>16 about Shipwatch?</p> <p>17 A. I've had conversations with the folks</p> <p>18 from SKA.</p> <p>19 Q. Other than that? Any of the defense</p> <p>20 experts?</p> <p>21 A. No. I mean, other than just some casual</p> <p>22 conversation when we happened to be on-site at the</p> <p>23 same time.</p> <p>24 Q. Have you read any of the depositions</p> <p>25 that have been taken in this case so far?</p>                                                                                                                                                                                                     | <p style="text-align: right;">Page 92</p> <p>1 mentioned, the window was made larger. I wasn't</p> <p>2 in that loop as to why it was. So there's</p> <p>3 definitely something different there. And I</p> <p>4 believe whatever is happening with the roof, that</p> <p>5 was a separate contract, meaning with Glasgow (ph)</p> <p>6 and the homeowners.</p> <p>7 Q. What is actually being done with the</p> <p>8 roof? Is the roof being replaced?</p> <p>9 A. I believe so. But that needs to be</p> <p>10 confirmed. I've not been involved in that portion</p> <p>11 of the work.</p> <p>12 Q. With regards to the length of time for</p> <p>13 the repairs, have you done any type of analysis to</p> <p>14 figure out whether or not it's been staffed</p> <p>15 correctly or sequenced in a way that's optimal?</p> <p>16 A. No.</p> <p>17 Q. What are you going to do with regards to</p> <p>18 the Shipwatch litigation moving forward?</p> <p>19 MR. FLYNN: Object to the form.</p> <p>20 A. I'm going to probably go to the site,</p> <p>21 take more pictures, meaning of A and B, while that</p> <p>22 work is going on, and I'll review whatever data is</p> <p>23 provided to me. And I'm sure there will be other</p> <p>24 things, but I don't have a list right now.</p> <p>25 MR. COBB: That's all the questions I</p> |
| <p style="text-align: right;">Page 91</p> <p>1 A. No.</p> <p>2 Q. With regards to the repairs that were</p> <p>3 done in 2013 and the repairs that are being done</p> <p>4 now, did you have any role in either coming up</p> <p>5 with the scope, coming up with the repair</p> <p>6 methodologies, any role in that?</p> <p>7 A. No.</p> <p>8 Q. Based on what you know, would you</p> <p>9 concede that some of the repairs that are being</p> <p>10 done to the buildings are outside of the</p> <p>11 responsibility of any of these Defendants?</p> <p>12 MR. FLYNN: Object to the form.</p> <p>13 A. I'm not aware of the full extent of the</p> <p>14 work that's in the SKA contract. I know there's</p> <p>15 been some minor changes, such as the bay windows,</p> <p>16 meaning the size of the glass panels. And there</p> <p>17 was some work done with regard to the storefront</p> <p>18 systems at the elevators, and that may be outside</p> <p>19 the scope of what Carolina Concrete was asked to</p> <p>20 do. But I don't know the details of those things.</p> <p>21 Q. Would you concede that there are</p> <p>22 betterments and upgrades being done on the</p> <p>23 repairs?</p> <p>24 A. Not on the exterior wall envelope</p> <p>25 repairs. On some of the others, as I just</p> | <p style="text-align: right;">Page 93</p> <p>1 have for you right now. I'll pass you down</p> <p>2 the road.</p> <p>3 THE WITNESS: Thank you.</p> <p>4 EXAMINATION</p> <p>5 BY MR. KELLY:</p> <p>6 Q. Mr. Sherratt, my name is Britt Kelly.</p> <p>7 I'm going to ask you a number of questions today</p> <p>8 related to your investigation and your</p> <p>9 observations at Shipwatch. Most of them will not</p> <p>10 have been asked or answered yet, but if I ask you</p> <p>11 a question you've already been asked, I apologize</p> <p>12 in advance. Have you done any personal</p> <p>13 investigation as to the performance of the EFCO</p> <p>14 doors at Shipwatch?</p> <p>15 A. I have read some historic data, and</p> <p>16 there were some questions raised as to whether the</p> <p>17 products from EFCO met the current building code</p> <p>18 that was appropriate at the time of installation</p> <p>19 and also whether the units met the DP rating. I</p> <p>20 think there were actually two products. There</p> <p>21 were doors and there were fixed glass.</p> <p>22 Q. What is your understanding -- I didn't</p> <p>23 mean to cut you off. If you're not finished,</p> <p>24 please continue.</p> <p>25 A. Go ahead.</p>                                                                                     |

24 (Pages 90 to 93)

| Page 94                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Page 96                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
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| <p>1 Q. What is your understanding as to when<br/>2 the EFCO door products were installed at<br/>3 Shipwatch?<br/>4 A. Sometime after June of 2001.<br/>5 Q. Do you have any more specific<br/>6 recollection as to when the doors and how many<br/>7 doors were replaced with EFCO products at<br/>8 Shipwatch?<br/>9 A. I think earlier today we looked at a<br/>10 document, and I believe it said 72 or 75 at that<br/>11 time.<br/>12 Q. How many sliding glass doors are at the<br/>13 Shipwatch buildings?<br/>14 A. I don't have that count.<br/>15 Q. Do you agree with me that it's more than<br/>16 72?<br/>17 A. Yes.<br/>18 Q. Other than the 72 that were replaced at<br/>19 some point in the early 2000's, do you know<br/>20 whether any other EFCO doors were installed at the<br/>21 Shipwatch buildings?<br/>22 A. I don't know that.<br/>23 Q. Have you done any investigation on your<br/>24 own as to the performance of those EFCO doors as<br/>25 it relates to water intrusion through or around</p>                                                                                          | <p>1 A. The windows that are somewhat adjacent<br/>2 to the sliding glass doors of the Carolina room or<br/>3 the master bedroom.<br/>4 Q. So it's fixed glass?<br/>5 A. Yes, sir.<br/>6 Q. Do you know when -- do you know how many<br/>7 units received EFCO fixed glass windows on the<br/>8 ocean side?<br/>9 A. No. I have limited information on the<br/>10 EFCO product. What would be good to look at is<br/>11 the installation instructions from EFCO.<br/>12 Q. But you haven't looked at those?<br/>13 A. I haven't located them. If you happen<br/>14 to have them, I would be happy to look at them.<br/>15 Q. Besides any water intrusion analysis,<br/>16 have you performed any investigation as to whether<br/>17 there are any performance problems with those EFCO<br/>18 doors -- excuse me -- EFCO fixed windows that we<br/>19 were just talking about?<br/>20 A. I don't know about the fixed windows.<br/>21 There was some correspondence from Mr. Freeman<br/>22 that the doors, in his opinion, didn't meet the<br/>23 applicable building code. And in reading that<br/>24 information, it seemed to be that he tried to<br/>25 obtain that information from either the</p>                  |
| Page 95                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Page 97                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <p>1 the doors?<br/>2 A. I have found damage to the wall system<br/>3 around the doors. I cannot tell you anything<br/>4 about whether the door itself has been damaged.<br/>5 Q. Do you hold any opinions as to whether<br/>6 the EFCO doors that were installed at some point<br/>7 in the early 2000's leak as a product itself?<br/>8 A. No. I did not do water testing. That<br/>9 was done by SKA, so it's a better question for<br/>10 Jeff Miller.<br/>11 Q. Any questions I have about whether or<br/>12 not EFCO doors leak can be directed better to SKA?<br/>13 A. Yes. With regard to the product.<br/>14 Q. Yes, sir. Thank you. A similar line of<br/>15 questions, have you done any independent<br/>16 investigation as to whether any of the EFCO<br/>17 windows installed at the Shipwatch project leak as<br/>18 a product itself?<br/>19 A. No.<br/>20 Q. Do you know whether any EFCO windows are<br/>21 installed at Shipwatch?<br/>22 A. Only from what I can read in the<br/>23 historic data.<br/>24 Q. What do you understand to be EFCO<br/>25 windows that are installed at Shipwatch?</p> | <p>1 distributor or the factory. And some of the<br/>2 information is that there was a response about --<br/>3 that -- whichever the product was only had a<br/>4 rating, I think, of 30, when the code was a<br/>5 substantially higher number. But I would have to<br/>6 go back and read that information.<br/>7 Q. Can you try to find that, please?<br/>8 A. There were two documents, from Gary<br/>9 Freeman to Bob Wiggins on one, and to Linda on the<br/>10 other one. The one to Mr. Wiggins was November 3,<br/>11 2010, and to Linda it was November 12, 2010. And<br/>12 they're discussing the design of the product, and<br/>13 they're also referencing the fixed glass. I'll<br/>14 let you look at them.<br/>15 Q. Thank you. I have those in front of me.<br/>16 MR. ANDERSON: Have those been marked?<br/>17 MR. KELLY: The November 3rd e-mail is<br/>18 Exhibit 129, and the November 12th e-mail is<br/>19 Exhibit 133.<br/>20 Q. And I understood your last answer to<br/>21 tell me that someone from EFCO said that their<br/>22 product only had a 30 PSF rating -- or a 30 DP<br/>23 rating?<br/>24 A. Right. The letter says 30 PSF, yes.<br/>25 Q. Do you see anyone from EFCO or W.C.</p> |

25 (Pages 94 to 97)

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| <p style="text-align: right;">Page 98</p> <p>1 Johnson who are listed anywhere on Exhibit 129 or</p> <p>2 Exhibit 133?</p> <p>3 A. I just see the name Mr. Broadway.</p> <p>4 Q. Do you know who Mr. Broadway is?</p> <p>5 A. No.</p> <p>6 Q. Do you know if he's an engineer that was</p> <p>7 retained by either Randy Morgan of Charleston</p> <p>8 Glass or Lynn Jernigan to do the analysis of those</p> <p>9 EFCO products?</p> <p>10 MR. FLYNN: Object to the form.</p> <p>11 A. What I can read here, that Mr. Broadway</p> <p>12 did some analysis based on information that a</p> <p>13 Randy gave him. I don't know who the Randy is.</p> <p>14 And they were talking about DP ratings or the PSF,</p> <p>15 and there seemed to be a conflict of whether the</p> <p>16 appropriate information was given to Broadway from</p> <p>17 Randy.</p> <p>18 Q. But you don't know who Randy is, right?</p> <p>19 A. Not right now, no.</p> <p>20 Q. And you don't know who Mr. Broadway is?</p> <p>21 A. Not in detail. Apparently, he did some</p> <p>22 analysis, but that's the extent of it.</p> <p>23 Q. Do you have any document to show me that</p> <p>24 someone from EFCO or W.C. Johnson said, Our</p> <p>25 product only has a DP rating of 30?</p> | <p style="text-align: right;">Page 100</p> <p>1 A. Well, I was called from the property</p> <p>2 manager.</p> <p>3 Q. Is it in litigation?</p> <p>4 A. No.</p> <p>5 Q. Do you remember the name of the property</p> <p>6 manager?</p> <p>7 A. It was Kuester Management, Phil McLeod.</p> <p>8 Q. What was the issue you were asked to</p> <p>9 look at by Phil McLeod?</p> <p>10 A. There were leaks in and around the</p> <p>11 windows. And the windows -- a sample window or</p> <p>12 two were removed to see how the installation was</p> <p>13 as it related to the wall cladding system that was</p> <p>14 also installed by Baldwin Construction.</p> <p>15 Q. What did you find?</p> <p>16 A. The findings were that the leak was not</p> <p>17 caused by the product. There was an installation</p> <p>18 problem at the termination of the wall cladding</p> <p>19 system and the roofing system.</p> <p>20 Q. Do you know what type of EFCO product</p> <p>21 that was that you were looking at?</p> <p>22 A. I don't have the model number, no.</p> <p>23 Q. Was it a window or a door?</p> <p>24 A. It was a window.</p> <p>25 Q. Fixed or operable?</p>                                                                                                        |
| <p style="text-align: right;">Page 99</p> <p>1 A. I don't know who at EFCO that Mr.</p> <p>2 Freeman tried to contact.</p> <p>3 Q. So you don't have any information to</p> <p>4 share with me that someone from EFCO told any of</p> <p>5 the folks involved in these e-mails that their</p> <p>6 product had a DP rating of 30; is that correct?</p> <p>7 A. That would be correct.</p> <p>8 Q. Do you know who W.C. Johnson</p> <p>9 Architectural Sales is?</p> <p>10 A. No.</p> <p>11 Q. Do you know who EFCO is?</p> <p>12 A. I know the name is a window</p> <p>13 manufacturer, yes.</p> <p>14 Q. Have you ever specified EFCO products on</p> <p>15 any job that you've designed?</p> <p>16 A. No. I looked at an EFCO window project</p> <p>17 in Myrtle Beach within the past year or so. But</p> <p>18 that's my extent of it.</p> <p>19 Q. What job is that?</p> <p>20 A. As soon as I think of it, I'll give it</p> <p>21 to you.</p> <p>22 Q. Who were you engaged by?</p> <p>23 A. By the homeowners.</p> <p>24 Q. Who is the lawyer working for the</p> <p>25 homeowners?</p>                                                                                                                                                                      | <p style="text-align: right;">Page 101</p> <p>1 A. Operable.</p> <p>2 Q. Did you make any recommendations in</p> <p>3 relationship to the use or reuse of that</p> <p>4 particular window?</p> <p>5 A. No. The source of the water was</p> <p>6 identified. The source of the water intrusion was</p> <p>7 identified, and I made recommendations of what</p> <p>8 needed to be done to fix it and left that with the</p> <p>9 property manager and the owners association.</p> <p>10 Q. What were your recommendations, in</p> <p>11 general terms?</p> <p>12 A. The roof-to-wall intersection had to be</p> <p>13 reflash, because there were three planes that</p> <p>14 came together. There was a sloped roof, a</p> <p>15 vertical wall above and below the drip line and</p> <p>16 flanking the drip line. So there was work that</p> <p>17 had to be involved in the roofing and its related</p> <p>18 flashing and how it was counter-flashed over the</p> <p>19 wall system.</p> <p>20 Q. Did your recommendation call for the</p> <p>21 reuse of the EFCO operable window?</p> <p>22 A. They were reused.</p> <p>23 Q. Do you know when those EFCO windows were</p> <p>24 originally installed at that project?</p> <p>25 A. Well, it was a repair. I would say</p> |

26 (Pages 98 to 101)

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| <p style="text-align: right;">Page 102</p> <p>1 within the last two years or so.</p> <p>2 Q. So I understand it correctly, so the</p> <p>3 buildings underwent a repair in which the EFCO</p> <p>4 product was installed?</p> <p>5 A. Correct.</p> <p>6 Q. And you were called out within the last</p> <p>7 year, which was about roughly a year after the</p> <p>8 installation of the EFCO product, to look at the</p> <p>9 product to determine what was causing the leak?</p> <p>10 A. Yes. The time frame may adjust a little</p> <p>11 bit but somewhere in there.</p> <p>12 Q. So do you know whether or not you've</p> <p>13 ever specified, other than that project, perhaps,</p> <p>14 the use of an EFCO product on any project?</p> <p>15 A. I don't recall. It could have been in</p> <p>16 the past. I know it was not within the past three</p> <p>17 or four years.</p> <p>18 Q. The 72 doors we were talking about that</p> <p>19 were installed in early 2000, is it your</p> <p>20 understanding that those doors were installed in</p> <p>21 the master bedroom opening for each unit on floors</p> <p>22 1 through 3 of all four buildings?</p> <p>23 A. I don't know if it was the master</p> <p>24 bedroom and/or the Carolina room.</p> <p>25 Q. Just so we're clear, what are you</p> | <p style="text-align: right;">Page 104</p> <p>1 installed only at the master bedroom doors of</p> <p>2 floors 1 through 3 or whether they were installed</p> <p>3 at the living room area?</p> <p>4 A. No. I don't know when the other doors</p> <p>5 were installed. But if you go in the field, there</p> <p>6 are doors to the living room that are not vintage</p> <p>7 1985.</p> <p>8 Q. Did you find any doors in the living</p> <p>9 rooms on floors 1 through 3 of buildings A, B, C</p> <p>10 or D that were EFCO product?</p> <p>11 A. I didn't look for the product</p> <p>12 identification. So that part I can't tell you. I</p> <p>13 can tell you that they were newer doors.</p> <p>14 Q. Would you agree with me that in a number</p> <p>15 of the units, when those EFCO doors were replaced,</p> <p>16 wherever they were on the unit, in the early</p> <p>17 2000s, that the rest of the glass on the</p> <p>18 oceanfront remained original or prior to the 2004</p> <p>19 installation?</p> <p>20 A. That part I don't know. I don't know</p> <p>21 when the -- we'll call them sidelights. They're</p> <p>22 not true sidelights, but the fixed glass, when</p> <p>23 that went in. And there are areas where there are</p> <p>24 doors -- new doors, meaning new after 1985, if we</p> <p>25 just use that as original construction, give or</p> |
| <p style="text-align: right;">Page 103</p> <p>1 referring to as the "Carolina room"?</p> <p>2 A. Call it the living room.</p> <p>3 Q. Well, if you need to take time to look</p> <p>4 at any documents, that's fine. But from looking</p> <p>5 at it -- at the building, would you agree with me</p> <p>6 that there are 72 openings that are associated</p> <p>7 with the master bedroom on floors 1 through 3 of</p> <p>8 the four buildings?</p> <p>9 A. It's whatever the math is. I mean, I'm</p> <p>10 not disputing the number.</p> <p>11 Q. Well, it's important for my next</p> <p>12 question, so I'm going to need -- you've got some</p> <p>13 plans sitting around here, I think.</p> <p>14 MR. FLYNN: It's kind of small.</p> <p>15 MR. KELLY: Off the record.</p> <p>16 (The deposition went off the record.)</p> <p>17 THE WITNESS:</p> <p>18 A. It looks like there's six per floor. So</p> <p>19 that math would get you 72.</p> <p>20 Q. Six per floor, three floors per</p> <p>21 building, four buildings, comes to 72, right?</p> <p>22 A. Yes.</p> <p>23 Q. You're telling me you don't know from</p> <p>24 your review of the documentation supplied to you</p> <p>25 by Mr. Flynn or Ms. Jernigan whether those 72 were</p>                                                           | <p style="text-align: right;">Page 105</p> <p>1 take a couple of years, that are in the living</p> <p>2 room areas.</p> <p>3 Q. Do you agree with me that there's at</p> <p>4 least one unit on each building that when the EFCO</p> <p>5 doors were installed in 2003 or 2004, whenever it</p> <p>6 was, still had glass from prior to 1995 installed</p> <p>7 in either the door or the fixed glass on the</p> <p>8 oceanfront side?</p> <p>9 A. That part I don't have information to</p> <p>10 give you an answer on.</p> <p>11 Q. Based on your investigation, your</p> <p>12 observations, you can't tell me whether any of</p> <p>13 those units had glass in them that predated 1995?</p> <p>14 A. 1995?</p> <p>15 Q. Yes, sir.</p> <p>16 A. There were some original doors. If</p> <p>17 we're talking -- I use the terminology the 1985</p> <p>18 doors.</p> <p>19 Q. That's fine.</p> <p>20 A. But we're talking about the same</p> <p>21 vintage; is that correct?</p> <p>22 Q. The reason I used 1995 is because I</p> <p>23 don't want to discount the possibility that after</p> <p>24 Hugo, perhaps one door or one window was replaced</p> <p>25 with some other piece of glass. So that's why I</p>                                                                                                                                                    |

27 (Pages 102 to 105)

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| <p style="text-align: right;">Page 106</p> <p>1 use the 1995 versus 1985.</p> <p>2 A. There are some doors that are an older</p> <p>3 vintage than what was installed in the 2000 era.</p> <p>4 Q. Okay. And were those doors -- did they</p> <p>5 contain impact glass?</p> <p>6 A. No.</p> <p>7 Q. Do you see other fixed windows that were</p> <p>8 installed at Shipwatch prior to the 2000s that did</p> <p>9 not contain impact glass?</p> <p>10 A. I did not survey that.</p> <p>11 Q. But you don't recall, just from looking</p> <p>12 at the product, whether or not there was impact</p> <p>13 glass or not impact glass?</p> <p>14 A. I know there were some windows on the</p> <p>15 walkway side that were not impact. But as far as</p> <p>16 the fixed glass sections, I didn't survey that. I</p> <p>17 can go out in the field and look.</p> <p>18 Q. What is the purpose of impact glass?</p> <p>19 A. It's a requirement similar to a shutter,</p> <p>20 to keep projectiles from going through it and then</p> <p>21 allowing the force of the wind to the interior of</p> <p>22 the building.</p> <p>23 Q. Why is the force of the wind to the</p> <p>24 interior of the building important?</p> <p>25 A. It creates a better structure for</p>                                                                                                                  | <p style="text-align: right;">Page 108</p> <p>1 nonimpact glazing?</p> <p>2 A. The building code.</p> <p>3 Q. What about the building code?</p> <p>4 A. The building code, as Mr. Freeman read</p> <p>5 it, that was applicable at the time, required</p> <p>6 either shutters or impact glass.</p> <p>7 Q. Well, Mr. Freeman was reading a code</p> <p>8 that was in effect in 2010, correct? You can have</p> <p>9 my copy.</p> <p>10 A. Can I see the other one?</p> <p>11 Q. Yes.</p> <p>12 A. The date of his memo, yes, is 2010. He</p> <p>13 was talking about buildings A and B of the current</p> <p>14 building code.</p> <p>15 Q. Unfortunately, we don't have any e-mails</p> <p>16 from him or any other architects or engineers from</p> <p>17 the 2003 or 2004 time period like this, right?</p> <p>18 A. You may. I don't.</p> <p>19 Q. If I did, I promise you I would show</p> <p>20 them to you. So the building code Mr. Freeman was</p> <p>21 talking about in 2010 very well could be a</p> <p>22 different building code than you're saying the</p> <p>23 contractors had to adhere to in 2003 or 2004,</p> <p>24 correct?</p> <p>25 A. I don't believe so.</p>                                                                                                                                                                             |
| <p style="text-align: right;">Page 107</p> <p>1 resistance to the hurricane winds. If you allow</p> <p>2 the force of the wind in, the wind is going to be</p> <p>3 looking for a place to get out, and then it's</p> <p>4 going to basically explode the opposite wall.</p> <p>5 Q. So in the early 2000 time frame, when</p> <p>6 some of this new EFCO product was being installed,</p> <p>7 the 72 doors we talked about, there would have</p> <p>8 been a number of openings at Shipwatch that would</p> <p>9 have contained glazing that was not</p> <p>10 impact-resistant, correct?</p> <p>11 A. There would have been some, yes.</p> <p>12 Q. That nonimpact-resistant glazing, that</p> <p>13 was either original to the building or at least</p> <p>14 predated the 2000 work, could be blown out by</p> <p>15 wind-blown debris, correct?</p> <p>16 A. Yes, it could.</p> <p>17 Q. And when that product got blown out, the</p> <p>18 forces that you're talking about that would be</p> <p>19 imposed on the building would be imposed because</p> <p>20 that product was blown out, correct?</p> <p>21 A. That's correct so far.</p> <p>22 Q. So what difference does it make if the</p> <p>23 product that was installed in the early 2000's,</p> <p>24 the EFCO product, was impact or nonimpact if the</p> <p>25 -- a number of other windows and doors contained</p> | <p style="text-align: right;">Page 109</p> <p>1 Q. Why not?</p> <p>2 A. Just from my experience. Once it</p> <p>3 changed to the IBC, there were drastic changes</p> <p>4 from the '97 version and the adoption of the 2000</p> <p>5 code we talked about earlier this morning. There</p> <p>6 have been some minor changes, but I don't believe</p> <p>7 the changes applied to the missile test.</p> <p>8 Q. So you think the 2000, the 2003 and the</p> <p>9 2006 International Building Codes would be the</p> <p>10 same as it relates to impact-resistant glass?</p> <p>11 A. Or very similar.</p> <p>12 Q. Do you know -- or have you seen any</p> <p>13 documents to show you what Carolina Concrete or</p> <p>14 the window installer ordered in terms of window</p> <p>15 and door products?</p> <p>16 A. There was some reference to that in the</p> <p>17 two documents you just had.</p> <p>18 Q. Okay. Do you want to see those again?</p> <p>19 A. Yes. Thank you. In the letter of</p> <p>20 Freeman to Jernigan of November 12, 2010, in the</p> <p>21 first paragraph, there's reference to two</p> <p>22 different EFCO systems as it pertains to the size</p> <p>23 of the structure, meaning the frame of the unit.</p> <p>24 And in just reading the words, according to EFCO,</p> <p>25 the system that they manufactured that has been</p> |

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| <p style="text-align: right;">Page 110</p> <p>1 tested to meet the impact requirements is the</p> <p>2 system S526 system. The size of the S526 frame</p> <p>3 member is five-by-two-and-a-half. The size of the</p> <p>4 frames that are being used at Shipwatch are</p> <p>5 four-and-a-half-by-two in size.</p> <p>6 That's the extent of where apparently</p> <p>7 there's a difference in the product that was made</p> <p>8 for impact glass versus nonimpact.</p> <p>9 <b>Q. Are you inferring something from that as</b></p> <p>10 <b>to what was actually ordered from EFCO?</b></p> <p>11 <b>A. The ordering part, I don't think I have</b></p> <p>12 <b>information on it. I don't recall seeing an order</b></p> <p>13 <b>sheet.</b></p> <p>14 <b>Q. In fairness, you have not been produced</b></p> <p>15 <b>documents from EFCO, correct? You have not been</b></p> <p>16 <b>provided documents --</b></p> <p>17 <b>A. No. That's what I would like to see,</b></p> <p>18 <b>because I also would like to see the attachment</b></p> <p>19 <b>requirements.</b></p> <p>20 <b>Q. You have not been provided documents</b></p> <p>21 <b>produced by W.C. Johnson Architectural Sales in</b></p> <p>22 <b>this case?</b></p> <p>23 <b>A. I have not.</b></p> <p>24 <b>Q. Have you been produced documents or</b></p> <p>25 <b>provided documents produced by Charleston Glass</b></p>                                                                                          | <p style="text-align: right;">Page 112</p> <p>1 <b>buildings?</b></p> <p>2 <b>A. It only references 4, but those are the</b></p> <p>3 <b>townhouse configuration, and the guest bedroom is</b></p> <p>4 <b>on the -- call it the back side or the walkway</b></p> <p>5 <b>side of the building.</b></p> <p>6 <b>Q. Okay.</b></p> <p>7 <b>A. So that seems to substantiate GBR</b></p> <p>8 <b>meaning guest bedroom.</b></p> <p>9 <b>Q. Does that help you understand anything</b></p> <p>10 <b>about what was actually ordered from W.C. Johnson?</b></p> <p>11 <b>A. Not ordered. But we've been talking</b></p> <p>12 <b>about 72 of them. It seemed that there was more</b></p> <p>13 <b>ultimately done at the project.</b></p> <p>14 <b>Q. That's a good segue. Exhibit 132 is a</b></p> <p>15 <b>document that we marked previously in Ms.</b></p> <p>16 <b>Jernigan's deposition.</b></p> <p>17 <b>A. Okay.</b></p> <p>18 <b>Q. Have you seen that document before?</b></p> <p>19 <b>A. That, I don't know. I've seen reference</b></p> <p>20 <b>to this vista wall before there.</b></p> <p>21 <b>Q. In reviewing that document, do you gain</b></p> <p>22 <b>the impression that Randy Morgan and Charleston</b></p> <p>23 <b>Glass knew they were purchasing a nonimpact</b></p> <p>24 <b>product for use at the Shipwatch project?</b></p> <p>25 <b>A. Yes.</b></p> |
| <p style="text-align: right;">Page 111</p> <p>1 <b>Company?</b></p> <p>2 <b>A. No.</b></p> <p>3 <b>Q. So you haven't seen the order forms from</b></p> <p>4 <b>Charleston Glass to W.C. Johnson?</b></p> <p>5 <b>A. I have seen some documentation, but I</b></p> <p>6 <b>don't recall seeing the order form.</b></p> <p>7 <b>Q. I'm going to hand you what we've marked</b></p> <p>8 <b>as -- unless you need to keep looking; that's</b></p> <p>9 <b>fine.</b></p> <p>10 <b>A. I'm looking at a chart that was provided</b></p> <p>11 <b>to me as to a sliding glass -- sliding doors</b></p> <p>12 <b>replaced at Shipwatch, and it goes through</b></p> <p>13 <b>buildings A, B, C and D. And it looks like all of</b></p> <p>14 <b>the master bedroom sliders were replaced between</b></p> <p>15 <b>'08 and 2011. But there were living room sliders,</b></p> <p>16 <b>or the Carolina room, whatever we want to call it,</b></p> <p>17 <b>that were replaced in buildings A, B and D. And</b></p> <p>18 <b>they have a reference, GBR -- whether that means</b></p> <p>19 <b>guest bedroom -- and that part I don't know what</b></p> <p>20 <b>-- but that might be a reasonable guess. And it</b></p> <p>21 <b>shows replacement in years '08 through '11. So</b></p> <p>22 <b>that would be more than the 72 that we talked</b></p> <p>23 <b>about.</b></p> <p>24 <b>Q. It would have been. And those are</b></p> <p>25 <b>limited to floors 4 and 5, right, on the five</b></p> | <p style="text-align: right;">Page 113</p> <p>1 <b>Q. Do you have any information to share</b></p> <p>2 <b>with me otherwise, that the people purchasing the</b></p> <p>3 <b>product from EFCO or W.C. Johnson did not</b></p> <p>4 <b>understand they were purchasing nonimpact glazing</b></p> <p>5 <b>products?</b></p> <p>6 <b>A. No. Based on that document, they were</b></p> <p>7 <b>purchasing it. But they were also referencing the</b></p> <p>8 <b>'97 code in 2010, if I'm not mistaken. Is that</b></p> <p>9 <b>the date on the letter?</b></p> <p>10 <b>Q. I believe that's right.</b></p> <p>11 <b>A. Yes, sir. November 11, 2010.</b></p> <p>12 <b>Q. In 2010, is it your understanding of the</b></p> <p>13 <b>building code that you could still use a</b></p> <p>14 <b>nonimpact-rated product as long as you had</b></p> <p>15 <b>shutters?</b></p> <p>16 <b>A. You could have appropriate storm</b></p> <p>17 <b>shutters, yes.</b></p> <p>18 <b>Q. Are you critical of EFCO or W.C. Johnson</b></p> <p>19 <b>Architectural Sales for selling their customer</b></p> <p>20 <b>nonimpact-rated glazing products?</b></p> <p>21 <b>A. If they're basing it on the '97 code,</b></p> <p>22 <b>yes.</b></p> <p>23 <b>Q. If who is basing it on the 1997 code?</b></p> <p>24 <b>A. The author of that document we just</b></p> <p>25 <b>read.</b></p>           |

29 (Pages 110 to 113)

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| <p style="text-align: right;">Page 114</p> <p>1 Q. Do you have any information to share<br/>2 with me that W.C. Johnson Architectural Sales or<br/>3 EFCO had any idea as to what building code<br/>4 applied?<br/>5 A. Clearly, the local distributor should<br/>6 know what building code was applicable.<br/>7 Q. Do you know where W.C. Johnson<br/>8 Architectural Sales is located?<br/>9 A. No.<br/>10 Q. Why do you say, clearly a local<br/>11 distributor should know that?<br/>12 A. Because he knows exactly where the<br/>13 product is going. There could be an argument from<br/>14 a manufacturer that says, we make windows for all<br/>15 over the U.S., just as an example, and we don't<br/>16 know where it ends up. And there may be some<br/>17 argument there that local codes are different in<br/>18 other areas of the country.<br/>19 Q. You told us today that you don't know<br/>20 what the 2000 building code says without looking<br/>21 at it, right?<br/>22 A. No. I need to refer back to it.<br/>23 Q. You don't know what the 2003 building<br/>24 code says without looking at it?<br/>25 A. Same thing.</p> | <p style="text-align: right;">Page 116</p> <p>1 A. I don't think you put the caveat of<br/>2 construction litigation. I would agree that there<br/>3 are architects in other areas of the country that<br/>4 may not be familiar with the requirements of the<br/>5 International Building Code because they may<br/>6 operate under some other code or they don't even<br/>7 have a code in that municipality.<br/>8 Q. A building department official can give<br/>9 a variance for a code or applicability of certain<br/>10 sections of the code, correct?<br/>11 A. Yes.<br/>12 Q. How would a distributor of product know<br/>13 whether a building department official has given a<br/>14 variance to a contractor or not?<br/>15 MR. FLYNN: Object to the form.<br/>16 A. The distributor may not know, but you<br/>17 had asked the question as to what the requirements<br/>18 are from the person placing the order, which, in<br/>19 this case, it looks like it's the general<br/>20 contractor.<br/>21 Q. Have you ever worked for a window or<br/>22 door distributor?<br/>23 A. No.<br/>24 Q. Have you ever worked for a product<br/>25 distributor?</p> |
| <p style="text-align: right;">Page 115</p> <p>1 Q. The same with 2006?<br/>2 A. Yes.<br/>3 Q. You're a licensed architect?<br/>4 A. Yes.<br/>5 Q. And there are Registered Professional<br/>6 Engineers out there that can't tell you what the<br/>7 code says without looking at it, right?<br/>8 A. You said, are there?<br/>9 Q. Yes.<br/>10 A. Yes. I would think everybody would want<br/>11 to go back and look at the particular section.<br/>12 Q. In fact, there are engineers and<br/>13 architects out there who can look at it and not<br/>14 tell you what it actually says, in relationship to<br/>15 impact-resistant glass or DP ratings, correct?<br/>16 MR. FLYNN: Object to the form.<br/>17 A. And not tell you?<br/>18 Q. Right.<br/>19 A. I don't understand the question.<br/>20 Q. There are architects and engineers who<br/>21 aren't as familiar with what the DP rating<br/>22 requirements are and the impact-resistant glass<br/>23 requirements as perhaps those who are commonly<br/>24 involved in construction litigation; would you<br/>25 agree with that.</p>                                                  | <p style="text-align: right;">Page 117</p> <p>1 A. No.<br/>2 Q. Have you ever owned a company that is in<br/>3 the business of distributing products?<br/>4 A. No.<br/>5 Q. Are you going to be able to quote me a<br/>6 source that says a duty exists for a distributor<br/>7 of a product to know what building code is in<br/>8 effect for a certain time period and a certain<br/>9 installation method?<br/>10 MR. FLYNN: Object to the form.<br/>11 A. It's my opinion they should know.<br/>12 Q. Why do you hold that opinion?<br/>13 A. If that's not valid, how would they<br/>14 order the correct product when there are different<br/>15 product lines?<br/>16 Q. Do you hold that opinion because you've<br/>17 read that in some peer-reviewed publication?<br/>18 A. No.<br/>19 Q. Do you hold that opinion because someone<br/>20 in the industry has indicated to you that's the<br/>21 way it's done?<br/>22 A. I don't hold that, but that circumstance<br/>23 has taken place, yes.<br/>24 Q. So is there some source that you believe<br/>25 I can reference to tell me that a duty exists for</p>                                                |

30 (Pages 114 to 117)

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1 a product manufacturer or distributor to know what  
2 building code is in effect for a certain time  
3 period for a certain application method?

4 A. I don't know if there's a written  
5 document. What I can tell you, there are other  
6 window distributors that do that research before  
7 the order is placed in the coastal environment.

8 Q. In 2010, Linda Jernigan was the property  
9 manager for Shipwatch, right?

10 A. I believe so.

11 Q. And she was told that the product she  
12 was getting for installation in 2010 contained  
13 nonimpact glass, right?

14 MR. FLYNN: Object to the form.

15 A. That's what the document says. If  
16 that's the same one we just referenced.

17 Q. Yes, sir. Look at it if you need to.  
18 It's Exhibit 133. That's something you looked at;  
19 it's in your file, right, Exhibit 133?

20 A. Not with the stamp on it. But I believe  
21 the document is.

22 Q. The e-mail is in your file? You  
23 referenced it earlier, right?

24 A. Yes.

25 Q. That's something you considered in

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1 MR. FLYNN: Object to the form.

2 A. I don't understand the question. It  
3 seems there's two questions there.

4 Q. We'll try it again. Do you agree with  
5 me that a customer has the right to determine  
6 whether to purchase impact- or nonimpact-rated  
7 glazing?

8 MR. FLYNN: Object to the form.

9 A. No. No. Because the customer could be  
10 a layperson and not involved in these type things.  
11 They need to rely on some professional to tell  
12 them or the distributor that's providing the  
13 product to the area.

14 Q. Is a contractor a sophisticated --  
15 excuse me -- is a window installation contractor a  
16 sophisticated business entity?

17 A. It should be.

18 Q. That would be familiar with what  
19 building codes may apply to the installation of  
20 glazing and window products?

21 A. They should be.

22 Q. Would you agree with me that the EFCO  
23 products applied at the project are not defective?

24 A. No. Because, in my opinion, they should  
25 have impact glass.

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1 forming your opinions in this case, right?

2 A. I don't disagree with you of what's in  
3 paragraph No. 1, with the content of the e-mail.

4 Q. It says, "The aluminum storefront  
5 glazing system that has been installed at  
6 oceanfront window openings of the first three  
7 floors of buildings A and B does not meet the  
8 current building code requirements for  
9 impact-resistant systems"?

10 A. That's correct.

11 Q. And Shipwatch and Ms. Jernigan did not  
12 reject these windows that were installed at  
13 Shipwatch in 2010?

14 MR. FLYNN: Object to the form.

15 A. I don't know about that. I don't know  
16 what discussion has happened after that letter.

17 Q. You know those windows are still in  
18 place out there, right?

19 A. Right. But I don't know any other  
20 discussion about it.

21 Q. Well, in 2010, Ms. Jernigan is told that  
22 the product is nonimpact. Do you agree with me  
23 that a customer has a right to make its own  
24 decision as to whether to purchase nonimpact or  
25 impact-rated products?

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1 Q. Is there anything wrong with the product  
2 itself, if the building code that's in effect is  
3 the 1997 Standard Building Code?

4 A. If we set aside the glass to answer your  
5 question?

6 MR. FLYNN: Object to the form.

7 Q. No. If the 1997 Standard Building Code  
8 was in effect at the time all the EFCO product was  
9 installed, is there anything defective about the  
10 EFCO product that was installed at the Shipwatch  
11 project?

12 MR. FLYNN: Same.

13 Q. You understand --

14 A. I can't answer that until I go back and  
15 confirm with the '97 code.

16 Q. I'm not asking you to agree or disagree  
17 which code is in effect. I'm asking you to assume  
18 that the 1997 Standard Building Code was in effect  
19 at the time the EFCO products were installed at  
20 Shipwatch; assuming that -- realizing you can  
21 disagree with that assertion later -- assuming  
22 that to be the case, is there anything defective  
23 with the EFCO products that were installed at  
24 Shipwatch in the 2000s?

25 A. That, again, I can't answer it until I

31 (Pages 118 to 121)

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| <p style="text-align: right;">Page 122</p> <p>1 go back and reread the requirements in the '97.</p> <p>2 Q. I follow you. So you're not sure</p> <p>3 whether the 1997 Standard Building Code permitted</p> <p>4 the use of nonimpact glass?</p> <p>5 A. I believe the '97 did, but before I can</p> <p>6 answer your question, I want to go back and read</p> <p>7 the appropriate sections.</p> <p>8 Q. Which sections? What in general?</p> <p>9 A. As to the requirement for shutters or</p> <p>10 impact glass.</p> <p>11 Q. Do you have any information to share</p> <p>12 with me that W.C. Johnson Architectural Sales or</p> <p>13 EFCO told the contractors or the owner that they</p> <p>14 can't use shutters at Shipwatch?</p> <p>15 A. I have no information on that. From a</p> <p>16 code standpoint, you could use an appropriate</p> <p>17 shutter.</p> <p>18 Q. The fact that the EFCO product was</p> <p>19 nonimpact-rated doesn't make it defective if you</p> <p>20 use shutters, right?</p> <p>21 A. That part would be correct.</p> <p>22 Q. So you could take the EFCO products that</p> <p>23 were installed at Shipwatch and use shutters, and</p> <p>24 your opinion would be that the EFCO products are</p> <p>25 not defective?</p> | <p style="text-align: right;">Page 124</p> <p>1 -- to come to a conclusion as to what their duty</p> <p>2 was or was not?</p> <p>3 A. One would hope that if they're selling a</p> <p>4 widget -- we'll do this hypothetically -- that if</p> <p>5 a distributor is selling a widget, that he is</p> <p>6 instructed by the manufacturer how the widget</p> <p>7 should be installed so that can be passed on to</p> <p>8 the distributor's client. And the pros and cons</p> <p>9 of the product, meaning what can it perform? So</p> <p>10 there is some education. I don't think there's --</p> <p>11 that that education goes down to possibly the</p> <p>12 mechanic in the field or the warehouse personnel.</p> <p>13 But somewhere in that organization, that</p> <p>14 information has to come from the manufacturer to</p> <p>15 the person who is wholesaling it so it can be</p> <p>16 passed on to the retail customer.</p> <p>17 Q. Do you have any information to share as</p> <p>18 to whether W.C. Johnson Architectural Sales or</p> <p>19 EFCO recommended or suggested the use of the</p> <p>20 products that are incorporated at Shipwatch?</p> <p>21 A. I don't know who recommended the</p> <p>22 product. From my information, the product,</p> <p>23 though, that was shipped to the job, in my</p> <p>24 opinion, did not comply and does not comply with</p> <p>25 the applicable code at the time.</p> |
| <p style="text-align: right;">Page 123</p> <p>1 A. Based on the information that I have on</p> <p>2 the product, that part would be correct.</p> <p>3 Q. So your opinion is really that the</p> <p>4 application of the product was an error and not</p> <p>5 the product itself?</p> <p>6 MR. FLYNN: Object to the form.</p> <p>7 A. The product, as installed, is defective.</p> <p>8 If you talk about the application, then clearly</p> <p>9 the distributor should have known where the</p> <p>10 product was going.</p> <p>11 Q. What is your basis for that statement?</p> <p>12 A. Just using your question.</p> <p>13 Q. I'm not sure I follow that.</p> <p>14 THE WITNESS: Read the question back.</p> <p>15 THE COURT REPORTER: "So your opinion is</p> <p>16 really that the application of the product was</p> <p>17 an error and not the product itself?"</p> <p>18 A. And that's where I'm saying the</p> <p>19 distributor should have known what the application</p> <p>20 was, where it was going.</p> <p>21 Q. Do you know anything about the</p> <p>22 education, training or experience of the employees</p> <p>23 of W.C. Johnson Architectural Sales?</p> <p>24 A. I do not.</p> <p>25 Q. Don't you think that's relevant upon a</p>        | <p style="text-align: right;">Page 125</p> <p>1 Q. And you agree with me that if Charleston</p> <p>2 Glass and Carolina Concrete knew they were</p> <p>3 purchasing nonimpact-rated product, then EFCO has</p> <p>4 no responsibility to provide them anything other</p> <p>5 than what was ordered?</p> <p>6 MR. FLYNN: Object to the form.</p> <p>7 A. I think you left out the distributor,</p> <p>8 though, right?</p> <p>9 Q. Yes, sir, intentionally. I understand</p> <p>10 your opinion on that. I was trying to move on.</p> <p>11 A. I think the information trail goes right</p> <p>12 down the line, just as I was trying to explain to</p> <p>13 you in the hypothetical situation. It's got to</p> <p>14 come from the entity that produces the widget all</p> <p>15 the way down to the retail customer, which, in</p> <p>16 this case, would be whoever is installing the</p> <p>17 product.</p> <p>18 Q. I thought a minute ago you told me that</p> <p>19 you thought the case could be made for a</p> <p>20 manufacturer had no responsibility to know what</p> <p>21 code was in effect at the time his product was</p> <p>22 installed in the field.</p> <p>23 A. No. We're now talking about the product</p> <p>24 itself, what it can do. That's the way I read</p> <p>25 your question.</p>                                                                                                                |

32 (Pages 122 to 125)

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| <p style="text-align: right;">Page 126</p> <p>1 Q. Okay.</p> <p>2 A. Meaning if you make a window product,</p> <p>3 just hypothetically, and you only make nonimpact</p> <p>4 product, you ought to know that in a coastal</p> <p>5 environment the impact product is required. I've</p> <p>6 run across that with other manufacturers that come</p> <p>7 into continuing ed programs and, you know, they</p> <p>8 have a great product but it's not code-compliant.</p> <p>9 They ought to know that before they go to sell it</p> <p>10 into a product or some of the products you see</p> <p>11 marketed from Window World. They ought to know</p> <p>12 that their product is not code-compliant.</p> <p>13 Q. Well, specifically looking at this case,</p> <p>14 EFCO made impact-rated products. Right?</p> <p>15 A. That's what it appears to be, yes.</p> <p>16 Q. A customer could have purchased</p> <p>17 impact-rated products or nonimpact-rated products?</p> <p>18 A. The customer being the distributor?</p> <p>19 Q. The customer being the window installer.</p> <p>20 A. Yes.</p> <p>21 Q. And you agreed with me a minute ago that</p> <p>22 the window installer knew it was purchasing</p> <p>23 nonimpact-rated products?</p> <p>24 A. Yes.</p> <p>25 Q. Is it your opinion that EFCO did nothing</p>                                                                   | <p style="text-align: right;">Page 128</p> <p>1 A. That's not what this is referring to, I</p> <p>2 don't believe.</p> <p>3 Q. Right.</p> <p>4 A. This is talking about the design</p> <p>5 pressure and if there's stiffener components that</p> <p>6 are required. My point being, there was some</p> <p>7 discussion going on, at least at 12/29/08, about</p> <p>8 what are the requirements of the EFCO product?</p> <p>9 What requirements do they need to meet?</p> <p>10 Q. Well, there's a question about the</p> <p>11 design pressure, right?</p> <p>12 A. That's a question.</p> <p>13 Q. That's the only question?</p> <p>14 MR. FLYNN: Object to the form.</p> <p>15 Q. Is there something on there that talks</p> <p>16 about impact glass or nonimpact glass?</p> <p>17 A. No.</p> <p>18 Q. Is there anything on there that talks</p> <p>19 about what building code is in effect?</p> <p>20 A. No. My point being that there was a</p> <p>21 dialogue going on between the manufacturer and the</p> <p>22 sales company, and this was back in '08.</p> <p>23 Q. About how to assemble the product?</p> <p>24 A. More how the manufacturer needed to</p> <p>25 design and construct the product.</p>                           |
| <p style="text-align: right;">Page 127</p> <p>1 wrong in supplying nonimpact-rated products if its</p> <p>2 customer intentionally purchased nonimpact-rated</p> <p>3 products?</p> <p>4 MR. FLYNN: Object to the form.</p> <p>5 A. No, I don't. If you look at the</p> <p>6 document from Shannon Andrews, who is a project</p> <p>7 manager at EFCO, which is a Pella company, and it</p> <p>8 appears that it went to james@wcjsales.com, and</p> <p>9 Pella or EFCO is saying Shipwatch, and she goes on</p> <p>10 to say, "I need to know the design pressure on</p> <p>11 this to determine the length of the stiffener and</p> <p>12 if steel is required. We have priced it that way</p> <p>13 based off of the made-up design pressure used on</p> <p>14 the quote" -- or it reads "quote takeoff," I'm</p> <p>15 sorry. "Now we're actually going to build</p> <p>16 something. I'm going to need a real number." So</p> <p>17 there was some discussion from the manufacturer,</p> <p>18 at least down to James at WCJ Sales.</p> <p>19 Q. As to design pressure?</p> <p>20 A. Well, as to the design pressure, but,</p> <p>21 more importantly, how the window was to be built.</p> <p>22 Q. There's no discussion as to whether --</p> <p>23 what code is in effect because we need to know</p> <p>24 whether to build those as nonimpact or impact</p> <p>25 glazing, right?</p> | <p style="text-align: right;">Page 129</p> <p>1 Q. For design pressure requirements?</p> <p>2 A. That's what this says, yes.</p> <p>3 Q. Are you critical in any way of whether</p> <p>4 the product does or does not meet the design</p> <p>5 pressure requirements required by the building</p> <p>6 code?</p> <p>7 A. The DP rating should have been more than</p> <p>8 30. That doesn't give you numbers that I can</p> <p>9 respond to.</p> <p>10 Q. Do you know what the design pressure</p> <p>11 rating requirements -- excuse me -- start again.</p> <p>12 Do you know what the design pressure ratings are</p> <p>13 for the EFCO products that were supplied in 2004?</p> <p>14 A. Only from reading correspondence that --</p> <p>15 from Mr. Freeman.</p> <p>16 Q. Okay.</p> <p>17 A. I think the discussion there was that it</p> <p>18 was, give or take, a 30, and there was some</p> <p>19 inquiry to another entity that talked about that</p> <p>20 it should have been at least a 45.</p> <p>21 Q. I saw you and Mr. Flynn looking earlier</p> <p>22 at some blue pieces of paper that contained some</p> <p>23 EFCO literature. Do you have that?</p> <p>24 A. These?</p> <p>25 Q. No. They were blue pages. The copy</p> |

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| <p style="text-align: right;">Page 130</p> <p>1 itself was blue.</p> <p>2 A. This pile?</p> <p>3 Q. I don't know.</p> <p>4 MR. FLYNN: I've got an extra copy.</p> <p>5 BY MR. KELLY:</p> <p>6 Q. This is what I was talking about. Have</p> <p>7 you seen a document that looks like that?</p> <p>8 A. I don't recall seeing this document.</p> <p>9 Q. What about the one we just put in front</p> <p>10 of Mr. Flynn, the blue pages I was talking about?</p> <p>11 A. These came about because I had asked if</p> <p>12 he had any information on the installation</p> <p>13 requirements, particularly as it applied to</p> <p>14 attachment at the jambs. In my visit of the past</p> <p>15 two times into the field, what has been observed</p> <p>16 is, if you take a 5-in-1 tool and run it down the</p> <p>17 jamb between the window unit, meaning that</p> <p>18 product, and the buck that's forming the rough</p> <p>19 opening, it doesn't get interrupted by a fastener.</p> <p>20 And that's where this all came about, because I</p> <p>21 didn't have any installation instructions. You</p> <p>22 and I talked about that earlier.</p> <p>23 Q. Gotcha.</p> <p>24 A. So that's how that came about. Now, I</p> <p>25 scanned this. I didn't see an answer to my</p> | <p style="text-align: right;">Page 132</p> <p>1 Q. I'm going to hand you this document we</p> <p>2 were referring to a moment ago, which is the EFCO</p> <p>3 Series 3015 Sliding Glass Door Report created by</p> <p>4 Construction Consulting Laboratory International,</p> <p>5 and there's a Bates stamp, Charleston Glass 87, in</p> <p>6 the bottom right-hand corner. That's the page I</p> <p>7 want to reference. You can look at however much</p> <p>8 of it you would like.</p> <p>9 A. And your question is?</p> <p>10 Q. I think my question was, is there a</p> <p>11 correlation between 90 PSF and a DP rating?</p> <p>12 A. Yes.</p> <p>13 Q. What is the correlation?</p> <p>14 A. I can't give you the engineering aspect</p> <p>15 of it.</p> <p>16 Q. Are you qualified to testify about what</p> <p>17 the design pressure rating should be on the</p> <p>18 project?</p> <p>19 MR. FLYNN: Object to the form.</p> <p>20 A. With regard to if it's in compliance</p> <p>21 with the applicable building code, yes.</p> <p>22 Q. Okay. Are you qualified to give an</p> <p>23 opinion as to what the DP ratings of the EFCO</p> <p>24 products installed at Shipwatch are?</p> <p>25 A. I don't see that listed here.</p>            |
| <p style="text-align: right;">Page 131</p> <p>1 question.</p> <p>2 Q. Can I see that white --</p> <p>3 A. Yes, sir.</p> <p>4 Q. Just for the record, this is an EFCO</p> <p>5 Series 3015 Sliding Glass Door Report produced by</p> <p>6 Construction Consulting Laboratory International.</p> <p>7 Your testimony was you had not seen this document</p> <p>8 before?</p> <p>9 A. I don't believe I've seen that, sir.</p> <p>10 Q. Do you know what design pressure rating</p> <p>11 was required for the installation of the EFCO</p> <p>12 sliding glass doors in 2010?</p> <p>13 A. Somewheres in the 45 to 50 range.</p> <p>14 Q. Do you know what design pressure rating</p> <p>15 was required for the installation of those fixed</p> <p>16 window units on the ocean side of the buildings in</p> <p>17 the 2010 time period?</p> <p>18 A. It should have been the same.</p> <p>19 Q. What does 90 PSF mean?</p> <p>20 A. I would need to look at the document.</p> <p>21 Q. Was there a general correlation between</p> <p>22 numbers -- a number with the PSF and DP ratings?</p> <p>23 A. There is, but you have to look at the</p> <p>24 negative and the positive. And you have to look</p> <p>25 at the size of the unit.</p>                                           | <p style="text-align: right;">Page 133</p> <p>1 Q. My question was, are you qualified to</p> <p>2 give that opinion?</p> <p>3 MR. FLYNN: Same objection.</p> <p>4 A. I can get the opinion.</p> <p>5 Q. How do you get the opinion?</p> <p>6 A. If I was designing it, I would go to the</p> <p>7 structural engineer.</p> <p>8 Q. To get the opinion of what the door or</p> <p>9 window product's DP rating is?</p> <p>10 A. Yes. But, more importantly, if the</p> <p>11 rough opening is framed, to take the rating of the</p> <p>12 door or the window.</p> <p>13 Q. Well, that doesn't have anything to do</p> <p>14 with the door or window product itself, does it?</p> <p>15 A. Well, it does for the end product. If</p> <p>16 the rough opening was not framed such that it was</p> <p>17 compliant with the requirements of the door or</p> <p>18 window unit and the applicable building code, then</p> <p>19 you could put a door in the hole and it would</p> <p>20 still not work. You have to look at all of those</p> <p>21 aspects.</p> <p>22 Q. Well, a window manufacturer or</p> <p>23 distributor has no responsibility for framing the</p> <p>24 rough opening that's going to receive a door or a</p> <p>25 window, does it?</p> |

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| <p style="text-align: right;">Page 134</p> <p>1 MR. FLYNN: Object.</p> <p>2 A. The window manufacturer?</p> <p>3 Q. Right.</p> <p>4 A. No. Not as far as the actual framing.</p> <p>5 But the window manufacturer would normally give</p> <p>6 deflection limits, meaning you could not put a</p> <p>7 stiffer product in a hole where the rough opening</p> <p>8 is going to flex. The window manufacturer,</p> <p>9 through its attachment requirements, would also</p> <p>10 tell you the performance of what the frame needs</p> <p>11 to be. It wouldn't typically tell you it has to</p> <p>12 be metal stud or wood stud, just as an example.</p> <p>13 It would tell you the requirements that that</p> <p>14 opening has to comply with in the performance of</p> <p>15 the opening.</p> <p>16 Q. Are windows and doors typically shipped</p> <p>17 with information about their DP rating?</p> <p>18 A. They should be.</p> <p>19 Q. And aren't those ratings typically taken</p> <p>20 from the test report like you're looking at?</p> <p>21 A. From the information here, yes.</p> <p>22 Q. So the information to determine what the</p> <p>23 DP ratings of the EFCO doors are should be right</p> <p>24 there in your hands?</p> <p>25 A. No. The DP rating, typically, at least</p> | <p style="text-align: right;">Page 136</p> <p>1 A. No.</p> <p>2 Q. Sir, are you offering any opinions that</p> <p>3 there are any issues with the DP ratings of the</p> <p>4 EFCO doors or windows at Shipwatch?</p> <p>5 A. If the information shows that it didn't</p> <p>6 comply with the applicable building code, then,</p> <p>7 yes, I will.</p> <p>8 Q. As we sit here today, do you have any</p> <p>9 information to share that the product supplied did</p> <p>10 not meet the DP ratings in the building codes that</p> <p>11 were in effect at the time the Shipwatch projects</p> <p>12 were constructed?</p> <p>13 A. No. I relay to the Gary Freeman</p> <p>14 documents, and I'm trying to find the documents</p> <p>15 from the manufacturer that we already talked</p> <p>16 about.</p> <p>17 Q. And that test report I just showed you</p> <p>18 for the 3015 Series doors you don't think helped</p> <p>19 you at all in determining whether or not the DP</p> <p>20 ratings for the doors installed at Shipwatch are</p> <p>21 appropriate?</p> <p>22 A. I didn't see it spelled out on that</p> <p>23 document.</p> <p>24 MR. FLYNN: Did we mark that?</p> <p>25 MR. KELLY: I did not mark it. I think</p> |
| <p style="text-align: right;">Page 135</p> <p>1 nowadays -- and I can't tell you what EFCO did</p> <p>2 back in '04, but there's a sticker on the window</p> <p>3 unit.</p> <p>4 Q. Where do you think the number for that</p> <p>5 sticker comes from?</p> <p>6 A. From the manufacturer.</p> <p>7 Q. Where does the manufacturer get the</p> <p>8 number?</p> <p>9 A. They design the product.</p> <p>10 Q. Right. Well, how do they determine the</p> <p>11 number through their design of the product?</p> <p>12 MR. FLYNN: Object to the form.</p> <p>13 A. That's from their engineer.</p> <p>14 Q. You don't know, is the answer, right?</p> <p>15 A. No. The answer is -- to the question is</p> <p>16 from the engineering and the design of the</p> <p>17 product.</p> <p>18 Q. Have you ever designed a window?</p> <p>19 A. No. You asked me that.</p> <p>20 Q. I think I asked you if you ever worked</p> <p>21 for a distributor. Have you ever designed a door?</p> <p>22 A. No.</p> <p>23 Q. Have you ever fabricated a door?</p> <p>24 A. No.</p> <p>25 Q. Have you ever fabricated a window?</p>                                                                                                                                                                                  | <p style="text-align: right;">Page 137</p> <p>1 I referenced the Bates label.</p> <p>2 MR. FLYNN: You did. So I don't need</p> <p>3 it. It's the Charleston Glass doc.</p> <p>4 BY MR. KELLY:</p> <p>5 Q. Can an owner pull a building permit?</p> <p>6 A. In some cases, yes.</p> <p>7 Q. And they do in some cases, right?</p> <p>8 A. In some cases.</p> <p>9 Q. Do you have any knowledge as to Ms.</p> <p>10 Jernigan's familiarity with the building</p> <p>11 department at Isle of Palms?</p> <p>12 A. No.</p> <p>13 Q. Do you have any knowledge as to Ms.</p> <p>14 Jernigan's familiarity with the building permit</p> <p>15 process at Isle of Palms?</p> <p>16 A. No.</p> <p>17 Q. Do you know whether any of the units at</p> <p>18 Shipwatch have hurricane shutters?</p> <p>19 A. I do not know. There's one unit that</p> <p>20 has some type of a track at the sill but nothing</p> <p>21 at the head. But to answer your question, I don't</p> <p>22 know.</p> <p>23 Q. What about before the repairs were done</p> <p>24 at building C and D; do you know whether any of</p> <p>25 those units had hurricane shutters on them?</p>                                                                           |

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| <p style="text-align: right;">Page 138</p> <p>1 A. Not that I recall.</p> <p>2 Q. If any of the units had hurricane</p> <p>3 shutters, would that address the concern or</p> <p>4 criticism you had about the use of nonimpact</p> <p>5 glass?</p> <p>6 A. It could.</p> <p>7 Q. Why do you qualify that it could as</p> <p>8 opposed to would?</p> <p>9 A. Because I don't know what the design of</p> <p>10 the shutter is.</p> <p>11 Q. I don't know enough about shutters. So</p> <p>12 can you explain to me why that's important?</p> <p>13 A. Well, someone may figure that a cosmetic</p> <p>14 shutter is suitable as the substitution. And in</p> <p>15 most cases, that is not the case. If it is a true</p> <p>16 storm shutter that resists the proper impact,</p> <p>17 meaning the missile test, then, yes, that could be</p> <p>18 a substitute for not having impact glass.</p> <p>19 Q. What is a cosmetic shutter versus --</p> <p>20 like I'm used to these roll-out, sort of</p> <p>21 steel-looking things that come around the doors?</p> <p>22 A. Some little cosmetic shutter on each</p> <p>23 side of the window, whether it operates or not.</p> <p>24 Q. Could the owners use plywood to protect</p> <p>25 their glass?</p>                                                                                                        | <p style="text-align: right;">Page 140</p> <p>1 A. They could use plywood early on.</p> <p>2 Q. So the contractor could have told them,</p> <p>3 You can use plywood in the event of a storm to</p> <p>4 protect your glass?</p> <p>5 A. Then the general contractor, by the</p> <p>6 building code, had to provide the shutters and</p> <p>7 have them all numbered and put the studs in the</p> <p>8 wall such that they could be put up, and the</p> <p>9 product needs to be stored on-site someplace.</p> <p>10 Q. And you think it's reasonable for a</p> <p>11 distributor of building materials to know the</p> <p>12 terms of the contract and the field directives</p> <p>13 between a contractor and an owner?</p> <p>14 A. I think it's incumbent upon the</p> <p>15 distributor and the retailer, who may be the</p> <p>16 installer, to know that something needs to be</p> <p>17 there. Either to say, You need to put up</p> <p>18 hurricane shutters, or, This needs to be impact</p> <p>19 glass.</p> <p>20 Q. Can you tell me why you believe it's</p> <p>21 incumbent upon the distributor to do that?</p> <p>22 A. If the distributor knows where it's</p> <p>23 going, and he should, then I think that's part of</p> <p>24 the service.</p> <p>25 Q. Have you ever sat on a board or any sort</p>                           |
| <p style="text-align: right;">Page 139</p> <p>1 A. At least in the beginning, I believe,</p> <p>2 yes, they could. Whether it's currently approved</p> <p>3 or not, that part, I don't know. Because that</p> <p>4 would be a decision from the building official.</p> <p>5 Q. This is what I don't understand. If the</p> <p>6 owners have the ability to protect nonimpact glass</p> <p>7 with shutters or plywood, at least in the</p> <p>8 beginning, why would you be critical in any way of</p> <p>9 the distributor or the manufacturer for selling</p> <p>10 nonimpact glass?</p> <p>11 MR. FLYNN: Object to the form.</p> <p>12 A. Because they sold it or distributed it</p> <p>13 to a project and they should have known where it</p> <p>14 is. And if they sold it and understood that</p> <p>15 impact glass or a shutter was there, it seems to</p> <p>16 me the obligation is, we have this product but it</p> <p>17 can only be used if you have the appropriate</p> <p>18 hurricane shutters.</p> <p>19 Q. Or plywood?</p> <p>20 A. Well, that -- it depends on the window</p> <p>21 of time. You can't use plywood.</p> <p>22 Q. I apologize. I was trying to limit my</p> <p>23 question to the time period when plywood could be</p> <p>24 used, which I understood to be in the early 2000s?</p> <p>25 MR. FLYNN: Object to the form.</p> | <p style="text-align: right;">Page 141</p> <p>1 of committee that is charged with developing</p> <p>2 standards or rules for window and door</p> <p>3 manufacturers or distributors?</p> <p>4 A. No, I have not sat on a board.</p> <p>5 Q. In designing projects, is it common for</p> <p>6 you to rely upon information provided to you by</p> <p>7 the product manufacturer?</p> <p>8 A. Yes.</p> <p>9 Q. Is that because the product manufacturer</p> <p>10 is the expert on its products?</p> <p>11 A. No. It's because the product</p> <p>12 manufacturer -- and if we use windows as an</p> <p>13 example -- may tell you that a window has a</p> <p>14 certain DP rating of the window tested being a</p> <p>15 single unit. And what I have found in the printed</p> <p>16 literature is that once you gang the windows</p> <p>17 together, there are only a couple manufacturers</p> <p>18 that then provide you a new DP rating, because the</p> <p>19 rating is for the assembled product. So you can't</p> <p>20 take a bunch of small products, gang them together</p> <p>21 and expect to get the same DP rating.</p> <p>22 Q. Do you know whether any of the EFCO</p> <p>23 products were ganged together at Shipwatch?</p> <p>24 A. No. I'm just giving you an example,</p> <p>25 because yours was more hypothetical, of the</p> |

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| <p style="text-align: right;">Page 142</p> <p>1 manufacturer.</p> <p>2 Q. Were you aware that Sutton-Kennerly &amp;</p> <p>3 Associates attempted to reuse the EFCO products</p> <p>4 that are installed at Shipwatch as part of its</p> <p>5 redesign?</p> <p>6 A. No.</p> <p>7 Q. Is that significant to you in any way?</p> <p>8 A. I don't know all the details about it.</p> <p>9 I would have to know more to answer your question.</p> <p>10 MR. KELLY: All right. I'm going to let</p> <p>11 some of these other folks ask some questions.</p> <p>12 Thanks for your time.</p> <p>13 MR. FLYNN: Do you want to take a couple</p> <p>14 minutes?</p> <p>15 (The deposition went off the record.)</p> <p>16 EXAMINATION</p> <p>17 BY MR. WINTON:</p> <p>18 Q. Mr. Sherratt, we've met before, but for</p> <p>19 the benefit of the record, my name is Tyler</p> <p>20 Winton. I work at Carlock, Copeland, and I'm here</p> <p>21 on behalf of Sisroy Engineering and Bob Sisroy.</p> <p>22 I know you're obviously familiar with my client,</p> <p>23 and I listened to some of your testimony before</p> <p>24 regarding documents that you have from Mr. Sisroy</p> <p>25 relative to this matter and some of your opinions.</p>    | <p style="text-align: right;">Page 144</p> <p>1 Q. I think that was in a -- I wrote it</p> <p>2 down, but it was in a June or July letter, July</p> <p>3 10th, 2006. Could you pull that back up and could</p> <p>4 we mark that as an exhibit? If you think it's</p> <p>5 going to take too long to look for it, I will try</p> <p>6 to track it down when some other folks ask you</p> <p>7 questions.</p> <p>8 A. Why don't you go ahead and ask and I'll</p> <p>9 keep looking for it.</p> <p>10 Q. Also, I thought I heard you talking</p> <p>11 about the lack of design drawings in this case.</p> <p>12 Are you blaming or criticizing Mr. Sisroy because</p> <p>13 there's not a set of design plans for the</p> <p>14 renovation work that was performed out at</p> <p>15 Shipwatch?</p> <p>16 A. As I read the building code, there needs</p> <p>17 to be an appropriate set of plans and specs --</p> <p>18 specs could be on the plans -- for any</p> <p>19 construction work.</p> <p>20 Q. That's any construction work?</p> <p>21 A. Well, short of doing a doghouse or</p> <p>22 something like that. But to keep it in</p> <p>23 perspective, a project like this. And if you look</p> <p>24 at what the building code says in the first</p> <p>25 chapter, it talks about specific details at</p> |
| <p style="text-align: right;">Page 143</p> <p>1 You mentioned at one point that you read</p> <p>2 something where Mr. Sisroy called for copper pan</p> <p>3 flashing to be installed at aluminum sliding</p> <p>4 doors; is that correct?</p> <p>5 A. Yes.</p> <p>6 Q. And you noted that that would be an</p> <p>7 issue if it was installed; is that correct?</p> <p>8 A. The two products need to be isolated.</p> <p>9 You could still use the copper. The copper should</p> <p>10 not be in contact with the concrete, nor should it</p> <p>11 be in contact with the aluminum. But there are</p> <p>12 methods to isolate at those joints, meaning the</p> <p>13 materials.</p> <p>14 Q. Have you ever seen -- what are those</p> <p>15 methods, just real quickly?</p> <p>16 A. Well, one, you could take the</p> <p>17 waterproofing and roll it over the top or</p> <p>18 underneath where the door is going to be. That</p> <p>19 would isolate you from the concrete. And you</p> <p>20 could use a rubberized product to isolate metal to</p> <p>21 metal.</p> <p>22 Q. All right. Have you ever seen the</p> <p>23 application of copper pan flashing and at an</p> <p>24 aluminum window door or slider?</p> <p>25 A. Yes.</p> | <p style="text-align: right;">Page 145</p> <p>1 dissimilar materials or intersections of different</p> <p>2 materials.</p> <p>3 Q. And what building code are you referring</p> <p>4 to?</p> <p>5 A. The 2000 and 2003. And then as you come</p> <p>6 forward, the same terminology is in the subsequent</p> <p>7 codes.</p> <p>8 Q. The 2000 and 2003 IBCs?</p> <p>9 A. Yes. When I say code, I'm always</p> <p>10 referencing the IBC.</p> <p>11 Q. I understand that now.</p> <p>12 A. This is that document you asked about.</p> <p>13 Q. Do you mind if we mark this as an</p> <p>14 exhibit to your deposition and have a copy made?</p> <p>15 A. Can you make a copy and give it back to</p> <p>16 me now; I mean before we --</p> <p>17 Q. I bet we can. I don't have Mr. Cobb's</p> <p>18 copying skills.</p> <p>19 MR. WINTON: Let's do that.</p> <p>20 (Deposition Exhibit No. 184, 7/10/06</p> <p>21 letter from Sisroy Engineering to Linda Jernigan,</p> <p>22 was marked for identification.)</p> <p>23 BY MR. WINTON:</p> <p>24 Q. Is it okay if I put this sticker on it?</p> <p>25 A. Yeah. Just give me a copy back. I'd</p>                                                                                                                                                                     |

37 (Pages 142 to 145)

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) IN THE COURT OF COMMON PLEAS  
) NINTH JUDICIAL CIRCUIT  
) CIVIL ACTION NO.: 2012-CP-10-3858

) CIVIL ACTION NO.: 2012-CP-10-3858

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## FACTS

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has been governed since by a Master Deed, dated April 24, 1984.<sup>1</sup> The Shipwatch Regime is comprised of four buildings, A, B, C, and D, which each have five floors of conditioned space. In total, there are 104 condominium units in the four Shipwatch buildings. Plaintiff has an ownership interest in condominium unit D-431, which is a two story unit occupying part of the 4<sup>th</sup> and 5<sup>th</sup> floors in building D. Originally, the buildings were constructed with a synthetic stucco exterior cladding system (EIFS) and approximately 344 windows and approximately 264 sliding glass doors that did not contain impact rated glass products. Plaintiff's condominium unit includes three sliding glass doors (two on the ocean side), and one or two windows on the street side corridor. At the time this lawsuit was filed, the street side windows and the street side sliding glass door in the condominium unit were original to the building (non-EFCO products). In the fall of 2010, the two ocean side sliding glass doors in Plaintiff's unit were replaced with EFCO sliding glass doors. Prior to renovations made to Buildings C and D in 2013-2014, Plaintiff's unit had hurricane shutters that existed to protect the sliding glass doors from glass breakage in the event of a hurricane.

In approximately 2002, Shipwatch began a relationship with Carolina Concrete Systems, Inc. ("CCS") for periodic building inspections and improvements/repairs. The Board of Directors at Shipwatch chose to undertake a piece meal repair and replacement of the synthetic stucco cladding on the building from 2002-2010. At various points between 2003 and 2010, the Board of Directors also authorized CCS to replace a number of the original windows and sliding glass doors. For example, 72 sliding glass doors were replaced on floors 1-3 of the four buildings in the 2003-2004 timeframe. In 2008, approximately 14 sliding glass doors were replaced on the 4<sup>th</sup>

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<sup>1</sup> As argued in EFCO and WCJ's memorandum filed in support of summary judgment in the companion case filed by the Shipwatch Regime, the individual condominium unit owners have the responsibility to maintain and replace the glass in the sliding glass doors and windows under the Master Deed. Because the claims against EFCO and WCJ allege deficiencies with the glass of the windows and doors, the individual unit owners, not the Regime, own and control the claims against EFCO and WCJ.

and 5<sup>th</sup> floors. An additional 17 sliding glass doors, approximately, were replaced in 2009, and approximately 18 sliding glass doors were replaced in 2010. Like the original windows and doors, none of the product installed at Shipwatch between 2003 and 2010 by CCS contained impact rated glass.

EFCO, a Missouri based company, manufactures commercial grade windows and sliding glass doors. From 2003-2010, it manufactured and sold impact rated products and non-impact rated products. From 2003-2010, WCJ was the distributor of EFCO products in South Carolina. During that time, WCJ offered impact rated and non-impact rated products for sale to commercial contractors in this area. EFCO manufactured and WCJ sold window and door products installed into the Shipwatch buildings between 2003 and 2010. Neither EFCO nor WCJ had any responsibility for the installation of windows and sliding glass doors at Shipwatch.

Charleston Glass and Mirror Company, Inc. ("Charleston Glass") is in the business of installing windows and doors on commercial projects in the Charleston County area. The company was incorporated in 1964. Randy Morgan is the President of Charleston Glass. Charleston Glass has purchased EFCO products from WCJ since approximately 1995. In 2003, Charleston Glass contacted WCJ about purchasing certain EFCO products and submitted a purchase order. WCJ was Charleston Glass' only contact for EFCO product; Charleston Glass did not have direct contact with EFCO.

As part of its sales process, WCJ has its customers fill out an order form and confirm that they are asking for the products that WCJ intends to supply. In 2004, Randy Morgan signed a WCJ order form and confirmed that Charleston Glass wanted to purchase EFCO product that did not contain impact rated glass. The process repeated itself for orders in 2008, 2009, and 2010. On each occasion, Charleston Glass confirmed that it intended to order EFCO products with non-

impact glass. With each order, EFCO extended a Limited Warranty for the products supplied. The Limited Warranty represents that the products will be free from material defects and disclaims implied warranties of merchantability and fitness for a particular purpose.

In addition to the order forms, various proposals of Charleston Glass and CCS that were reviewed by Shipwatch establish that the contractors intended to purchase non-impact rated EFCO products. A November 11, 2010, fax from Mr. Morgan at Charleston Glass to the head of CCS explains that the contractors did not believe impact rated products were necessary for the projects they were performing at Shipwatch. This communication was made because a question was raised by Gary Freeman, an architect retained by the Shipwatch Regime to observe and report on construction, about the non-impact rated EFCO window and door product that was being installed in the building in 2010. Neither WCJ nor EFCO were involved in this communication.

During construction, Mr. Freeman reported concerns to the Shipwatch Regime's designated agent, Linda Jernigan, about the non-impact rated EFCO products. Mr. Freeman informed Ms. Jernigan and the Shipwatch Regime that the contractor was required to use impact rated glass for window and door products being installed in the buildings in 2010. In response to Mr. Freeman's concerns about the sliding glass doors, Ms. Jernigan wrote,

"Gary,  
The board considers the siding doors regular maintenance, they chose the doors they wanted and approved the installation in 2002, so it is not requesting your assistance in this project."

Jernigan Deposition, Exhibit 134.

Clearly, Plaintiff did not reject the non-impact rated EFCO products being installed at Plaintiff's condominium unit and permitted them to become part of the building system. No request was

made in 2010 for WCJ to sell or EFCO to manufacture different product. No request was made by CCS or Charleston Glass that impact glass be provided.

Plaintiff alleges causes of action against EFCO and WCJ for negligence, breach of warranties, and strict liability relating to its supply of non-impact rated glass products to the Shipwatch project. To support its claims against the Defendants, Plaintiff has disclosed Jeff Miller, PE with Sutton Kennerly & Associates and Peter Sherratt, AIA as testifying expert witnesses. Mr. Miller and Mr. Sherratt are to offer opinions as to the nature of the problems with the buildings at Shipwatch and the cause of the damages.<sup>2</sup>

As part of a comprehensive building evaluation in 2012, Mr. Miller asked his project team to conduct water testing of various portions of the building, including windows and doors. The water testing of the windows and doors was conducted in such a manner that Mr. Miller's team could test the method of installation of the windows and doors in one test and the window and door products themselves in other tests. The testing ordered by Mr. Miller revealed no deficiencies in the EFCO products supplied to the job, as the EFCO products passed the water tests.

After concluding his investigation of the buildings, Mr. Miller was asked to design a repair for buildings C & D at Shipwatch. Mr. Miller's originally conceived repair for buildings C & D included the EFCO product that was then installed in the buildings. Because of the scope (removal and replacement of all windows and doors in the buildings) and timing of the repairs being made at Shipwatch, the Isle of Palms building official required the design to include impact rated products for all window and door openings. Therefore, Mr. Miller could not incorporate the non-impact rated EFCO products into the final design to repair the buildings.

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<sup>2</sup> To date, Mr. Miller has been deposed for three days and Mr. Sherratt has been deposed for one day. Greg Isaacs, an engineer with Sutton Kennerly and Associates who worked with Mr. Miller on the project, has also been deposed for three days.

Plaintiff's experts admit that the EFCO products are not contributing or causing any water intrusion at the buildings. Likewise, they admit that no property damage has resulted from the EFCO products. Plaintiff's experts have not pointed to any defect with the product, and the undisputed evidence is that the product has performed as intended.

**I. BECAUSE PLAINTIFF HAS NOT SUSTAINED PROPERTY DAMAGE OR INJURY FROM THE NON-IMPACT GLASS, THE PLAINTIFF'S CLAIMS SHOULD BE DISMISSED**

The Plaintiff has sued EFCO and WCJ for negligence, breach of warranties, and strict liability. To recover, each of these causes of action require the Plaintiff to prove that the product caused property damage or injury. Because the EFCO window and door products have not caused property damage or injury, the causes of action should be dismissed.

To recover on its negligence action, the Plaintiff must prove (1) a duty of care owed to the Plaintiff by EFCO and WCJ; (2) a breach of the duty by a negligent act or omission by EFCO and WCJ; and (3) damages proximately resulting from the breach. Crolley v. Hutchins, 387 S.E.2d 716 (S.C. Ct. App. 1989). Likewise, a strict liability claim under section 15-73-20 of the South Carolina Code requires the Plaintiff to prove "physical harm caused to the ultimate user or consumer, or to his property. . ." Finally, Plaintiff cannot recover on its warranty claims without proving the alleged product defects caused property damage or injury. Wilson v. Style Crest Products, Inc., 627 S.E.2d 733 (S.C. 2006).

Wilson is a remarkably similar case where the Supreme Court of South Carolina affirmed the granting of summary judgment because the plaintiff class could not prove that allegedly defectively designed and assembled mobile homes had suffered any damages from high wind events. The Wilson mobile home owner class plaintiffs asserted claims for negligence, negligence per se, breach of express warranty, breach of implied warranty of workmanlike

service, breach of implied warranty of merchantability, fraud and misrepresentation, negligent misrepresentation, and fraudulent concealment. On appeal, the plaintiffs dropped the negligence claims and argued that they could recover on the warranty and fraud claims despite the fact that the owners' property had not been damaged or injured. The South Carolina Supreme Court disagreed and found that the lack of damages meant that the mobile homes had performed satisfactorily and were, in fact, merchantable. Accordingly, the court affirmed the granting of summary judgment by the trial judge.

As in Wilson, the Plaintiff, through its expert, has admitted that the non-impact rated EFCO windows and doors are performing and have not caused any damage to Plaintiff's unit or the Shipwatch buildings in whole. The following exchanges took place at the most recent deposition of Mr. Miller:

*Q. The fact that buildings A and B have non-impact windows and doors installed in the buildings, is the fact that those windows and doors are non-impact causing any damage to the building?*

*A In and of itself, I would say no.*

Miller, Jeff - Vol. 3, (Page 609:24 to 610:03)

*Q. Did the presence of non-impact glass in those windows and doors lead to any damage to buildings C and D?*

*A No damage, fortunately, because we had no hurricane blow through there. But no.*

Miller, Jeff - Vol. 3, (Page 610:9 to 610:13).

Like in Wilson, the failure to prove damages caused by the allegedly defective product is fatal to Plaintiff's claims.<sup>3</sup> Accordingly, the claims should be dismissed.

## **II. NO EVIDENCE OF A DEFECT WITH THE PRODUCT HAS BEEN PRESENTED BY PLAINTIFF**

Plaintiff cannot recover on any of its product liability claims against EFCO and WCJ unless it can prove that the EFCO products were defective in some way. The strict liability claim requires Plaintiff to prove that the product was sold in a defective condition and is unreasonably dangerous. Similarly, a claim for breach of implied warranty of merchantability requires the Plaintiff to prove that the products were not "fit for the ordinary purposes for which [they] are used" and that they would not "pass without objection in the trade under the contract description." S.C. Code Ann § 36-2-314.

Plaintiff has presented no evidence that the product is defective or that it is unreasonably dangerous. In fact, the only evidence is that the EFCO products are performing as intended. As indicated above, the failure to prove damages resulting from an allegedly defective product is evidence that a product is merchantable and not defective. Wilson, 627 S.E.2d at 736. Because no evidence of a defective product has been presented by Plaintiff, the claims against EFCO and WCJ should be dismissed.

## **III. EFCO AND WCJ HAVE NO LIABILITY FOR SELLING SOPHISTICATED CUSTOMERS EXACTLY WHAT WAS ORDERED**

Charleston Glass, WCJ's customer, purchased exactly what it intended to purchase, non-impact rated window and door products from EFCO. The documents to the transaction establish that the window installation contractor that has been in business since the 1960s knew what it

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<sup>3</sup> It should be pointed out that Plaintiff had already removed and replaced the EFCO products from buildings C and D at the time of Mr. Miller's deposition. The removal and replacement of the EFCO products from buildings A and B are underway.



was purchasing. The records further reflect that CCS knew it was obtaining non-impact rated products, and, in 2010 at a minimum, the Plaintiff, through the Shipwatch Regime agents, knew that it was receiving non-impact rated products. There is no dispute Charleston Glass, CCS, nor Plaintiff ever paid for impact rated windows and doors. EFCO and WCJ willingly would have supplied the products.

**A. Plaintiff cannot establish that EFCO or WCJ had a duty to sell impact rated products.**

In furtherance of its negligence claim, Plaintiff seeks to invent a duty that it alleges WCJ and EFCO had when selling and/or manufacturing window and door products for the Shipwatch project. Through one of its experts, Plaintiff appears prepared to argue that WCJ, as a product distributor, has a duty to advise its customers on the requirements and conditions of the building codes that might be applied by the jurisdiction where the construction is taking place as it relates to window and door building components. While the testimony is less clear from Plaintiff's expert, Mr. Sherratt appears prepared to offer the same opinion against the product manufacturer, the Missouri based EFCO. Therefore, Plaintiff appears to argue that the terms and conditions of the commercial contract between WCJ and Charleston Glass are meaningless.

The terms of the agreement between WCJ and Charleston Glass, however, are of paramount importance. Both companies are commercially sophisticated entities. Charleston Glass had the option to order impact glass or non-impact glass from WCJ. It unequivocally made the informed decision to purchase non-impact rated glass. The only duty WCJ owed was to provide its customer what it promised to provide through the order agreement. Plaintiff's theory would require a vendor of a product to essentially become a building designer and dictate what products should and should not be used in the construction of buildings. It is a novel theory with no precedent in the law or in the construction materials industry.

Plaintiff's theory is an even greater stretch when applied to EFCO, the manufacturer of the door and window products. EFCO did not have direct contact with Charleston Glass concerning the purchase of products or the location of the project. WCJ simply informed EFCO as to what Charleston Glass intended to purchase. In return, EFCO fabricated the products requested and supplied them to Charleston Glass.

While novel, Plaintiff's theory is akin to a "failure to warn" negligence claim. Products liability law is clear that there is no duty to warn of dangers when the customer purchasing the products in question has equal or greater knowledge about the dangers of the products than the supplier or manufacturer. See Lawing v. Trinity Mfg. Inc., 749 S.E.2d 126 (S.C. Ct. App. 2013)(confirming that the sophisticated user doctrine is the law of South Carolina). Because Charleston Glass was a sophisticated glass contractor and had knowledge of the performance limitations of the glass contained within the window and door products it chose to purchase, WCJ had no duty to warn or to advise Charleston Glass or Plaintiff concerning any potential dangers associated with the non-impact glass that was selected for purchase.

Because the law does not support Plaintiff's theory of the duty it alleges EFCO and WCJ owed in regards to the sale of non- impact rated windows and doors, Plaintiff's claim for negligence fails and should be dismissed.

**B. Plaintiff cannot succeed on a claim for breach of warranty for a particular purpose because WCJ and EFCO did not recommend or suggest the use of products with non-impact glass**

Where implied warranties are not disclaimed, section 36-2-315 of the South Carolina Code creates an implied warranty for situations where the buyer relies on the skill and judgment of a seller to furnish suitable goods. Plaintiff has presented no evidence to suggest that

Charleston Glass was relying on WCJ or EFCO to furnish the “suitable goods” for the Shipwatch project. The only evidence is that Charleston Glass knowingly and intentionally purchased non-impact rated windows and doors instead of impact rated products offered for sale by WCJ and EFCO because it believed that non-impact rated products were acceptable for the projects.

**C. EFCO and WCJ disclaimed all implied warranties**

The warranty claims also fail because EFCO and WCJ disclaimed all implied warranties as part of the sale of the commercial windows and sliding glass door products to Charleston Glass. The first page of the limited warranty document contains a paragraph that states “[t]here are no warranties which extend beyond the description on the face hereof,” and the final sentence in the document states that “[t]here are no other expressed or implied warranties from EFCO.” The only warranty made in the limited warranty document is a limited express warranty. Plaintiff’s implied warranty claims are barred by the clear disclaimers of warranties that are clearly communicated in the limited warranty document.

Plaintiff has asserted claims against EFCO and WCJ alleging that they breached implied warranties of merchantability and fitness for a particular purpose. The general rule is that “a warranty that [] goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind.” S.C. Code Ann. § 36-2-314(1) (1976). Implied warranties, however, may be disclaimed by the seller’s language. S.C. Code Ann. § 36-2-316 (1976). Under section 36-2-316(2) of the South Carolina Code, the implied warranty of merchantability is disclaimed where the purported disclaimer (1) mentions “merchantability”, (2) is conspicuous if in writing, and (3) is specific so as not to create an ambiguity in the contract. S.C. Code Ann. § 36-2-316(2).

EFCO and WCJ specifically disclaimed the implied warranty of merchantability and fitness for a particular purpose when it sold products to Charleston Glass for use in the Plaintiff's project by including the written disclaimers in the limited warranty document in such a way that the disclaimer referenced the word "merchantability" and the customer was aware of the disclaimers. Using bold font in a paragraph in the middle of the first page of the document and set apart from other language in regular font, EFCO and WCJ disclaimed the implied warranties of merchantability and fitness for a particular purpose by stating: **"EFCO CORPORATION excludes any implied warranties of merchantability and fitness for a particular purpose."**

The disclaimer made by EFCO and WCJ specifically states the word "merchantability" and thereby satisfies the first requirement of section 36-2-316(2) of the South Carolina Code. Likewise, the disclaimer meets the second and third elements of section 36-2-316(2), as it was conspicuous and was not likely to create an ambiguity. Language is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. S.C. Code § 36-1-201(10). It must be in a distinctive color or type. *Id.* ("Language in the body of a form is 'conspicuous' if it is in larger or other contrasting type or color."). Factors to be considered in determining whether a written disclaimer is conspicuous for purposes of § 36-2-316(2) include the following:

- (1) the color of print in which the purported disclaimer appears; (2) the style of print in which the disclaimer is written; (3) the size of the disclaiming language, particularly in relation to other print in the document; (4) the location of the disclaimer in the contract; (5) the appearance of the term "merchantability" with respect to color, style, size, and type of print in the disclaimer clause; and (6) the status of the parties contesting the validity of the disclaimer, namely whether they be consumers or commercially sophisticated entities.

Myrtle Beach Pipeline Corp. v. Emerson Elec. Co., 843 F. Supp.1027, 1038 (D.S.C. 1993). The factors listed above are not individually dispositive nor are they exhaustive of all the criteria that can be used in examining a disclaimer. Id.

EFCO and WCJ's disclaimer of the implied warranty of merchantability and fitness for a particular purpose meets the conspicuous requirement of section 36-2-316(2) because it is set forth as a separate paragraph in the middle of the first page of the document and styled in bold font where the remainder of the language on the page is not in bold font. Accordingly, Plaintiff's claims for relief under any implied warranty theory should be dismissed.

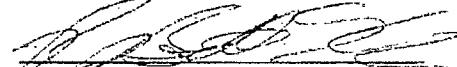
#### **IV. THE CROSS CLAIMS OF CCS SHOULD ALSO BE DISMISSED AS THEY ARE DERIVATIVE CLAIMS**

CCS has asserted cross claims against EFCO and WCJ asserting various theories of liability based on the general argument that EFCO and WCJ are responsible for any damages claimed by Plaintiff. For the same reasons discussed above, CCS' claims against EFCO and WCJ fail and should be dismissed. Additionally, the CCS claims are really just disguised indemnity claims. There is no contract between CCS and EFCO or CCS and WCJ. Accordingly, there are no contractual indemnity claims that can be advanced by CCS against EFCO or WCJ. Any claim for equitable indemnity fails because of the lack of a special relationship and the unclean hands of CCS in contributing to the damages it alleges are the responsibility of EFCO and WCJ.

**CONCLUSION**

For the reasons stated above, all claims of the Plaintiff and CCS against EFCO and WCJ should be dismissed.

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Charleston, South Carolina  
January 14, 2015

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Circuit Case No. 2012-CP-10-3858

Appellate Case No. 2014-002765

**RECEIVED**

APR 13 2015

**SC Court of Appeals**

Oscar Mendiondo, individually and as representative of a class of similarly  
situated owners of condominium units in the horizontal property regime known  
as Shipwatch Condominiums, .....Appellants,

v.

Carolina Concrete Systems, Inc.; Sisnroy Engineering, LLC; Robert G. Sisnroy, individually;  
Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Spectec, Inc.; Sonneborn, Inc.;  
Chimney Sweeps, Inc.; Low Country Chimneys, Inc.; EFCO Corp.; W.C. Johnston Architectural  
Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; Acrocrete, Inc.; BASF Corp.;  
Gary Freeman Architect, Inc.; Gary Freeman, individually,

Of Which Carolina Concrete Systems, Inc.; Sisnroy Engineering, LLC; Robert G. Sisnroy,  
individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Sonneborn, Inc.; EFCO  
Corp.; W.C. Johnston Architectural Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors,  
LLC; Acrocrete, Inc.; BASF Corp.; Gary Freeman Architect, Inc.; Gary Freeman, individually,  
are..... Respondents.

**APPELLANT'S RETURN TO ACROCRETE, INC.'S AND GLASSTEC, INC.'S JOINT  
MOTION TO DISMISS APPEAL**

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Christopher M. Ramsey  
ROBERTSON HOLLINGSWORTH & FLYNN  
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(843) 723-6470  
Attorneys for Appellant

On April 2, 2015, Appellant received Acrocrete, Inc.'s and Glasstec, Inc.'s Joint Motion to Dismiss Appeal as to those respondents (hereinafter "the Motion"). Acrocrete and Glasstec take the position that they should be dismissed from this appeal because they are not "adverse parties" to the Appellant. That position is without merit and unsupported by the South Carolina Appellate Court Rules or case law, and this Joint Motion must be denied.

These Respondents attempt to justify their position from the language of Rule 202(a), SCACR. However, that rule only provides guidance as to the proper nomenclature of the parties in an appeal, and does not provide any guidance as to the qualifications of either party to an appeal. Indeed, the rule only employs the term "adverse party" in order to distinguish the relative positions of the appellant and the respondent. "The party appealing shall be known as the appellant and the adverse party as the respondent." Id.

It is not disputed that Acrocrete and Glasstec are defendants in the underlying cases now on appeal. Additionally, Acrocrete and Glasstec do not dispute in their Joint Motion that they performed work on the Shipwatch project as subcontractors to Respondent Carolina Concrete Systems, as alleged in the Complaint. Appellant asserted that Acrocrete and Glasstec were negligent in the performance of their work at Shipwatch, among other causes of action. Acrocrete and Glasstec denied those allegations, thus taking an adverse position to Appellant in this matter.

A plain reading of the hearing transcript indicates that the lower court denies Appellant's right to assert any claims for work performed at the Shipwatch project prior to 2010. Transcript of Motion Hearing October 27, 2014, at p. 6. Appellant alleges in the Complaint that Acrocrete and Glasstec performed work at the project before 2010, thus making the substance of this appeal applicable to the claims and defenses relating to these two Respondents, which fully justifies their



inclusion as Respondents which are affected by the matter in this appeal.

Acrocrete and Glasstec are not, however, required to file a separate Brief of Respondent if they choose not to do so. Rule 208(b)(6), SCACR, provides: "In cases involving more than one appellant or respondent, including cases consolidated for appeal, any number of parties may join in a single brief, and any party may adopt by reference all or any part of the brief of another."

Moreover, it is appropriate to have all parties affected by the appeal, especially those who have taken adverse positions in the matter on appeal, included as Respondents in order to ensure that they receive copies of all filings and communications from the parties and the Court, in order to allow them the opportunity to submit briefs and participate as they deem appropriate.

Based upon the foregoing, the joint motion by Acrocrete and Glasstec must be denied, as they are adverse parties to Appellant and are properly included as Respondents in this Appeal.

Respectfully submitted,

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April 10, 2015

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2012-CP-10-3857

FILED  
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CLERK OF COURT  
BY \_\_\_\_\_

Shipwatch Condominium Association, Inc., ..... Appellant,

v.

Carolina Concrete Systems, Inc.; Sisnroy Engineering, LLC; Robert G. Sisnroy, individually;  
Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Spectec, Inc.; Sonneborn, Inc.;  
Chimney Sweeps, Inc.; Low Country Chimneys, Inc.; EFCO Corp.; W.C. Johnston Architectural  
Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; Acrocrete, Inc.; BASF Corp.;  
Gary Freeman Architect, Inc.; Gary Freeman, individually, ..... Defendants,

Of Which, Carolina Concrete Systems, Inc.; Sisnroy Engineering, LLC; Robert G. Sisnroy,  
individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Sonneborn, Inc.;  
EFCO Corp.; W.C. Johnston Architectural Sales, Inc.; Charleston Glass Company, Inc.; First  
Exteriors, LLC; Acrocrete, Inc.; BASF Corp.; Gary Freeman Architect, Inc.; Gary Freeman,  
individually,  
are ..... Respondents

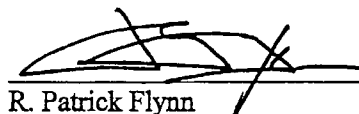
NOTICE OF APPEAL

The Shipwatch Condominium Association, Inc. hereby appeals the Order granting Summary Judgment in Part to Carolina Concrete Systems, Inc. That motion was heard October 27, 2014, and the Order filed on July 28, 2015.

An appeal was filed on December 30, 2014 as to the oral order of October 27, 2014 granting Summary Judgment in part to Carolina Concrete Systems, and as to the denial of Appellant's Motion for Rehearing entered on December 5, 2014. That previous appeal was dismissed by the South

Carolina Court of Appeals on July 2, 2015, on the basis that a written order had not been entered by the lower court. The above-described written order was entered on July 28, 2015, and this Notice of Appeal is for that written order.

July 28, 2015



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**PRO SE DEFENDANT**

STATE OF SOUTH CAROLINA )

COUNTY OF CHARLESTON )

Shipwatch Condominium  
Association, Inc. )

Plaintiff, )

v. )

Carolina Concrete Systems, Inc.; )  
Sisnroy Engineering, LLC; Robert G. )  
Sisnroy, individually; Terrence J. )  
McKelvey; Glasgow Roofing, Inc.; )  
GlassTec, Inc.; Spectech, Inc.; )  
Sonneborn, Inc.; Chimney Sweeps, )  
Inc.; Low Country Chimneys, Inc.; )  
EFCO Corp.; W.C. Johnston )  
Architectural Sales, Inc.; Charleston )  
Glass Company, Inc.; First Exteriors, )  
LLC; Acrocrete, Inc.; BASF Corp.; )  
Gary Freeman Architect, Inc.; Gary )  
Freeman, individually, )

Defendants. )

STATE OF SOUTH CAROLINA )

COUNTY OF CHARLESTON )

Oscar Mendiondo individually and )  
as representative of a class similarly )  
situated Owners of Condominium )  
Units in the Horizontal Property )  
Regime known as Shipwatch )  
Condominiums )

Plaintiffs, )

v. )

Carolina Concrete Systems, Inc.; )  
Sisnroy Engineering, LLC; Robert G. )

IN THE COURT OF COMMON PLEAS

Docket No.: 2012-CP-10-3857

ORDER GRANTING DEFENDANT  
CAROLINA CONCRETE SYSTEMS,  
INC. PARTIAL SUMMARY  
JUDGMENT

FILED  
2015 JUL 28 PM 12:15  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

IN THE COURT OF COMMON PLEAS

Docket No.: 2012-CP-10-3858

*[Handwritten signature]*

Sisroy, individually; Terrence J. )  
 McKelvey; Glasgow Roofing, Inc.; )  
 GlassTec, Inc.; Spectech, Inc.; )  
 Sonneborn, Inc.; Chimney Sweeps, )  
 Inc.; Low Country Chimneys, Inc.; )  
 EFCO Corp.; W.C. Johnston )  
 Architectural Sales, Inc.; Charleston )  
 Glass Company, Inc.; First Exteriors, )  
 LLC; Acrocrete, Inc.; BASF Corp.; )  
 Gary Freeman Architect, Inc.; Gary )  
 Freeman, individually, )  
 )  
 Defendants. )  
 )

This matter came before the Court on Defendant Carolina Concrete Systems, Inc.'s ("CCS") summary judgment motion based on the statute of limitations. As discussed in this order the court grants partial summary judgment. This Order does not dismiss the entire litigation and allows Plaintiffs to continue the lawsuit for claims concerning work not barred by the statute of limitations.

Plaintiffs filed these lawsuits on June 13, 2012 alleging defective and deficient construction at the Shipwatch Condominiums located within the Wild Dunes development of Isle of Palms, South Carolina. Plaintiffs served CCS on July 12, 2012. The Shipwatch project consists of four oceanfront buildings constructed around 1985 with EIFS exterior cladding. Neither CCS nor any of the defendants in this litigation had any involvement with the original construction.

From 2002-2010, CCS acted as the general contractor for various piece-meal repairs and renovations to the buildings at the direction of the Shipwatch Homeowners' Association ("HOA") and various on-site property managers. The work included partial replacement of some (but not all) of the original EIFS (Exterior Insulation Finish System) cladding with a Durock Wall System ("DEFS"); removal of some (but not all) original windows and sliding glass doors at certain locations on the endwalls, ocean-side, and street-side elevations; reframing of chimneys; and recoating of certain balcony and corridor decks. CCS' contracts with Plaintiffs included:



November 5, 2002: Contract for chimney repairs, waterproofing repairs, corridor/balcony repairs, and traffic coatings;

September 22, 2003: Contract for re-sloping of balconies, window and door repairs, removal of EIFS and replacement with Durock Stucco System on endwalls and fourth and fifth floor streetside, removal and replacement of stucco at stairwell and elevator towers, repairs to privacy walls and chimneys; and

December 19, 2008: Contract for removal and replacement of 16 EFCO doors in specified units.

The work took place primarily between 2002-2005 and 2008-2011.

#### STANDARD FOR STATUTE OF LIMITATIONS

The statute of limitations starts to run when the "cause of action shall have accrued." S.C. Code Ann. § 15-3-20. "Generally, a cause of action accrues under South Carolina law 'the moment the defendant breaches a duty owed to the plaintiff.'" Barr v. City of Rock Hill, 330 S.C. 640, 644, 500 S.E.2d 157, 159-60 (Ct. App. 1998). In some circumstances, however, the "discovery rule" provides an exception to the general rule and tolls the statute of limitations until such time as "the person knew or by the exercise of reasonable diligence should have known that he had a cause of action." S.C. Code Ann. § 15-3-535. A person has constructive notice of a cause of action if he or she knows of "facts and circumstances of an injury [that] would put a person of common knowledge and experience on notice that some right . . . has been invaded or that some claim against another party might exist." Id. "The statute of limitations begins to run from this point and not when advice of counsel is sought or a full-blown theory of recovery developed." Snell v. Columbia Gun Exchange, Inc., 276 S.C. 301, 303, 278 S.E.2d 333, 334 (1981). The analysis is an objective one, focusing not on the subjective knowledge of the individual plaintiff, but on whether a reasonable person with knowledge of the facts and circumstances should have been placed on notice of an injury.

Likewise, the inability of the plaintiff to discover evidence of culpability against a particular defendant within the limitations period is irrelevant. Republic

Contracting Corp., South Carolina Dept. of Highways and Public Transportation, 332 S.C. 197, 208, 503 S.E.2d 761, 767 (Ct. App. 1998). In addition, the "[f]ailure of the injured party to comprehend the full extent of the damages . . . is immaterial." Wiggins v. Edwards, 314 S.C. 126, 442 S.E.2d 169 (1994).

In Carolina Marine Handling, Inc. v. Lasch, 363 S.C. 169, 609 S.E.2d 548 (Ct. App. 2005), the Court wrote:

Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote response by giving security and stability to human affairs." The cornerstone policy consideration underlying statutes of limitations is the laudable goal of law to promote and achieve finality in litigation. Significantly, "statutes of limitations provide potential defendants with certainty that after a period of time, they will not be haled [sic] into court to defend time-barred claims. Moreover, limitation periods discourage plaintiffs from sitting on their rights." Statutes of limitations are, indeed, fundamental to our judicial system.

Id., 363 S.C. at 175-176, 609 S.E.2d at 552 (citations omitted).

Statutes of limitations "are designed to promote justice by forcing parties to pursue a case in a timely manner." State ex rel. Condon v. City of Columbia, 528 S.E. 2d 408, 413 (S.C. 2000). These statutes "encourage plaintiffs to initiate actions promptly while evidence is fresh and a court will be able to judge more accurately." Moriarty v. Garden Sanctuary Church of God, 511 S.E.2d 699, 706 (S.C. Ct. App. 1999), aff'd, 534 S.E.2d 672 (S.C. 2000), overruled in part on other grounds, 606 S.E.2d 475 (S.C. 2004). Thus, as the South Carolina Court of Appeals has observed:

Statutes of limitations are not simply technicalities. On the contrary, they have long been respected as fundamental to a well-ordered judicial system. . . . Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs. . . . One purpose of a statute of limitations is to 'to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights.' . . . Another purpose of a statute of limitations is to protect potential defendants from protracted fear of litigation. . . .

City of N. Myrtle Beach v. Lewis-Davis, 599 S.E.2d 462, 465 (S.C. Ct. App. 2004)  
(internal citations omitted).

### DISCUSSION

The applicable statute of limitations is three years.<sup>1</sup> CCS does not dispute that any work performed after the applicable date for statute of limitations purposes should not be included with this order; CCS challenges, however, certain claims based on notice to Plaintiffs that implicates the statute of limitations. Thus, the inquiry is what Plaintiffs knew or should have known before July 12, 2009.

Plaintiffs' assert in this litigation that CCS and the other defendants should be liable for the costs associated with the repairs arising from the failure of original building components such as EIFS and original sliding glass doors and windows (which were not installed, repaired, or replaced by CCS or any of the defendants in this litigation); however, the applicable statutes of limitations bar those claims because the undisputed facts show that Plaintiffs knew about water intrusion and alleged construction defects more than three years before commencing this litigation.

**A. THE UNDISPUTED TESTIMONY FROM PLAINTIFFS' BOARD MEMBERS AND REGIME MANAGER IS THAT PLAINTIFFS KNEW ABOUT MANY OF THE ISSUES THEY ASSERT IN THIS LITIGATION WELL BEFORE ANY THREE-YEAR PERIOD INVOLVING THE STATUTE OF LIMITATIONS**

Plaintiffs clearly knew about various water intrusion issues at the Shipwatch project at least 5-10 years before filing this litigation and, clearly, well before July 12, 2009 (three years before Plaintiffs served CCS with pleadings). In fact, many of the damages claimed in this lawsuit were recommended to Plaintiffs for replacement in 2008 by Plaintiff's regime manager because of water intrusion or

<sup>1</sup> S.C. Code Ann. § 15-3-530 applies a three-year statute of limitations to Plaintiffs' claims of negligence, aiding and abetting a breach of fiduciary duty, breach of contract, common-law warranty, and strict liability in tort. Further, S.C. Ann. § 39-5-150 provides a three-year statute of limitations on Plaintiffs' claims under the South Carolina Unfair Trade Practices Act.

*Rad/s*

other damage. In addition, Arnie Schaewe (a board member and unit owner) testified that Plaintiffs knew about water intrusion problems into the buildings in 2003. Deposition of Arnie Schaewe, page 35, lines 9-19. Further, Schaewe testified Plaintiffs had leakage problems at various locations including the end walls, oceanside sliding glass doors, and bay windows when CCS began work in 2002-2003. Id., page 35, line 9-page 37, line 22.

Accordingly, the statute of limitations bars the following claims:

**Originally-installed EIFS (Exterior Insulation Finish System):**

In this litigation, Plaintiffs demanded CCS pay for the costs of removing the remaining EIFS on the exterior of the buildings and replacing the exterior cladding on the buildings; even though CCS never installed the EIFS and Plaintiffs knew about damage and water intrusion associated with EIFS by the mid-2000s. For example, Plaintiffs' former board member Fred Trombino testified that during his tenure on the board between 2005-2007, the board knew EIFS was problematic and not the right application for a coastal environment. Deposition of Fred Trombino, page 37, line 24-page 38, line 6. Specifically, Trombino said the board knew that water tended to get trapped behind EIFS, which caused the metal studs to rot and fail. Id. page 38, lines 11-17. However, the board elected not to further inspect the buildings at that time because it had decided to remove the EIFS cladding. Id. page 38, lines 18-25.

The regime manager (Linda Jernigan), whom Plaintiffs have employed since 2005, testified she told Plaintiffs in September 2008 that she had obtained a contract to remove and replace the originally-installed EIFS off of all buildings at a projected cost of \$1,800,000 (or approximately \$423,060 per building). Deposition of Linda Jernigan, page 330, line 2-page 331, line 18. The September 2008 HOA Board Minutes also detailed that Jernigan told Plaintiffs that the buildings showed water intrusion problems when they opened up the buildings previously for EIFS removal at certain locations and that Plaintiffs should anticipate additional

problems if Plaintiffs moved forward with her recommendation about complete removal of the remaining EIFS. Id., page 333, line 14-page 335, line 10.

**Originally-installed sliding glass doors:**

In this litigation, Plaintiffs demanded CCS pay for the costs of removing originally-installed sliding glass doors and replacing those doors with modern versions, even though CCS never installed the original sliding glass doors and Plaintiffs knew about damage and water intrusion associated with leaking sliding glass doors by the mid-2000s. Arnie Schaewe (a board member and unit owner) testified that Plaintiffs knew they had leakage problems at various locations including the oceanside sliding glass doors when CCS began work in 2002-2003. Deposition of Arnie Schaewe, page 35, line 9-page 37, line 22. In September 2008, Jernigan recommended Plaintiffs remove and replace the "leaking sliding glass doors" because of problems that had been "on-going" or that had not been funded by Plaintiffs in previous years. Deposition of Jernigan, page 332, line 15-page 333, line 13. Jernigan testified that leaking sliding glass doors have been a problem at Shipwatch since she returned to manage the property in February 2005. Id., page 219, lines 8-18; page 230, lines 9-12.

Trombino testified he knew about leaking sliding glass doors when he joined the Board in 2005 when Jernigan told him the project had problems with the sliding glass doors. Trombino, page 132, line 22-page 133, line 14. Beginning in 2006, the Board replaced a certain number of leaking sliding glass doors (approximately 10-15 per year) based mainly upon homeowner complaints. Schaewe, page 78, line 11-page 79, line 6.

In addition, HOA Board meeting minutes between 2005-2007 clearly reflect Plaintiffs' knowledge and ongoing discussions about repairing and replacing leaking sliding glass doors. In 2005, the Board noted leaks continued at some sliding glass doors, including the fifth floor penthouse doors likely caused by sunlight deteriorating the rubber seals and caulking. See Shipwatch Board of Directors Meeting, April 1, 2005, page 2; and Shipwatch Board of Director Meeting,

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September 16-17, 2005, page 2. In 2006, the Board discussed that leaking sliding glass doors continued to be problematic, and the leaking persisted despite repairs using caulk. See Shipwatch Board of Directors Meeting, March 18, 2006, page 10 (Exhibit 3).

In 2006 and 2007, Plaintiffs also received correspondence directly from Defendants that put Plaintiffs on notice of continued water intrusion issues at the sliding glass doors. On July 10, 2006, Robert Sisnroy, P.E., produced a report to Jernigan explaining the results of his visual survey of "chronic water intrusion" conditions at two of the Shipwatch buildings. Sisnroy stated that based on his observations, "it is evident that chronic water intrusion is occurring adjacent to the sliding glass door installations typically at the south walls." Further, Sisnroy cautioned his recommended repair of installing a sill pan with end dams would only be a temporary solution to the leaks, and a long term solution included installation of new doors on an elevated curb.

In 2007, the HOA building committee reported: "it has been well known by passed boards that there has been leakage problem[s] with . . . a number of sliding glass doors. . . . The regime has put forth concerted effort over the years to remedy this problem by caulking." See Building Report, March 9, 2007, page 2. However, leaks continued at the fourth and fifth floor sliding glass doors, and the Board undertook an investigation to determine "whether [the] leakage is from the doors themselves or from other sources." See Building Committee Report, Shipwatch Homeowners' Meeting, January 20, 2007, page 2.

The September 13, 2008 HOA Board meeting minutes stated: "Out of the 276 sliding glass doors (which has been an ongoing project for many years) we have replaced 85. The cost is very high, over \$10,000 per door as they are not stock doors and must be custom made - the cost is for taking off the old door, replacing and shim the door to fit, plus caulking."

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Originally-installed windows:

In this litigation, Plaintiffs demanded CCS pay for the costs of removing originally-installed windows and replacing them with enhanced windows, even though CCS never installed those windows and Plaintiffs knew about damage and water intrusion associated with leaking windows by the mid-2000s. As discussed, Arnie Schaewe (a board member and unit owner) testified that Plaintiffs knew they had leakage problems at various locations including the original bay windows when CCS began work in 2002-2003. Deposition of Arnie Schaewe, page 35, line 9-page 37, line 22. Jernigan noted leaking bay windows in 2007. Deposition of Jernigan, page 307, lines 12-21.

Deck coatings:

In this litigation, Plaintiffs demanded CCS pay for the costs of removing and replacing the exterior deck coatings throughout the buildings even though CCS did not install the original coatings and Plaintiffs knew about damage associated with deteriorated deck coatings by 2008. For example, in September 2008, Jernigan recommended Plaintiffs remove and replace the deck coatings. Deposition of Jernigan, page 332, line 15-page 333, line 13. The September 2008 HOA Board meeting minutes stated, "[t]he Board previously passed on coating the decks because we needed to have money to do other projects . . . and let the warranty expire. If the decks are not recoated very soon, they will deteriorate to point buildings will have to be closed and decks completely redone." Id. The minutes reflected Jernigan "highly recommended" this work. Id. The minutes further reflected the Board's acknowledgment in 2008 that the balcony deck recoating, along with the recommended EIFS replacement and sliding glass door replacement, "were items that either were 'on-going' or [had] been held back from years previous." Id.

**Balcony ceiling coatings:**

In this litigation, Plaintiffs demanded CCS pay for the costs of removing and replacing the balcony ceiling coatings throughout the buildings even though CCS did not install the original coatings and Plaintiffs knew about damage associated with deteriorated deck coatings by 2005. For example, Trombino testified that the breezeway ceilings had "peeling" issues since he started on the board in 2005. Deposition of Trombino, page 43, line 17-page 44, line 2. Schaewe testified that Plaintiffs only "spot repaired" the ceilings from 2002-2013 and that he did not know why Plaintiffs did not make any wholesale repair to the balcony ceiling coatings. Deposition of Schaewe, page 19, lines 2-23.

**Handrails**

In this litigation, Plaintiffs demanded CCS pay for the costs of removing and replacing the exterior handrails throughout the complex even though CCS did not install the original handrails and Plaintiffs knew about damage associated with deteriorated handrails by 2008. For example, in September 2007 and September 2008, the HOA Board meeting minutes discussed the continued need to sand and repaint the railings. The Board decided to remove the repairs to the handrails from the budget "in lieu of more important items." On September 13, 2008, the Board meeting minutes note the decision that the Board "will again delay painting of the railings."

Moreover, Trombino testified CCS is not responsible for the cost of new handrails. Deposition of Trombino, page 44, lines 8-12. Schaewe also testified CCS should not be held responsible for the cost to remove and replace the handrails. Deposition of Schaewe, page 59, line 25-page 60, line 15.

**Metal Framing/DEFS**

In this litigation, Plaintiffs demanded CCS pay for the costs of removing and replacing metal framing at the buildings even though CCS notified Plaintiffs about damaged metal framing and Plaintiffs elected not to make repairs. The contract



documents showed CCS and its subcontractors removed the original EIFS and replaced it with Durock/DEFS at certain locations on the buildings in two phases (from November 2002-December 2003 and September 2003-May 2004). Schaewe testified that during the removal of the original EIFS cladding in 2003-2004, Plaintiffs knew about rusted studs on the oceanside and endwalls of all four buildings, particularly behind originally-installed EIFS adjacent to originally-installed sliding glass door and windows. Deposition of Schaewe, page 37, lines 1-9.

Between 2005-2007, the board learned that water tended to get behind EIFS and then rotted the studs and caused failure. Deposition of Trombino, page 38, lines 11-17. Trombino testified the board did not elect to hire someone to inspect the buildings at that point because [the board] had already decided to remove the EIFS and replace the studs. Id. page 38, lines 18-25. Significantly, on May 9, 2007, CCS reported to Jernigan, "Leaks continue to be a problem at and around the old sliding doors on the beachfront and golf course side of the buildings. We have repeatedly shown you and numerous board members that these doors are leaking and I am sure there is damage that is occurring in the new metal stud walls with the Durock system that we installed during our project [in 2003-2004]." Carolina Concrete Systems, Inc. "Inspection Report" dated May 9, 2007, item 14.

On September 6, 2007 CCS issued a proposal for the removal and replacement of the fourth and fifth floor oceanside balcony sliding glass doors. Importantly, the proposal stated the proposed replacement did not include any repair to the metal studs that support the doors or the new installed wall studs, "for we do not know the extent of any damage ... the doors have been leaking since the new [Durock] wall system was installed ... and has allowed water to enter the wall ... and damaged the metal studs in the wall." Carolina Concrete Systems, Inc. Proposal dated September 6, 2007.

On February 5, 2009, CCS again notified Plaintiffs: "Leaks continue to be a problem at and around the old sliding glass doors on the beachfront and golf course side of the buildings. We have repeatedly shown [Jernigan] and numerous board members that these doors are leaking and I am sure there is damage that is

occurring in the new metal stud walls with the Durock system that was installed during 2003/2004. We are in the process of replacing 17 doors and I recommend the remaining old doors be removed and replaced." Carolina Concrete Systems, Inc. "Building Inspection Report" dated February 5, 2009, page 2.

**Lack of kickout flashing or drip edge flashing:**

On May 22, 2009, Plaintiffs' engineering experts in this litigation (Sutton-Kennerly & Associates, Inc. or "SKA") issued a "Proposal for Engineering Cost Estimate and Design" for the project "... to conduct a cost estimate of the recommended repairs from the Property Assessment and Report by Commercial Building Consultants, dated January 31, 2008 and design details for recommended kickout flashings, drip edge flashing and installation of new EFCO sliding glass doors." SKA's May 22, 2009 proposal reflected Plaintiffs' knowledge based on the January 31, 2008 "Limited Property Assessment Report" about "[o]ther moisture problems [including] lack of a drip edge flashing along the ends of the buildings, and the lack of a kick-out flashing at the transition between the sloped metal roof of the existing stair wells and the exterior facade."

**B. THE EVIDENCE MIRRORED OTHER SOUTH CAROLINA CONSTRUCTION DEFECTS CASE LAW THAT UPHELD THE APPLICABILITY OF THE STATUTE OF LIMITATIONS.**

In Dean v. Ruscon Corporation, 321 S.C. 360, 468 S.E.2d 645 (1996), Dean purchased a building in Charleston on September 1984 after a contractor had inspected it and found it to be structurally sound. Two months later, she noticed a fine crack in the building façade, which she thought might be related to some pile driving done by Ruscon during construction at another location nearby. She immediately hired expert consultants to examine the crack. Several months later Ms. Dean noticed that the original crack had expanded and the façade in that location was beginning to bulge and buckle. A second crack also had appeared in another location. After being informed that the building was no longer structurally

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sound, Dean brought suit against Ruscon in 1991. At trial, the court directed a verdict against Dean, finding as a matter of law that the statute of limitations expired.

On appeal, the Supreme Court affirmed, holding that the statute of limitations began to run in November 1984 when Dean initially discovered the crack. The court said, "[b]ecause Dean had notice in November 1984 that she may have a cause of action against Ruscon, there is no need to toll the statute of limitations beyond that date." (emphasis in original). Dean, 321 S.C. at 366, 468 S.E.2d at 647. Further, the court said, "Dean's subsequent failure to act with reasonable diligence in pursuing such claim is no reason to toll the statute of limitations until such time as further damage evolved." Id. Moreover, the court said, "The fact that Dean may not have comprehended in 1984 that the original crack would expand causing the building to ultimately buckle is immaterial." Id.

In a similar case, the court upheld summary judgment for the defendant based on the statute of limitations in Barr v. City of Rock Hill, 330 S.C. 640, 500 S.E.2d 157 (Ct. App. 1998). The court held a termite inspection report noting moisture in the crawl space of the Plaintiffs' house was sufficient notice of water damage to start the running of the statute of limitations.

In this case, Plaintiffs' clearly knew about possible claims for damage from water intrusion before July 12, 2009, as evidenced by the deposition testimony of Schaewe, Trombino, and Jernigan. In addition, HOA board meeting minutes clearly documented numerous discussions surrounding continued issues involving leaks at the sliding glass doors and attempted piece-meal repairs short of removal and replacement.

#### CONCLUSION

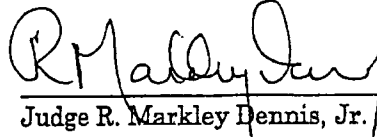
For these reasons, the Court grants partial summary judgment and strikes the claims associated with (a) EIFS; (b) originally-installed sliding glass doors; (c) originally-installed windows; (d) deck coatings; (e) balcony ceiling coatings; (f) handrails; (g) metal framing behind originally-installed EIFS and adjacent to originally-installed sliding glass doors and windows; and (h) lack of kickout flashing

RWJ 13

or drip edge flashing from Plaintiffs' claims in this litigation. See Dean v. Ruscon Corporation, 321 S.C. 360, 468 S.E.2d 645 (1996). The litigation continues for the remaining issues.

Charleston, South Carolina

July 27, 2015

  
\_\_\_\_\_  
Judge R. Markley Dennis, Jr.

RMD/14

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2012-CP-10-3857

FILED  
2015 JUL 28 PM 4:33  
JULIE J. ARMSTRONG  
CLERK OF COURT

Shipwatch Condominium Association, Inc., .....Appellant,

v.

Carolina Concrete Systems, Inc.; Sisnroy Engineering, LLC; Robert G. Sisnroy, individually;  
Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Spectec, Inc.; Sonneborn, Inc.;  
Chimney Sweeps, Inc.; Low Country Chimneys, Inc.; EFCO Corp.; W.C. Johnston Architectural  
Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; Acrocrete, Inc.; BASF Corp.;  
Gary Freeman Architect, Inc.; Gary Freeman, individually,

Of Whom, Carolina Concrete Systems, Inc.; Sisnroy Engineering, LLC; Robert G. Sisnroy,  
individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Sonneborn, Inc.;  
EFCO Corp.; W.C. Johnston Architectural Sales, Inc.; Charleston Glass Company, Inc.; First  
Exteriors, LLC; Acrocrete, Inc.; BASF Corp.; Gary Freeman Architect, Inc.; Gary Freeman,  
individually, are,

..... Respondents.

CERTIFICATE OF SERVICE

I, Frances Klotsch, an employee of Robertson Hollingsworth & Flynn, hereby certify that I have  
served parties in this action with a copy of the document(s) via U.S. Mail and/or Electronic mail as follows:

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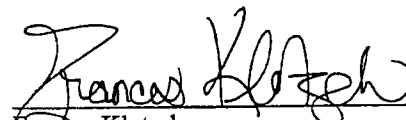
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Frances Klotsch

July 28, 2015

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2012-CP-10-3858

FILED  
2015 JUL 28 PM 4:00  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

Oscar Mendiondo, individually and as representative of a class of similarly situated owners of  
condominium units in the horizontal property regime known as Shipwatch Condominiums,  
..... Appellant,

v.

Carolina Concrete Systems, Inc.; Sisnroy Engineering, LLC; Robert G. Sisnroy, individually;  
Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Spectec, Inc.; Sonneborn, Inc.;  
Chimney Sweeps, Inc.; Low Country Chimneys, Inc.; EFCO Corp.; W.C. Johnston Architectural  
Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; Acrocrete, Inc.; BASF Corp.;  
Gary Freeman Architect, Inc.; Gary Freeman, individually, ..... Defendants,

Of Which, Carolina Concrete Systems, Inc.; Sisnroy Engineering, LLC; Robert G. Sisnroy,  
individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Sonneborn, Inc.;  
EFCO Corp.; W.C. Johnston Architectural Sales, Inc.; Charleston Glass Company, Inc.; First  
Exteriors, LLC; Acrocrete, Inc.; BASF Corp.; Gary Freeman Architect, Inc.; Gary Freeman,  
individually,  
are ..... Respondents.

NOTICE OF APPEAL

Appellants hereby appeal the Order granting Summary Judgment in Part to Carolina Concrete  
Systems, Inc. That motion was heard October 27, 2014, and the Order filed on July 28, 2015.



An appeal was filed on December 30, 2014 as to the oral order of October 27, 2014 granting Summary Judgment in part to Carolina Concrete Systems, and as to the denial of Appellants' Motion for Rehearing entered on December 5, 2014. That previous appeal was dismissed by the South Carolina Court of Appeals on July 2, 2015, on the basis that a written order had not been entered by the lower court. The above-described written order was entered on July 28, 2015, and this Notice of Appeal is for that written order.

July 28, 2015



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**PRO SE DEFENDANT**

STATE OF SOUTH CAROLINA )

COUNTY OF CHARLESTON )

Shipwatch Condominium  
Association, Inc. )

Plaintiff, )

v. )

Carolina Concrete Systems, Inc.; )  
Sisnroy Engineering, LLC; Robert G. )  
Sisnroy, individually; Terrence J. )  
McKelvey; Glasgow Roofing, Inc.; )  
GlassTec, Inc.; Spectech, Inc.; )  
Sonneborn, Inc.; Chimney Sweeps, )  
Inc.; Low Country Chimneys, Inc.; )  
EFCO Corp.; W.C. Johnston )  
Architectural Sales, Inc.; Charleston )  
Glass Company, Inc.; First Exteriors, )  
LLC; Acrocrete, Inc.; BASF Corp.; )  
Gary Freeman Architect, Inc.; Gary )  
Freeman, individually, )

Defendants. )

STATE OF SOUTH CAROLINA )

COUNTY OF CHARLESTON )

Oscar Mendiondo individually and )  
as representative of a class similarly )  
situated Owners of Condominium )  
Units in the Horizontal Property )  
Regime known as Shipwatch )  
Condominiums )

Plaintiffs, )

v. )

Carolina Concrete Systems, Inc.; )  
Sisnroy Engineering, LLC; Robert G. )

IN THE COURT OF COMMON PLEAS

Docket No.: 2012-CP-10-3857

ORDER GRANTING DEFENDANT  
CAROLINA CONCRETE SYSTEMS,  
INC. PARTIAL SUMMARY  
JUDGMENT

FILED  
2015 JUL 28 PM 12:15  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

IN THE COURT OF COMMON PLEAS

Docket No.: 2012-CP-10-3858

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Sisnroy, individually; Terrence J. )  
 McKelvey; Glasgow Roofing, Inc.; )  
 GlassTec, Inc.; Spectech, Inc.; )  
 Sonneborn, Inc.; Chimney Sweeps, )  
 Inc.; Low Country Chimneys, Inc.; )  
 EFCO Corp.; W.C. Johnston )  
 Architectural Sales, Inc.; Charleston )  
 Glass Company, Inc.; First Exteriors, )  
 LLC; Acrocrete, Inc.; BASF Corp.; )  
 Gary Freeman Architect, Inc.; Gary )  
 Freeman, individually, )  
 )  
 Defendants. )

This matter came before the Court on Defendant Carolina Concrete Systems, Inc.'s ("CCS") summary judgment motion based on the statute of limitations. As discussed in this order the court grants partial summary judgment. This Order does not dismiss the entire litigation and allows Plaintiffs to continue the lawsuit for claims concerning work not barred by the statute of limitations.

Plaintiffs filed these lawsuits on June 13, 2012 alleging defective and deficient construction at the Shipwatch Condominiums located within the Wild Dunes development of Isle of Palms, South Carolina. Plaintiffs served CCS on July 12, 2012. The Shipwatch project consists of four oceanfront buildings constructed around 1985 with EIFS exterior cladding. Neither CCS nor any of the defendants in this litigation had any involvement with the original construction.

From 2002-2010, CCS acted as the general contractor for various piece-meal repairs and renovations to the buildings at the direction of the Shipwatch Homeowners' Association ("HOA") and various on-site property managers. The work included partial replacement of some (but not all) of the original EIFS (Exterior Insulation Finish System) cladding with a Durock Wall System ("DEFS"); removal of some (but not all) original windows and sliding glass doors at certain locations on the endwalls, ocean-side, and street-side elevations; reframing of chimneys; and recoating of certain balcony and corridor decks. CCS' contracts with Plaintiffs included:

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November 5, 2002: Contract for chimney repairs, waterproofing repairs, corridor/balcony repairs, and traffic coatings;

September 22, 2003: Contract for re-sloping of balconies, window and door repairs, removal of EIFS and replacement with Durock Stucco System on endwalls and fourth and fifth floor streetside, removal and replacement of stucco at stairwell and elevator towers, repairs to privacy walls and chimneys; and

December 19, 2008: Contract for removal and replacement of 16 EFCO doors in specified units.

The work took place primarily between 2002-2005 and 2008-2011.

#### STANDARD FOR STATUTE OF LIMITATIONS

The statute of limitations starts to run when the "cause of action shall have accrued." S.C. Code Ann. § 15-3-20. "Generally, a cause of action accrues under South Carolina law 'the moment the defendant breaches a duty owed to the plaintiff.'" Barr v. City of Rock Hill, 330 S.C. 640, 644, 500 S.E.2d 157, 159-60 (Ct. App. 1998). In some circumstances, however, the "discovery rule" provides an exception to the general rule and tolls the statute of limitations until such time as "the person knew or by the exercise of reasonable diligence should have known that he had a cause of action." S.C. Code Ann. § 15-3-535. A person has constructive notice of a cause of action if he or she knows of "facts and circumstances of an injury [that] would put a person of common knowledge and experience on notice that some right . . . has been invaded or that some claim against another party might exist." Id. "The statute of limitations begins to run from this point and not when advice of counsel is sought or a full-blown theory of recovery developed." Snell v. Columbia Gun Exchange, Inc., 276 S.C. 301, 303, 278 S.E.2d 333, 334 (1981). The analysis is an objective one, focusing not on the subjective knowledge of the individual plaintiff, but on whether a reasonable person with knowledge of the facts and circumstances should have been placed on notice of an injury.

Likewise, the inability of the plaintiff to discover evidence of culpability against a particular defendant within the limitations period is irrelevant. Republic

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Contracting Corp., South Carolina Dept. of Highways and Public Transportation, 332 S.C. 197, 208, 503 S.E.2d 761, 767 (Ct. App. 1998). In addition, the "[f]ailure of the injured party to comprehend the full extent of the damages . . . is immaterial." Wiggins v. Edwards, 314 S.C. 126, 442 S.E.2d 169 (1994).

In Carolina Marine Handling, Inc. v. Lasch, 363 S.C. 169, 609 S.E.2d 548 (Ct. App. 2005), the Court wrote:

Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote response by giving security and stability to human affairs." The cornerstone policy consideration underlying statutes of limitations is the laudable goal of law to promote and achieve finality in litigation. Significantly, "statutes of limitations provide potential defendants with certainty that after a period of time, they will not be hailed [sic] into court to defend time-barred claims. Moreover, limitation periods discourage plaintiffs from sitting on their rights." Statutes of limitations are, indeed, fundamental to our judicial system.

Id., 363 S.C. at 175-176, 609 S.E.2d at 552 (citations omitted).

Statutes of limitations "are designed to promote justice by forcing parties to pursue a case in a timely manner." State ex rel. Condon v. City of Columbia, 528 S.E. 2d 408, 413 (S.C. 2000). These statutes "encourage plaintiffs to initiate actions promptly while evidence is fresh and a court will be able to judge more accurately." Moriarty v. Garden Sanctuary Church of God, 511 S.E.2d 699, 706 (S.C. Ct. App. 1999), aff'd, 534 S.E.2d 672 (S.C. 2000), overruled in part on other grounds, 606 S.E.2d 475 (S.C. 2004). Thus, as the South Carolina Court of Appeals has observed:

Statutes of limitations are not simply technicalities. On the contrary, they have long been respected as fundamental to a well-ordered judicial system. . . . Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs. . . . One purpose of a statute of limitations is to 'to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights.' . . . Another purpose of a statute of limitations is to protect potential defendants from protracted fear of litigation. . . .

City of N. Myrtle Beach v. Lewis-Davis, 599 S.E.2d 462, 465 (S.C. Ct. App. 2004)  
(internal citations omitted).

### DISCUSSION

The applicable statute of limitations is three years.<sup>1</sup> CCS does not dispute that any work performed after the applicable date for statute of limitations purposes should not be included with this order; CCS challenges, however, certain claims based on notice to Plaintiffs that implicates the statute of limitations. Thus, the inquiry is what Plaintiffs knew or should have known before July 12, 2009.

Plaintiffs' assert in this litigation that CCS and the other defendants should be liable for the costs associated with the repairs arising from the failure of original building components such as EIFS and original sliding glass doors and windows (which were not installed, repaired, or replaced by CCS or any of the defendants in this litigation); however, the applicable statutes of limitations bar those claims because the undisputed facts show that Plaintiffs knew about water intrusion and alleged construction defects more than three years before commencing this litigation.

**A. THE UNDISPUTED TESTIMONY FROM PLAINTIFFS' BOARD MEMBERS AND REGIME MANAGER IS THAT PLAINTIFFS KNEW ABOUT MANY OF THE ISSUES THEY ASSERT IN THIS LITIGATION WELL BEFORE ANY THREE-YEAR PERIOD INVOLVING THE STATUTE OF LIMITATIONS**

Plaintiffs clearly knew about various water intrusion issues at the Shipwatch project at least 5-10 years before filing this litigation and, clearly, well before July 12, 2009 (three years before Plaintiffs served CCS with pleadings). In fact, many of the damages claimed in this lawsuit were recommended to Plaintiffs for replacement in 2008 by Plaintiffs regime manager because of water intrusion or

<sup>1</sup> S.C. Code Ann. § 15-3-530 applies a three-year statute of limitations to Plaintiffs' claims of negligence, aiding and abetting a breach of fiduciary duty, breach of contract, common-law warranty, and strict liability in tort. Further, S.C. Ann. § 39-5-150 provides a three-year statute of limitations on Plaintiffs' claims under the South Carolina Unfair Trade Practices Act.

*Ray/s*



other damage. In addition, Arnie Schaewe (a board member and unit owner) testified that Plaintiffs knew about water intrusion problems into the buildings in 2003. Deposition of Arnie Schaewe, page 35, lines 9-19. Further, Schaewe testified Plaintiffs had leakage problems at various locations including the end walls, oceanside sliding glass doors, and bay windows when CCS began work in 2002-2003. Id., page 35, line 9-page 37, line 22.

Accordingly, the statute of limitations bars the following claims:

**Originally-installed EIFS (Exterior Insulation Finish System):**

In this litigation, Plaintiffs demanded CCS pay for the costs of removing the remaining EIFS on the exterior of the buildings and replacing the exterior cladding on the buildings, even though CCS never installed the EIFS and Plaintiffs knew about damage and water intrusion associated with EIFS by the mid-2000s. For example, Plaintiffs' former board member Fred Trombino testified that during his tenure on the board between 2005-2007, the board knew EIFS was problematic and not the right application for a coastal environment. Deposition of Fred Trombino, page 37, line 24-page 38, line 6. Specifically, Trombino said the board knew that water tended to get trapped behind EIFS, which caused the metal studs to rot and fail. Id. page 38, lines 11-17. However, the board elected not to further inspect the buildings at that time because it had decided to remove the EIFS cladding. Id. page 38, lines 18-25.

The regime manager (Linda Jernigan), whom Plaintiffs have employed since 2005, testified she told Plaintiffs in September 2008 that she had obtained a contract to remove and replace the originally-installed EIFS off of all buildings at a projected cost of \$1,800,000 (or approximately \$423,060 per building). Deposition of Linda Jernigan, page 330, line 2-page 331, line 18. The September 2008 HOA Board Minutes also detailed that Jernigan told Plaintiffs that the buildings showed water intrusion problems when they opened up the buildings previously for EIFS removal at certain locations and that Plaintiffs should anticipate additional

problems if Plaintiffs moved forward with her recommendation about complete removal of the remaining EIFS. Id., page 333, line 14-page 335, line 10.

**Originally-installed sliding glass doors:**

In this litigation, Plaintiffs demanded CCS pay for the costs of removing originally-installed sliding glass doors and replacing those doors with modern versions, even though CCS never installed the original sliding glass doors and Plaintiffs knew about damage and water intrusion associated with leaking sliding glass doors by the mid-2000s. Arnie Schaewe (a board member and unit owner) testified that Plaintiffs knew they had leakage problems at various locations including the oceanside sliding glass doors when CCS began work in 2002-2003. Deposition of Arnie Schaewe, page 35, line 9-page 37, line 22. In September 2008, Jernigan recommended Plaintiffs remove and replace the "leaking sliding glass doors" because of problems that had been "on-going" or that had not been funded by Plaintiffs in previous years. Deposition of Jernigan, page 332, line 15-page 333, line 13. Jernigan testified that leaking sliding glass doors have been a problem at Shipwatch since she returned to manage the property in February 2005. Id., page 219, lines 8-18; page 230, lines 9-12.

Trombino testified he knew about leaking sliding glass doors when he joined the Board in 2005 when Jernigan told him the project had problems with the sliding glass doors. Trombino, page 132, line 22-page 133, line 14. Beginning in 2006, the Board replaced a certain number of leaking sliding glass doors (approximately 10-15 per year) based mainly upon homeowner complaints. Schaewe, page 78, line 11-page 79, line 6.

In addition, HOA Board meeting minutes between 2005-2007 clearly reflect Plaintiffs' knowledge and ongoing discussions about repairing and replacing leaking sliding glass doors. In 2005, the Board noted leaks continued at some sliding glass doors, including the fifth floor penthouse doors likely caused by sunlight deteriorating the rubber seals and caulking. See Shipwatch Board of Directors Meeting, April 1, 2005, page 2; and Shipwatch Board of Director Meeting,

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September 16-17, 2005, page 2. In 2006, the Board discussed that leaking sliding glass doors continued to be problematic, and the leaking persisted despite repairs using caulk. See Shipwatch Board of Directors Meeting, March 18, 2006, page 10 (Exhibit 3).

In 2006 and 2007, Plaintiffs also received correspondence directly from Defendants that put Plaintiffs on notice of continued water intrusion issues at the sliding glass doors. On July 10, 2006, Robert Sisnroy, P.E., produced a report to Jernigan explaining the results of his visual survey of "chronic water intrusion" conditions at two of the Shipwatch buildings. Sisnroy stated that based on his observations, "it is evident that chronic water intrusion is occurring adjacent to the sliding glass door installations typically at the south walls." Further, Sisnroy cautioned his recommended repair of installing a sill pan with end dams would only be a temporary solution to the leaks, and a long term solution included installation of new doors on an elevated curb.

In 2007, the HOA building committee reported: "it has been well known by passed boards that there has been leakage problem[s] with . . . a number of sliding glass doors. . . . The regime has put forth concerted effort over the years to remedy this problem by caulking." See Building Report, March 9, 2007, page 2. However, leaks continued at the fourth and fifth floor sliding glass doors, and the Board undertook an investigation to determine "whether [the] leakage is from the doors themselves or from other sources." See Building Committee Report, Shipwatch Homeowners' Meeting, January 20, 2007, page 2.

The September 13, 2008 HOA Board meeting minutes stated: "Out of the 276 sliding glass doors (which has been an ongoing project for many years) we have replaced 85. The cost is very high, over \$10,000 per door as they are not stock doors and must be custom made - the cost is for taking off the old door, replacing and shim the door to fit, plus caulking."

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Originally-installed windows:

In this litigation, Plaintiffs demanded CCS pay for the costs of removing originally-installed windows and replacing them with enhanced windows, even though CCS never installed those windows and Plaintiffs knew about damage and water intrusion associated with leaking windows by the mid-2000s. As discussed, Arnie Schaewe (a board member and unit owner) testified that Plaintiffs knew they had leakage problems at various locations including the original bay windows when CCS began work in 2002-2003. Deposition of Arnie Schaewe, page 35, line 9-page 37, line 22. Jernigan noted leaking bay windows in 2007. Deposition of Jernigan, page 307, lines 12-21.

Deck coatings:

In this litigation, Plaintiffs demanded CCS pay for the costs of removing and replacing the exterior deck coatings throughout the buildings even though CCS did not install the original coatings and Plaintiffs knew about damage associated with deteriorated deck coatings by 2008. For example, in September 2008, Jernigan recommended Plaintiffs remove and replace the deck coatings. Deposition of Jernigan, page 332, line 15-page 333, line 13. The September 2008 HOA Board meeting minutes stated, "[t]he Board previously passed on coating the decks because we needed to have money to do other projects . . . and let the warranty expire. If the decks are not recoated very soon, they will deteriorate to point buildings will have to be closed and decks completely redone." Id. The minutes reflected Jernigan "highly recommended" this work. Id. The minutes further reflected the Board's acknowledgment in 2008 that the balcony deck recoating, along with the recommended EIFS replacement and sliding glass door replacement, "were items that either were 'on-going' or [had] been held back from years previous." Id.

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### Balcony ceiling coatings:

In this litigation, Plaintiffs demanded CCS pay for the costs of removing and replacing the balcony ceiling coatings throughout the buildings even though CCS did not install the original coatings and Plaintiffs knew about damage associated with deteriorated deck coatings by 2005. For example, Trombino testified that the breezeway ceilings had "peeling" issues since he started on the board in 2005. Deposition of Trombino, page 43, line 17-page 44, line 2. Schaewe testified that Plaintiffs only "spot repaired" the ceilings from 2002-2013 and that he did not know why Plaintiffs did not make any wholesale repair to the balcony ceiling coatings. Deposition of Schaewe, page 19, lines 2-23.

### Handrails

In this litigation, Plaintiffs demanded CCS pay for the costs of removing and replacing the exterior handrails throughout the complex even though CCS did not install the original handrails and Plaintiffs knew about damage associated with deteriorated handrails by 2008. For example, in September 2007 and September 2008, the HOA Board meeting minutes discussed the continued need to sand and repaint the railings. The Board decided to remove the repairs to the handrails from the budget "in lieu of more important items." On September 13, 2008, the Board meeting minutes note the decision that the Board "will again delay painting of the railings."

Moreover, Trombino testified CCS is not responsible for the cost of new handrails. Deposition of Trombino, page 44, lines 8-12. Schaewe also testified CCS should not be held responsible for the cost to remove and replace the handrails. Deposition of Schaewe, page 59, line 25-page 60, line 15.

### Metal Framing/DEFS

In this litigation, Plaintiffs demanded CCS pay for the costs of removing and replacing metal framing at the buildings even though CCS notified Plaintiffs about damaged metal framing and Plaintiffs elected not to make repairs. The contract

documents showed CCS and its subcontractors removed the original EIFS and replaced it with Durock/DEFS at certain locations on the buildings in two phases (from November 2002-December 2003 and September 2003-May 2004). Schaeuwe testified that during the removal of the original EIFS cladding in 2003-2004, Plaintiffs knew about rusted studs on the oceanside and endwalls of all four buildings, particularly behind originally-installed EIFS adjacent to originally-installed sliding glass door and windows. Deposition of Schaeuwe, page 37, lines 1-9.

Between 2005-2007, the board learned that water tended to get behind EIFS and then rotted the studs and caused failure. Deposition of Trombino, page 38, lines 11-17. Trombino testified the board did not elect to hire someone to inspect the buildings at that point because [the board] had already decided to remove the EIFS and replace the studs. Id. page 38, lines 18-25. Significantly, on May 9, 2007, CCS reported to Jernigan, "Leaks continue to be a problem at and around the old sliding doors on the beachfront and golf course side of the buildings. We have repeatedly shown you and numerous board members that these doors are leaking and I am sure there is damage that is occurring in the new metal stud walls with the Durock system that we installed during our project [in 2003-2004]." Carolina Concrete Systems, Inc. "Inspection Report" dated May 9, 2007, item 14.

On September 6, 2007 CCS issued a proposal for the removal and replacement of the fourth and fifth floor oceanside balcony sliding glass doors. Importantly, the proposal stated the proposed replacement did not include any repair to the metal studs that support the doors or the new installed wall studs, "for we do not know the extent of any damage ... the doors have been leaking since the new [Durock] wall system was installed ... and has allowed water to enter the wall ... and damaged the metal studs in the wall." Carolina Concrete Systems, Inc. Proposal dated September 6, 2007.

On February 5, 2009, CCS again notified Plaintiffs: "Leaks continue to be a problem at and around the old sliding glass doors on the beachfront and golf course side of the buildings. We have repeatedly shown [Jernigan] and numerous board members that these doors are leaking and I am sure there is damage that is

occurring in the new metal stud walls with the Durock system that was installed during 2003/2004. We are in the process of replacing 17 doors and I recommend the remaining old doors be removed and replaced." Carolina Concrete Systems, Inc. "Building Inspection Report" dated February 5, 2009, page 2.

**Lack of kickout flashing or drip edge flashing:**

On May 22, 2009, Plaintiffs' engineering experts in this litigation (Sutton-Kennerly & Associates, Inc. or "SKA") issued a "Proposal for Engineering Cost Estimate and Design" for the project "... to conduct a cost estimate of the recommended repairs from the Property Assessment and Report by Commercial Building Consultants, dated January 31, 2008 and design details for recommended kickout flashings, drip edge flashing and installation of new EFCO sliding glass doors." SKA's May 22, 2009 proposal reflected Plaintiffs' knowledge based on the January 31, 2008 "Limited Property Assessment Report" about "[o]ther moisture problems [including] lack of a drip edge flashing along the ends of the buildings, and the lack of a kick-out flashing at the transition between the sloped metal roof of the existing stair wells and the exterior facade."

**B. THE EVIDENCE MIRRORED OTHER SOUTH CAROLINA CONSTRUCTION DEFECTS CASE LAW THAT UPHELD THE APPLICABILITY OF THE STATUTE OF LIMITATIONS.**

In Dean v. Ruscon Corporation, 321 S.C. 360, 468 S.E.2d 645 (1996), Dean purchased a building in Charleston on September 1984 after a contractor had inspected it and found it to be structurally sound. Two months later, she noticed a fine crack in the building façade, which she thought might be related to some pile driving done by Ruscon during construction at another location nearby. She immediately hired expert consultants to examine the crack. Several months later Ms. Dean noticed that the original crack had expanded and the façade in that location was beginning to bulge and buckle. A second crack also had appeared in another location. After being informed that the building was no longer structurally

RO/12

sound, Dean brought suit against Ruscon in 1991. At trial, the court directed a verdict against Dean, finding as a matter of law that the statute of limitations expired.

On appeal, the Supreme Court affirmed, holding that the statute of limitations began to run in November 1984 when Dean initially discovered the crack. The court said, "[b]ecause Dean had notice in November 1984 that she may have a cause of action against Ruscon, there is no need to toll the statute of limitations beyond that date." (emphasis in original). Dean, 321 S.C. at 366, 468 S.E.2d at 647. Further, the court said, "Dean's subsequent failure to act with reasonable diligence in pursuing such claim is no reason to toll the statute of limitations until such time as further damage evolved." Id. Moreover, the court said, "The fact that Dean may not have comprehended in 1984 that the original crack would expand causing the building to ultimately buckle is immaterial." Id.

In a similar case, the court upheld summary judgment for the defendant based on the statute of limitations in Barr v. City of Rock Hill, 330 S.C. 640, 500 S.E.2d 157 (Ct. App. 1998). The court held a termite inspection report noting moisture in the crawl space of the Plaintiffs' house was sufficient notice of water damage to start the running of the statute of limitations.

In this case, Plaintiffs' clearly knew about possible claims for damage from water intrusion before July 12, 2009, as evidenced by the deposition testimony of Schaewe, Trombino, and Jernigan. In addition, HOA board meeting minutes clearly documented numerous discussions surrounding continued issues involving leaks at the sliding glass doors and attempted piece-meal repairs short of removal and replacement.

#### CONCLUSION

For these reasons, the Court grants partial summary judgment and strikes the claims associated with (a) EIFS; (b) originally-installed sliding glass doors; (c) originally-installed windows; (d) deck coatings; (e) balcony ceiling coatings; (f) handrails; (g) metal framing behind originally-installed EIFS and adjacent to originally-installed sliding glass doors and windows; and (h) lack of kickout flashing



or drip edge flashing from Plaintiffs' claims in this litigation. See Dean v. Ruscon Corporation, 321 S.C. 360, 468 S.E.2d 645 (1996). The litigation continues for the remaining issues.

Charleston, South Carolina

July 27, 2015

RMD/14

R. Markley Dennis, Jr.  
Judge R. Markley Dennis, Jr.

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Circuit Case No. 2012-CP-10-3858

FILED  
2015 JUL 28 PM 4:32  
JULIE J. ARISTRONG  
CLERK OF COURT

Oscar Mendiondo, individually and as representative of a class of similarly  
situated owners of condominium units in the horizontal property regime known  
as Shipwatch Condominiums, .....Appellants,

v.

Carolina Concrete Systems, Inc.; Sisnroy Engineering, LLC; Robert G. Sisnroy, individually;  
Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Spectec, Inc.; Sonneborn, Inc.;  
Chimney Sweeps, Inc.; Low Country Chimneys, Inc.; EFCO Corp.; W.C. Johnston Architectural  
Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; Acrocrete, Inc.; BASF Corp.;  
Gary Freeman Architect, Inc.; Gary Freeman, individually,

Of Whom, Carolina Concrete Systems, Inc.; Sisnroy Engineering, LLC; Robert G. Sisnroy,  
individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Sonneborn, Inc.;  
EFCO Corp.; W.C. Johnston Architectural Sales, Inc.; Charleston Glass Company, Inc.; First  
Exteriors, LLC; Acrocrete, Inc.; BASF Corp.; Gary Freeman Architect, Inc.; Gary Freeman,  
individually, are,..... Respondents.

CERTIFICATE OF SERVICE

I, Frances Klotsch, an employee of Robertson Hollingsworth & Flynn, hereby certify that I have  
served parties in this action with a copy of the document(s) via U.S. Mail and/or Electronic Mail as follows:

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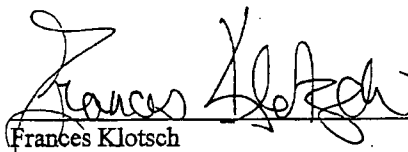
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**PRO SE DEFENDANT**

  
\_\_\_\_\_  
Frances Klotsch

July 28, 2015

STATE OF SOUTH CAROLINA )

COUNTY OF CHARLESTON )

SHIPWATCH CONDOMINIUM )  
ASSOCIATION, INC., )

Plaintiff, )

vs. )

CAROLINA CONCRETE SYSTEMS, INC., )  
GLASSTEC, INC., EFCO CORP., SISNROY )  
ENGINEERING, LLC; ET AL )

Defendant. )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

CASE NO.: 2012-CP-10-3857

MOTION AND ORDER INFORMATION

FORM AND COVERSHEET

Plaintiff's Attorney:

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E-mail: staceycanaday@tgdpa.com Other: \_\_\_\_\_

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

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

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

SECTION I: Hearing Information

Nature of Motion: MOTION FOR SUMMARY JUDGMENT

Estimated Time Needed: 15 MINUTES

Court Reporter Needed: ☒ YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

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

Signature of Attorney for ☐ Plaintiff/☒ Defendant

10/28/2014

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ \_\_\_\_\_

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

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

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

Name of Court Reporter: \_\_\_\_\_

☐ Other: \_\_\_\_\_

|                                                                                                                                                               |                                     |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|
| <b>JUDGE'S SECTION</b>                                                                                                                                        |                                     |
| <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order.<br><input type="checkbox"/> Other: _____                                    | JUDGE CODE _____<br><br>Date: _____ |
| <b>CLERK'S VERIFICATION</b>                                                                                                                                   |                                     |
| Collected by: _____ Date Filed: _____<br><input type="checkbox"/> MOTION FEE COLLECTED: \$ _____<br><input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____ |                                     |

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

Shipwatch Condominium Association, )  
Inc., )

Plaintiff, )

VS. )

Carolina Concrete Systems, Inc.; Sisnroy )  
Engineering, LLC; Robert G. Sisnroy, )  
individually; Terrence J. McKelvey; )  
Glasgow Roofing, Inc.; GlassTec, Inc.; )  
Spectech, Inc.; Sonnebom, Inc.; Chimney )  
Sweeps, Inc.; Low Country Chimneys, Sales )  
Inc.; Charleston Glass Company, Inc.; First )  
Exteriors, LLC; Acrocrete, Inc.; BASF Corp.)  
Gary Freeman Architect, EFCO Corp.; W.C.)  
Johnston Architectural Inc.; Gary Freeman, )  
individually; )

Defendants. )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO. 2012-CP-10-3857

DEFENDANT GLASSTEC, INC.'S  
NOTICE OF MOTION AND MOTION  
FOR SUMMARY JUDGMENT AS TO  
THE PLAINTIFFS' CLAIMS AND  
DEFENDANT CAROLINA CONCRETE  
SYSTEMS, INC.'S CROSS-CLAIMS

FILED  
2014 OCT 29 PM 4:29  
JULIE J. ARMSTRONG  
CLERK OF COURT

TO: R. PATRICK FLYNN, ESQ., ATTORNEY FOR PLAINTIFFS, and DAVID S.  
COBB, ESQ., ATTORNEY FOR DEFENDANT CAROLINA CONCRETE SYSTEMS,  
INC.:

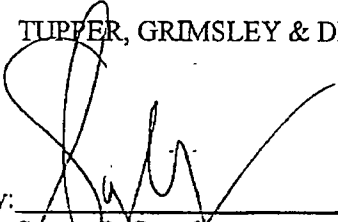
PLEASE TAKE NOTICE THAT ten (10) days after the service of this Notice upon you,  
or as soon thereafter as counsel may be heard, the undersigned attorney for Defendant GlassTec,  
Inc. ("GlassTec") will move before the presiding Judge for the Ninth Judicial Circuit in  
Charleston County for an Order pursuant to Rule 56 of the South Carolina Rules of Civil  
Procedure granting GlassTec's Motion for Summary Judgment as to both the Plaintiffs' and  
Defendant Carolina Concrete Systems, Inc.'s claims against it on the grounds that the Plaintiffs  
have failed to file and serve their claims against GlassTec within the applicable statute of  
limitations, that the majority of GlassTec's work on the subject project, specifically including  
work on bay windows, was removed and replaced by another party prior to the inception of this  
lawsuit, that there is no special relationship between GlassTec and Defendant Carolina Concrete

Systems, Inc. to support its claims against GlassTec, and that there is no genuine issue as to any material fact and GlassTec is therefore entitled to judgment as a matter of law.

This motion will be further based upon the pleadings, discovery, oral arguments and any affidavits and memorandum of law that may be filed prior to a hearing on this matter.

Respectfully submitted,

TUPPER, GRIMSLEY & DEAN, P.A.

By: 

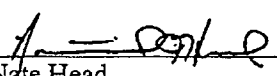
Stacey P. Canaday  
Attorney for GlassTec, Inc.  
Post Office Box 2055  
Beaufort, South Carolina 29901-2055  
(843) 524-1116

Beaufort, South Carolina

Dated: October 28, 2014

**CERTIFICATE OF MAILING**

I hereby certify that I have mailed a copy of the  
Above and foregoing to counsel of record in said  
Proceeding to his office address with sufficient  
Postage affixed hereto, this 28<sup>th</sup> day of  
October, 2014.

  
Nate Head



STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

Shipwatch Condominium Association, )  
Inc., )

Plaintiff, )

VS. )

Carolina Concrete Systems, Inc.; Sisroy )  
Engineering, LLC; Robert G. Sisroy, )  
individually; Terrence J. McKelvey; )  
Glasgow Roofing, Inc.; GlassTec, Inc.; )  
Spectech, Inc.; Sonnebom, Inc.; Chimney )  
Sweeps, Inc.; Low Country Chimneys, Sales )  
Inc.; Charleston Glass Company, Inc.; First )  
Exteriors, LLC; Acrocrete, Inc.; BASF Corp.)  
Gary Freeman Architect, EFCO Corp.; W.C.)  
Johnston Architectural Inc.; Gary Freeman, )  
individually; )

Defendants. )

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

Oscar Mendiondo, Individually and as )  
Representative of a class of similarly )  
Situated owners of condominium units at )  
The horizontal property regime known as )  
Shipwatch Condominiums )  
Plaintiffs, )

VS. )

Carolina Concrete Systems, Inc.; Sisroy )  
Engineering, LLC; Robert G. Sisroy, )  
individually; Terrence J. McKelvey; )  
Glasgow Roofing, Inc.; GlassTec, Inc.; )  
Spectech, Inc.; Sonnebom, Inc.; Chimney )  
Sweeps, Inc.; Low Country Chimneys, Sales )  
Inc.; Charleston Glass Company, Inc.; First )  
Exteriors, LLC; Acrocrete, Inc.; BASF Corp.)  
Gary Freeman Architect, EFCO Corp.; W.C.)  
Johnston Architectural Inc.; Gary Freeman, )  
individually; )

Defendants. )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO. 2012-CP-10-3857

DEFENDANT GLASSTEC, INC.'S  
MEMORANDUM IN SUPPORT OF  
MOTION FOR SUMMARY JUDGMENT

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO. 2012-CP-10-3858

## FACTS

The Shipwatch project consists of four oceanfront buildings constructed around 1984-85 with EIFS exterior cladding. GlassTec was not involved in the original construction of these buildings. In August of 2001, GlassTec provided two proposals to Bob Clink, then-manager of the Shipwatch Condominium Association (hereinafter referred to as "Shipwatch"), for various window repair work upon the property (copies of two proposals dated August 30, 2001 attached collectively as Exhibit 1). On November 5, 2001, GlassTec provided another proposal for additional work upon the property, to include glass replacement in both windows and sliding glass doors (copy of proposal dated November 5, 2001 attached as Exhibit 2). Throughout 2002, GlassTec purchased and installed a limited number of Starline brand windows for a limited number of units for complete removal and replacement, and also purchased glass for replacement of fogged panels (copy of GlassTec's job cost ledger attached as Exhibit 3). Based upon this ledger, it appears GlassTec performed work in only the following units: A106, 301, 306, B107, 108, 207, 212, 307, 312, 410, 411, C114, 118, 213, 218, 313, D124, 219, 224, 319, 353, 324, 429. Further, minimal work was performed by GlassTec from January through March of 2003, appearing to comprise only removal and replacement of one bay window unit in Unit D319. Materials were ordered for Units A206, B112, and D219 but no labor was associated with those units. By January of 2004, GlassTec was no longer performing any work on the project (copy of letter dated January 25, 2004 from Ron Weaver of GlassTec to Lester Griffin of Shipwatch attached as Exhibit 4).

In 2002, Carolina Concrete Systems (hereinafter referred to as "CCS") acted as the general contractor for various projects at Shipwatch, which included window and door repair in 2003 and 2004 (copy of Application and Certification for Payment dated April 25, 2004 attached as Exhibit 5). On or about October 22, 2003, Defendant Charleston Glass Co., Inc. performed an

inspection of the windows (copy of Charleston Glass invoice dated October 22, 2003 attached as Exhibit 6). Robert Sisnroy inspected the Shipwatch property on December 20, 2003. Mr. Sisnroy produced a memorandum to Lester Griffin of Shipwatch dated January 7, 2004, wherein he states—among other things—that at least some bay windows were apparently inadequately flashed (copy of January 7, 2004 memorandum attached as Exhibit 7). It is unclear, however, which buildings and/or units were inspected. Charleston Glass provided a proposal for work on bay windows on January 7, 2004 (copy of Charleston Glass proposal dated January 7, 2004 attached as Exhibit 8). According to Charleston Glass documents, at least twelve bay windows were to be replaced, with the remaining to be removed, reflashed and reinstalled (copy of March 30, 2004 correspondence from Charleston Glass to CCS attached as Exhibit 9). Charleston Glass sent invoices for bay window work to CCS on March 26, 2004 and October 14, 2004 (copies attached collectively as Exhibit 10). It is apparent that GlassTec was not contacted to inspect the property or provide any repairs as a result of the Sisnroy inspection.

In addition to bay window work, CCS performed other work on various fixed windows and sliding glass doors, which necessarily included work performed by GlassTec in 2002. At no time did GlassTec perform work on behalf of CCS, nor was GlassTec paid by CCS for work it performed in 2002-03.

Plaintiffs filed these lawsuits on June 13, 2012 alleging defective and deficient construction at the Shipwatch Condominiums located within the Wild Dunes development of Isle of Palms, South Carolina. Plaintiffs served GlassTec on or about July 13, 2012.

### **ARGUMENT**

In addition to the arguments asserted herein, GlassTec incorporates by reference those arguments set forth by CCS in its Motion for Summary Judgment, Memorandum in Support, and argument by counsel to the extent all are applicable to the position of GlassTec. GlassTec asserts

that it is entitled to summary judgment as to the Plaintiffs' claims against it on the grounds that the Plaintiffs have failed to file their suit within the applicable statute of limitations. Further, the majority—if not all—of GlassTec's work was removed from the property prior to the suits being filed. With regard to CCS's cross-claims, CCS does not enjoy a special relationship with GlassTec such that CCS is permitted to assert claims against GlassTec. As a result, GlassTec is entitled to summary judgment.

### **I. The Plaintiffs' Claims**

The statute of limitations starts to run when the "cause of action shall have accrued." S.C. Code Ann. § 15-3-20. In order to determine when the cause of action accrues, South Carolina has adopted the "discovery rule" which provides that "the statute begins to run from the date the injury resulting from the wrongful conduct is either discovered or may be discovered by the exercise of reasonable diligence." Dillon School District Number Two v. Lewis Sheet Metal Works, 286 S.C. 207, 215, 332 S.E.2d 555, 559 (Ct. App. 1985). An owner can be put on notice that some claim might exist when the owner observes a construction defect and retains a consultant. See Dean v. Ruscon Corp., 321 S.C. 360, 468 S.E.2d 645 (1996) (Court held that the statute of limitations began to run when the owner observed a building crack and retained a consultant). "The statute of limitations begins to run from this point and not when advice of counsel is sought or a full-blown theory of recovery developed." Snell v. Columbia Gun Exchange, Inc., 276 S.C. 301, 303, 278 S.E.2d 333, 334 (1981). The "[f]ailure of the injured party to comprehend the full extent of damages ... is immaterial." Wiggins v. Edwards, 314 S.C. 126, 442 S.E.2d 169, 170 (1994).

S.C. Code Ann. § 15-3-530 applies a three-year statute of limitations to Plaintiffs' claims of negligence, breach of contract, common-law warranty, and strict liability in tort. As indicated above, GlassTec completed its work on the subject property by March of 2003. By January of

2004, Shipwatch had received a report from Robert Sisnroy regarding alleged flashing deficiencies within at least some bay windows. In October of 2004, it appears most if not all bay windows were removed and replaced or removed and reflashed. Additionally, CCS performed other window work on the property from 2004 through at least 2008, to include sliding glass door repairs. To the extent GlassTec performed any sliding glass door work, its work was likely removed and replaced no later than 2008.

Since the Plaintiffs were placed on notice as early as January 7, 2004 of alleged deficiencies in bay window flashing, they arguably had until January 4, 2007 to file suit against GlassTec for any alleged deficiency. However, Plaintiffs did not file and serve their complaint against GlassTec until July 12, 2013, over five years past the applicable statute of limitations. At the outside, Plaintiffs would have had until 2011 to file claims against GlassTec (based upon 2008 work performed on various windows and doors by CCS), but the July 12, 2013 filing and service date is still well beyond the limitations. In addition, by the time the Plaintiffs filed and served GlassTec with the summons and complaint, all of GlassTec's work had been removed and replaced by some other entity, without notice to GlassTec, thereby preventing GlassTec the opportunity to inspect any alleged deficiencies in its work. For these reasons, GlassTec is entitled to summary judgment as to all of the Plaintiffs' claims against it.

## **II. CCS's Claims**

CCS has asserted claims for negligence, breach of contract, breach of warranty and indemnity. As indicated above, GlassTec had no contract, oral or otherwise, with CCS. Further, all of CCS's claims sound in indemnity; specifically, for each cause of action CCS claims it is entitled to "...actual damages (collectively or individually) against Other Defendants in the amount of any monies that it is adjudged to owe Plaintiff or which it pays Plaintiff in settlement of Plaintiff's claims as well as fees and costs incurred in the investigation, defense and settlement

of this claim.” (See CCS’s Answer and Cross-Claims). “Indemnity is that form of compensation in which a first party is liable to pay a second party for a loss of damage the second party incurs to a third party.” *Town of Winnsboro v. Wiedeman-Singleton, Inc.*, 303 S.C. 52, 56, 398 S.E.2d 500, 502 (Ct.App. 1990), aff’d 307 S.C. 128, 414 S.E.2d 118 (1992). “The character of an action is not to be determined by the terminology which the pleadings may chance to give it. On the contrary, the character of an action is fixed by the events which the pleader has cited...” *Walsh v. Evans*, 112 S.C. 131,136, 99 S.E.2d 546 (1919).

Clearly, in seeking the damages enumerated above, CCS is pleading a claim for indemnity rather than for negligence, breach of warranty or breach of contract. Because GlassTec had no contract with CCS and at no time ever performed any work on behalf of CCS, the only kind of indemnity that could be sought would be for equitable indemnification. Such a claim can only be brought where some special relationship between the parties exists such that there is an obligation on one party to indemnify the other. *Stuck v. Pioneer Logging Machinery, Inc.*, 301 S.E.2d 552, 53 (S.C. 1983). As indicated, no contract or any special relationship existed between GlassTec and CCS such that CCS is now able to maintain a cause of action for equitable indemnification against GlassTec. GlassTec, therefore, is entitled to summary judgment as to CCS’s claims against it for negligence, breach of warranties, breach of contract and indemnity.

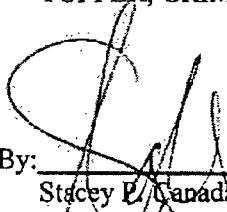
### CONCLUSION

Based upon the above and forgoing, GlassTec believes it is entitled to an order of summary judgment as to both the Plaintiffs’ and CCS’s claims against it, as there is no question of material fact and GlassTec is entitled to an order as a matter of law.

(Signature page to follow)

Respectfully submitted,

TUPPER, GRIMSLEY & DEAN, P.A.

By: 

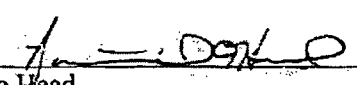
Stacey E. Canaday  
Attorney for GlassTec, Inc.  
Post Office Box 2055  
Beaufort, South Carolina 29901-2055  
(843) 524-1116

Beaufort, South Carolina

Dated: January 14, 2015

**CERTIFICATE OF MAILING**

I hereby certify that I have mailed a copy of the  
Above and foregoing to counsel of record in said  
Proceeding to his office address with sufficient  
Postage affixed hereto, this 14<sup>th</sup> day of  
January, 2014.

  
Nate Head

August 30, 2001

Bob Clink  
Shipwatch HOA  
Isle of Palms, SC

Re: Shipwatch  
Renovations

Dear sir:

Thank you for allowing Glasstec to bid on the renovations at Shipwatch. This bid is based on information gathered by Glasstec during an on site inspection of the unit windows accessible by the lift on that day. All new windows will be Starline products, which are manufactured with a 2½" frame depth as opposed to the existing 4½" storefront frames. This will result in a need for interior sheetrock repairs to be completed by others.

All new windows will meet following specifications:

- Series 100
- 2 ½" frame thickness
- HC 65
- 15 psf sill
- Standard bronze paint
- Head receptors
- Installation of bituthene
- .050 bronze sill flashing provided and bent by Glasstec
- Fixed glass units - 1" bronze tempered insulated glass
- Sliding glass units - ¾" bronze tempered insulated glass
- Screens included
- Interior and exterior caulk

**Operable Bay Windows**

- ✓ (2) 24" x 59" fixed units
- ✓ (1) 105" x 59" operable unit OXO slider with screen

For the sum of: \$3,001.10 per unit

**Fixed Bay Windows**

- ✓ (2) 24" x 59" fixed units
- ✓ (1) 105" x 59" fixed/fixed unit

For the sum of: \$2,840.87 per unit

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Glasstec





**Maintenance to Existing Bay Windows**

- ✓ Remove existing windows
- ✓ Clean caulk from existing storefront metal as much as possible
- ✓ Install bituthene
- ✓ Replace existing flashing with .050 bronze aluminum flashing
- ✓ Reinstall window frames
- ✓ Install new 1" bronze tempered insulated glass units
- ✓ Install new glazing gasket

**For the sum of: \$1,915.42 per unit**

**Fogged Insulated Glass Replacement**

- ✓ (2) 48" x 57" x 1" bronze tempered insulated glass units
- ✓ (2) 23" x 57" x 1" bronze tempered insulated glass units
- ✓ Related caulking
- ✓ New glazing gasket

**For the sum of: \$1,419.41**

**These prices do not include the following:**

- Lift Rental
- Moving furniture
- Protection of carpet
- Removing/reinstalling window dressings
- Interior sheetrock repair
- Replacement of metal studs
- Wood blocking
- Replacement of exterior or interior corner beads
- Stucco/EIFS repair
- Wood trim
- Shop drawings or engineer's stamp
- Protection of windows and doors after installation
- Cleaning/dusting of unit after installation

If you should have any questions regarding any of the information above, please call. Once again, thank you for allowing Glasstec to bid on Shipwatch.

Respectfully,

Ron Weaver  
Glasstec, Inc.

0000004  
Glasstec

August 30, 2001

Bob Clink  
Shipwatch HOA  
Isle of Palms, SC

Re: Shipwatch  
Units 301 & 429

Dear sir:

Thank you for allowing Glasstec to bid on your glass replacement needs. This bid covers all labor, material, travel time, and service call necessary to complete the following work at Shipwatch;

**Bldg A Unit 301 - Fogged Insulated Glass Units**

Cut out existing sealant from perimeters of glass units  
Install (2) 23" x 57" x 1" bronze tempered insulated glass units  
Install new glazing gasket  
Wet seal perimeters of glass with urethane caulk in appropriate color

For the sum of: \$ 799.60

**Unit 429 - Fogged Sliding Glass Door Insulated Glass Units**

Remove existing door panels  
Inspect door frame for compromised areas  
Caulk any compromised areas  
Install new 46 3/4" x 88" x 5/8" bronze tempered insulated glass units in existing door frames  
Reinstall door panels

|                 |            |            |
|-----------------|------------|------------|
| For the sum of: | (1) panel  | \$ 796.72  |
|                 | (4) panels | \$1,806.45 |
|                 | (6) panels | \$2,507.87 |

If you should have any questions, please call. Allow a 5-7 day lead time for completion of work.

If any of the above projects are accepted, please clearly indicate your choice, sign below, and return to Glasstec at 843-293-8675.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Respectfully,

Ron Weaver  
Glasstec, Inc.

0000005  
Glasstec

November 5, 2001

Bob Clink  
Shipwatch HOA  
Isle of Palms, SC

Re: Shipwatch  
Window and glass replacement

Dear sir:

Per our conversation regarding window and glass replacement at Shipwatch, I am confirming the following information. Please note that I have corrected a mistake I made regarding unit 429.

Unit D224

*Operable Bay Windows*

- ✓ (2) 24" x 59" fixed units
- ✓ (1) 105" x 59" operable unit OXO slider with screen

*For the sum of: \$3,001.10 per unit*

Unit D124

*Fixed Bay Windows*

- ✓ (2) 24" x 59" fixed units
- ✓ (1) 105" x 59" fixed/fixed unit

*For the sum of: \$2,840.87 per unit*

Unit A301

*Fogged Insulated Glass Units*

Cut out existing sealant from perimeters of glass units

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GlassTec



Install (2) 23" x 57" x 1" bronze tempered insulated glass units  
Install new glazing gasket  
Wet seal perimeters of glass with urethane caulk in appropriate color

For the sum of: \$ 799.60

Unit D429

*Fogged Sliding Glass Door Insulated Glass Units*

Remove existing door panels  
Inspect door frame for compromised areas  
Caulk any compromised areas  
Install new 46 3/4" x 88" x 5/8" bronze tempered insulated glass units in existing door frames  
Reinstall door panels

For the sum of: (6) panels \$2,507.87

Unit B410

*Fogged Sliding Glass Door Insulated Glass Units*

Remove existing door panels  
Inspect door frame for compromised areas  
Caulk any compromised areas  
Install new 46 3/4" x 88" x 5/8" bronze tempered insulated glass units in existing door frames  
Reinstall door panels

For the sum of: (1) panel \$ 796.72

Unit B312

*Fogged Insulated Glass Replacement*

- ✓ (2) 48" x 57" x 1" bronze tempered insulated glass units
- ✓ (2) 23" x 57" x 1" bronze tempered insulated glass units
- ✓ Related caulking
- ✓ New glazing gasket

For the sum of: \$1,419.41

Unit B212

*Fogged Insulated Glass Replacement*

- ✓ (2) 48" x 57" x 1" bronze tempered insulated glass units
- ✓ (2) 23" x 57" x 1" bronze tempered insulated glass units
- ✓ Related caulking
- ✓ New glazing gasket

*For the sum of: \$1,419.41*

Unit B207

*Maintenance to Existing Bay Windows*

- ✓ Remove existing windows
- ✓ Clean caulk from existing storefront metal as much as possible
- ✓ Install bituthene
- ✓ Replace existing flashing with .050 bronze aluminum flashing
- ✓ Reinstall window frames
- ✓ Install new 1" bronze tempered insulated glass units
- ✓ Install new glazing gasket

*For the sum of: \$1,915.42 per unit*

Glasstec will complete all of the above for the total sum of: **\$14,700.40**

If you should have any questions, please call. We will contact you to schedule installation as soon as all of the above material is shipped.

Thank you,

Ron Weaver  
Glasstec, Inc.

0000008  
GlassTec

GLASSTEC, INC.  
Job Ledger Report

For the Period From Jan 1, 2000 to Dec 31, 2009

Filter Criteria includes: 1) IDs from Shipwatch IOP to Shipwatch IOP. Report order is by ID. Report is printed including Balance Forward and including Retainage.

| Job ID        | GL Acct ID | GL Acct Description   | Trx Date | Trans Description                                                                                                 | Jrnl | Trans Ref | Debit Amt       | Credit Amt      | Net DR/CR        |
|---------------|------------|-----------------------|----------|-------------------------------------------------------------------------------------------------------------------|------|-----------|-----------------|-----------------|------------------|
| Shipwatch IOP | 305        | Income - Glazing      | 3/7/03   | Shipwatch HOA - Completion of bay window in unit 319 and materials only for units D119, B112 and A206 bay windows | SJ   | 5912      |                 | 7,863.48        |                  |
|               | 405        | Job Materials No Tax  | 12/7/01  | Coastal Glass - 1" bronze tempered IG 21-7/16x53-9/16                                                             | PJ   | 217365    | 214.16          |                 |                  |
|               |            |                       | 12/7/01  | Coastal Glass - 1" bronze tempered IG 47-1/2x53-9/16                                                              | PJ   | 217365    | 116.82          |                 |                  |
|               |            |                       | 12/7/01  | Coastal Glass - 1" bronze tempered IG 47-1/4x53/9/16                                                              | PJ   | 217365    | 116.82          |                 |                  |
|               |            |                       | 12/12/01 | Coastal Glass - 31-5/16" x 53-9/16 x 3/4" clear annealed IG                                                       | PJ   | 218552    | 155.76          |                 |                  |
|               |            |                       | 10/22/02 | Starline Industries - 98 1/8" x 59 3/4" Fixed/Fixed                                                               | PJ   | 2787      | 279.00          |                 |                  |
|               |            |                       | 10/22/02 | Starline Industries - 90 degree Corners 59 3/4"                                                                   | PJ   | 2787      | 86.00           |                 |                  |
|               |            |                       | 10/22/02 | Starline Industries - 1 x 2 Snap Trim - 28"                                                                       | PJ   | 2787      | 21.00           |                 |                  |
|               |            |                       | 10/22/02 | Starline Industries - 1 x 2 Snap Trim - 102"                                                                      | PJ   | 2787      | 31.50           |                 |                  |
|               |            |                       | 10/22/02 | Starline Industries - 1 x 2 Snap Trim - 60"                                                                       | PJ   | 2787      | 44.40           |                 |                  |
|               | 406        | Direct Labor          | 2/14/03  | William Blackwell                                                                                                 | PRJ  | 26782     | 210.00          |                 |                  |
|               |            |                       | 2/14/03  | Jerry Chappell                                                                                                    | PRJ  | 26784     | 280.00          |                 |                  |
|               |            |                       | 1/16/04  | Jerry Chappell                                                                                                    | PRJ  | 28560     | 104.00          |                 |                  |
|               |            |                       | 1/16/04  | William C. Whitecotton                                                                                            | PRJ  | 28569     | 52.00           |                 |                  |
|               | 576        | Gas/Oil               | 2/7/03   | Jerry Chappell - Gas for trip to Isle of Palms to do unit at Shipwatch                                            | CDJ  | 26746     | 20.00           |                 |                  |
|               |            |                       | 3/14/03  | Jerry Chappell - Gas Ticket                                                                                       | CDJ  | 27071     | 20.00           |                 |                  |
|               | 610        | Miscellaneous Expense | 2/7/03   | Jerry Chappell - Parking Permit for Wild Dunes to do job at Shipwatch                                             | CDJ  | 26746     | 20.00           |                 |                  |
|               | 665        | Travel/Lodging        | 2/14/03  | Ray Blackwell - Food Allowance for 1.5 days                                                                       | CDJ  | 26810     | 21.00           |                 |                  |
|               |            |                       | 2/14/03  | Ray Blackwell - 3 hours ride time                                                                                 | CDJ  | 26810     | 15.45           |                 |                  |
|               |            |                       | 2/14/03  | Jerry Chappell - Food Allowance for 1.5 days                                                                      | CDJ  | 26811     | 21.00           |                 |                  |
|               |            |                       | 2/14/03  | Jerry Chappell - 3 hours drive time                                                                               | CDJ  | 26811     | 48.00           |                 |                  |
|               |            |                       | 2/21/03  | William Blackwell - Travel Time for Isle of Palms                                                                 | CDJ  | 26882     | 2.55            |                 |                  |
|               |            |                       | 3/10/03  | MBNA - Lodging                                                                                                    | PJ   | 03.31.03  | 45.45           |                 |                  |
|               |            |                       |          |                                                                                                                   |      |           | <u>1,924.91</u> | <u>7,863.48</u> | <u>-5,938.57</u> |
|               |            |                       |          |                                                                                                                   |      |           | <u>1,924.91</u> | <u>7,863.48</u> | <u>-5,938.57</u> |
|               |            |                       |          |                                                                                                                   |      |           | <u>1,924.91</u> | <u>7,863.48</u> | <u>-5,938.57</u> |

Shipwatch IOP  
Report



GLASSTEC, INC.  
Job Ledger Report

For the Period From Jan 1, 2000 to Dec 31, 2009

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| Job ID    | GL Acct ID | GL Acct Description | Trx Date | Trans Description                                                           | Jrnl | Trans Ref | Debit Amt | Credit Amt | Net DR/CR |
|-----------|------------|---------------------|----------|-----------------------------------------------------------------------------|------|-----------|-----------|------------|-----------|
| Shipwatch | 305        | Income - Glazing    | 3/27/02  | Walk- in - pay app # 2 for units B318, B411, B108 & B207 acc attached forms | SJ   | 5227      |           | 9,547.31   |           |
|           |            |                     | 3/27/02  | Walk- in - minus 2 day lift rental                                          | SJ   | 5227      | 716.56    |            |           |
|           |            |                     | 4/24/02  | Walk- in - removed 8' x 8' mirror                                           | SJ   | 5295      |           | 80.00      |           |
|           |            |                     | 6/11/02  | Shipwatch HOA - completion of change order #4                               | SJ   | 5386      |           | 9,467.31   |           |
|           |            |                     | 9/24/02  | Shipwatch HOA - fixed bay window in C218                                    | SJ   | 5628      |           | 2,840.87   |           |
|           |            |                     | 9/24/02  | Shipwatch HOA - replace IG units in D324                                    | SJ   | 5628      |           | 1,419.41   |           |
|           |            |                     | 9/24/02  | Shipwatch HOA - replace fixed bay window in C118                            | SJ   | 5628      |           | 2,840.87   |           |
|           |            |                     | 9/24/02  | Shipwatch HOA - replace sliding glass door in C114                          | SJ   | 5628      |           | 3,785.57   |           |
|           | 405        | Job Materials No Ta | 12/6/01  | Starline Industries - 98 7/8" x 59 1/2" x o xo (ox type))                   | PJ   | 2428      | 370.00    |            |           |
|           |            |                     | 12/6/01  | Starline Industries - 23 1/2" x 59 1/2" fixed                               | PJ   | 2428      | 288.00    |            |           |
|           |            |                     | 12/6/01  | Starline Industries - 90 degree mulls 59 1/2                                | PJ   | 2428      | 80.00     |            |           |
|           |            |                     | 12/6/01  | Starline Industries - 98 7/8" x 59 1/2" -oo                                 | PJ   | 2428      | 273.00    |            |           |
|           |            |                     | 12/6/01  | Starline Industries - 23 1/2" x 59 1/2" fixed                               | PJ   | 2428      | 288.00    |            |           |
|           |            |                     | 12/6/01  | Starline Industries - 90 degree mulls 59 1/2                                | PJ   | 2428      | 80.00     |            |           |
|           |            |                     | 12/6/01  | Starline Industries - sales tax                                             | PJ   | 2428      | 68.95     |            |           |
|           |            |                     | 12/7/01  | Coastal Glass - 3/4" bronze tempered IG 31-5/16x53-9/16                     | PJ   | 217364    | 77.88     |            |           |
|           |            |                     | 1/21/02  | Starline Industries - 2462                                                  | CDJ  | 24115     | 42.53     |            |           |
|           |            |                     | 1/24/02  | Guaranteed Supply Company - caulk sp1 spec btz                              | PJ   | 0074310   | 79.50     |            |           |
|           |            |                     | 1/24/02  | Guaranteed Supply Company - airsheld flashing 12" x 67"                     | PJ   | 0074310   | 104.85    |            |           |
|           |            |                     | 1/24/02  | Guaranteed Supply Company - gun 15" bulk sausage cart man cox               | PJ   | 0074310   | 41.55     |            |           |
|           |            |                     | 1/24/02  | Guaranteed Supply Company - yellow cone nozzle cox                          | PJ   | 0074310   | 2.40      |            |           |
|           |            |                     | 1/24/02  | Guaranteed Supply Company - caulk dow 795 black 20 oz                       | PJ   | 0074310   | 268.80    |            |           |
|           |            |                     | 2/11/02  | Coastal Glass - Unit B-207 22 3/8" x 56 3/4" x 1" bronze tempered IG        | PJ   | 223589    | 62.74     |            |           |
|           |            |                     | 2/11/02  | Coastal Glass - Unit B-207 22 3/8" x 56 1/2" x 1" bronze tempered IG        | PJ   | 223589    | 62.74     |            |           |
|           |            |                     | 2/11/02  | Coastal Glass - Unit B-212 48" x 56 1/2" x 1" bronze tempered IG            | PJ   | 223587    | 125.47    |            |           |
|           |            |                     | 2/11/02  | Coastal Glass - Unit B-212 47 7/8" x 56 5/8" x 1" bronze tempered IG        | PJ   | 223587    | 125.47    |            |           |
|           |            |                     | 2/11/02  | Coastal Glass - Unit B-207 47 7/8" x                                        | PJ   | 223587    | 125.47    |            |           |

GLASSTEC, INC.  
Job Ledger Report

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|--------|------------|---------------------|----------|------------------------------------------------------------------------------------------------------|------|-----------|-----------|------------|-----------|
|        |            |                     | 2/11/02  | 56 5/8" x 1" bronze tempered IG Coastal Glass - Unit B-207 47 7/8" x 56 1/2" x 1" bronze tempered IG | PJ   | 223587    | 125.47    |            |           |
|        |            |                     | 2/11/02  | Coastal Glass - Unit B-312 47 7/8" x 56 1/2" x 1" bronze tempered IG                                 | PJ   | 223585    | 125.47    |            |           |
|        |            |                     | 2/11/02  | Coastal Glass - Unit B-312 48" x 56 5/8" x 1" Bronze tempered IG                                     | PJ   | 223585    | 125.47    |            |           |
|        |            |                     | 2/11/02  | Coastal Glass - Unit B-212 22 5/8" x 56 1/2" x 1" bronze tempered IG                                 | PJ   | 223585    | 62.74     |            |           |
|        |            |                     | 2/11/02  | Coastal Glass - Unit B-212 22 1/4" x 56 1/2" x 1" bronze tempered IG                                 | PJ   | 223585    | 62.74     |            |           |
|        |            |                     | 2/11/02  | Coastal Glass - Unit D-429 46 3/4" x 88" x 5/8" bronze tempered IG                                   | PJ   | 223582    | 1,168.20  |            |           |
|        |            |                     | 2/11/02  | Coastal Glass - Unit B-410 46 3/4" x 88" x 5/8" bronze tempered IG                                   | PJ   | 223582    | 190.37    |            |           |
|        |            |                     | 2/11/02  | Coastal Glass - Unit B-312 22 1/4" x 56 5/8" x 1" bronze tempered IG                                 | PJ   | 223582    | 125.48    |            |           |
|        |            |                     | 2/11/02  | Coastal Glass - Unit A-301 22 3/8" x 56 5/8" x 1" bronze tempered IG                                 | PJ   | 223581    | 62.74     |            |           |
|        |            |                     | 2/11/02  | Coastal Glass - Unit A-301 22 3/4" x 56 3/8" x 1" bronze tempered IG                                 | PJ   | 223581    | 62.74     |            |           |
|        |            |                     | 2/11/02  | Coastal Glass - Delivery                                                                             | PJ   | 223980    | 10.00     |            |           |
|        |            |                     | 2/11/02  | Coastal Glass - 46 3/4" x 88" x 5/8"                                                                 | PJ   | 229577    | 1,142.22  |            |           |
|        |            |                     | 2/11/02  | Coastal Glass - 46 3/4" x 88" x 5/8"                                                                 | PJ   | Credit    |           | 1,168.20   |           |
|        |            |                     | 3/6/02   | Starline Industries - 95-1/2" x 92-1/2" XO per quote Shipwatch B-411                                 | PJ   | 2517      | 903.00    |            |           |
|        |            |                     | 3/6/02   | Starline Industries - screen                                                                         | PJ   | 2517      | 78.00     |            |           |
|        |            |                     | 3/6/02   | Starline Industries - Freight                                                                        | PJ   | 2517      | 49.05     |            |           |
|        |            |                     | 3/11/02  | Starline Industries - 97" x 59" x OO                                                                 | PJ   | 2525      | 273.00    |            |           |
|        |            |                     | 3/11/02  | Starline Industries - 25" x 59" x O                                                                  | PJ   | 2525      | 288.00    |            |           |
|        |            |                     | 3/11/02  | Starline Industries - 29" -90 Degree Mulls                                                           | PJ   | 2525      | 80.00     |            |           |
|        |            |                     | 3/11/02  | Starline Industries - 102" Box of trim 1 x 1 1/2                                                     | PJ   | 2525      | 25.50     |            |           |
|        |            |                     | 3/11/02  | Starline Industries - 30" box trim 1 x 1/2                                                           | PJ   | 2525      | 15.00     |            |           |
|        |            |                     | 3/11/02  | Starline Industries - 60" box trim 1 x 1/2                                                           | PJ   | 2525      | 38.40     |            |           |
|        |            |                     | 3/18/02  | Starline Industries - 98 1/4" x 60 1/2" OO Fixed                                                     | PJ   | 2527      | 273.00    |            |           |
|        |            |                     | 3/18/02  | Starline Industries - 24" x 60 1/2" Fixed                                                            | PJ   | 2527      | 288.00    |            |           |
|        |            |                     | 3/18/02  | Starline Industries - 90 degree mulls 60 1/2"                                                        | PJ   | 2527      | 80.00     |            |           |
|        |            |                     | 3/18/02  | Starline Industries - Box trim for sills and heads                                                   | PJ   | 2527      | 25.50     |            |           |
|        |            |                     | 3/18/02  | Starline Industries - Series 100 HC 65 15 psf sill, painted bronze and preped for 1" glass           | PJ   | 2527      | 15.00     |            |           |



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|--------|------------|---------------------|----------|----------------------------------------|------|-----------|-----------|------------|-----------|
|        |            |                     | 3/18/02  | Starline Industries - sales tax        | PJ   | 2527      | 34.08     |            |           |
|        |            |                     | 3/28/02  | Jerry Chappell - Reimbursement of      | CDJ  | 24502     | 45.99     |            |           |
|        |            |                     | 4/8/02   | Coastal Glass - Gate Fee               | PJ   | 249405    | 10.00     |            |           |
|        |            |                     | 4/8/02   | Coastal Glass - 44-3/4" x 86-7/16"     | PJ   | 248121    | 364.88    |            |           |
|        |            |                     |          | 1" bronze tempered IG - B411           |      |           |           |            |           |
|        |            |                     | 4/8/02   | Coastal Glass - 47 x 54-9/16 1"        | PJ   | 248121    | 242.30    |            |           |
|        |            |                     |          | bronze tempered IG - C-318             |      |           |           |            |           |
|        |            |                     | 4/8/02   | Coastal Glass - 21-15/16" x 54-9/16    | PJ   | 248121    | 111.06    |            |           |
|        |            |                     |          | 1" bronze tempered IG - C318           |      |           |           |            |           |
|        |            |                     | 4/8/02   | Coastal Glass - 46-3/8" x 53-1/16"     | PJ   | 248131    | 233.64    |            |           |
|        |            |                     |          | 1" bronze tempered IG - B207           |      |           |           |            |           |
|        |            |                     | 4/8/02   | Coastal Glass - 22-15/16 x 53-1/16"    | PJ   | 248131    | 116.82    |            |           |
|        |            |                     |          | 1" bronze tempered IG - B207           |      |           |           |            |           |
|        |            |                     | 5/6/02   | Coastal Glass - 3/8" chr plate 8" x    | PJ   | 264202    | 100.32    |            |           |
|        |            |                     |          | 69-1/2" with (1) 69-1/2" edge          |      |           |           |            |           |
|        |            |                     |          | polished                               |      |           |           |            |           |
|        |            |                     | 5/28/02  | Starline Industries - 23 1/4" x 59     | PJ   | 2611      | 288.00    |            |           |
|        |            |                     |          | 3/4" x fixed                           |      |           |           |            |           |
|        |            |                     | 5/28/02  | Starline Industries - 96" x 59 3/4" x  | PJ   | 2611      | 273.00    |            |           |
|        |            |                     | 5/28/02  | Starline Industries - 90 degree mulls  | PJ   | 2611      | 80.00     |            |           |
|        |            |                     | 5/28/02  | Starline Industries - 102" x 1 x 2 box | PJ   | 2611      | 25.50     |            |           |
|        |            |                     |          | trim                                   |      |           |           |            |           |
|        |            |                     | 5/28/02  | Starline Industries - 30" x 1-2 box    | PJ   | 2611      | 15.00     |            |           |
|        |            |                     |          | trim                                   |      |           |           |            |           |
|        |            |                     | 5/28/02  | Starline Industries - 60" x 1 x 2 box  | PJ   | 2611      | 38.40     |            |           |
|        |            |                     |          | trim                                   |      |           |           |            |           |
|        |            |                     | 5/28/02  | Starline Industries - tax              | PJ   | 2611      | 36.00     |            |           |
|        |            |                     | 5/28/02  | Starline Industries - 23 1/2" x 59     | PJ   | 2610      | 288.00    |            |           |
|        |            |                     |          | 3/4" x fixed                           |      |           |           |            |           |
|        |            |                     | 5/28/02  | Starline Industries - 96" x 59 3/4"    | PJ   | 2610      | 273.00    |            |           |
|        |            |                     |          | fixed                                  |      |           |           |            |           |
|        |            |                     | 5/28/02  | Starline Industries - 90 deg mulls     | PJ   | 2610      | 80.00     |            |           |
|        |            |                     | 5/28/02  | Starline Industries - 102" x 1 x 2 box | PJ   | 2610      | 25.50     |            |           |
|        |            |                     |          | trim                                   |      |           |           |            |           |
|        |            |                     | 5/28/02  | Starline Industries - 30" x 1x 2 box   | PJ   | 2610      | 15.00     |            |           |
|        |            |                     |          | trim                                   |      |           |           |            |           |
|        |            |                     | 5/28/02  | Starline Industries - 60" x 1 x 2 box  | PJ   | 2610      | 38.40     |            |           |
|        |            |                     |          | trim                                   |      |           |           |            |           |
|        |            |                     | 5/28/02  | Starline Industries - sales tax        | PJ   | 2610      | 36.00     |            |           |
|        |            |                     | 5/31/02  | Coastal Glass - 21-7/16 x 53-13/16 x   | PJ   | 273370    | 107.08    |            |           |
|        |            |                     |          | 1" bronze tempered IGs                 |      |           |           |            |           |
|        |            |                     | 5/31/02  | Coastal Glass - 45-7/8 x 53-13/16 x    | PJ   | 273370    | 447.80    |            |           |
|        |            |                     |          | 1" bronze tempered IGs                 |      |           |           |            |           |
|        |            |                     | 5/31/02  | Starline Industries - series 200 hc65  | PJ   | 2601      | 999.60    |            |           |
|        |            |                     |          | painted bronze with screen 15 psf sill |      |           |           |            |           |
|        |            |                     |          | S/S hardware                           |      |           |           |            |           |
|        |            |                     | 6/6/02   | Guaranteed Supply Company -            | PJ   | 0080433   | 3.50      |            |           |
|        |            |                     |          | wd40 net wt 12 oz                      |      |           |           |            |           |
|        |            |                     | 6/6/02   | Guaranteed Supply Company - tape       | PJ   | 0080433   | 6.15      |            |           |
|        |            |                     |          | long masking 2" x 60 yds               |      |           |           |            |           |

GLASSTEC, INC.  
Job Ledger Report

For the Period From Jan 1, 2000 to Dec 31, 2009

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|--------|------------|---------------------|----------|----------------------------------------------------------------|------|-----------|-----------|------------|-----------|
|        |            |                     | 6/6/02   | Guaranteed Supply Company -<br>caulksp spot 1                  | PJ   | 0080433   | 74.20     |            |           |
|        |            |                     | 6/6/02   | Guaranteed Supply Company -<br>yellow cone nozzle cox          | PJ   | 0080433   | 1.20      |            |           |
|        |            |                     | 6/6/02   | Guaranteed Supply Company - caulk<br>Dow 795 Black 10.3 oz     | PJ   | 0080433   | 61.20     |            |           |
|        |            |                     | 6/25/02  | Lowes Business Account - plastic<br>12501.5m cauli             | PJ   | 22228     | 7.86      |            |           |
|        |            |                     | 6/25/02  | Lowes Business Account - 33gl shop<br>sak 12ct 3mil p          | PJ   | 22228     | 5.97      |            |           |
|        |            |                     | 6/25/02  | Lowes Business Account - steel 1/8<br>x 1/4 rivets ar          | PJ   | 22228     | 4.97      |            |           |
|        |            |                     | 6/25/02  | Lowes Business Account - 1.88 x<br>60yd prof duck tape         | PJ   | 22228     | 4.87      |            |           |
|        |            |                     | 6/25/02  | Lowes Business Account - steel 1/8<br>x 1/8 rivets ar          | PJ   | 22228     | 3.87      |            |           |
|        |            |                     | 6/25/02  | Lowes Business Account - Tax                                   | PJ   | 22228     | 1.65      |            |           |
|        |            |                     | 7/9/02   | Coastal Glass - (2) 21 X 53 X 1"<br>BRZ IG                     | PJ   | 275451    | 107.08    |            |           |
|        |            |                     | 7/9/02   | Coastal Glass - gate charge - IOP                              | PJ   | 275962    | 10.00     |            |           |
|        |            |                     | 8/16/02  | Coastal Glass - no PO - Shipwatch<br>glass                     | PJ   | 300499    | 364.50    |            |           |
|        |            |                     | 8/20/02  | Guaranteed Supply Company - caulk<br>for shipwatch             | PJ   | 0083759   | 367.05    |            |           |
|        |            |                     | 8/20/02  | Coastal Glass - 48-3/8 x 56-5/8 x 1"<br>brz temp IG            | PJ   | 301017    | 135.94    |            |           |
|        |            |                     | 8/20/02  | Coastal Glass - 22-1/2 x 56-3/8 x 1"<br>brz temp IG            | PJ   | 301017    | 65.25     |            |           |
|        |            |                     | 8/26/02  | Starline Industries - shipwatch C118                           | PJ   | 2713      | 755.90    |            |           |
|        |            |                     | 8/29/02  | Coastal Glass - 48-3/8 x 56-5/8 x 1"<br>brz tempered IG        | PJ   | 302208    | 135.94    |            |           |
|        |            |                     | 8/29/02  | Coastal Glass - 22-1/2 x 56-3/8 x 1"<br>brz tempered IG        | PJ   | 302208    | 65.25     |            |           |
|        |            |                     | 9/6/02   | Starline Industries - C114 door                                | PJ   | 2721      | 994.35    |            |           |
|        |            |                     | 9/23/02  | Starline Industries - shipwatch D112                           | CDJ  | 25478     | 755.90    |            |           |
|        |            |                     | 9/23/02  | Starline Industries - shipwatch A206                           | CDJ  | 25478     | 755.90    |            |           |
|        |            |                     | 10/3/02  | Coastal Glass - 22-3/16" X<br>53-13/16" X 1" BRZ TEMP IG       | PJ   | 317488    | 121.50    |            |           |
|        |            |                     | 10/3/02  | Dual<br>Coastal Glass - 47" X 53-1/2" X 1"<br>BRZ TEMP IG Dual | PJ   | 317488    | 121.50    |            |           |
|        |            |                     | 10/3/02  | Coastal Glass - 47-3/8" X 53-1/2"<br>BRZ TEMP IG 1" Dual       | PJ   | 317488    | 121.50    |            |           |
|        |            |                     | 10/3/02  | Coastal Glass - 22-1/16" X<br>53-13/16" X 1" BRZ TEMP IG       | PJ   | 317434    | 121.50    |            |           |
|        |            |                     | 10/3/02  | Coastal Glass - 47-1/8" X 53-1/2" X<br>1" BRZ TEMP Dual IG     | PJ   | 317434    | 121.50    |            |           |
|        |            |                     | 10/3/02  | Coastal Glass - 47-1/2" X 53-1/2" X<br>1" BRZ TEMP Dual IG     | PJ   | 317434    | 121.50    |            |           |
|        |            |                     | 10/7/02  | Coastal Glass - 32-3/4 x 89-7/16 x<br>...                      | PJ   | 308057    | 289.38    |            |           |

## GLASSTEC, INC.

## Job Ledger Report

For the Period From Jan 1, 2000 to Dec 31, 2009

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| Job ID | GL Acct ID | GL Acct Descriptio | Trx Date | Trans Description                    | Jrnl | Trans Ref | Debit Amt | Credit Amt | Net DR/CR |
|--------|------------|--------------------|----------|--------------------------------------|------|-----------|-----------|------------|-----------|
|        |            |                    | 10/7/02  | 1" bronze tempered IG                |      |           |           |            |           |
|        |            |                    |          | Coastal Glass - 22-3/16 x 53-13/16 x | PJ   | 308057    | 124.00    |            |           |
|        |            |                    | 10/7/02  | 1" bronze temp IG                    |      |           |           |            |           |
|        |            |                    |          | Coastal Glass - 47 x 53-1/2 x 1"     | PJ   | 308057    | 124.00    |            |           |
|        |            |                    | 10/7/02  | bronze temp IG                       |      |           |           |            |           |
|        |            |                    |          | Coastal Glass - 47-3/8 x 53-1/2 x 1" | PJ   | 308057    | 124.00    |            |           |
|        |            |                    | 10/22/02 | bronze temp IG                       |      |           |           |            |           |
|        |            |                    |          | Starline Industries - 24 1/4" x 59   | PJ   | 2787      | 294.00    |            |           |
|        |            |                    | 11/26/02 | 3/4" Fixed                           |      |           |           |            |           |
|        |            |                    |          | Starline Industries - 97 7/8" x 59   | PJ   | 2836      | 286.65    |            |           |
|        |            |                    | 11/26/02 | 3/4" - OO                            |      |           |           |            |           |
|        |            |                    |          | Starline Industries - 24 3/8" x 59   | PJ   | 2836      | 302.40    |            |           |
|        |            |                    | 11/26/02 | 3/4" - O                             |      |           |           |            |           |
|        |            |                    |          | Starline Industries - 1 x 2 Box trim | PJ   | 2836      | 48.83     |            |           |
|        |            |                    | 11/26/02 | 62"                                  |      |           |           |            |           |
|        |            |                    |          | Starline Industries - 59 3/4" - 90   | PJ   | 2836      | 84.00     |            |           |
|        |            |                    | 11/26/02 | degree mulls                         |      |           |           |            |           |
|        |            |                    |          | Starline Industries - 1 x 2 Box trim | PJ   | 2836      | 26.25     |            |           |
|        |            |                    | 11/26/02 | 100"                                 |      |           |           |            |           |
|        |            |                    |          | Starline Industries - 1 x 2 Box trim | PJ   | 2836      | 15.75     |            |           |
|        |            |                    | 2/4/03   | 28"                                  |      |           |           |            |           |
|        |            |                    |          | Coastal Glass - 22-3/16 x 53-3/4 x   | PJ   | 355801    | 125.28    |            |           |
|        |            |                    | 2/4/03   | 1" brz temp IG                       |      |           |           |            |           |
|        |            |                    |          | Coastal Glass - 47-5/16 x 53-3/4 x   | PJ   | 355801    | 250.56    |            |           |
|        |            |                    |          | 1" brz temp IG                       |      |           |           |            |           |
| 406    |            | Direct Labor       | 5/18/01  | Stephen V. Boyd                      | PRJ  | 022725    | 58.50     |            |           |
|        |            |                    | 5/18/01  | Stephen V. Boyd                      | PRJ  | 022725    | 87.75     |            |           |
|        |            |                    | 1/25/02  | Jerry Chappell                       | PRJ  | 24132     | 520.00    |            |           |
|        |            |                    | 1/25/02  | Jerry Chappell                       | PRJ  | 24132     | 204.75    |            |           |
|        |            |                    | 1/25/02  | Troy Weaver                          | PRJ  | 24133     | 700.40    |            |           |
|        |            |                    | 1/25/02  | Troy Weaver                          | PRJ  | 24133     | 275.84    |            |           |
|        |            |                    | 2/1/02   | Jerry Chappell                       | PRJ  | 24171     | 266.50    |            |           |
|        |            |                    | 2/1/02   | Troy Weaver                          | PRJ  | 24182     | 700.40    |            |           |
|        |            |                    | 2/1/02   | Troy Weaver                          | PRJ  | 24182     | 183.89    |            |           |
|        |            |                    | 3/29/02  | Jerry Chappell                       | PRJ  | 24488     | 520.00    |            |           |
|        |            |                    | 3/29/02  | Jerry Chappell                       | PRJ  | 24488     | 331.50    |            |           |
|        |            |                    | 3/29/02  | Eric Holshouser                      | PRJ  | 24492     | 198.00    |            |           |
|        |            |                    | 3/29/02  | Candido Ortiz-Robles                 | PRJ  | 24495     | 171.00    |            |           |
|        |            |                    | 4/5/02   | Jerry Chappell                       | PRJ  | 24529     | 143.00    |            |           |
|        |            |                    | 4/19/02  | Jerry Chappell                       | PRJ  | 24598     | 60.75     |            |           |
|        |            |                    | 4/19/02  | Jerry Chappell                       | PRJ  | 24598     | 70.88     |            |           |
| 542    |            | Shop Supplies - No | 1/23/03  | Guaranteed Supply Company -          | PJ   | 0090040   | 126.00    |            |           |
|        |            |                    |          | Caulk Dow 795 Black 10.3 oz          |      |           |           |            |           |
|        |            |                    | 1/23/03  | Guaranteed Supply Company -          | PJ   | 0090040   | 82.50     |            |           |
|        |            |                    |          | Caulk NP1 Limestone 10.6 oz          |      |           |           |            |           |
|        |            |                    | 1/23/03  | Guaranteed Supply Company -          | PJ   | 0090040   | 100.00    |            |           |
|        |            |                    |          | Caulk NP1 Spec Bronze 20 oz          |      |           |           |            |           |
|        |            |                    | 1/23/03  | Guaranteed Supply Company -          | PJ   | 0090040   | 10.00     |            |           |
|        |            |                    |          | Caution Tape Yellow 3" x 1000'       |      |           |           |            |           |
|        |            |                    | 1/23/03  | Guaranteed Supply Company - Tape     | PJ   | 0090040   | 4.50      |            |           |

GLASSTEC, INC.  
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|-----------|------------|---------------------|----------|--------------------------------------------------------------------------|------|-----------|-----------|------------|-----------|
|           | 576        | Gas/Oil             | 6/13/02  | Duct 2" x 60 yds                                                         |      |           |           |            |           |
|           |            |                     |          | Jerry Chappell - gas                                                     | CDJ  | 24917     | 25.57     |            |           |
|           |            |                     | 9/20/02  | Jerry Chappell - 9.11 gas                                                | CDJ  | 25457     | 18.91     |            |           |
|           |            |                     | 9/20/02  | Jerry Chappell - 9.12 gas                                                | CDJ  | 25457     | 5.00      |            |           |
|           | 661        | Insurance - AUTO    | 3/28/02  | Candido Ortiz-Robles - Sensescape                                        | CDJ  | 24504     | 26.00     |            |           |
|           |            |                     |          | Drive time                                                               |      |           |           |            |           |
|           |            |                     | 6/13/02  | Troy Weaver - cost of living 3 days                                      | CDJ  | 24916     | 30.00     |            |           |
|           | 665        | Travel/Lodging      | 1/24/02  | Jerry Chappell - Food                                                    | CDJ  | 24134     | 42.00     |            |           |
|           |            |                     | 1/24/02  | Troy Weaver - Food                                                       | CDJ  | 24135     | 42.00     |            |           |
|           |            |                     | 3/28/02  | Jerry Chappell - Drive time                                              | CDJ  | 24502     | 52.00     |            |           |
|           |            |                     | 3/28/02  | Jerry Chappell - Food                                                    | CDJ  | 24502     | 70.00     |            |           |
|           |            |                     | 3/28/02  | Eric Holzhouser - Ride time to IOP                                       | CDJ  | 24505     | 18.00     |            |           |
|           |            |                     | 3/28/02  | Troy Weaver - Ride time                                                  | CDJ  | 24507     | 35.04     |            |           |
|           |            |                     | 3/28/02  | Troy Weaver - Food                                                       | CDJ  | 24507     | 70.00     |            |           |
|           |            |                     | 3/28/02  | Troy Weaver - Reimbursement of cash tickets                              | CDJ  | 24507     | 125.24    |            |           |
|           |            |                     | 4/4/02   | Jerry Chappell - Drive time                                              | CDJ  | 24541     | 52.00     |            |           |
|           |            |                     | 4/4/02   | Jerry Chappell - Gas ticket                                              | CDJ  | 24541     | 10.00     |            |           |
|           |            |                     | 4/5/02   | Troy Weaver - Drive time IOP4 hrs                                        | CDJ  | 24546     | 70.04     |            |           |
|           |            |                     | 4/5/02   | Troy Weaver - Food                                                       | CDJ  | 24546     | 14.00     |            |           |
|           |            |                     | 6/13/02  | Troy Weaver - 4 hours ride time to Shipwatch, IOP                        | CDJ  | 24916     | 36.08     |            |           |
|           |            |                     | 6/13/02  | Troy Weaver - food 3 days                                                | CDJ  | 24916     | 42.00     |            |           |
|           |            |                     | 6/13/02  | Jerry Chappell - parking permits                                         | CDJ  | 24917     | 20.00     |            |           |
|           |            |                     | 6/13/02  | Jerry Chappell - drive time 4 hours to Shipwatch, IOP                    | CDJ  | 24917     | 64.00     |            |           |
|           |            |                     | 6/13/02  | Jerry Chappell - food 3 days                                             | CDJ  | 24917     | 42.00     |            |           |
|           |            |                     | 6/13/02  | Jerry Chappell - cost of living expenses                                 | CDJ  | 24917     | 30.00     |            |           |
|           |            |                     | 6/14/02  | Charlie Morris - 4 hrs drive time to Shipwatch, IOP at regular time rate | CDJ  | 24911     | 36.00     |            |           |
|           |            |                     | 6/14/02  | Timothy Rausch - ride time to HH                                         | CDJ  | 24913     | 41.20     |            |           |
|           |            |                     | 6/14/02  | Timothy Rausch - food                                                    | CDJ  | 24913     | 56.00     |            |           |
|           |            |                     | 6/14/02  | Timothy Rausch - cost of living expenses                                 | CDJ  | 24913     | 40.00     |            |           |
|           |            |                     | 6/14/02  | Jerry Warren - 4 hours ride time to Shipwatch                            | CDJ  | 24914     | 36.06     |            |           |
|           |            |                     | 7/15/02  | Wachovia Bank - lodging in IOP                                           | CDJ  | 25102     | 232.86    |            |           |
|           |            |                     | 9/20/02  | William Blackwell - 4 hours ride time                                    | CDJ  | 25456     | 24.00     |            |           |
|           |            |                     | 9/20/02  | William Blackwell - food                                                 | CDJ  | 25456     | 56.00     |            |           |
|           |            |                     | 9/20/02  | Jerry Chappell - 4 hours drive time                                      | CDJ  | 25457     | 64.00     |            |           |
|           |            |                     | 9/20/02  | Jerry Chappell - food                                                    | CDJ  | 25457     | 56.00     |            |           |
|           |            |                     | 10/14/02 | Wachovia Bank - Masters Inn                                              | PJ   | 10.31.02  | 136.35    |            |           |
|           |            |                     |          |                                                                          |      |           | 27,351.47 | 31,149.54  | -3,798.07 |
| Shipwatch |            |                     |          |                                                                          |      |           | 27,351.47 | 31,149.54  | -3,798.07 |
| Report    |            |                     |          |                                                                          |      |           | 27,351.47 | 31,149.54  | -3,798.07 |

7/16/12 at 11:50:01.50

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GLASSTEC, INC.  
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|--------|------------|---------------------|----------|-------------------|------|-----------|-----------|------------|-----------|
|--------|------------|---------------------|----------|-------------------|------|-----------|-----------|------------|-----------|

577

0000016  
GlassTec

January 25, 2004

Lester Griffin, GM  
Shipwatch Horizontal Regime  
7600 Palmetto Drive  
Isle of Palms, South Carolina 29451

Dear Sir:

We were unaware of any issues Shipwatch has with our work and are disappointed to know that you have decided to hire another company to complete our contract. Typically, if there is a problem with workmanship or product, the contractor is given the opportunity to correct the problem. However, if the contract is withdrawn by the owner for no apparent reason, then the owner becomes responsible for the remaining work on the contract.

The installation of these windows has never been an easy project. Each installation involved woodwork, flashing installation, and problem solving. It would be difficult for any contractor unfamiliar with the previous installations to install the windows with no difficulty.

We hope to have the opportunity to complete this contract with Shipwatch. Once given that opportunity, we consider it our responsibility to address any issues with the remaining products as necessary. Otherwise, we will consider the contract closed.

We look forward to hearing from you soon.

Respectfully,

Ron Weaver  
Glasstec, Inc.

0000001  
GlassTec





CCS 777

**APPLICATION AND CERTIFICATE FOR PAYMENT**

AIA DOCUMENT G702

To Owner: SHIPWATCH PROPERTY Project: PHASE I  
7800 PALMETTO DRIVE  
ISLE OF PALMS, S.C.  
From Contractor: CAROLINA CONCRETE SYSTEMS, INC.  
P.O. BOX 13149  
CHARLESTON, S.C. 29422

Application No.: 12  
Period to: 4/25/2004  
Project No.:  
Contract Date:

Distribution To:  
☐ Owner  
☐ Architect  
☐ Contractor

Contract For:

**CONTRACTOR'S APPLICATION FOR PAYMENT**

Application is made for payment, as shown below, in connection with the contract.  
Continuation sheet, AIA document G703, is attached.

1. Original Contract Sum..... \$ 249,546.00  
2. Net change by Change Orders..... \$ 624,516.00  
3. Contract Sum to date..... \$ 874,062.00  
4. Total completed/ stored materials to date... \$ 810,547.20  
5. Retainage:  
    a. \$ 13,194.76  
    b. % of stored material..... \$  
Total Retainage..... \$ 13,194.76  
6. Total earned less retainage..... \$ 797,352.44  
7. Less previous certificates for payment..... \$ 762,391.44  
8. Current payment due..... \$ 34,961.00  
9. Balance to finish, including retainage..... \$ 76,709.56

| Change Order Summary | Additions | Deductions |
|----------------------|-----------|------------|
| c/o # 8              | 37650     |            |
|                      |           |            |
|                      |           |            |

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief, the work covered by this Application for Payment has been completed in accordance with the contract documents, that all amounts have been paid by the Contractor for work which previous Certificates of Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

**CONTRACTOR:**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
ROBERT M. WIGGINS PRESIDENT  
State of: South Carolina  
County of: Charleston  
Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_

Notary Public:

My commission expires:

**Architect's Certificate for Payment**

In accordance with the Contract Documents, based on on-site observations and

the data comprising this application, the Architect certifies to the Owner that to the Architect's knowledge, information and belief the work has progressed as indicated the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

Amount Certified..... \$ \_\_\_\_\_

Attach explanation if amount certified differs from the amount applied for. Initial all figures on this application and on the continuation sheet that are changed to conform to the amount certified.

By: \_\_\_\_\_ Date: \_\_\_\_\_

This certificate is not negotiable. The amount certified is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this contract.

AIA DOCUMENT G702, APPLICATION AND CERTIFICATE FOR PAYMENT, 1992 EDITION. AIA, THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVENUE, N.W., WASHINGTON, DC 20004-6292. WARNING: UNLICENSED PHOTOCOPYING VIOLATES U.S. COPYRIGHT LAWS AND WILL SUBJECT THE VIOLATOR TO LEGAL PROSECUTION.  
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**CONTINUATION SHEET**

AIA DOCUMENT G703

(Instructions on reverse side)

AIA Document G702, APPLICATION AND CERTIFICATE FOR PAYMENT, containing Contractors signed Certification, is attached. In tabulations below, amounts are stated to the nearest dollar. Use column 1 on contracts where variable retainage for line items may apply.

Application No.:

Application Date:

Period to:

Architects Project No.:

CCS 778

| A<br>Item<br>No. | B<br>Description of Work                                                                                   | C<br>Scheduled<br>Value | D                                              |                             | F<br>Materials<br>Presently<br>Stored | G                                        |          | H<br>Balance<br>To<br>Finish |
|------------------|------------------------------------------------------------------------------------------------------------|-------------------------|------------------------------------------------|-----------------------------|---------------------------------------|------------------------------------------|----------|------------------------------|
|                  |                                                                                                            |                         | Work Completed<br>From Previous<br>Application | Completed<br>This<br>Period |                                       | Total Completed<br>And Stored<br>To Date | %<br>G/C |                              |
| 1                | CHIMNEY REPAIRS                                                                                            | \$129,800.00            | \$129,800.00                                   | \$0.00                      | \$0.00                                | \$129,800.00                             | 100%     | \$0.00                       |
| 2                | VENT PIPE SEALANT                                                                                          | \$10,740.00             | \$10,740.00                                    | \$0.00                      | \$0.00                                | \$10,740.00                              | 100%     | \$0.00                       |
| 1                | CHANGE ORDER #1                                                                                            |                         |                                                |                             |                                       |                                          |          |                              |
| 1                | REMOVE & REPLACE<br>METAL STUD FRAMING<br>ON CHIMNEYS                                                      | \$4,235.00              | \$4,235.00                                     | \$0.00                      | \$0.00                                | \$4,235.00                               | 100%     | \$0.00                       |
| 2                | CHIMNEY FLASHING<br>316 STAINLESS<br>STEEL CAP TO BE 63<br>MIL POWDER COAT<br>ALUMINUM                     | \$4,500.00              | \$4,500.00                                     | \$0.00                      | \$0.00                                | \$4,500.00                               | 100%     | \$0.00                       |
| 3                | ADD NEW SHEATHING<br>TO ROOF TO<br>SUPPORT FLASHING<br>BATTENS & TILE                                      | \$2,035.00              | \$2,035                                        | \$0.00                      | \$0.00                                | \$2,035.00                               | 100%     | \$0.00                       |
| 4                | REMOVE & REPLACE<br>BALCONY PARTY<br>WALLS                                                                 | \$89,440.00             | \$89,440.00                                    | \$0.00                      | \$0.00                                | \$89,440.00                              | 100%     | \$0.00                       |
| 5                | REPLACE FLASHING<br>ON PARTY WALLS<br>ON PENTHOUSE 5TH<br>FLOOR OCEAN SIDE                                 | \$9,360.00              | \$0.00                                         | \$0.00                      | \$0.00                                | \$0.00                                   | 0%       | \$9,360.00                   |
| 6                | TEMPORARILY CAULK<br>ALL FLASHING ON ROOF<br>PARAPET AND PENT<br>HOUSE PRIVACY WALL<br>ON GOLF COURSE SIDE | \$7,400.00              | \$0.00                                         | \$0.00                      | \$0.00                                | \$0.00                                   | 0%       | \$7,400.00                   |
|                  |                                                                                                            | \$257,510.00            | \$240,760.00                                   | \$0.00                      | \$0.00                                | \$240,760.00                             |          | \$16,760.00                  |

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**CONTINUATION SHEET**

AIA DOCUMENT G703

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Application No.:  
Application Date:  
Period to:  
Architects Project No.:

CCS 779

| A<br>Item No. | B<br>Description of Work                                                    | C<br>Scheduled Value | D                                        |                       | F<br>Materials Presently Stored | G                                  |       | H<br>Balance To Finish |
|---------------|-----------------------------------------------------------------------------|----------------------|------------------------------------------|-----------------------|---------------------------------|------------------------------------|-------|------------------------|
|               |                                                                             |                      | Work Completed From Previous Application | Completed This Period |                                 | Total Completed And Stored To Date | % G/C |                        |
| 7             | REMOVE & REPLACE OF DAMAGED PARTY WALLS AT @ CHIMNEY                        | \$10,395.00          | \$10,395.00                              | \$0.00                | \$0.00                          | \$10,395.00                        | 100%  | \$0.00                 |
| 7A            | REMOVE & REPLACE PRIVACY WALLS ON 6TH FL PENTHOUSE                          | \$20,880.00          | \$20,880.00                              | \$0.00                | \$0.00                          | \$20,880.00                        | 100%  | \$0.00                 |
|               | CHANGE ORDER#2                                                              |                      |                                          |                       |                                 |                                    |       |                        |
| 1             | REMOVE & REPLACE EIFS SYSTEM ON HEATED WALLS ADJACENT TO NEW PRIVACY WALLS. | \$22,464.00          | \$17,971.20                              | \$0.00                | \$0.00                          | \$17,971.20                        |       | \$4,490.80             |
|               | REMOVE & RE-INSTALL LIGHT FIXTURES                                          |                      |                                          |                       |                                 |                                    |       |                        |
| 2             | REMOVE & REPLACE EIFS SYSTEM ON HEATED WALLS ADJACENT TO NEW PARTY WALLS    | \$43,600.00          | \$43,600.00                              | \$0.00                | \$0.00                          | \$43,600.00                        | 100%  | \$0.00                 |
| 3             | SMALL END CHIMNEYS AND WALLS ON PENTHOUSE 2@ BLD                            | \$107,200.00         | \$107,200.00                             | \$0.00                | \$0.00                          | \$107,200.00                       | 100%  | \$0.00                 |
| 4             | REMOVE & REPLACE PRIVACY WALLS. ON GOLF COURSE SIDE.                        | \$158,400.00         | \$158,400.00                             | \$0.00                | \$0.00                          | \$158,400.00                       | 100%  | \$0.00                 |
|               |                                                                             | \$362,939.00         | \$358,448.20                             | \$0.00                | \$0.00                          | \$358,448.20                       | 0%    | \$4,492.80             |

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**CONTINUATION SHEET**
**AIA DOCUMENT G703**
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Application No.:  
Application Date:  
Period to:  
Architects Project No.:

CCS 780

| A<br>Item No. | B<br>Description of Work                                                       | C<br>Scheduled Value | D<br>Work Completed       |                       | F<br>Materials Presently Stored | G                                  |       | H<br>Balance To Finish |
|---------------|--------------------------------------------------------------------------------|----------------------|---------------------------|-----------------------|---------------------------------|------------------------------------|-------|------------------------|
|               |                                                                                |                      | From Previous Application | Completed This Period |                                 | Total Completed And Stored To Date | % G/C |                        |
| 1             | CHANGE ORDER #3<br>REMOVE & REPLACE EIFS HEATED WALL 4TH & 5TH FLOOR           | \$110,688.00         | \$110,688.00              | \$0.00                | \$0.00                          | \$110,688.00                       | 100%  | \$0.00                 |
| 1             | CHANGE ORDER #4<br>INSTALL BITUTHENE TEMPORARILY OVER PARAPET WALL TIL PHASE 2 | \$1,700.00           | \$1,700.00                | \$0.00                | \$0.00                          | \$1,700.00                         | 100%  | \$0.00                 |
| 2             | REMOVE 12 WINDOWS 5TH FL OF A & B BLDG AND FLASH                               | \$3,100.00           | \$3,100.00                | \$0.00                | \$0.00                          | \$3,100.00                         | 100%  | \$0.00                 |
| 3             | INSTALL 12 NEW WINDOWS ON 5TH FL                                               | \$12,240.00          | \$12,240.00               |                       | 0                               | \$12,240.00                        | 100%  | \$0.00                 |
| 4             | REPAINT 4 NEW CHIMNEY CAPS THAT WERE ORDERED PRIOR TO ROOF COLOR SECTION       | \$1,080.00           | \$1,080.00                | \$0.00                | \$0.00                          | \$1,080.00                         | 100%  | \$0.00                 |
| 5             | REPAIR CONCRETE ON PENTHOUSE BALCONY WALL TO SLAB VOID BLDG A & B              | \$1,760.00           | \$1,760.00                |                       |                                 | \$1,760.00                         | 100%  | \$0.00                 |
| 6             | REMOVE & REPLACE 4TH FLOOR CORRIDOR END WALL ON B BLD DUE TO NO FLASHING       | \$1,840.00           | \$1,840.00                | \$0.00                | \$0.00                          | \$1,840.00                         | 100%  | \$0.00                 |
|               |                                                                                | \$132,408.00         | \$132,408.00              | \$0.00                | \$0.00                          | \$132,408.00                       | 100%  | \$0.00                 |

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**CONTINUATION SHEET**

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Application No.:

Application Date:

Period to:

Architects Project No.:

CCS 781

| A<br>Item<br>No. | B<br>Description of Work                                                             | C<br>Scheduled<br>Value | D<br>Work Completed          |                             | F<br>Materials<br>Presently<br>Stored | G                                        |          | H<br>Balance<br>To<br>Finish |
|------------------|--------------------------------------------------------------------------------------|-------------------------|------------------------------|-----------------------------|---------------------------------------|------------------------------------------|----------|------------------------------|
|                  |                                                                                      |                         | From Previous<br>Application | Completed<br>This<br>Period |                                       | Total Completed<br>And Stored<br>To Date | %<br>G/C |                              |
| 7                | TEMPORARILY REPAIR<br>SMALL END CHIMNEYS<br>ON C BLD UNTIL<br>PHASE II               | \$1,170.00              | \$1,170.00                   | \$0.00                      | \$0.00                                | \$1,170.00                               | 100%     | \$0.00                       |
| 1                | CHANGE ORDER # 5<br>REMOVE FLASHING &<br>REINSTALL NEW<br>FLASHING ON 12<br>CHIMNEYS | \$10,608.00             | \$10,608.00                  | \$0.00                      | \$0.00                                | \$10,608.00                              | 100%     | \$0.00                       |
| 2                | REMOVE FLASHING &<br>STUCCO AND INSTALL<br>NEW RECEIVERS                             | \$5,208.00              | \$5,208.00                   | \$0.00                      | \$0.00                                | \$5,208.00                               | 100%     | \$0.00                       |
| 1                | CHANGE ORDER # 6<br>CONCRETE REPAIR<br>TO WALL SLAB VOID ON<br>BLD C                 | \$920.00                | \$920.00                     | \$0.00                      | \$0.00                                | \$920.00                                 | 100%     | \$0.00                       |
| 2                | CONCRETE REPAIR<br>TO 3 BALCONY RAIL<br>POST                                         | \$1,640.00              | \$1,640.00                   | \$0.00                      | \$0.00                                | \$1,640.00                               | 100%     | \$0.00                       |
| 3                | REMOVE 12 WINDOWS<br>FLASH AND REINSTLL<br>BLDG C & D                                | \$3,100.00              | \$3,100.00                   | \$0.00                      | \$0.00                                | \$3,100.00                               | 100%     | \$0.00                       |
| 1                | CHANGE ORDER # 7<br>CONCRETE REPAIR<br>WALL TO SLAB VOID<br>BLD D                    | \$920.00                | \$920.00                     | \$0.00                      | \$0.00                                | \$920.00                                 | 100%     | \$0.00                       |
|                  |                                                                                      | \$23,566.00             | \$23,566.00                  | \$0.00                      | \$0.00                                | \$23,566.00                              | 100%     | \$0.00                       |

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**CONTINUATION SHEET**

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Application No.:

Application Date:

Period to:

Architects Project No.:

CCS 782

| A        | B                                                                                 | C               | D                         | E           | F                          | G                                  |         | H                 |
|----------|-----------------------------------------------------------------------------------|-----------------|---------------------------|-------------|----------------------------|------------------------------------|---------|-------------------|
| Item No. | Description of Work                                                               | Scheduled Value | Work Completed            | Completed   | Materials Presently Stored | Total Completed And Stored To Date | % G / C | Balance To Finish |
|          |                                                                                   |                 | From Previous Application | This Period |                            |                                    |         |                   |
| 2        | CONCRETE REPAIR TO BALCONY RAIL UNIT D324.                                        | \$547.00        | \$547.00                  | \$0.00      | \$0.00                     | \$547.00                           | 100%    | \$0.00            |
| 3        | REMOVE & INSTALL NEW FRAMING INSULATION AND DRYWALL AT GARAGE ENTRY ON ALL 4 BLD  | \$19,650.00     | \$19,650.00               | \$0.00      | \$0.00                     | \$19,650.00                        | 100%    | \$0.00            |
| 4        | REMOVE BAY WINDOWS THAT HAVE BEEN REPLACE AND INSTALL PROPER FLASHING & REINSTALL | \$10,152.00     | \$0.00                    | \$0.00      | \$0.00                     | \$0.00                             | 0%      | \$10,152.00       |
| 5        | REMOVE & REPLACE 12 OLD BAY WINDOWS                                               | \$29,640.00     | \$0.00                    | \$0.00      | \$6,000.00                 | \$0.00                             | 0%      | \$23,640.00       |
| 6        | CHANGE ORDER # 8 ADD 3 MORE BAY WINDOWS TO REPLACE 3 ORDERED BY GLASSTEC          | \$7,410.00      | \$0.00                    | \$4,940.00  | \$0.00                     | \$4,940.00                         | 66%     | \$2,470.00        |
| 7        | Qty 24 WINDOWS 1ST, 2ND & 3RD FLOOR END WALLS. 23" X42"                           | \$30,240.00     | \$0.00                    | \$30,240.00 | \$0.00                     | \$30,240.00                        | 100%    | \$0.00            |
|          |                                                                                   | \$97,639.00     | \$20,197.00               | \$35,180.00 | \$6,000.00                 | \$55,377.00                        | 57%     | \$42,262.00       |

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SHIPWATCH  
FAX 843-588-6722

Charleston Glass Company  
4231 Spruill Ave.  
N. Charleston, SC 29405

Q-U-O-T-E 001-114842  
Date: 10/22/2003

Windows - 10# 16254R

ATT: BOB WIGGINS

Sold-to: CAROLINA CONCRETE  
SHIP WATCH  
WILD DUNES

Sales Rep: TW Installer: PO-#: Terms: C.O.D.

ARRANGEMENTS

In: Out:  
RANDY GAVE WO

INSTALL-NOTES: SHIP WATCH-WILD DUNES

| QTY                                                                 | PRODUCTS-&SERVICES                                                                                                                    | -IV-LOC- | --TOTAL--                                                                                                 |
|---------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------|----------|-----------------------------------------------------------------------------------------------------------|
| 1                                                                   | LABOR FWHSC LABOR AND SERVICE CHARGE N/A<br>LOOK AT MORE WINDOWS<br>BOB WIGGINS 729-2510<br>LESTER 886-5267 OFFICE<br>343-3302 MOBILE | 1        | .00                                                                                                       |
| 28e 23"x42" } X0 SLIDING WINDOWS<br>8e 47"x49" } TO MATCH 1ST ROUND |                                                                                                                                       |          | Material: .00<br>Labor: .00<br>Tax: .00<br>Deductible: .00<br>TOTAL: .00<br>Deposit: .00<br>Payments: .00 |
| MATERIAL, TAX, LABOR, & DEMO<br>TOTAL- \$34,643.00                  |                                                                                                                                       |          |                                                                                                           |
| -B-A-L-A-N-C-E-                                                     |                                                                                                                                       |          | .00                                                                                                       |

PRICE BASED ON PREVIOUSLY INSTALLED WINDOWS

WINDOWS ARE ORDERED ON EXPRESS FROM KFCO  
ADD 3 WEEKS ON SHIPPING.

Thanks,  
Rug

TERMS: 1/2 DEPOSIT REQUIRED/BALANCE UPON COMPLETION  
ORDERS ARE PLACED UPON RECEIPT OF YOUR DEPOSIT.

104.144  
Charleston Glass0541

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_





P.O. BOX 12806  
CHARLESTON, S.C. 29422  
PHONE (843) 795-0450  
FAX (843) 795-0307

January 7, 2004

Memorandum  
2002-50

TO: Shipwatch Horizontal Property Regime, Charlie Rhoden c/o Lester Griffin  
FROM: Bob Sisnroy  
SUBJECT: Results of Meeting and Visual Survey December 30, 2003  
DATE: January 6, 2004  
COPY TO: Glasgow Roofing  
Carolina Concrete Systems

On December 20, 2003 a limited visual survey of the ongoing roof replacement and Durock exterior cladding system was performed. This was conducted in conjunction with a meeting between Carl Grisie, Lester Griffin and myself. The purpose of this memorandum is to summarize the results of the site visit.

- I. During the site visit, a limited visual survey of the roof replacement was performed. Based on the survey, the following items must be addressed.
  1. Chimney caps on both C Building and D Building are not adequately fastened as addressed in the letter signature dated December 5, 2003. As delineated in the letter, it was agreed that 3/8 inch stainless steel lag bolts would be installed. Currently, there is poorly installed thin shank screws which is unsatisfactory.
  2. Mira dry sticky back roof water barrier is not weather lapped at the party wall/roof intersection on the fifth floor street side roofs. This was discussed with Glasgow Roofing on October 31, 2003. It was indicated that this would be properly weather lapped right away. Although this may be accomplished in the course of the panel installation, I received no confirmation this would be accomplished.
  3. Heavily trimmed chimney caps at the parapet wall intersection must be counter flashed at the parapet wall end.
  4. All corner chimney inboard corners must be fully counter flashed at the roof/wall intersection.



CCS 1929

5. Chimney caps trimmed to accommodate chimney counter flashing must be repaired with additional counterflashing down to the parapet cap.

II. A limited visual survey of the Durock exterior cladding system installation was accomplished during the site. Based on the visual survey, the following items must be addressed.

1. Heavy mold was observed on the inner wall dry wall on the right side wall elevation looking from the street. It was agreed with Dave Hill that the area of mold contamination would be cleaned in accordance with proper protocol. It was also agreed that numerous damaged metal studs would be sistered with new studs.
2. Observations of the side elevation bay window units revealed the sill flashing currently is of inadequate length. Therefore, the Durock terminations at the wall corner intersections are exposed allowing an avenue for water intrusion. Also, the flashing offset is now improper for a sound engineered sealant joint at the sill. Therefore, it is recommended that the flashing be replaced with proper new flashing properly integrated at the wall. However, it was agreed that a site meeting and evaluation would be performed with the window installer and Carolina Concrete Systems to determine if a possible alternative was acceptable.
3. Partial wall installation integrating the Durock system with existing EIFS at the end corner walls was discussed. It was agreed that the typical wall section from the corner to the sliding glass door frame would be fully replaced with the Durock system.
4. Damage to the Seal-O-Flex stair tower roof was evident due to the edge flashing being pushed up to accommodate installation of the Durock board. It was agreed that heavy seal tape would be installed on the membrane tears to make a waterproof condition until the stairwell membrane roofing is replaced.
5. No evidence of kickouts at the sloped party wall terminations was observed. It will be necessary for kickouts to be installed.
6. Wall/deck corner intersections must have engineered sealant joints as a minimum.

III. Progress on the roof replacement is as follows.

1. Building C top mansard is approximately 2/3 complete. All remaining roof surfaces have panels installed.

2. Building D roof demolition is still required at the lower mansard roof on both ends of the building, the elevator tower and one stairwell. Roofing panels have been installed on the ocean side roof.

#### IV. General

1. It should be noted that approval for payment of requested job progress draws will not be provided if outstanding deficiencies exist. It is the responsibility of the respective contractors to ensure that deficiencies due not exist.

*Robert G. Sisnroy*  
Robert G. Sisnroy 1/7/04

CCS 1931



**Charleston Glass**  
 4231 SPRUILL AVE.  
 NORTH CHARLESTON, SOUTH CAROLINA  
 (843) 747-7371  
 (FAX) 747-0188

1-7-04

CAROLINA CONCRETE  
 BOB WILKINS  
 SHIPWATCH JOB

INSTALL  
 3 - 736<sup>00</sup>  
 2208<sup>00</sup>  
 9 INSTALLED 736<sup>00</sup>  
 6624<sup>00</sup>  
 12 @ 1971<sup>00</sup>  
 23652<sup>00</sup>  
 32484<sup>00</sup>

REMOVE EACH BAY WINDOW  
 INSTALL NEW FORMED FLASHING  
 REINSTALL EXISTING SYSTEM  
 RESERL PERIMETER + ALL JOINTS

TOTAL MATERIAL, DAY, + LABOR - @ \$736. -

\* DOES NOT INCLUDE BROKEN GLASS, INCORRECT EXISTING  
 PART REPLACEMENT, ETC.

FURNISH + INSTALL A NEW SYSTEM  
 BRONZE 2"x4 1/2" STREETVIEW SYSTEM (PAINTED  
 WITH BRONZE TEMPLATES) GLASS,

\* DEMO OF EXISTING BY OTHERS  
 \* INCLUDES MATERIAL, DAY, + LABOR - \$1,971. -  
 \* ALSO INCLUDED IS NEW SIM FINISHING

REWORK BASED ON 1 PER DAY  
 NEW BASED ON 2 PER DAY

Thanks

*Andy*

CCS 635



CHARLESTON GLASS & MIR Fax:8437470188

**\*\* Transmit Conf. Report \*\***

P.1

Mar 30 2004 10:21

| Fax/Phone Number | Mode   | Start    | Time  | Page | Result | Note |
|------------------|--------|----------|-------|------|--------|------|
| 8865815          | NORMAL | 30.10:21 | 0'46" | 3    | # O K  |      |

BB6-5B15

**Charleston Glass Co.**

4231 SPRUILL AVE.  
NORTH CHARLESTON, SOUTH CAROLINA 29405  
(843) 747-7371  
(FAX) 747-0188

3-30-04

TO: BOB WILKINS

FROM: RAMON

3 TOTAL SHEETS

**CONTRACT**

|    |                   |            |
|----|-------------------|------------|
| 36 | SLIDING WINDOWS   | 34,643.-   |
| 14 | BAY WINDOWS @1971 | 27,594.-   |
|    |                   | <hr/>      |
|    |                   | \$62,237.- |

**INVOICE**

|    |                          |          |
|----|--------------------------|----------|
| 36 | SLIDING WINDOWS          | 34,643.- |
| 2  | BAY WINDOWS @1971        | 3,942    |
|    | METAL + GLASS FOR THE 12 | 6,000.   |
|    | OTHER BAY WINDOWS        | <hr/>    |

104.14d  
Charleston Glass0643



TOTAL INVOICE

\$44,585.00

BB6-SB15

*Charleston Glass Co.*

4231 SPRUILL AVE.  
NORTH CHARLESTON, SOUTH CAROLINA 29405  
(843) 747-7371  
(FAX) 747-0188

3-30-04

To: BOB WIGGINS

FASHI RANBY

3 TOTAL SHEETS

CONTRACT

|    |                   |                 |
|----|-------------------|-----------------|
| 36 | SLIDING WINDOWS   | 34,643.-        |
| 14 | BAY WINDOWS @1971 | <u>27,594.-</u> |
|    |                   | \$62,237.-      |

INVOICE

|    |                        |                   |
|----|------------------------|-------------------|
| 36 | SLIDING WINDOWS        | 34,643.-          |
| 2  | BAY WINDOWS @1971      | 3,942             |
|    | METAL + WAX FOR THE 12 | 6,000.            |
|    | OTHER BAY WINDOWS      | <u>          </u> |

TOTAL INVOICE \$44,585.00

10-14-04

8 MORE BAY WINDOWS - @1971

*Randy*

104.144  
Charleston Glass0540

✓ GlasTec ★ A 101  
 ✓ GlasTec ★ 201  
 ✓ GLASTEC ★ 301  
 GLASS ONLY

106  
 206-GLASTEC ★ ✓  
 306

### B Bid

107  
 ✓ GLASTEC ★ 207  
 307

112 GLASTEC ★ ✓  
 212 GLASTEC ★ GLASS ONLY ✓  
 312 GLASTEC ★ GLASS ONLY ✓

### C Bid

| N   | S               |
|-----|-----------------|
| 113 | 118 GLASTEC ★   |
| 213 | 218 - GLASTEC ★ |
| 313 | 318 GLASTEC ★   |

### D Bid

| N   | S                          |
|-----|----------------------------|
| 124 | 119 - <del>GLASTEC ★</del> |
| 224 | 219 -                      |
| 324 | 319 -                      |

104.144  
 Charleston Glass 0539

★ - indicates Glasstec installed Recently  
 but Needs to be Remove, Flashed  
 AND REINSTALLED

# Charleston Glass Co.

4231 Spruill Ave.

North Charleston, South Carolina 29405

(843) 747-7371 • FAX (843) 747-0188

24 HOUR SERVICE

Charleston Glass Company  
4231 Spruill Ave.  
Charleston, SC 29405

INVOICE

001-334956

Date: 03/25/2004

Order to: CAROLINA CONCRETE SYSTEMS  
P.O. BOX 13149  
CHARLESTON SC 29422

**FAXED**

MAR 26 2004

By

(43)588-6721 F(843)588-6722

Rep: TW Installer: EVE PO-#: SHIPWATCH

Terms: NET 30

## ARRANGEMENTS

In: Out:  
RANDY GAVE WO

TALL-NOTES: SHIP WATCH-WILD DUNES \$34643.000  
FOR ALUM. WINDOWS - \$ 27594.00 FOR ALUM. BAYS  
TOTAL 62237.00

| PRODUCTS & SERVICES                                                                                             | IV-LOC | TOTAL |
|-----------------------------------------------------------------------------------------------------------------|--------|-------|
| RD<br>DRAW REQUEST<br>LOOK AT MORE WINDOWS<br>BOB WIGGINS 729-2510<br>LESTER 886-5267 OFFICE<br>343-3382 MOBILE | 1      |       |

Deductible: .00  
TOTAL inc. tax: 44,585.00  
Deposit: .00  
Payments: .00

-B-A-L-A-N-C-E- 44,585.00

CCS 753

EXHIBIT

10

# Charleston Glass Co.

Charleston Glass Company  
4231 Spruill Ave.  
Charleston, SC 29405

4231 Spruill Ave.  
North Charleston, South Carolina 29405  
(843) 747-7371 • FAX (843) 747-0188 Date: 10/14/2004  
24 HOUR SERVICE

to: CAROLINA CONCRETE SYSTEMS  
P.O. BOX 13149  
CHARLESTON SC 29422

31586-6721 F(843)588-6722

Repr: EVE Installer: EVE PO: SHIPWATCH Terms: NET 30

ALL-NOTES: SHIPWATCH VILLAS \$ 62231.00

| PRODUCTS & SERVICES                           | QUANTITY | UNIT PRICE | TOTAL                     |
|-----------------------------------------------|----------|------------|---------------------------|
| RD                                            |          |            |                           |
| DRAW REQUEST                                  |          |            |                           |
| 2ND DRAW 15768.00                             |          |            |                           |
| SEE BREAKDOWN!!!!                             |          |            |                           |
| WINDOWS & DOORS CONTRACT 62231.00             |          |            |                           |
| 1ST REQUEST 0.00                              |          |            |                           |
| BALANCE 17645.00                              |          |            |                           |
| 2ND REQUEST 8 HOME DAYS 15768.00 THIS INVOICE |          |            |                           |
| BALANCE DUE AFTER THIS 1870.00                |          |            |                           |
| <hr/>                                         |          |            |                           |
|                                               |          |            | Deductible: .00           |
|                                               |          |            | TOTAL inc. tax: 15,768.00 |
|                                               |          |            | Deposit: .00              |
|                                               |          |            | Payment: .00              |
| <hr/>                                         |          |            |                           |
| B-A-L-A-N-C-E                                 |          |            | 15,768.00                 |

CCS 851

## CERTIFICATE OF SERVICE

I hereby certify that I have on this day served counsel for the opposing party(s) with a copy of the foregoing and within Defendant Glasstec, Inc.'s Memorandum in Support of Motion for Summary Judgment by submitting same via *E-mail* to the following:

**Attorney for Plaintiff:**

R. Patrick Flynn, Esq.  
[rpf@roblaw.net](mailto:rpf@roblaw.net)

**Attorneys for First Exteriors LLC:**

James H Elliott, Jr., Esq.  
[jelliott@richardsonplowden.com](mailto:jelliott@richardsonplowden.com)  
J.J. Anderson, Esq.  
[janderson@arlawsc.com](mailto:janderson@arlawsc.com)

**Attorneys for Robert G Sisinroy and Sisinroy Engineering, LLC:**

Tyler Paul Winton, Esq.  
[twinton@carlockcopeland.com](mailto:twinton@carlockcopeland.com)  
Paul Eliot Sperry, Esq.  
[psperry@carlockcopeland.com](mailto:psperry@carlockcopeland.com)

**Attorney for BASF Corp.:**

David Root, Esq.  
[droot@kernodlelaw.com](mailto:droot@kernodlelaw.com)

**Attorney for EFCO Corp.:**

R. Britton Kelly, Esq.  
[bkelly@rrhlawfirm.com](mailto:bkelly@rrhlawfirm.com)

**Attorney for Gary Freeman Architect, Inc and Gary Freeman, Individually:**

K. Michael Barfield, Esq.  
[mbarfield@barnwell-whaley.com](mailto:mbarfield@barnwell-whaley.com)

**Attorneys for Charleston Glass Company, Inc.:**

Marshall A. Earhart, Esq.,  
[marshall@maybanklaw.com](mailto:marshall@maybanklaw.com)  
Amanda R. Maybank, Esq.  
[amanda@maybanklaw.com](mailto:amanda@maybanklaw.com)

**Attorneys for Acrocrete, Inc.:**

Greg Horton, Esq.  
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Adriane Belton, Esq.  
[abelton@wcsr.com](mailto:abelton@wcsr.com)

**Attorney for Glasgow Roofing Co., Inc.:**

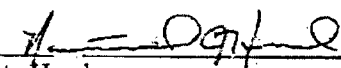
Samia H. Nettles, Esq.  
[snettlles@richardsonplowden.com](mailto:snettlles@richardsonplowden.com)

**Attorneys for Carolina Concrete Systems, Inc.:**

David C. Cobb, Esq.  
[dcobb@turnerpadget.com](mailto:dcobb@turnerpadget.com)  
Jennie Smith, Esq.  
[jsmith@turnerpadget.com](mailto:jsmith@turnerpadget.com)

The following will receive hand delivered copies on January 15, 2015:  
R. Patrick Flynn, Esq. and David C. Cobb, Esq.

This 14<sup>th</sup> day of January, 2015  
Beaufort, South Carolina

  
\_\_\_\_\_  
Nate Head  
Paralegal for Stacey P. Canaday

# TURNER PADGET

TURNER PADGET GRAHAM & LANEY PA.

CHARLESTON  
COLUMBIA  
FLORENCE  
GREENVILLE  
MYRTLE BEACH

Jennie M. Smith

REPLY TO:

E-Mail: [jsmith@TurnerPadget.com](mailto:jsmith@TurnerPadget.com)

Writer's Direct Dial: (843) 576-2805

Direct Fax: (843) 577-1627

March 29, 2013

Honorable Julie Armstrong  
Charleston County Clerk of Court  
100 Broad Street  
Charleston, South Carolina 29401

Re: Shipwatch Condominium Association, Inc. v. Carolina Concrete Systems, Inc., et al.

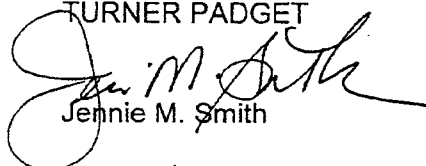
Docket No.: 2012-CP-10-3857  
TP File No.: 490.1123

Dear Ms. Armstrong:

I have enclosed the original and one copy of Carolina Concrete Systems, Inc.'s Answer and Crossclaims in this matter. Please file the original and return a clocked copy in the return envelope. By copy of this letter, I am serving counsel of record. Thank you for your assistance.

Sincerely,

TURNER PADGET



Jennie M. Smith

JMS/sec  
enclosures

BUSINESS • LITIGATION • SOLUTIONS

1

Gateway Center • Suite 200 • 40 Calhoun Street (29401) • PO Box 22129 • Charleston, SC 29413  
Phone (843) 576-2800 • Fax (843) 577-3369 • [turnerpadget.com](http://turnerpadget.com)



|                                                                                                        |   |                                                                                                                                                                                                                                                                                                                                                                                                          |
|--------------------------------------------------------------------------------------------------------|---|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| STATE OF SOUTH CAROLINA                                                                                | ) | IN THE COURT OF COMMON PLEAS                                                                                                                                                                                                                                                                                                                                                                             |
| COUNTY OF CHARLESTON                                                                                   | ) | Docket No.: 2012-CP-10-3857                                                                                                                                                                                                                                                                                                                                                                              |
| SHIPWATCH CONDOMINIUM ASSOCIATION, INC.,                                                               | ) |                                                                                                                                                                                                                                                                                                                                                                                                          |
| Plaintiff,                                                                                             | ) |                                                                                                                                                                                                                                                                                                                                                                                                          |
| v.                                                                                                     | ) | <b>CAROLINA CONCRETE SYSTEMS, INC.'S ANSWER AND CROSSCLAIMS AGAINST SISNROY ENGINEERING, LLC; ROBERT G. SISNROY; TERRENCE McKELVEY; GLASGOW ROOFING, INC; GLASTEC, INC.; SPECTECH, INC.; CHIMNEY SWEEPS, INC.; LOW COUNTRY CHIMNEYS, INC.; EFCO CORP.; W.C. JOHNSTON ARCHITECTURAL SALES, INC.; CHARLESTON GLASS COMPANY, INC.; FIRST EXTERIORS, LLC; GARY FREEMAN ARCHITECT, INC.; and GARY FREEMAN</b> |
| CAROLINA CONCRETE SYSTEMS, INC., SISNROY ENGINEERING, LLC;                                             | ) |                                                                                                                                                                                                                                                                                                                                                                                                          |
| ROBERT G. SISNROY, individually;                                                                       | ) |                                                                                                                                                                                                                                                                                                                                                                                                          |
| TERRENCE J. McKELVEY; GLASGOW ROOFING, INC.; GLASTEC, INC.;                                            | ) |                                                                                                                                                                                                                                                                                                                                                                                                          |
| SPECTECH, INC.; SONNEBORN, INC.;                                                                       | ) |                                                                                                                                                                                                                                                                                                                                                                                                          |
| CHIMNEY SWEEPS, INC.; LOW COUNTRY CHIMNEYS, INC.; EFCO CORP.; W.C. JOHNSTON ARCHITECTURAL SALES, INC.; | ) |                                                                                                                                                                                                                                                                                                                                                                                                          |
| CHARLESTON GLASS COMPANY, INC.; FIRST EXTERIORS, LLC;                                                  | ) |                                                                                                                                                                                                                                                                                                                                                                                                          |
| ACROCRETE, INC.; BASF CORP.;                                                                           | ) |                                                                                                                                                                                                                                                                                                                                                                                                          |
| GARY FREEMAN ARCHITECT, INC.;                                                                          | ) |                                                                                                                                                                                                                                                                                                                                                                                                          |
| GARY FREEMAN, individually,                                                                            | ) |                                                                                                                                                                                                                                                                                                                                                                                                          |
| Defendants.                                                                                            | ) |                                                                                                                                                                                                                                                                                                                                                                                                          |
|                                                                                                        | ) | <b>(Jury Trial Demanded)</b>                                                                                                                                                                                                                                                                                                                                                                             |

Defendant Carolina Concrete Systems, Inc. ("Defendant") answers the Complaint; crossclaims against Sisnroy Engineering, LLC, Robert G. Sisnroy, Terrence McKelvey, Glasgow Roofing, Inc., GlassTec Inc., Spectech, Inc., Chimney Sweeps, Inc., Low Country Chimneys, Inc., W.C. Johnston Architectural Sales, Inc., Charleston Glass Company, Inc., First Exteriors, LLC, Gary Freeman Architect, Inc., and Gary Freeman; and respectfully shows unto this Court:

#### FOR A FIRST DEFENSE

1. Except as specifically admitted, qualified or explained, Defendant denies the allegations and demands strict proof of each allegation.

2. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations of Paragraph 1; therefore, Defendant denies the allegations and demands strict proof of each allegation.

3. Defendant admits the allegations of Paragraph 2.

4. Paragraphs 3-19 do not require a response.

5. Defendant admits only so much of the allegations of Paragraph 20 at this time as allege Defendant worked at the Project. Defendant denies the remaining allegations of Paragraph 20 at this time and demands strict proof of each allegation.

6. Paragraph 21 does not require a response.

7. Defendant admits only so much of the allegations of Paragraph 22 as allege a civil lawsuit may be filed in Charleston County.

8. Paragraph 23 does not require a response.

9. Defendant denies the allegations of Paragraphs 24-25 and demands strict proof of each allegation.

10. Paragraph 26 does not require a response.

11. Paragraph 27 contains statements of law, to which no response is required.

12. Defendant denies the allegations of Paragraphs 28-33 and demands strict proof of each allegation.

13. Paragraph 34 does not require a response.

14. Defendant denies the allegations of Paragraphs 35-47 and demands strict proof of each allegation.

15. Paragraph 48 does not require a response.

16. Defendant denies the allegations of Paragraphs 49-51 and demands strict proof of each allegation.

17. Paragraph 52 does not require a response.

18. Defendant admits only so much of the allegations of Paragraph 53 that allege it contracted with Shipwatch at Wild Dunes and/or Shipwatch Horizontal Property Regime to provide certain work and services, and Defendant craves reference to the applicable contracts and agreements between these parties. Defendant denies the

remaining allegations of Paragraph 53 that are inconsistent with the applicable contracts and agreements and demands strict proof of each allegation.

19. Defendant denies the allegations of Paragraphs 54-58 and demands strict proof of each allegation.

20. Paragraph 59 does not require a response.

21. Paragraph 60 contains statements of law, to which no response is required. To the extent a response is required, Defendant denies the allegations and demands strict proof of each allegation.

22. Defendant denies the allegations of Paragraphs 61-62 and demands strict proof of each allegation.

23. Paragraph 63 does not require a response.

24. Defendant denies the allegations of Paragraphs 64-68 and demands strict proof of each allegation.

25. Paragraph 69 does not require a response.

**FOR A SECOND DEFENSE**  
**(Comparative Negligence)**

26. FURTHER ANSWERING, Defendant alleges any injury and/or damage sustained was caused by the negligence or willfulness of Plaintiff, combining, concurring, and contributing with the negligence or willfulness, if any, on the part of the Defendant. Because Plaintiff's negligence or willfulness is greater than the alleged negligence or willfulness of Defendant, Plaintiff is barred from recovery against this party.

**FOR A THIRD DEFENSE**  
**(Comparative Negligence)**

27. FURTHER ANSWERING, Defendant alleges any injury or damage sustained was caused by the negligence or willfulness of Plaintiff, combining, concurring, and contributing with the negligence or willfulness, if any, on the part of Defendant. Therefore, the Court should reduce any recovery awarded to Plaintiff for the alleged injuries and damage based upon the percentage of negligence or willfulness attributed to Plaintiff.

**FOR A FOURTH DEFENSE**  
**(Compliance with Industry Customs, Practices, and Standards)**  
**(Acceptance by Plaintiff)**

28. FURTHER ANSWERING, Defendant alleges any and all work or services that Defendant provided met all construction industry customs, practices, and standards applicable, and Plaintiff approved or directed any deviation by this party from the applicable construction industry customs, practices, and standards.

**FOR A FIFTH DEFENSE**  
**(Failure to Maintain)**

29. FURTHER ANSWERING, Defendant alleges Plaintiff failed to maintain the structure against normal wear, tear, and deterioration due to age and the elements, which is the direct and proximate cause of any damage suffered. Therefore, Plaintiff's claims are barred.

**FOR A SIXTH DEEFNSE**  
**(Failure to State a Claim)**

30. FURTHER ANSWERING, Defendant submits the allegations of the Complaint do not state facts sufficient to constitute a cause of action against Defendant. Accordingly, this Court should dismiss the Complaint.

**FOR A SEVENTH DEFENSE**  
**(Punitive Damages)**

31. FURTHER ANSWERING, Defendant alleges that any award of punitive damages would violate the constitutional safeguards provided it by the Due Process Clause of the Fourteenth Amendment of the United States Constitution and under the Due Process Clause of Article I, Section 3 of the South Carolina Constitution because the determination of punitive damages does not bear any reasonable relationship to the amount of actual damages, if any, suffered by or awarded.

**FOR AN EIGHTH DEFENSE**  
**(Failure to Mitigate)**

32. FURTHER ANSWERING, Defendant alleges Plaintiff failed to mitigate its damages, if any.

**FOR A NINTH DEFENSE**  
**(Reservation of Rights)**

33. FURTHER ANSWERING, Defendant has not had an opportunity to conduct a sufficient investigation or engage in adequate discovery touching on the circumstances of these allegations. Defendant intends to act as best it can to inform itself as to the pertinent facts and prevailing circumstances surrounding any reported injury or damage and gives notice of the intent to assert any further affirmative defenses that the information-gathering process may indicate is supported by fact and law, including but not limited to, defense that the action is barred in whole or in part by any applicable statute, contract, release, covenant, or the doctrine of laches. Thus, Defendant reserves the right to amend this pleading to assert any such defenses.

**FOR A TENTH DEFENSE**  
**(Third Party)**

34. FURTHER ANSWERING, Defendant alleges any injury or damage sustained was due to and caused by the negligence, gross negligence, willfulness, wantonness, or carelessness on the part of some third party over whom Defendant had or has no authority or control. Therefore, Defendant is not liable in any amount.

**FOR AN ELEVENTH DEFENSE**  
**(Statute of Limitations)**

35. FURTHER ANSWERING, Defendant alleges the applicable statute of limitations may bar these claims.

**FOR A TWELFTH DEFENSE AND AS CROSSCLAIMS AGAINST**  
**SISNROY ENGINEERING, LLC; ROBERT G. SISNROY;**  
**TERRENCE MCKELVEY; GLASGOW ROOFING, INC.;**  
**GLASSTEC INC.; SPECTECH, INC.; CHIMNEY SWEEPS, INC.;**  
**LOW COUNTRY CHIMNEYS, INC.; W.C. JOHNSTON**  
**ARCHITECTURAL SALES, INC.; CHARLESTON GLASS**  
**COMPANY, INC.; FIRST EXTERIORS, LLC;**  
**GARY FREEMAN ARCHITECT, INC.; AND GARY FREEMAN**  
**("OTHER DEFENDANTS")**

36. Defendant incorporates the allegations from the above paragraphs.

37. Plaintiff sued Defendant Carolina Concrete Systems, Inc. claiming damages caused by allegedly defective products and/or construction work or services.

38. Defendant denies all of the substantive allegations against it made by Plaintiff.

39. By way of crossclaims, Defendant asserts claims against Sisroy Engineering, LLC; Robert G. Sisroy; Terrence McKelvey; Glasgow Roofing, Inc.; GlassTec Inc.; Spectech, Inc.; Chimney Sweeps, Inc.; Low Country Chimneys, Inc.; W.C. Johnston Architectural Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; Gary Freeman Architect, Inc.; and Gary Freeman ("Other Defendants").

**FOR A FIRST CAUSE OF ACTION**  
**AGAINST "OTHER DEFENDANTS"**  
**(Negligence)**

40. Defendant incorporates the allegations from the above paragraphs.

41. Upon information and belief, Other Defendants owed a duty to Defendant to exercise the degree of skill necessary to ensure that the labor, materials, goods, and services in connection with the construction of repairs at the Project conformed with the customary and ordinary standards of the building and construction industry, all applicable building codes, and to otherwise deliver the buildings free of construction defects.

42. Upon information and belief, Other Defendants were negligent, careless and reckless in the design, supervision, construction, inspection, and/or supplying of the work or materials outlined above and incorporated into the Project.

43. Upon information and belief, as a direct and proximate result of the negligence, carelessness, and recklessness, Defendant incurred damages in the amount of any money that it is adjudged to owe Plaintiff or which it pays Plaintiff in the settlement of Plaintiff's claims plus the cost of investigating and defending these claims.

44. Upon information and belief, Defendant is entitled to judgment for actual damages (collectively or individually) against Other Defendants in the amount of any monies that it is adjudged to owe Plaintiff or which it pays Plaintiff in settlement of Plaintiff's claims as well as costs and fees incurred in the investigation, defense, and settlement of these claims.

**FOR A SECOND CAUSE OF ACTION**  
**AGAINST "OTHER DEFENDANTS"**  
**(Breach of Warranty)**

45. Defendant incorporates the allegations from the above paragraphs.

46. Other Defendants expressly or impliedly warranted to Defendant that all work performed would be performed in a careful, diligent, and workmanlike manner and that any materials and/or services designed, supplied, or sold by them for use on the project would be merchantable and fit for their intended or specific purposes.

47. Upon information and belief, Other Defendants breached their implied and/or express warranties of merchantability, workmanlike service, and/or fitness for a particular or intended purpose in the construction of the Project.

48. Upon information and belief, as a result of these breaches, Defendant has incurred damages in the amount of any money that it is adjudged to owe Plaintiff or which it pays Plaintiff in the settlement of Plaintiff's claims plus the cost of investigating and defending these claims.

49. Upon information and belief, Defendant is entitled to judgment for actual damages (collectively or individually) against Other Defendants in the amount of any monies that it is adjudged to owe Plaintiff or which it pays Plaintiff in settlement of Plaintiff's claims, as well as costs and fees incurred in the investigation, defense, and settlement of these claims.

**FOR A THIRD CAUSE OF ACTION**  
**AGAINST "OTHER DEFENDANTS"**  
**(Breach of Contract)**

50. Defendant incorporates the allegations from the above paragraphs.

51. Defendant entered into oral and/or written contracts with Other Defendants, and Other Defendants provided work and materials for the project.

52. The contracts required Other Defendants to provide construction goods and/or services for the project that, among other things, would produce quality buildings free from defects that conformed to the contract documents, building codes, and industry standards. The contracts further required Other Defendants to supervise and direct their work using the best skill and attention.

53. Upon information and belief, Other Defendants breached the contract by failing to provide appropriate construction goods and/or services to the project, by failing to perform their work in a careful, diligent, and workmanlike manner, by failing to provide goods and/or services that resulted in quality buildings free from defects and otherwise in conformance with all contract documents, and by failing to provide goods and/or services that conformed with all appropriate building codes and industry standards.

54. Upon information and belief, as a result of these breaches, Defendant has incurred damages in the amount of any money that it is adjudged to owe Plaintiff or which it pays Plaintiff in settlement of Plaintiff's claims plus the costs of investigating and defending these claims.

55. Upon information and belief, Defendant is entitled to judgment for actual damages (collectively or individually) against Other Defendants in the amount of any monies that it is adjudged to owe Plaintiff or which it pays Plaintiff in settlement of Plaintiff's claims as well as costs and fees incurred in the investigation, defense, and settlement of these claims.

**FOR A FOURTH CAUSE OF ACTION**  
**AGAINST "OTHER DEFENDANTS"**  
**(Indemnity)**

56. Defendant incorporates into this cause of action the allegations of the above paragraphs.

57. Upon information and belief, Other Defendants negligently selected the materials and/or products and negligently installed and/or trained and instructed the installers about the proper manner for the installation of the materials and/or products.

58. To the extent, if any, that Defendant is held liable to Plaintiff, such liability would be a direct and proximate result of the wrongful acts, omissions, negligence, and/or presentation of Other Defendants, which has damaged Defendant because Defendant has been subjected to liability and has incurred consequential damages in having to expend fees and costs in defending this action.

59. To the extent, if any, that the materials and/or products were defective or deficient in design, engineering, materials, installation, installation obstruction, and/or were not merchantable or fit for its particular or intended purposes, such defects and

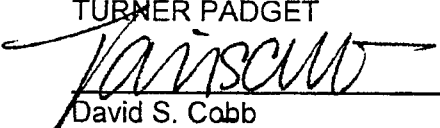


deficiencies would result from the breach of the express and implied contractual obligations and warranties that Other Defendants provided. These acts would have damaged Defendant because Defendant has been subjected to liability and has incurred consequential damages in having to expend fees and costs in defending this action.

60. Defendant is entitled to indemnification from Other Defendants for any liability Defendant is found to have to Plaintiff, and Defendant would be entitled to damages for Other Defendants' negligence and for Other Defendants' breaches of the implied and express warranties. In such a case, Defendant would be entitled to recover from Other Defendants for any moneys that it is adjudged to owe Plaintiff or which it pays Plaintiff in settlement of Plaintiff's claims as well as costs and fees incurred in the investigation, defense, and settlement of these claims. To the extent, if any, Defendant is liable to Plaintiff, Defendant is entitled to contractual and equitable indemnity from Other Defendants for any judgment or settlement amount, including reasonable attorney's fees. Further, to the extent liability or damages are imposed against Defendant, Defendant alleges its liability to Plaintiff, if any, is only secondary or passive and Plaintiff's damages, if any, were solely and proximately caused by the active or primary fault of Other Defendants. Therefore, Defendant pleads the right of contractual and equitable indemnity exists in its favor against Other Defendants because Defendant is exposed to the liability in this case, if at all, because of the primary wrongful acts and/or omissions of Other Defendants.

WHEREFORE, Defendant Carolina Concrete Systems, Inc. demands judgment in its favor dismissing the Complaint; awarding it judgment on its Crossclaims (if required) against Defendants Sisroy Engineering, LLC, Robert G. Sisroy, Terrence McKelvey, Glasgow Roofing, Inc., GlassTec Inc., Spectech, Inc., Chimney Sweeps, Inc., Low Country Chimneys, Inc., W.C. Johnston Architectural Sales, Inc., Charleston Glass Company, Inc., First Exteriors, LLC, Gary Freeman Architect, Inc., and Gary Freeman ("Other Defendants"); and awarding costs, attorney's fees, and such other further relief as the Court deems just and equitable.

TURNER PADGET

  
David S. Cobb

Post Office Box 22129

Charleston, South Carolina 29413-2129

Direct: (843) 576-2803

Fax: (843) 577-1629

[DCobb@TurnerPadget.com](mailto:DCobb@TurnerPadget.com)

ATTORNEYS FOR CAROLINA  
CONCRETE SYSTEMS, INC.

Charleston, South Carolina

March 28, 2013

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON )

Docket No.: 2012-CP-10-3857

SHIPWATCH CONDOMINIUM )  
ASSOCIATION, INC., )

Plaintiff, )

v. )

CERTIFICATE OF SERVICE

CAROLINA CONCRETE SYSTEMS, )  
INC., SISNROY ENGINEERING, LLC; )  
ROBERT G. SISNROY, individually; )  
TERRENCE J. McKELVEY; GLASGOW )  
ROOFING, INC.; GLASTEC, INC.; )  
SPECTECH, INC.; SONNEBORN, INC.; )  
CHIMNEY SWEEPS, INC.; LOW )  
COUNTRY CHIMNEYS, INC.; EFCO )  
CORP.; W.C. JOHNSTON )  
ARCHITECTURAL SALES, INC.; )  
CHARLESTON GLASS COMPANY, )  
INC.; FIRST EXTERIORS, LLC; )  
ACROCRETE, INC.; BASF CORP.; )  
GARY FREEMAN ARCHITECT, INC.; )  
GARY FREEMAN, individually, )

Defendants. )  
\_\_\_\_\_ )

On March 29, 2013, I emailed a copy of **Carolina Concrete Systems, Inc.'s Answer and Crossclaims** to:

R. Patrick Flynn  
177 Meeting Street, Suite 300  
Charleston, South Carolina 29401  
**Attorney for Plaintiff**

Samia H. Nettles  
40 Calhoun Street, Suite 220  
Charleston, South Carolina 29401  
**Attorney for Glasgow Roofing Company, Inc.**

Wesley D. Peel  
1735 St. Julian Place  
Columbia, South Carolina 29202  
**Attorney for W.C. Johnston Architectural Sales, Inc.**

Paul E. Sperry  
40 Calhoun Street, Suite 400  
Charleston, South Carolina 29401  
**Attorney for Sisnroy Engineering, LLC and  
Robert G. Sisnroy**

James H. Elliot  
P.O. Box 630  
Charleston, South Carolina 29401  
**Attorney for First Exteriors, LLC**

Erin D. Dean  
Post Office Box 2055  
Beaufort, South Carolina 29901-2055  
**Attorney for Glasstec, Inc.**

K. Michael Barfield  
Post Office Drawer H  
Charleston, South Carolina 29402  
**Attorney for Gary Freeman Architect, Inc.  
and Gary Freeman, Individually**

R. Britton Kelly  
Post Office Box 893  
Charleston, South Carolina 29402  
**Attorney EFCO Corp., Inc.**

D. Andrew Williams  
Post Office Box 1473  
Columbia, South Carolina 29202  
**Attorney for BASF Corp.**

Amanda R. Maybank  
Post Office Box 12579  
Charleston, South Carolina 29422  
**Attorney for Charleston Glass & Mirror**

  
\_\_\_\_\_  
Susan Creel

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
Shipwatch Condominium Association, Inc., )  
Plaintiff, )  
vs. )  
Carolina Concrete Systems, Inc.; Sisroy )  
Engineering, LLC, Robert G. Sisroy, )  
individually; Terrence J. McKelvey; )  
Glasgow Roofing, Inc.; GlassTec, Inc.; )  
Spectech, Inc.; Sonneborn, Inc.; Chimney )  
Sweeps, Inc.; Low Country Chimneys, Inc.; )  
EFCO Corp.; W.C. Johnston Architectural )  
Sales, Inc.; Charleston Glass Company, )  
Inc.; First Exteriors, LLC; Acrocrete, Inc.; )  
BASF Corp.; Gary Freeman Architect, Inc.; )  
Gary Freeman, individually; )  
Defendants. )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
Case No. 2012-CP-10-3857

**ANSWER OF DEFENDANT BASF  
CORPORATION TO PLAINTIFF'S  
COMPLAINT**

(Jury Trial Demanded)

**FILED**  
2013 SEP 23 PM 2:27  
JULIE J. ARMSTRONG  
CLERK OF COURT

Defendant BASF Corporation ("BASF") responds to Plaintiff's Complaint as follows:

1. As a preliminary matter, on information and belief, the Defendant styled in the Summons and Complaint as "Sonneborn, Inc." is improperly identified. Sonneborn® is a registered trademark, licensed to BASF Corporation, which identifies a line of products manufactured by BASF Corporation.
2. Every allegation of the Complaint not specifically admitted below is denied.
3. BASF lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 1 through 8.
4. BASF denies the allegations of Paragraph 9.
5. BASF lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 10 through 16.

6. BASF denies the allegations of Paragraph 17, as stated.
7. BASF lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 18 and 19.
8. BASF denies the allegations of Paragraph 20, as stated, as to it.
9. The allegations of Paragraph 21 are directed at other defendants and do not require a response from BASF. To the extent a response is required, BASF denies any allegation of fault or liability as to it.
10. The allegations of Paragraph 22 constitute legal conclusions which require no response. To the extent a response is required, BASF denies any allegation of fault or liability as to it.

**FOR A FIRST DEFENSE TO THE FIRST CAUSE OF ACTION**

11. Responding to Paragraph 23, BASF incorporates its prior responses as if fully stated here.
12. BASF denies the allegations of Paragraphs 24 and 25.

**FOR A FIRST DEFENSE TO THE SECOND CAUSE OF ACTION**

13. Responding to Paragraph 26, BASF incorporates its prior responses as if fully stated here.
14. The allegations of Paragraphs 27 through 33 are directed at another defendant and do not require a response from BASF. To the extent a response is required, BASF denies any allegation of fault or liability as to it.

**FOR A FIRST DEFENSE TO THE THIRD CAUSE OF ACTION**

15. Responding to Paragraph 34, BASF incorporates its prior responses as if fully stated here.
16. The allegations of Paragraphs 35 through 47 are directed at other defendants and do not require a response from BASF. To the extent a response is required, BASF denies any allegation of fault or liability as to it.

**FOR A FIRST DEFENSE TO THE FOURTH CAUSE OF ACTION**

17. Responding to Paragraph 48, BASF incorporates its prior responses as if fully stated here.
18. The allegations of Paragraphs 49 through 51 are directed at other defendants and do not require a response from BASF. To the extent a response is required, BASF denies any allegation of fault or liability as to it.

**FOR A FIRST DEFENSE TO THE FIFTH CAUSE OF ACTION**

19. Responding to Paragraph 52, BASF incorporates its prior responses as if fully stated here.
20. The allegations of Paragraphs 53 through 58 are directed at other defendants and do not require a response from BASF. To the extent a response is required, BASF denies any allegation of fault or liability as to it.

**FOR A FIRST DEFENSE TO THE SIXTH CAUSE OF ACTION**

21. Responding to Paragraph 59, BASF incorporates its prior responses as if fully stated here.
22. BASF denies the allegations of Paragraphs 60, 61, and 62 as to it.

**FOR A FIRST DEFENSE TO THE SEVENTH CAUSE OF ACTION**

23. Responding to Paragraph 63, BASF incorporates its prior responses as if fully stated here.
24. BASF denies the allegations of Paragraphs 64 through 68 as to it.
25. As stated, Paragraph 69 does not appear to require a response. To the extent a response is deemed required, BASF denies any allegation of fault or liability as to it.

**FOR A SECOND DEFENSE**

26. Plaintiff has failed to state facts sufficient to constitute a cause of action against BASF.

**FOR A THIRD DEFENSE**

27. Upon information and belief, Plaintiff's damages, if any, were caused by the acts or omissions of other parties over whom BASF had no control.

**FOR A FOURTH DEFENSE**

28. Upon information and belief, Plaintiff's claims are barred or limited by the doctrines of comparative negligence and/or assumption of the risk.

**FOR A FIFTH DEFENSE**

29. Upon information and belief, some or all of Plaintiff's claims must be reduced or are barred by the applicable statute of limitations and/or statute of repose.

**FOR A SIXTH DEFENSE**

30. Upon information and belief, some or all of Plaintiff's claims are barred by the doctrines of laches, waiver, and/or estoppel.

**FOR A SEVENTH DEFENSE**

31. Any claim by Plaintiff for punitive damages against BASF cannot be sustained, because:
- a. any award of punitive damages under South Carolina law (1) without bifurcating the trial of all punitive damages issues; (2) for the purpose of compensating Plaintiff for elements of damage not otherwise recognized by South Carolina law; (3) without proof of every element beyond a reasonable doubt; and/or (4) that is subject to no predetermined limit, such as a maximum multiple of compensatory damages or a maximum amount on the amount of punitive damages that a jury may impose would violate BASF's due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and by the due process provisions of the South Carolina Constitution;
  - b. an award of punitive damages under South Carolina law by a jury that (1) is not provided a standard of sufficient clarity for determining the appropriateness, or the appropriate size, of a punitive damages award, (2) is not instructed on the limits on punitive damages imposed by the applicable principles of deterrence and



punishment, (3) is not expressly prohibited from awarding punitive damages or determining the amount of an award of punitive damages, in whole or in part, on the basis of invidiously discriminatory characteristics, including the alleged corporate status of BASF, (4) is permitted to award punitive damages under a standard for determining liability for punitive damages that is vague and arbitrary and does not define with sufficient clarity the conduct or mental state that makes punitive damages permissible, and (5) is not subject to judicial review on the basis of objective standards, would violate BASF's due process and equal protection rights guaranteed by the Fourteenth Amendment to the United States Constitution and the double jeopardy clause of the Fifth Amendment, and by the South Carolina Constitution's provisions providing due process, equal protection, and a guaranty against double jeopardy;

- c. an award of punitive damages under state law without the same protections that are accorded to criminal defendants, including protection against unreasonable searches and seizures, double jeopardy, self-incrimination, the right to confront adverse witnesses, a speedy trial, and the effective assistance of counsel would violate BASF's rights under the Fourteenth Amendment to the United States Constitution and the Fourth, Fifth, and Sixth Amendments as incorporated into the Fourteenth Amendment and the South Carolina Constitution's provisions providing for due process and the rights to confront witnesses, a speedy trial and effective assistance of counsel and protection against unreasonable searches and seizures, double jeopardy and compelled self-incrimination;
- d. any award of punitive damages based on anything other than BASF's conduct in connection with the specific incident that is the subject of this lawsuit would

violate the due process clause of the Fourteenth Amendment to the United States Constitution and the double jeopardy clause of the Fifth Amendment as incorporated into the Fourteenth Amendment and the South Carolina Constitution's provisions providing for due process and a guaranty against double jeopardy, because any other judgment for punitive damages in this case cannot protect BASF against impermissible multiple punishment for the same wrong.

**FOR AN EIGHTH DEFENSE**

32. Upon information and belief, any right to recover damages against BASF is barred by the independent and intervening negligent actions of others.

**FOR A NINTH DEFENSE**

33. Upon information and belief, Plaintiff's right to recover damages from BASF is barred, in whole or in part, due to Plaintiff's failure to mitigate damages.

**FOR A TENTH DEFENSE**

34. Upon information and belief, Plaintiff's right to recover damages from BASF is barred, in whole or in part, by operation of the economic loss doctrine.

**FOR AN ELEVENTH DEFENSE**

35. BASF specifically pleads and incorporates herein the terms of any limitations of remedy in any applicable warranty, if any, in bar of any recovery.

**FOR A TWELFTH DEFENSE**

36. If work performed and/or products supplied by BASF were defective, which is denied, failure to give reasonable notice is pled in bar of any recovery under a warranty claim or otherwise.

**FOR A THIRTEENTH DEFENSE**

37. Upon information and belief, Plaintiff's right to recover damages from BASF is barred, in whole or in part, due to Plaintiff's spoliation of evidence.

**FOR A FOURTEENTH DEFENSE**

38. BASF performed its work in conformance with the applicable plans and specifications, and thus Plaintiff's claims are barred or limited by operation of the *Spearin* doctrine.

**FOR A FIFTEENTH DEFENSE**

39. Upon information and belief, Plaintiff's claims are barred or limited by its lack of standing.

**FOR A SIXTEENTH DEFENSE**

40. Upon information and belief, Plaintiff's claims are barred or limited by the doctrine of completion and acceptance.

**FOR A SEVENTEENTH DEFENSE**

41. Upon information and belief, Plaintiff's claims are barred by its failure to make a claim within the applicable warranty period.

**FOR AN EIGHTEENTH DEFENSE**

42. Upon information and belief, Plaintiff's claims are barred or limited as a function of insufficiency of process and/or insufficiency of service of process.

**FOR A NINETEENTH DEFENSE**

43. Upon information and belief, Plaintiff's claims are barred or limited as a result of Plaintiff's failure to give timely notice to BASF.

**FOR A TWENTIETH DEFENSE**

44. Upon information and belief, Plaintiff's claims are barred or limited as a result of Plaintiff's, or its representative's, misuse, abuse, mistreatment, and/or misapplication of BASF's materials.

**FOR A TWENTY-FIRST DEFENSE**

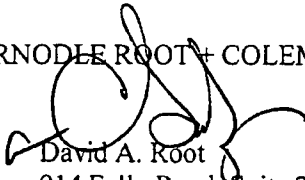
45. Upon information and belief, Plaintiff's claims are barred or limited as a function of the learned intermediary and/or sophisticated user doctrine(s).

**FOR AN ADDITIONAL DEFENSE**  
**(Reservation/Non-Waiver and Adoption)**

46. BASF specifically reserves any additional defenses, including affirmative defenses, as may be available or revealed to it during the course of its investigation and/or discovery in the case, and as are consistent with the South Carolina Rules of Civil Procedure. Further, BASF adopts by reference all defenses, including affirmative defenses, where relevant and consistent with BASF's position, as alleged by other parties in this action.

WHEREFORE, having fully answered Plaintiff's Complaint, BASF demands a trial by jury and prays that the Complaint be dismissed, with costs, and for such other relief as the Court deems proper.

KERNODLE ROOT + COLEMAN

By: 

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[droot@kernodlelaw.com](mailto:droot@kernodlelaw.com)

ATTORNEYS FOR BASF CORPORATION

Charleston, South Carolina  
September 20, 2013

# **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this date a copy of *the Answer of BASF Corporation to Plaintiff's Complaint* was sent as noted below:

**Via U.S. Mail and Email**

R. Patrick Flynn, Esquire  
Robertson Hollingsworth & Flynn  
177 Meeting Street, Suite 300  
Charleston, SC 29401

**ATTORNEYS FOR PLAINTIFF**

**Via Email Only**

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Stacey P. Canaday, Esquire  
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**ATTORNEYS FOR DEFENDANT W.C. JOHNSTON ARCHITECTURAL SALES, INC.  
AND DEFENDANT EFCO CORP.**

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Tyler P. Winton, Esquire  
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**ATTORNEYS FOR DEFENDANTS SISNROY ENGINEERING, LLC AND  
ROBERT G. SISNROY, INDIVIDUALLY**

**Via Email Only**

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Charleston, SC 29401

**ATTORNEYS FOR DEFENDANTS FIRST EXTERIORS, LLC**

**FILED**  
2013 SEP 23 PM 2:21  
JULIE J. ARMSTRONG  
CLERK OF COURT

**Via Email Only**

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Danielle Wegener, Esquire  
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K. Michael Barfield, Esquire  
Barnwell Whaley Patterson & Helms  
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Charleston, SC 29402  
***ATTORNEYS FOR DEFENDANTS GARY FREEMAN ARCHITECT, INC. AND  
GARY FREEMAN, INDIVIDUALLY***

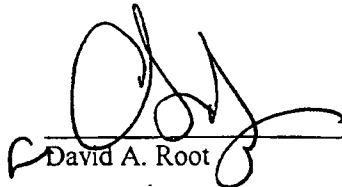
**Via Email Only**

Samia Nettles, Esquire  
Richardson Plowden & Robinson, P.A.  
40 Calhoun Street, Suite 220  
Charleston, SC 29401  
***ATTORNEYS FOR DEFENDANTS GLASGOW ROOFING***

**Via Email Only**

Amanda R. Maybank, Esquire  
Marshall A. Earhart, Esquire  
Maybank Law Firm, LLC  
P.O. Box 12579  
Charleston, SC 29422  
***ATTORNEYS FOR DEFENDANT CHARLESTON GLASS COMPANY, INC.***

September 20, 2013

  
\_\_\_\_\_  
David A. Root

914 Folly Road, Suite 2  
P.O. Box 13897  
Charleston, SC 29422-3897  
Phone (843) 795-7800  
Fax (843) 795-3032



**KERNODLE  
ROOT &  
COLEMAN**  
ATTORNEYS AT LAW

*David A. Root, Esquire*  
[droot@kernodlelaw.com](mailto:droot@kernodlelaw.com)

September 20, 2013

Honorable Julie J. Armstrong  
Clerk of Court  
Charleston County  
100 Broad Street, #106  
Charleston, SC 29401

Re: *Shipwatch Condominium Association, Inc. v. Carolina Concrete Systems, Inc.;  
Sisnroy Engineering, LLC; Robert G. Sisnroy, individually; Terrence J.  
McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Spectech, Inc.; Sonneborn,  
Inc.; Chimney Sweeps, Inc.; Low Country Chimneys, Inc.; EFCO Corp.; W.C.  
Johnston Arcitectoral Sales, Inc.; Charleston Glass Company, Inc.; First  
Exteriors, LLC; Acrocrete Inc.; BASF Corp.; Gary Freeman Architect, Inc.; Gary  
Freeman, individually*  
County of Charleston / Case No. 2012-CP-10-3857  
KR+C File No.: 8092-1

Dear Julie:

Enclosed for filing is the original and one copy of *Defendant BASF Corp's Answer* in the above-referenced matter. Please file the original, and return the date-stamped to me in the envelope provided for your convenience.

By copy of this correspondence to opposing counsel, I am serving him with a copy of the same.

Should you have any questions or require additional information, please do not hesitate to contact me.

kernodlelaw.com



September 20, 2013  
Page 2

Sincerely,

KERNODLE ROOT + COLEMAN



David A. Root

DAR/jlc  
Enclosures

cc: R. Patrick Flynn, Esquire (w/encl)  
Erin D. Dean, Esquire / Stacey P. Canaday, Esquire (w/encl)  
D. Andrew Williams, Esquire (w/encl)  
R. Britton Kelly Esquire (w/encl)  
Paul Sperry, Esquire / Tyler P. Winton, Esquire (w/encl)  
James H. Elliott, Jr., Esquire (w/encl)  
J.J. Anderson, Esquire / Danielle Wegener, Esquire (w/encl)  
David S. Cobb, Esquire (w/encl)  
K. Michael Barfield, Esquire (w/encl)  
Samia Nettles, Esquire (w/encl)  
Amanda R. Maybank, Esquire / Marshall A. Earhart, Esquire (w/encl)



STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

Oscar Mendiondo, individually and as  
representative of a class of similarly  
situated owners of condominiums units in  
the horizontal property regime known as  
Shipwatch Condominiums,

Plaintiff,

vs.

Carolina Concrete Systems, Inc.; Sisnroy  
Engineering, LLC; Robert G. Sisnroy,  
individually; Terrence J. McKelvey;  
Glasgow Roofing, Inc.; GlassTec, Inc.;  
Spectech, Inc.; Sonneborn, Inc.; Chimney  
Sweeps, Inc.; Low Country Chimneys, Inc.;  
EFCO Corp.; W.C. Johnston Architectural  
Sales, Inc.; Charleston Glass Company,  
Inc.; First Exteriors, LLC; Acrocrete, Inc.;  
BASF Corp.; Gary Freeman Architect, Inc.;  
Gary Freeman, individually;

Defendants.

Sisnroy Engineering, LLC and Robert G.  
Sisnroy, individually,

Third-Party Plaintiffs,

vs.

Shipwatch Condominium Association,

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
Case No. 2012-CP-10-3858

FILED  
2013 SEP 23 PM 2:29  
JULIE J. ARMSTRONG  
CLERK OF COURT

ANSWER OF DEFENDANT BASF  
CORPORATION TO PLAINTIFF'S  
COMPLAINT

(Jury Trial Demanded)

Defendant BASF Corporation ("BASF") responds to Plaintiff's Complaint as follows:

1. As a preliminary matter, on information and belief, the Defendant styled in the Summons and Complaint as "Sonneborn, Inc." is improperly identified. Sonneborn® is a registered

trademark, licensed to BASF Corporation, which identifies a line of products manufactured by BASF Corporation.

2. Every allegation of the Complaint not specifically admitted below is denied.
3. BASF lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 1 through 8.
4. BASF denies the allegations of Paragraph 9.
5. BASF lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 10 through 16.
6. BASF denies the allegations of Paragraph 17, as stated.
7. BASF lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 18 and 19.
8. BASF denies the allegations of Paragraph 20, as stated, as to it.
9. The allegations of Paragraph 21 are directed at other defendants and do not require a response from BASF. To the extent a response is required, BASF denies any allegation of fault or liability as to it.
10. The allegations of Paragraph 22 constitute legal conclusions which require no response. To the extent a response is required, BASF denies any allegation of fault or liability as to it.

**FOR A FIRST DEFENSE TO THE FIRST CAUSE OF ACTION**

11. Responding to Paragraph 23, BASF incorporates its prior responses as if fully stated here.
12. BASF denies the allegations of Paragraphs 24 and 25.

**FOR A FIRST DEFENSE TO THE SECOND CAUSE OF ACTION**

13. Responding to Paragraph 26, BASF incorporates its prior responses as if fully stated here.

14. The allegations of Paragraphs 27 through 33 are directed at another defendant and do not require a response from BASF. To the extent a response is required, BASF denies any allegation of fault or liability as to it.

**FOR A FIRST DEFENSE TO THE THIRD CAUSE OF ACTION**

15. Responding to Paragraph 34, BASF incorporates its prior responses as if fully stated here.
16. The allegations of Paragraphs 35 through 47 are directed at other defendants and do not require a response from BASF. To the extent a response is required, BASF denies any allegation of fault or liability as to it.

**FOR A FIRST DEFENSE TO THE FOURTH CAUSE OF ACTION**

17. Responding to Paragraph 48, BASF incorporates its prior responses as if fully stated here.
18. The allegations of Paragraph 49 through 51 are directed at other defendants and do not require a response from BASF. To the extent a response is required, BASF denies any allegation of fault or liability as to it.

**FOR A FIRST DEFENSE TO THE FIFTH CAUSE OF ACTION**

19. Responding to Paragraph 52, BASF incorporates its prior responses as if fully stated here.
20. The allegations of Paragraph 53 through 58 are directed at other defendants and do not require a response from BASF. To the extent a response is required, BASF denies any allegation of fault or liability as to it.

**FOR A FIRST DEFENSE TO THE SIXTH CAUSE OF ACTION**

21. Responding to Paragraph 59, BASF incorporates its prior responses as if fully stated here.
22. BASF denies the allegations of Paragraphs 60, 61, and 62 as to it.

**FOR A FIRST DEFENSE TO THE SEVENTH CAUSE OF ACTION**

23. Responding to Paragraph 63, BASF incorporates its prior responses as if fully stated here.
24. BASF denies the allegations of Paragraphs 64 through 68 as to it.

25. As stated, Paragraph 69 does not appear to require a response. To the extent a response is deemed required, BASF denies any allegation of fault or liability as to it.

**FOR A SECOND DEFENSE**

26. Plaintiff has failed to state facts sufficient to constitute a cause of action against BASF.

**FOR A THIRD DEFENSE**

27. Upon information and belief, Plaintiff's damages, if any, were caused by the acts or omissions of other parties over whom BASF had no control.

**FOR A FOURTH DEFENSE**

28. Upon information and belief, Plaintiff's claims are barred or limited by the doctrines of comparative negligence and/or assumption of the risk.

**FOR A FIFTH DEFENSE**

29. Upon information and belief, some or all of Plaintiff's claims must be reduced or are barred by the applicable statute of limitations and/or statute of repose.

**FOR A SIXTH DEFENSE**

30. Upon information and belief, some or all of Plaintiff's claims are barred by the doctrines of laches, waiver, and/or estoppel.

**FOR A SEVENTH DEFENSE**

31. Any claim by Plaintiff for punitive damages against BASF cannot be sustained, because:
- a. any award of punitive damages under South Carolina law (1) without bifurcating the trial of all punitive damages issues; (2) for the purpose of compensating Plaintiff for elements of damage not otherwise recognized by South Carolina law; (3) without proof of every element beyond a reasonable doubt; and/or (4) that is subject to no predetermined limit, such as a maximum multiple of compensatory damages or a maximum amount on the amount of punitive damages that a jury

may impose would violate BASF's due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and by the due process provisions of the South Carolina Constitution;

- b. an award of punitive damages under South Carolina law by a jury that (1) is not provided a standard of sufficient clarity for determining the appropriateness, or the appropriate size, of a punitive damages award, (2) is not instructed on the limits on punitive damages imposed by the applicable principles of deterrence and punishment, (3) is not expressly prohibited from awarding punitive damages or determining the amount of an award of punitive damages, in whole or in part, on the basis of invidiously discriminatory characteristics, including the alleged corporate status of BASF, (4) is permitted to award punitive damages under a standard for determining liability for punitive damages that is vague and arbitrary and does not define with sufficient clarity the conduct or mental state that makes punitive damages permissible, and (5) is not subject to judicial review on the basis of objective standards, would violate BASF's due process and equal protection rights guaranteed by the Fourteenth Amendment to the United States Constitution and the double jeopardy clause of the Fifth Amendment, and by the South Carolina Constitution's provisions providing due process, equal protection, and a guaranty against double jeopardy;
- c. an award of punitive damages under state law without the same protections that are accorded to criminal defendants, including protection against unreasonable searches and seizures, double jeopardy, self-incrimination, the right to confront adverse witnesses, a speedy trial, and the effective assistance of counsel would violate BASF's rights under the Fourteenth Amendment to the United States

Constitution and the Fourth, Fifth, and Sixth Amendments as incorporated into the Fourteenth Amendment and the South Carolina Constitution's provisions providing for due process and the rights to confront witnesses, a speedy trial and effective assistance of counsel and protection against unreasonable searches and seizures, double jeopardy and compelled self-incrimination;

- d. any award of punitive damages based on anything other than BASF's conduct in connection with the specific incident that is the subject of this lawsuit would violate the due process clause of the Fourteenth Amendment to the United States Constitution and the double jeopardy clause of the Fifth Amendment as incorporated into the Fourteenth Amendment and the South Carolina Constitution's provisions providing for due process and a guaranty against double jeopardy, because any other judgment for punitive damages in this case cannot protect BASF against impermissible multiple punishment for the same wrong.

**FOR AN EIGHTH DEFENSE**

32. Upon information and belief, any right to recover damages against BASF is barred by the independent and intervening negligent actions of others.

**FOR A NINTH DEFENSE**

33. Upon information and belief, Plaintiff's right to recover damages from BASF is barred, in whole or in part, due to Plaintiff's failure to mitigate damages.

**FOR A TENTH DEFENSE**

34. Upon information and belief, Plaintiff's right to recover damages from BASF is barred, in whole or in part, by operation of the economic loss doctrine.

**FOR AN ELEVENTH DEFENSE**

35. BASF specifically pleads and incorporates herein the terms of any limitations of remedy in any applicable warranty, if any, in bar of any recovery

**FOR A TWELFTH DEFENSE**

36. If work performed and/or products supplied by BASF were defective, which is denied, failure to give reasonable notice is pled in bar of any recovery under a warranty claim or otherwise.

**FOR A THIRTEENTH DEFENSE**

37. Upon information and belief, Plaintiff's right to recover damages from BASF is barred, in whole or in part, due to Plaintiff's spoliation of evidence.

**FOR A FOURTEENTH DEFENSE**

38. BASF performed its work in conformance with the applicable plans and specifications, and thus Plaintiff's claims are barred or limited by operation of the *Spearin* doctrine.

**FOR A FIFTEENTH DEFENSE**

39. Upon information and belief, Plaintiff's claims are barred or limited by its lack of standing.

**FOR A SIXTEENTH DEFENSE**

40. Upon information and belief, Plaintiff's claims are barred or limited by the doctrine of completion and acceptance.

**FOR A SEVENTEENTH DEFENSE**

41. Upon information and belief, Plaintiff's claims are barred by its failure to make a claim within the applicable warranty period.

**FOR AN EIGHTEENTH DEFENSE**

42. Upon information and belief, Plaintiff's claims are barred or limited as a function of insufficiency of process and/or insufficiency of service of process.

**FOR A NINETEENTH DEFENSE**

43. Upon information and belief, Plaintiff's claims are barred or limited as a result of Plaintiff's failure to give timely notice to BASF.

**FOR A TWENTIETH DEFENSE**

44. Upon information and belief, Plaintiff's claims are barred or limited as a result of Plaintiff's, or its representative's, misuse, abuse, mistreatment, and/or misapplication of BASF's materials.

**FOR A TWENTY-FIRST DEFENSE**

45. Upon information and belief, Plaintiff's claims are barred or limited as a function of the learned intermediary and/or sophisticated user doctrine(s).

**FOR A TWENTY-SECOND DEFENSE**

46. Upon information and belief, Plaintiff's attempts to proceed with this matter as a class action are barred on one or more of the following grounds:
- a. The putative class is insufficiently defined;
  - b. Joinder of all members of the putative class is not impracticable;
  - c. The questions of law or fact in this matter are not common to the class;
  - d. The claims or defenses of the allegedly representative party are not typical to the claims and defenses of the putative class;
  - e. The allegedly representative party will not fairly and adequately protect the interests of the putative class; and/or
  - f. The amount in controversy as to each member of the class is insufficient.

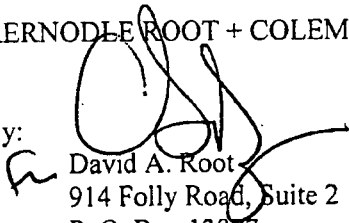


**FOR AN ADDITIONAL DEFENSE**  
**(Reservation/Non-Waiver and Adoption)**

47. BASF specifically reserves any additional defenses, including affirmative defenses, as may be available or revealed to it during the course of its investigation and/or discovery in the case, and as are consistent with the South Carolina Rules of Civil Procedure. Further, BASF adopts by reference all defenses, including affirmative defenses, where relevant and consistent with BASF's position, as alleged by other parties in this action.

WHEREFORE, having fully answered Plaintiff's Complaint BASF demands a trial by jury and prays that the Complaint be dismissed, with costs, and for such other relief as the Court deems proper.

KERNODLE ROOT + COLEMAN

By: 

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ATTORNEYS FOR BASF CORPORATION

Charleston, South Carolina

September 20, 2013

# **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this date a copy of *the Answer of BASF Corporation to Plaintiff's Complaint* was sent as noted below:

**Via U.S. Mail and Email**

R. Patrick Flynn, Esquire  
Robertson Hollingsworth & Flynn  
177 Meeting Street, Suite 300  
Charleston, SC 29401

**ATTORNEYS FOR PLAINTIFF**

**Via Email Only**

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Stacey P. Canaday, Esquire  
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**ATTORNEYS FOR DEFENDANT GLASSTEC, INC.**

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Charleston SC 29401

**ATTORNEYS FOR DEFENDANT W.C. JOHNSTON ARCHITECTURAL SALES, INC.  
AND DEFENDANT EFCO CORP.**

**Via Email Only**

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Tyler P. Winton, Esquire  
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**ATTORNEYS FOR DEFENDANTS SISNROY ENGINEERING, LLC AND  
ROBERT G. SISNROY, INDIVIDUALLY**

**Via Email Only**

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**FILED**  
2013 SEP 23 PM 2:29  
JULIE J. ARISTONING  
CLERK OF COURT

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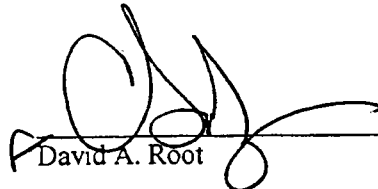
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September 20, 2013

  
\_\_\_\_\_  
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COLEMAN**  
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[droot@kernodelaw.com](mailto:droot@kernodelaw.com)

September 20, 2013

Honorable Julie J. Armstrong  
Clerk of Court  
Charleston County  
100 Broad Street, #106  
Charleston, SC 29401

Re: *Oscar Mendiondo, individually and as representative of a class of similarly situated owners of condominiums units in the horizontal property regime known as Shipwatch Condominiums v. Carolina Concrete Systems, Inc.; Sisnroy Engineering, LLC; Robert G. Sisnroy, individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Spectech, Inc.; Sonneborn, Inc.; Chimney Sweeps, Inc.; Low Country Chimneys, Inc.; EFCO Corp.; W.C. Johnston Arcitectural Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; Acrocrete Inc.; BASF Corp.; Gary Freeman Architect, Inc.; Gary Freeman, individually*  
County of Charleston / Case No. 2012-CP-10-3858  
KR+C File No.: 8092-2

Dear Julie:

Enclosed for filing is the original and one copy of *Defendant BASF Corp's Answer* in the above-referenced matter. Please file the original, and return the date-stamped to me in the envelope provided for your convenience.

By copy of this correspondence to opposing counsel, I am serving him with a copy of the same.

kernodelaw.com



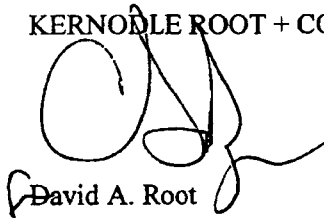
September 20, 2013

Page 2

Should you have any questions or require additional information, please do not hesitate to contact me.

Sincerely,

KERNODLE ROOT + COLEMAN



David A. Root

DAR/jlc

Enclosures

cc: R. Patrick Flynn, Esquire (w/encl)  
Erin D. Dean, Esquire / Stacey P. Canaday, Esquire (w/encl)  
D. Andrew Williams, Esquire (w/encl)  
R. Britton Kelly Esquire (w/encl)  
Paul Sperry, Esquire / Tyler P. Winton, Esquire (w/encl)  
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J.J. Anderson, Esquire / Danielle Wegener, Esquire (w/encl)  
David S. Cobb, Esquire (w/encl)  
K. Michael Barfield, Esquire (w/encl)  
Samia Nettles, Esquire (w/encl)  
Amanda R. Maybank, Esquire / Marshall A. Earhart, Esquire (w/encl)

1 STATE OF SOUTH CAROLINA )  
 2 COUNTY OF CHARLESTON ) Court of Common Pleas  
 3 ) Case No. 2012-CP-10-3857  
 4 ) 2012-CP-10-3858  
 5 )  
 6 SHIPWATCH CONDOMINIUM ASSOCIATION, )  
 7 INC., et al, )  
 8 )  
 9 Plaintiff, )  
 10 vs. ) Transcript of Record  
 11 )  
 12 CAROLINA CONCRETE SYSTEMS, ET AL, )  
 13 )  
 14 Defendant. )  
 15 )  
 16 ) DATE: October 27, 2014  
 17 )

18 B E F O R E:

19 The Honorable Judge R. Markley Dennis, Jr.

20

21 A P P E A R A N C E:

22

23 Patrick R. Flynn and Christopher M. Ramsey  
24 For the Plaintiff

25 David Starr Cobb  
For the Defendant, Carolina Concrete Systems

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Karen V. Andersen, RMR, CRR, CSR  
Circuit Court Reporter

1 THE COURT: Two motions for summary judgment.

2 MR. FLYNN: Well, I think one in each case.

3 THE COURT: Before you identify yourselves, all  
4 memorandum filed in conjunction with this motion are  
5 incorporated fully for the purposes of review. And each of  
6 you may rely on the memos as submitted. Thank you very much.  
7 Appreciate it.

8 All right. If you would identify yourselves.

9 MR. COBB: Good morning, Your Honor. I'm David  
10 Cobb. I'm here on behalf of Carolina Concrete Systems, which  
11 is the defendant, one of the defendants in both the Shipwatch  
12 and the Mendiondo lawsuits. It is our motion for summary  
13 judgment. We are doing it based on the statute of  
14 limitations. I'll probably be about two minutes to explain  
15 the motion.

16 THE COURT: Sure. Take your time.

17 MR. COBB: This is a condo project at Wild Dunes in  
18 Isle of Palms. The lawsuit was filed against Carolina  
19 Concrete Systems and various subcontractors in June of 2012.  
20 The project was built in 1985. And none of these defendants  
21 in this lawsuit had anything to do with the original  
22 construction of the buildings.

23 Carolina Concrete Systems started around 2003 doing  
24 various what we refer to as piecemeal repairs at various  
25 parts of the buildings, all with contracts through the HOA.

1           The lawsuit that the plaintiffs filed in 2012 seeks  
2   to recover costs and damages associated with the original  
3   EIFS system applied to the building, sliding glass doors,  
4   windows, of which were originally installed in the buildings  
5   in 1995, and also for some other issues, such as failed and  
6   peeling ceiling paint on balconies and some other things.  
7   Those are damages that the plaintiffs seek to recover for in  
8   this lawsuit.

9           And the reason why the statute of limitations  
10   applies in this case, and clearly, three-quarters of what we  
11   handed to you this morning as part of our summary judgment  
12   motions, are various homeowner minutes and deposition  
13   excerpts from two of the board members and from the regime  
14   manager, Linda Jernigan.

15           Ms. Jernigan was at Shipwatch before Hugo left, but  
16   came back in 2005, so has been there since 2005. The board  
17   members, who we included as part of our package, include  
18   Ernie Schawe, I think it's S-c-h-a-w-e, and also Ernie  
19   Trombino, T-r-o-m-b-i-n-o. Those gentlemen and Ms. Jernigan  
20   and the HOA minutes, which are 2006, 2007, and 2008, clearly  
21   identify that the plaintiffs knew about problems with the  
22   synthetic stucco, with the EIFS well before 2009.

23           In fact, probably the most telling piece of exhibit  
24   is in September of 2008, Ms. Jernigan goes to the board  
25   saying that she has a contract, an estimate for \$2.3 million



1 to do various repairs of the project, 1.8 million of which is  
2 for the removal of the remaining parts of this synthetic  
3 stucco off the buildings.

4 The 2003, 2004, 2005, moving forward, repairs that  
5 Carolina Concrete Systems performed included removing some of  
6 the EIFS off of some of the buildings, but not all of them.  
7 The 2008 contract that Ms. Jernigan presented to the board  
8 was for the removal of the remaining parts of the synthetic  
9 stucco off of the buildings.

10 There are also -- in 2003, 2004, 2005, the HOA  
11 implemented a program to remove somewhere in the neighborhood  
12 of 5 to 15 sliding glass doors and some periodic windows  
13 because of various leaks. And they have Bob Sisnroy out  
14 there in 2006/2007 time frame as well. Mr. Sisnroy provided  
15 them with reports showing them that they had problems with  
16 the leaking sliding glass doors, and problems with leaking  
17 windows at this project in 2006/2007. And, again, that is  
18 the damage that they are including as part of this lawsuit.

19 Now, Carolina Concrete Systems also did work out  
20 there in 2010 and so forth. If the claim is just going to be  
21 related to that work, then I think they survive summary  
22 judgment as to those claims. But as far as the work and cost  
23 associated with removing things that they clearly knew about  
24 in 2005, 2006, 2007 and 2008, that's what we are trying to  
25 sever from this lawsuit. And that includes the sliding glass

1 doors, the windows, and the cost associated with removing the  
2 synthetic stucco. Thank you.

3 MR. FLYNN: Your Honor, I have a couple of --

4 THE COURT: I don't need all of this. This is  
5 summary judgment, isn't it?

6 MR. FLYNN: It is, Your Honor. Actually, one of the  
7 things I will do is --

8 THE COURT: It's not going to influence me. Maybe  
9 it will influence you. If it makes you feel better, put it  
10 up.

11 MR. FLYNN: Yes, sir. Your Honor, I'm not sure  
12 exactly what --

13 THE COURT: Well, why don't you start by telling me  
14 how in the world you get any action for damages done for work  
15 in 2005?

16 MR. FLYNN: Your Honor, because this has nothing to  
17 do with the original artificial stucco.

18 THE COURT: Tell me about 2005.

19 MR. FLYNN: 2005, Your Honor, this was one project.  
20 This began in 2002 and it ended in 2011.

21 THE COURT: Well, what I'm asking you for is the  
22 work that was done and mistakes that you are claiming was  
23 done -- were done in 2005.

24 MR. FLYNN: Your Honor, we had no idea that there  
25 were problems.

1 THE COURT: That's your position?

2 MR. FLYNN: It is, Your Honor.

3 THE COURT: And notwithstanding Mr. Sisnroy's  
4 report?

5 MR. FLYNN: Well, Your Honor, they corrected any  
6 defects which were associated --

7 THE COURT: So there's no cause of action for  
8 anything in 2005?

9 MR. FLYNN: Well, they corrected it as far as what  
10 Mr. Sisnroy pointed out. But, Your Honor, in 2011, they were  
11 getting ready to do the final stage of all of these repairs.  
12 And they were all over the buildings all of the time, this  
13 being the defendant, Carolina Concrete Systems. And, Your  
14 Honor, I've got documentation in my brief --

15 THE COURT: Mr. Flynn, look, you are arguing the  
16 same thing he just said. They are seeking action. They are  
17 seeking to recover for work done after 2010. Fine. I've got  
18 no gripe.

19 MR. FLYNN: Your Honor, what he's saying is that --

20 THE COURT: Well, I'm helping him. Granted. You  
21 are entitled to sue him for anything you can relate to things  
22 that he did in 2010. Okay? Thank you, sir.

23 MR. FLYNN: Thank you, Your Honor.

24 THE COURT: Prepare the order. Thank you.  
25 Appreciate it.

1           And, Mr. Flynn, for the record, if you will give me  
2   the name -- your name and party you are representing, please.

3           MR. FLYNN: Yes, sir. It's Patrick Flynn. I  
4   represent the plaintiffs, Oscar Menciondo class action and  
5   Shipwatch Homeowners Association.

6           MR. RAMSEY: Chris Ramsey also on behalf  
7   Shipwatch.

8           THE COURT: Appreciate it. Mr. Flynn, I didn't mean  
9   to cut you off with that, but it seemed to be more than  
10   something. When I started hearing you, really focused on  
11   that. Thank you very much.

12          MR. FLYNN: Yes, Your Honor.

13                               (End of transcript.)

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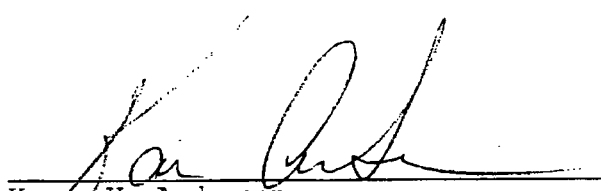
CERTIFICATE OF REPORTER

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I, Karen V. Andersen, Registered Merit Reporter  
certified Realtime Reporter, and Notary Public for the State  
of South Carolina at Large, do hereby certify that the  
foregoing transcript is a true, accurate and complete  
Transcript of Record of the proceedings.

I further certify that I am neither related to nor  
counsel for any party to the cause pending or interested in  
the events thereof.

Witness my hand, I have hereunto affixed my official  
seal this 30th day of October, 2014, at Charleston,  
Charleston County, South Carolina.



Karen V. Andersen  
Registered Merit Reporter  
Certified Realtime Reporter  
My Commission expires:  
September 14, 2016

THE COURT OF COMMON PLEAS

SHIPWATCH CONDOMINIUM  
ASSOCIATION,

Plaintiff,

-versus-

CAROLINA CONCRETE SYSTEMS,  
INC., et al.,

Defendants.

OSCAR MENDIONDO, Individually )  
and as representative of a )  
class of similarly situated )  
owners of condominium units in )  
the horizontal property regime )  
known as SHIPWATCH CONDOMINIUMS, )

Plaintiffs,

-versus-

CAROLINA CONCRETE SYSTEMS,  
INC., et al.,

Defendants.

THE DEPOSITION OF LINDA JERNIGAN was taken as a witness on behalf of the Defendants, pursuant to South Carolina Rules of Civil Procedure, at 9:30 a.m. on Tuesday, the 25th day of March 2014, at the offices of Turner Padgett, 40 Calhoun Street, Suite 200, in the City of Charleston, State of South Carolina, before Janice O. Darby, Registered Professional Reporter and Notary Public in and for the State of South Carolina.

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1 LINDA JERNIGAN

2 having been first duly sworn, was called as a  
3 witness herein and was examined and testified as  
4 follows:

5 E X A M I N A T I O N

6 BY MR. ELLIOTT:

7 Q Ms. Jernigan, good morning. My name is  
8 James Elliott. I represent First Exteriors, LLC,  
9 and Glasgow Roofing in this litigation brought by  
10 the Shipwatch Homeowners' Association. I'm going to  
11 take your deposition today. Have you ever given a  
12 deposition before?

13 A No, I have not.

14 Q Well, the process is going to be, I'm  
15 just going to ask you some questions throughout the  
16 day. And one of the rules is you need to give us  
17 verbal responses so our court reporter can take down  
18 what you say. Okay?

19 A Mm-hmm. Yes.

20 Q That was my test. A lot of folks do  
21 that. They will shake their head and make some  
22 utterance to evidence a response, and we can't do  
23 that today because we don't want Janice to have to  
24 interpret what you say or she'll just write down a  
25 nod or something, and then we won't know when the

Janice Ohlendorf Darby, RPR  
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1 some documents.

2 A I think when Lester Griffin was there, he  
3 had no previous property management experience.

4 Q Was he the police officer?

5 A He was a police officer. So I think they  
6 hired Mike Parades, CCM, to support him and give the  
7 board advice until I came. Since I had experience,  
8 they no longer needed Mike Parades.

9 Q Now, the history of Shipwatch, the  
10 construction was in 1984 to '86? Do you know?

11 A It was turned over to the homeowner  
12 association in 1984, April of 1984.

13 Q So construction was done by 1984?

14 A I assume all four buildings. I know A  
15 and B were phase one. C and D was phase two. But  
16 they were very close to the same time.

17 Q And they've always had -- they always  
18 have a board of directors for the history of the  
19 organization. Right?

20 A Correct.

21 Q And the board of directors meet monthly?

22 A No. They meet quarterly.

23 Q Typically does the manager attend the  
24 meetings?

25 A Yes.

Janice Ohlendorf Darby, RPR  
(843) 814-7666 jodarby@comcast.net

1 to not take minutes.

2 A To not take minutes, right.

3 Q Do you know if that occurred here?

4 A I don't think so.

5 Q How was the decision made -- It's a broad  
6 question, and we'll get into some detail, but how  
7 was the decision made to file this lawsuit?

8 A We hired Sutton-Kennerly & Associates  
9 Engineers to do a study of our buildings.

10 Q Who made that decision?

11 A The board.

12 Q It was a study brought on by what? Why  
13 did you decide to do that?

14 A We had been doing upgrades to the  
15 buildings piecemeal because of money, I would  
16 assume. And we were doing -- Like they did the end  
17 walls and the roofs, and then they started to do the  
18 ocean side of two buildings. And Oscar Mendiondo as  
19 president said, you know, we just need to be sure  
20 that we're doing everything just right. So it was  
21 his idea to hire someone to do a study of the  
22 buildings, and Sutton-Kennerly had been highly  
23 recommended to us.

24 Q Who gave you that recommendation?

25 A The first recommendation came from Bob

1 few windows, that sort of thing.  
 2 Q Were all the sliding glass doors replaced  
 3 after Hurricane Hugo?  
 4 A I don't know. I don't recall that they  
 5 were.  
 6 Q Were the sliding glass doors --  
 7 Obviously, the original construction, the sliding  
 8 glass doors were in the complex. The building  
 9 hasn't been changed.  
 10 A Right.  
 11 Q To that extent?  
 12 A Correct.  
 13 Q Do you know what the useful life on the  
 14 sliding glass doors was?  
 15 A No.  
 16 Q Are there sliding glass doors in place  
 17 currently that are original?  
 18 A I don't know that they are original, but  
 19 there are older doors in the building.  
 20 Q Do you have any surveys that indicate  
 21 when sliding glass doors were replaced?  
 22 A I keep track of everything that has been  
 23 replaced since 2003, 2004, before I came. I know  
 24 what doors were replaced, and I know what doors have  
 25 been replaced since I came.

1 Q Do you have that written down somewhere?  
 2 A Mm-hmm.  
 3 Q Yes?  
 4 A Yes.  
 5 Q Has that been produced?  
 6 A I think so, yes.  
 7 Q This is a collection of documents that is  
 8 titled Attachments: 2010 Schedule. Just take a  
 9 look at this and tell me if this is the document  
 10 that you created to illustrate what sliding glass  
 11 doors have been replaced and which ones are  
 12 original.  
 13 A These are definitely things that I've  
 14 created. This is not the very last one, but this is  
 15 of the fourth and fifth floor sliding glass doors.  
 16 2010, I think, would have been the last year that we  
 17 did any sliding glass doors. We were replacing  
 18 three or four or five a year. I think we did ten  
 19 one year, five, because it was so costly. We were  
 20 only replacing those that were leaking.  
 21 Q I'm trying to start with some sort of  
 22 document control. I've put as a collection  
 23 documents that seem to concern sliding glass doors,  
 24 and they are not Bates stamped sequentially. For  
 25 the record, they are all CCS documents, came from

1 Carolina Concrete's files: 1483, 1443, 1421, 1422,  
 2 1423, 1234, 1220, 1206, 1187, 1188, 1189, 1193 and  
 3 1194. Can you tell me which one of these documents  
 4 that you created?  
 5 A 1483 has my name on it. 1443 has my name  
 6 on it. 1421 looks like something that I would do.  
 7 Q Set the ones that you think you created  
 8 aside separated from the ones that you did not.  
 9 A I think I did all of these.  
 10 Q Well, let's mark that as an exhibit then.  
 11 A That's not my handwriting, but that's a  
 12 form that I would have --  
 13 Q Bates stamp number?  
 14 A 1193 and 1194. I created the form, but I  
 15 did not do the handwriting.  
 16 Q Do you know if those documents combined  
 17 illustrate all the sliding glass doors that have  
 18 been removed and replaced?  
 19 A Well, at least through 2009. But I think  
 20 there were some in 2010, a few, all on the fourth  
 21 and fifth floor.  
 22 (Exhibit No. 1 marked for  
 23 identification.)  
 24 BY MR. ELLIOTT:  
 25 Q When did you guys start replacing sliding

1 glass doors?  
 2 A Before I came. '02 or '03 or '04, before  
 3 I came, all of the first, second and third floor  
 4 master bedrooms --  
 5 Q Time out one second. Before you came in  
 6 '90?  
 7 A I came in 2005. Before I came back.  
 8 Sorry.  
 9 Q Do you know what sliders were replaced  
 10 between -- Well, let me ask you this. Between '90  
 11 and '93, were any sliding glass doors replaced? Do  
 12 you know?  
 13 A I don't know.  
 14 Q Do you know if any were replaced between  
 15 '93 and 2005?  
 16 A Yes.  
 17 Q Which ones?  
 18 A As part of the project being done in the  
 19 time frame of 2002, 2003, 2004, all of the first,  
 20 second and third floor master bedroom sliding glass  
 21 doors were replaced.  
 22 Q Give me those dates one more time. '02  
 23 to '04?  
 24 A '02, '03, '04. When I came in 2005, they  
 25 were completed.

1 Q All sliding glass doors master bedroom?  
 2 A First, second and third floor.  
 3 Q All buildings?  
 4 A All four buildings.  
 5 Q And how do you know that?  
 6 A Because they were replaced.  
 7 Q You looked at them and could tell?  
 8 You've talked to people?  
 9 A Yes. It was part of the project.  
 10 Q Are there sliding glass doors on the  
 11 ocean side other than the master bedrooms?  
 12 A Living rooms all have sliding glass  
 13 doors.  
 14 Q Those were not replaced between '02 to  
 15 '04?  
 16 A They were not.  
 17 Q And none on the fourth and fifth floors?  
 18 A The fourth and fifth floors are  
 19 different. That's what all of these papers are  
 20 about. Fourth and fifth floor sliding glass doors  
 21 were replaced --  
 22 Q Exhibit 1 is about fourth and fifth  
 23 floor, all buildings, only?  
 24 A Correct.  
 25 Q And they weren't touched until the

1 done at some point during 2005 and 2010, 2011 maybe.  
 2 And then we replaced living rooms and  
 3 fifth floor street side bedrooms as we could as they  
 4 were leaking.  
 5 Q The first phase of Carolina Concrete's  
 6 work, what did that include?  
 7 A I don't really know for sure. I know it  
 8 had something to do with chimneys and party walls or  
 9 dividing walls between units on the fifth floor.  
 10 Q So it was the chimneys and the fifth  
 11 floor party walls only?  
 12 A I don't know. I know that was included.  
 13 I don't know --  
 14 Q -- what else?  
 15 A Huh-uh.  
 16 Q Are the party walls and privacy walls  
 17 different?  
 18 A No. It's just terminology.  
 19 Q In the buildings if you're on the decks,  
 20 there is a wall -- the full-height wall and then a  
 21 smaller wall. And I think the full-height wall is  
 22 adjacent to the living space of the unit next door.  
 23 Is that right?  
 24 A Yes.  
 25 Q And then there's a smaller wall that

1 '09-2010 time period?  
 2 A No. I really don't know when it started.  
 3 I don't know if any were done prior to when I came  
 4 in 2005. I don't remember.  
 5 Q On the fourth and fifth floors?  
 6 A On the fourth and fifth floors. But from  
 7 at least 2008 to 2010, I had some replaced.  
 8 Q Have any of the living room sliding glass  
 9 doors been replaced?  
 10 A Yes.  
 11 Q Do you know which ones?  
 12 A No.  
 13 Q Do you know how many?  
 14 A No.  
 15 Q Do you know when the first one was  
 16 replaced or a time frame of when however many were  
 17 replaced it began and ended?  
 18 A When I came in 2005, I don't know if any  
 19 on the fourth and fifth floors at any point have  
 20 been replaced. I just don't know. I don't  
 21 remember.  
 22 But my records would indicate that I  
 23 continued to replace sliding glass doors. We did  
 24 all master bedrooms first, fourth and fifth -- well,  
 25 fifth floor master bedrooms. All of those have been

1 extends to the end of the deck, I guess. Right?  
 2 A (Witness nodded).  
 3 Q And you can see over it to the next deck.  
 4 Right?  
 5 A Yes.  
 6 Q Is the smaller wall what they call the  
 7 privacy wall and the full-height wall the tenant  
 8 separation wall? Do you know?  
 9 A I don't know.  
 10 Q And the master bedroom sliding glass  
 11 doors are adjacent to the tenant separation wall?  
 12 Does that make sense?  
 13 A Well, there would be a wall on each side.  
 14 I mean, I can't really picture it.  
 15 Q When you walk out on the decks, don't you  
 16 go -- Like you go through the living room and  
 17 there's a door on the side that goes into the deck,  
 18 and there's a deck area, and to your left would be  
 19 the master bedroom, and then there's a wall that's  
 20 adjacent to the --  
 21 A No. We're talking about the fourth and  
 22 fifth floor townhouses?  
 23 Q I'm talking about one through three, I  
 24 think.  
 25 A Oh, one through three? Yes, you are

1 oceanfront. What did First Exteriors do on the  
 2 oceanfront side?  
 3 A A and B.  
 4 Q Just A and B?  
 5 A Correct.  
 6 Q Nothing on C and D?  
 7 A No.  
 8 Q On the ocean side?  
 9 A Correct.  
 10 Q How about on the street side?  
 11 A No.  
 12 Q Nothing on the street side?  
 13 A Nothing had been done.  
 14 Q How about the elevator towers?  
 15 A I believe all of the elevator towers were  
 16 done, but I don't know -- I was not there, so I  
 17 don't know what.  
 18 Q So it's true that there's oceanfront  
 19 stucco on C and D currently?  
 20 A Correct.  
 21 Q It's synthetic stucco?  
 22 A Correct.  
 23 Q It's been there since day one?  
 24 A Yes.  
 25 Q Who did you-all hire to do the work

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1 Do you know what was involved with the  
2 glazing of all bay windows in March of 2000?

3 A I do not.

4 Q Do you know if the work was done?

5 A I do not.

6 (Exhibit No. 15 marked for  
7 identification.)

8 BY MR. ELLIOTT:

9 Q No. 15 looks like a report from Terry  
10 McKelvey to Gloria May who was the manager in that  
11 time period regarding B-414/415 chimney/roof  
12 remediation field report. Take a look at that.

13 McKelvey indicates at the top he is  
14 making a site visit to meet with Watertight Systems,  
15 the company that's performing the prototype  
16 remediation to the chimneys and roofs due to the  
17 deficiently installed flashing. Do you know  
18 anything about the work that Watertight is doing  
19 during this time period?

20 A I do not.

21 Q Do you know if these chimneys and roofs  
22 are the same chimneys and roofs that Carolina  
23 Concrete Services worked on I think sometime later  
24 in 2002?

25 A I think they were actually brought in

1 have done post-Hugo, right, based on what we've seen  
2 so far?

3 A I believe so, yes.

4 Q And new flashing shall be installed in  
5 accordance with good practices. Do you know if  
6 Watertight attempted to do that work?

7 A I do not know.

8 Q And he goes on to talk about new chimney  
9 caps should be incorporated into the remediation to  
10 provide protection for the chimney. It sounds like  
11 you don't know whether or not Watertight did that or  
12 someone after them in the form of Carolina Concrete?

13 A It seems like Watertight was hired to do  
14 like a mockup or something and they only did that  
15 and no more. Carolina Concrete took over, is what I  
16 believe.

17 Q And I know we're stretching, but do you  
18 know if Carolina Concrete was to follow the mockup  
19 or the go-by done by Watertight?

20 A I don't know.

21 Q And overseen by McKelvey?

22 A I do not know.

23 (Exhibit No. 16 marked for  
24 identification.)

25 BY MR. ELLIOTT:

1 during this time for their opinion and they were  
2 hired.

3 Q They were brought in to review the work  
4 of Watertight and provide an opinion as to how to  
5 fix the problems?

6 A I don't know why they were brought in  
7 with Watertight. I just know that they kept finding  
8 more water intrusion, so they brought in Carolina  
9 Concrete.

10 Q Look at the next page, recommendations  
11 from McKelvey. No. 1 he says, "Due to the chimney  
12 sheathing deterioration from water intrusion, the  
13 EIFS cladding and sheathing will have to be removed.  
14 New sheathing and cladding should be installed."

15 Was Watertight, do you know, retained to  
16 do that work initially and then Carolina brought in  
17 afterwards?

18 A I don't really understand how the two  
19 worked together. I just know Carolina Concrete  
20 replaced Watertight.

21 Q And did work on all chimneys. Right?

22 A I believe so, yes.

23 Q No. 2 is the flashing installed by  
24 Cyclone Roofing will have to be removed and  
25 replaced. So this is flashing that Cyclone would

1 Q Exhibit No. 16 is an Exterior Condition  
2 Survey from Terry McKelvey Bates stamped Plaintiff's  
3 1 through 104. It's dated October 7, '02. Have you  
4 ever seen that?

5 A I'm aware of it. I never looked at it.

6 Q It's still before your time?

7 A Yes.

8 Q Do you know if it was a basis for the  
9 contract that was ultimately entered into by  
10 Carolina Concrete Services?

11 A I do not know.

12 Q Look at Plaintiff's 19, Windows and  
13 Sliding Glass Door Units. Are you with me?

14 A Yes.

15 Q On that Bates stamped page it says, "Bay  
16 windows, horizontal sliding, fixed and sliding glass  
17 door units have on numerous site visits been  
18 examined. They have been examined for, but not  
19 limited to, the following: Water leakage to the  
20 interior, insulated glass seal breakage, mold growth  
21 adjacent to unit, stains on the wall/wallpaper,  
22 stains on ceilings, wet carpet, rust stains,  
23 deteriorated wood base trim and howling due to  
24 wind."

25 Were you aware that Shipwatch was having

1 Right?

2 A Yes.

3 Q But we still don't know what work was  
4 being done, if it's replacing stucco on all the  
5 floors or replacing stucco on just fourth and fifth  
6 or something different. You can't shed any light on  
7 that right now?

8 A I can only say my understanding is the  
9 fourth and fifth floors ocean side were done and the  
10 fifth floor street side and the end walls.

11 Q In the '02, '03 time period?

12 A Right.

13 Q Back to the sliding glass doors and fixed  
14 windows, do we know if they were replaced then?

15 A To me, that was the time period that that  
16 work was done as well.

17 Q Though it doesn't mention that in our  
18 little outline here?

19 A Yeah, this was 2003. That was probably  
20 2004, because it was finished when I came in 2005.

21 Q What was finished?

22 A Sliding glass doors, master bedroom,  
23 first, second and third floor were completed.

24 Q On the page 6415 where we --

25 A I don't have 15.



1           A       Yes. One of them would request or call  
2   in about something they had a problem with or  
3   something they needed me to look at; or when it  
4   rains, you know, we had problems with leaking  
5   sliding glass doors. So we would go in after a  
6   heavy rain looking for wet carpet, any sign of  
7   water.

8           Q       How long has it been a problem with  
9   leaking sliding glass doors at Shipwatch?

10          A       Well, I've been there -- this is my ninth  
11   year. So there's been problems since I've been  
12   there.

13          Q       And you started when?

14          A       February 2005, I think.

15          Q       What kind of problems have you noticed  
16   with the leaking sliding glass doors since February  
17   of 2005?

18          A       They leak.

19          Q       Anybody ever told you why they leak?

20          A       We've had contractors out there that  
21   look. Sometimes they say it was no end dams.  
22   Sometimes it was installation. They kind of each  
23   had their own opinion.

24          Q       What contractors gave you those comments?

25          A       Carolina Concrete and Charleston Glass.

1           Q       Any place other than sliding glass doors?

2           A       Fourth floor units are townhouses. So  
3 they incorporate the fourth and the fifth floors.  
4 And there will be water penetration in the fourth  
5 floor bedroom street side, which is right below the  
6 fifth floor sliding glass door. That's how we would  
7 be able to find a leaking sliding glass door on the  
8 fifth floor.

9           Q       How long have you had the problem with  
10 the leaking fifth floor sliding glass doors?

11          A       We've had leaking problems since I came  
12 in 2005.

13          Q       Any other places where the homeowners  
14 have complained about water intrusion?

15          A       Not that I can think of.

16          Q       Have any of the homeowners complained  
17 about roof leaks?

18          A       I think we had a couple of -- I remember  
19 having Carolina Concrete come out and make some  
20 repairs -- they had to make some repairs to roof  
21 drains. I don't remember -- I know they had to cut  
22 into the ceilings of some of the townhouses to make  
23 the repair. I don't remember if there was a leak  
24 inside -- I don't remember why we had to do that,  
25 but they had to make some repairs to roof drains.

1 caused a bay window in C213 to leak. Correct?

2 A 213, that's correct. That's what it  
3 says.

4 Q How often were the bay windows leaking in  
5 2007?

6 A I have no idea.

7 Q How many bay windows are there in each  
8 building?

9 A Six in each building.

10 Q So 24 total?

11 A Correct.

12 Q And so in 2007 we know of reports of four  
13 of the 24 were leaking. Correct?

14 A Correct.

15 Q Do you recall any repairs being done to  
16 address the leaking bay windows in 2007?

17 A I don't recall specifically, but I know  
18 that Bob Wiggins came out, and I know that  
19 Charleston Glass also did some caulking around the  
20 bay windows. But I don't remember anything  
21 specific.

22 (Exhibit No. 101 marked for  
23 identification.)

24 BY MR. COBB:

25 Q I'm going to hand you Exhibit No. 101

1 have recommended what he recommended.

2 Q I want to make sure I'm clear. In  
3 September of 2008 you recommended to the board that  
4 the board enter into the \$1.8 million contract with  
5 Carolina Concrete Systems to replace the EIFS off of  
6 the four buildings at Shipwatch. Correct?

7 A I don't believe I recommended that they  
8 enter into a contract with anyone. I recommended  
9 that they do the work that had been recommended that  
10 they do for the protection of the buildings.

11 Q Let me rephrase. In September of 2008  
12 did you recommend to the board that it spend  
13 approximately \$423,060 per building which can be  
14 done in phases totaling \$1,800,000 for EIFS  
15 replacement of the buildings at Shipwatch?

16 A Apparently, I recommended whatever it  
17 says in here that I recommended. But did I stand up  
18 and say I recommend that you sign a contract with  
19 someone for this amount of money? No, that's not my  
20 place. My place is to do research to know what the  
21 buildings need to get the prices, get the  
22 information and lay it out for them. And, yes, I  
23 recommend that you do what is appropriate for the  
24 buildings. But I don't recommend that they sign a  
25 contract for a million dollars. That's not my

1 place.

2 Q My question to you -- the last question I  
3 asked you did not involve you recommending that they  
4 contract with anyone.

5 My question to you was, the September  
6 2008 minutes indicate that you "highly recommended"  
7 item No. 6 of the September 2008 budget meetings.  
8 Correct?

9 A That's what it says, yes.

10 Q Item No. 6 is titled, "EIFS replacement,  
11 approximately \$423,060 per building which can be  
12 done in phases totaling \$1,800,000."

13 A That's what it says, yes, correct.

14 Q And that work would have involved the  
15 complete removal and replacement of all the EIFS on  
16 the four buildings at Shipwatch. Correct?

17 A All that had not already been replaced,  
18 yes.

19 Q And do you recall making that  
20 recommendation to the Shipwatch board that they have  
21 that work done beginning in 2008?

22 A I can't say that I specifically remember  
23 it, but I'm sure that I would. And it says here  
24 that I did.

25 Q At any point in time after you reviewed

1 the September 2008 minutes did you ever go to anyone  
2 on the board and say you have misquoted me,  
3 mischaracterized what I said or did?

4 A No.

5 Q And so anybody who is objectively looking  
6 at the September 2008 minutes can take these minutes  
7 to mean that you in fact did --

8 A Yes, they can.

9 Q In 2008?

10 A Yes, they can.

11 Q That the Shipwatch board completely  
12 remove and replace all the existing EIFS on the four  
13 buildings. Correct?

14 A Sure.

15 Q And you would agree with me that there  
16 was a recognition by the board in 2008 that the  
17 three items you listed as "highly recommended" which  
18 in their entirety would have totaled over \$2 million  
19 were things that were either, quote, ongoing or had  
20 been held back from previous years?

21 A What was the question? The board -- What  
22 was it? The board what?

23 Q There is a recognition, is there not, in  
24 these September 2008 minutes by the board that you  
25 had recommended \$2.1 million worth of repairs --

1           A       It says here, yes. The secretary is in  
2 the minutes, so yes. I guess that would say that  
3 the board is acknowledging that I recommended that  
4 they get the EIFS off the building and replace it,  
5 yes.

6           Q       Not only that, but dealing with the deck  
7 coatings and the sliding glass doors. Correct?

8           A       Yes.

9           Q       And the board recognized in September of  
10 2008 that those three items were either as the  
11 minutes reflect, quote, ongoing or had been held  
12 back from previous years. Correct?

13          A       Yes, that's what it says.

14          Q       On the last page of the September 2008  
15 minutes there is a note that you told the board in  
16 September of 2008 that when Shipwatch opened up the  
17 EIFS before, there were problems, and that you  
18 notified the board additional problems may arise  
19 when opening up the new areas of EIFS, meaning that  
20 the costs may be more than expected. Correct?

21          A       It says that, but I don't remember that.

22          Q       Do you have any reason to dispute the  
23 accuracy of these minutes?

24          A       No.

25          Q       Let me go back to page 3 of these

1 time I turned around, they were coming, wanting a  
2 broken handle replaced or the rollers making the  
3 door hard to open. They never cleaned out the sand  
4 out of the tracks. And then you yank on the thing,  
5 and eventually the handle breaks.

6 So I brought it to the attention of the  
7 board, and they determined that maintenance --  
8 cleaning and maintenance items on the interior was  
9 the owner's responsibility. So I have not since  
10 that time replaced a handle or rollers on a sliding  
11 glass door.

12 Q On page 5 of the September 2008 minutes  
13 it reflects yet another bay window that's leaking.  
14 Correct? This time at unit D219 caused by the  
15 installation of window treatments.

16 A I think this is the same one we talked  
17 about before, D219. And that's where they had  
18 screwed into the framework and it caused damage  
19 below in D119. It was No. 106.

20 Q Let me go back to page 7 of the September  
21 2008 minutes. Under the asterisk there at the  
22 middle of the page it says, "The board previously  
23 passed on the coating of the decks because we needed  
24 to have money to do other projects (namely the  
25 beach) and let the warranty expire." What is the



## STATE OF SOUTH CAROLINA

THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

SHIPWATCH CONDOMINIUM  
ASSOCIATION,

Plaintiff,

-versus-

CAROLINA CONCRETE SYSTEMS,  
INC., et al.,

Defendants.

OSCAR MENDIONDO, Individually )  
and as representative of a )  
class of similarly situated )  
owners of condominium units in )  
the horizontal property regime )  
known as SHIPWATCH CONDOMINIUMS,)

Plaintiffs,

-versus-

CAROLINA CONCRETE SYSTEMS,  
INC., et al.,

Defendants.

THE CONTINUATION OF THE DEPOSITION OF LINDA JERNIGAN was taken as a witness on behalf of the Defendants, pursuant to South Carolina Rules of Civil Procedure, at 10:00 a.m. on Thursday, the 17th day of July 2014, at the offices of Turner Padgett, 40 Calhoun Street, Suite 200, Charleston, South Carolina, before Janice O. Darby, Registered Professional Reporter and Notary Public in and for the State of South Carolina.

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1 A Correct.

2 (Exhibit No. 126 marked for  
3 identification.)

4 BY MR. COBB:

5 Q I'm going to hand you what I've marked as  
6 Exhibit 126, Bates stamp PL 006986, 87 and 88, three  
7 pages titled Shipwatch Budget Proposal 2008. Can  
8 you just explain to me what this document shows?

9 A This is a worksheet that I create for the  
10 board with the budget proposal for any particular  
11 year. This one 2008. And as a comparison, I show  
12 them what we budgeted the year before, 2007. And  
13 because the year is not over, I do a projected  
14 actual total.

15 MR. COBB: Let me take a quick  
16 break, because I think my hour is up. The only  
17 thing I want to put on the record is we have not  
18 completed the review of the documents that have just  
19 recently been provided, so we reserve our right to  
20 at some point -- and we can schedule it with  
21 everybody -- to bring you back for more questioning.

22 (Recess taken.)

# 23 EXAMINATION

24 BY MR. KELLY:

25 Q Ms. Jernigan, my name is Britt Kelly. I

1 line. Who are those folks? Not their names, but  
2 what is their significance as it relates to  
3 Shipwatch?

4 A They were the board members at that time.

5 Q I see in the subject line it says,  
6 "Addendum to Manager's Report 3.5." Tell me about  
7 manager's reports. What are those?

8 A Usually prior to a board meeting I just  
9 write up a report of things that have been going on  
10 at the property, things that I have done, work  
11 that's been accomplished. Sometimes I do them more  
12 often, but usually just before a board meeting.

13 Q So obviously this goes to the board and  
14 not to the membership at large?

15 A Correct.

16 Q Why 3.5?

17 A When I put together the board meeting  
18 package, everything has to be numbered. And this  
19 just happens to be on the agenda -- the manager's  
20 section is No. 3, and anything that I have for them  
21 is numbered with a three something.

22 Q And on Exhibit 127, is the discussion  
23 taking place here about the work that will  
24 eventually be done in the fall of 2010?

25 A Yes, I believe so.

1 represent EFCO and W.C. Johnston Architects in this  
2 case.

3 I'll remind you during the deposition, if  
4 you would, please let me finish my question before  
5 you begin to respond, even if you know where I'm  
6 going with my question. Is that okay?

7 A Yes.

8 Q I want to kind of focus my questioning  
9 for the time being on the 2010 time period. I know  
10 there were some repairs or some renovation work done  
11 by Carolina Concrete in the fall of that year. I  
12 kind of want to understand how those repairs came to  
13 be, how the board made the decision to go forward  
14 with those.

15 (Exhibit No. 127 marked for  
16 identification.)

17 BY MR. KELLY:

18 Q I want to mark as Exhibit 127 an e-mail  
19 dated March 2, 2010, Bates labeled PL 028295. Take  
20 a minute to look at it and tell me if you recognize  
21 it.

22 A Okay.

23 Q Is that an e-mail from you?

24 A Yes, it is.

25 Q And I see a bunch of names in the "To"

1 Q How did the board decide to do the  
2 stationary window replacement work and the  
3 additional work that was going to be done in the  
4 fall of 2010?

5 A How did they determine?

6 Q What led them to choose to do that work?

7 A Well, we had leaking sliding glass doors  
8 in some areas. It was a continuation of work that  
9 had already been accomplished by Carolina Concrete  
10 and others. They had already done the end walls of  
11 all four buildings. They had already done the  
12 fourth and fifth floors, I believe, of all four  
13 buildings, at least parts of those two floors. And  
14 this was going to be a continuation of it.

15 They had also done the ocean-side master  
16 bedrooms on first, second and third floor. So this  
17 was just considered a continuation of all the other  
18 projects.

19 Q And on the second page of Exhibit 127,  
20 first full paragraph, it indicates that a  
21 conversation took place with you and Sutton-Kennerly  
22 about the costs of designing a remediation and  
23 putting together a scope of work for that work to be  
24 done in the fall of 2010?

25 A Yes.

1 Q It looks like you're relating to the  
2 board that Fred and Carl did not feel that an  
3 engineer is needed for that work. Is that correct?

4 A Correct.

5 Q What do you recall about your  
6 conversations with Fred and Carl about the lack of a  
7 need for an engineer to scope the work to be done in  
8 the fall of 2010?

9 A Well, in the previous projects that I had  
10 just mentioned, Bob Sisnroy had been the engineer.  
11 And Bob Wiggins, Carolina Concrete, had been the  
12 general contractor. So they were using the same  
13 product, which was EFCO doors, the same wall system,  
14 which was Durock, so they just felt like Bob Wiggins  
15 knew what he was doing. It was just a repeat, a  
16 continuation. So they didn't see the need for  
17 someone coming in cold and getting involved.

18 Q Am I correct from your e-mail here,  
19 Exhibit 127, that paragraph, that Fred and Carl and  
20 the board did not want to incur the cost of an  
21 engineer to do that work?

22 A Correct.

23 Q And the work was more expansive than the  
24 sliding glass door and the Durock work. Right?

25 A In 2010?

1 they were changing out the synthetic stucco on the  
2 outside.

3 Q And the synthetic stucco replacement work  
4 that they wanted to take place in 2010, was that  
5 limited to a certain number of buildings, or was it  
6 for all the buildings?

7 A It was going to be just two buildings, A  
8 and B.

9 Q So the stationary windows, the first and  
10 third floors, would have been for buildings A and B?

11 A Correct.

12 Q And there are 36 in each building? Is  
13 that what you told us on Tuesday?

14 A There are -- Oh, the number of windows?  
15 Yes.

16 Q You indicate on Exhibit 127 in that third  
17 paragraph that you estimate a price for the new  
18 windows and concrete curbs?

19 A Yes.

20 Q How did you estimate that?

21 A I don't really remember for sure, but I  
22 know that the sliding glass doors, I think, were  
23 estimated at \$11,000 each. So I'm sure I just was  
24 getting this information from Bob Wiggins in  
25 proposals or just in estimates.

1 Q Yes, ma'am.

2 A No, I don't think so.

3 Q If we look at the first page of Exhibit  
4 127, it's talking about replacing stationary windows  
5 on the first through third floors of the buildings.  
6 Right?

7 A Oh, right.

8 Q And none of that work had been done  
9 previously at Shipwatch. Correct?

10 A No. Only sliding glass doors at that  
11 time.

12 Q So no one had ever scoped -- By scope, I  
13 mean no engineer sat down and prepared a scope of  
14 work for the stationary windows to be replaced at  
15 Shipwatch. Right?

16 A Not to my knowledge.

17 Q Why was the board interested in replacing  
18 those stationary windows at Shipwatch?

19 A I believe it was a recommendation by Bob  
20 Wiggins because those -- like the sliding glass  
21 doors, those stationary windows were sitting  
22 directly on the concrete. And I guess at their age  
23 they were reaching their usefulness and would have  
24 to be repaired or replaced sometime in the near  
25 future. So it was just more feasible to do it while

1 Q The first paragraph of this Exhibit 127  
2 reads, "I met with Carl Grisier and Fred Trombino  
3 who act as our building consultants." Do you see  
4 that?

5 A Yes.

6 Q What did you mean that Carl Grisier and  
7 Fred Trombino act as building consultants?

8 A Well, it probably wasn't a wise choice of  
9 words, but -- Let's see. Were they on the board? I  
10 guess neither one of them were actually on the board  
11 at that time, but they both lived there, and so they  
12 were on site. Carl Grisier had been there -- Well,  
13 they had both been there for the end wall work that  
14 was done. So because they lived there, they are  
15 just there to give guidance and support and they  
16 stay involved.

17 Q The board of directors that's listed here  
18 in Exhibit 127, were they all out-of-town owners?

19 A Rick Fain, B412, is actually a local,  
20 Mt. Pleasant. The rest of them are all out of town  
21 or out of state.

22 Q During 2010, did Mr. Fain have any  
23 involvement during the building repair and  
24 renovation work?

25 A Only as a board member.

1 Q Did the board in 2010 appoint or  
2 designate Carl Grisier and/or Fred Trombino to serve  
3 in a building repair oversight capacity?

4 A No, I don't believe so. I don't remember  
5 specifically that they were assigned to it.

6 Q They were just interested in it?

7 A Well, you know, all the owners are  
8 interested. So if they are around, they are out  
9 there looking. But I don't remember them having  
10 specific roles to inspect or anything like that.

11 Q Do you recall in the 2010 time frame  
12 whether Mr. Trombino or Mr. Grisier were reporting  
13 back to the board as to their findings or their  
14 opinions concerning either the work of the repair  
15 contractors or their proposals?

16 A I don't remember that they did.

17 Q When did Mr. Trombino come on to the  
18 board?

19 A I don't know. Perhaps it was -- You can  
20 only serve on the board two terms. And I think he  
21 went -- must have been on the board prior to this.  
22 I am honestly not sure the years that he was on.

23 Q Do you remember if he came on to the  
24 board at some point after March 2, 2010?

25 A Yes, he did. You can serve two

1 three-year terms, and then you have to be off for at  
2 least a year, and then you can be reelected. And so  
3 he is serving for the second time now.

4 Q Do you know how many years are left on  
5 his term?

6 A This is it. He'll be complete -- At the  
7 annual meeting in January of 2015, they will elect  
8 new board members.

9 Q Does it seem right that he was out in  
10 2010 and back on in 2011?

11 A I honestly don't remember.

12 Q I think I'm finished with that one for  
13 the time being.

14 What do you remember about the regime  
15 hiring Gary Freeman?

16 A I don't -- I think it was kind of  
17 instigated by me. I felt that we needed some kind  
18 of expert guidance through the process of the work  
19 being done. And so I did some research on different  
20 local architects or engineers, and this was just  
21 someone that -- actually, Bob Wiggins gave me the  
22 name of and we met with. I don't know. Out of two  
23 or three we talked to, we chose him to guide us  
24 through that phase of the remediation project.

25 (Exhibit No. 128 marked for

1 identification.)

2 BY MR. KELLY:

3 Q Let me give you what I've marked as  
4 Exhibit 128. It appears to be a letter from  
5 Mr. Freeman dated September 22, 2010, addressed to  
6 you as the general manager at Shipwatch.

7 A Yes.

8 Q Do you recall this letter?

9 A Well, not this letter specifically, but I  
10 do know that I had correspondence with Mr. Freeman.

11 Q And in the first paragraph of Exhibit 128  
12 Mr. Freeman indicates that he is offering services  
13 to you as an architect to provide limited  
14 construction administration duties during the  
15 project. Do you see that?

16 A Yes.

17 Q Is that your understanding of what  
18 Mr. Freeman is being hired to do at Shipwatch?

19 A Yes.

20 Q Was the project in question the Carolina  
21 Concrete repair and renovation work of the EIFS  
22 replacement and the addition of the 72 stationary  
23 windows?

24 A I'm sorry?

25 Q Was the project that he's referencing

1 here in Exhibit 128 the work that Carolina Concrete  
2 was going to do to replace 72 stationary windows,  
3 add some sliding glass doors and replace the EIFS?

4 A Yes.

5 Q This letter is dated September 22, 2010.  
6 I assume it's fair for me to believe that the work  
7 had not been done yet at this point?

8 A I would assume so. I don't remember the  
9 specific date that the work started.

10 Q Who served as the regime's point person  
11 during the repairs for communicating with  
12 Mr. Freeman?

13 A I guess it would be me.

14 Q Who served as the regime's point person  
15 during the repairs for interacting with Bob Wiggins?

16 A It would be me.

17 Q Did you also deal with the subcontractors  
18 for Mr. Wiggins, or simply Mr. Wiggins?

19 A I was familiar with all of them, but my  
20 direction would be with Bob Wiggins.

21 Q If it's part of Mr. Freeman's  
22 responsibility for limited construction  
23 administration duties during the project, if he  
24 would raise a concern with you, how are those  
25 concerns addressed?

1 A He would send me a letter, and I would  
 2 share it with the board.  
 3 Q How would you share it with the board?  
 4 A Through e-mail.  
 5 Q During the project in the fall of 2010  
 6 being done by Carolina Concrete, Gary Freeman told  
 7 you that the EFCO windows being supplied did not  
 8 contain impact glass, didn't he?  
 9 A I honestly don't remember conversations  
 10 specifically. I would have to look at his records.  
 11 But I'm sure if they are in the records that he did.  
 12 (Exhibit No. 129 marked for  
 13 identification.)  
 14 BY MR. KELLY:  
 15 Q I'm going to mark as Exhibit 129 this  
 16 e-mail. Take a minute to review it, and then I'm  
 17 going to ask you if you recognize it.  
 18 A I don't understand this, but I do recall.  
 19 Q Exhibit 129 appears to be an e-mail from  
 20 Gary Freeman to Bob Wiggins where you were copied  
 21 dated November 3, 2010. Is that correct?  
 22 A Yes.  
 23 Q Do you recall receiving this e-mail?  
 24 A Not specifically, no. But I do recall  
 25 the Mr. Broadway. That's what rings a bell with me.

1 I think he was an engineer that did a report to  
 2 answer these questions. I remember that. I don't  
 3 understand the language here, but I do recall that  
 4 he did some kind of special report for Charleston  
 5 Glass.  
 6 Q The bottom right-hand corner of Exhibit  
 7 129 has a stamp on it. Do you see that PL 022008?  
 8 A Yes.  
 9 Q That indicates that it came from the  
 10 files produced by Pat Flynn's office. I'll just  
 11 tell you that this came from the e-mails that we  
 12 received last week. The CC line, Linda Jernigan,  
 13 says iopship@bellsouth.net. Is that your e-mail  
 14 account?  
 15 A Yes, it is.  
 16 Q Do you have any reason to dispute whether  
 17 you received this?  
 18 A Oh, not at all, no.  
 19 Q On this date, November 3, 2010,  
 20 Mr. Freeman tells you that the windows probably need  
 21 to be impact rated. Correct?  
 22 MR. RAMSEY: Object to the form.  
 23 A He was raising the question, yes.  
 24 BY MR. KELLY:  
 25 Q Well, on the fourth paragraph of Exhibit

1 129 doesn't he relay a conversation to you with  
 2 Brian Pietras where he was told that they probably  
 3 need to be impact rated?  
 4 A Yes. I think that's the reason for --  
 5 the whole reason for this e-mail.  
 6 Q In item No. 4 in the bottom of Exhibit  
 7 129 he's asking the question, "Are the windows  
 8 impact rated? Is it required?" Correct?  
 9 A Yes.  
 10 (Exhibit Nos. 130 and 131  
 11 marked for identification.)  
 12 BY MR. KELLY:  
 13 Q Have you had time to review Exhibit 130?  
 14 A Yes.  
 15 Q Do you recognize it as an e-mail from  
 16 Gary Freeman to Bob Wiggins where you're copied  
 17 dated November 5, 2010, about these windows?  
 18 A Yes.  
 19 Q Am I correct that on November 5, 2010,  
 20 Mr. Freeman is asking for a meeting with you and  
 21 Randy Morgan and Bob Wiggins?  
 22 A Yes.  
 23 Q And he asks the question again is impact  
 24 glazing required for the windows being installed as  
 25 part of Carolina Concrete's scope of work in 2010?

1 A Yes.  
 2 Q He also says at the bottom, correct, that  
 3 the questions about impact glazing also relate to  
 4 the slider doors that are to be installed?  
 5 A Yes.  
 6 Q Exhibit 131 is another one of these  
 7 e-mails that I was able to locate on either Monday  
 8 or Tuesday through the review of the e-mails that  
 9 were produced from your files. And the only reason  
 10 I marked it is it indicated that on November 8th you  
 11 forwarded this e-mail that we marked as Exhibit 130  
 12 to Fred Trombino.  
 13 A Yes.  
 14 Q It's my understanding that he was not on  
 15 the board at that time. Correct?  
 16 A I don't really know.  
 17 Q Well, we looked at that March 2010  
 18 e-mail. He was not on it then. Right?  
 19 A That's correct.  
 20 Q And when do the board elections normally  
 21 take place?  
 22 A In January.  
 23 Q So is it fair to assume that he was not  
 24 on the board as of November 8, 2010?  
 25 A Yes, it would.

1 Q Why was Mr. Trombino receiving a copy of  
2 this e-mail?

3 A Well, there was another e-mail back here  
4 that you had that said that we were using Fred  
5 Trombino and Carl Grisier as building consultants.  
6 Bad choice of words, but there it is.

7 Q Were they, for lack of a better term, the  
8 intermediary for you and the board for these  
9 building issues?

10 A I guess that would be a good way to put  
11 it. They were owners. I am not. So they would  
12 talk to the board in more of a position than I would  
13 be in. But it also was just to support me in trying  
14 to get the work done.

15 Q I wasn't able to find any e-mails where  
16 you forwarded these communications to anyone else at  
17 the regime including any board members. Do you know  
18 whether you did or did not?

19 A I don't know that I did or did not. If  
20 they weren't in there, I probably didn't. I don't  
21 really know.

22 Q Do you e-mail Mr. Trombino when every  
23 issue comes up on the project?

24 A No.

25 Q What was so significant about this issue

1 e-mails?

2 A I don't remember it. I don't remember  
3 sending the e-mail either. It's just too far back,  
4 too many things.

5 (Exhibit No. 132 marked for  
6 identification.)

7 BY MR. KELLY:

8 Q Exhibit 132 appears to be a fax from  
9 Randy Morgan with Charleston Glass on November 11,  
10 2010, to Bob Wiggins. If you would take a minute to  
11 read that, please.

12 A Okay.

13 Q The meeting Mr. Freeman had proposed was  
14 going to be on Wednesday afternoon, November 10th.  
15 And this document is dated November 11th. I'll tell  
16 you that I didn't attach it, but attached to this  
17 fax was a copy of the report from Jason Broadway.

18 Have you ever seen this document before  
19 that we marked as Exhibit 132?

20 A I don't recall seeing it, but I am sure I  
21 would have.

22 Q Why do you believe you would have seen  
23 that document?

24 A Well, it's all based on that information  
25 about the project, so I would assume I saw it at

1 that you felt you needed to e-mail it to  
2 Mr. Trombino?

3 A Well, it was raising questions that I had  
4 no clue about. They were raising issues that were  
5 part of a continuation of another project when I was  
6 not there, and I did not know what to do. So I was  
7 seeking some support.

8 Q Did you attend a meeting with Randy  
9 Morgan and Bob Wiggins and Gary Freeman about this  
10 issue?

11 A I honestly don't remember. In a way, it  
12 seems like we might have. But I just don't really  
13 specifically remember.

14 I know Mr. Freeman, his parents were in  
15 another state and they were in ill health and he  
16 made several trips away during that time. So a lot  
17 of what we were doing was on the phone. But yet it  
18 just seems like maybe we did have this meeting when  
19 Randy Morgan presented the drawing or whatever it  
20 was from the other engineer.

21 Q Jason Broadway?

22 A Broadway, yes.

23 Q Do you recall any of your  
24 conversations -- Let me back up. Did you have  
25 conversations with Mr. Trombino about these

1 some point.

2 Q In Exhibit 132, Mr. Morgan states that  
3 the sliding glass door replacement work his company  
4 did over the past several years was done at the  
5 Shipwatch buildings in accordance with the 1997  
6 Standard Building Code. Do you see that?

7 A I see that.

8 Q He also says that the 72 fixed windows  
9 were installed during this 2010 replacement work  
10 based on the 1997 Standard Building Code, contracts,  
11 proposals and conversations. Do you see that?

12 A Yes, I do.

13 Q Were you part of any conversations with  
14 Mr. Morgan or Mr. Wiggins about which building code  
15 the regime expected their work to be performed  
16 under?

17 MR. RAMSEY: Object to the form.

18 A I don't recall anything, other than I do  
19 remember the Broadway report. As far as  
20 conversations, I honestly don't remember whether I  
21 did or not.

22 BY MR. KELLY:

23 Q What do you remember about the Broadway  
24 report?

25 A That it played a big role in this. I



1 think the project was well in hand, if not  
 2 completed, almost completed by the time the report  
 3 came in. And that everyone felt -- everyone, Bob  
 4 Wiggins, Randy Morgan -- were confident that it was  
 5 sufficient to continue on.  
 6 Q The Jason Broadway report concerns the  
 7 design pressure rating. Do you know that?  
 8 A I know that it was a scientific type  
 9 thing that made everybody -- Bob Wiggins, Randy  
 10 Morgan -- confident that they met everything that  
 11 they needed to meet.  
 12 Q If you look back at Exhibit 131 and you  
 13 look down in Mr. Freeman's list, do you see in No. 2  
 14 he asks about the required design pressure rating?  
 15 A Mm-hmm. Yes.  
 16 Q And then in No. 4 he asks about impact  
 17 glazing?  
 18 A Yes.  
 19 Q Did you understand that impact glazing  
 20 and design pressure ratings were two different  
 21 things?  
 22 A I don't think that I truly understood  
 23 that at the time.  
 24 Q Were you part of any conversations with  
 25 Mr. Wiggins, Mr. Morgan or Mr. Freeman as to which

1 building code would apply to the work that they were  
 2 performing in the fall of 2010?  
 3 A I don't remember anything specific, other  
 4 than Bob Wiggins continually said that this was a --  
 5 this project was a continuation of the previous  
 6 project which called for it to be done the same way.  
 7 It was just a continuation. It was not a new  
 8 project in his eyes. I don't remember if it was at  
 9 this point in time or not, but I went to Bob  
 10 Sisnroy, called Bob Sisnroy, and asked him to  
 11 provide the documents showing the design of  
 12 everything and what he had recommended as the  
 13 original project, because it was being said that it  
 14 was a continuation, not new. And I was not there  
 15 before.  
 16 After quite some time he sent me an  
 17 e-mail which should be in here somewhere that said  
 18 that he was not able to find any of his design  
 19 drawings, and he sent me a bill for \$500 for  
 20 looking.  
 21 Q So without those documents, how did the  
 22 regime proceed?  
 23 A Well, I think that the project was  
 24 probably about completed, if not completed, at this  
 25 point.

1 Q You said Mr. Wiggins told you that this  
 2 project in the fall of 2010 was a continuation of  
 3 previous projects which called for work to be done  
 4 in the same way. Did I understand that correctly?  
 5 A The end walls and the sliding glass doors  
 6 for the master bedrooms, one, two and three floors.  
 7 Q What about the stationary windows on  
 8 floors one, two and three of buildings A and B?  
 9 A Well, that was a new part of the project,  
 10 continuation project.  
 11 Q What significance did you take from his  
 12 comment that this was a continuation of an ongoing  
 13 project?  
 14 A Well, Shipwatch had always had complete  
 15 trust and faith in Bob Wiggins. So if he was  
 16 confident and comfortable, then so were we.  
 17 Q Did you understand at that time that  
 18 building code changes had taken place in Isle of  
 19 Palms?  
 20 A I was not familiar with that, but that's  
 21 what I was understanding. And that's why I think  
 22 they continued to say that the design had been for  
 23 the 1997 building code and this is a continuation.  
 24 Q So you were told that this work, for lack  
 25 of a better term, would be grandfathered in under

1 the prior building code because it's a continuation  
 2 of the work?  
 3 A I don't remember the words "grandfathered  
 4 in" ever being used, but it was a continuation.  
 5 That's what they kept saying.  
 6 Q Was the impression you obtained from the  
 7 comments of Mr. Wiggins and those conversations lead  
 8 you to believe that the work was being done under a  
 9 prior building code because it was a continuation?  
 10 A That's the impression that I got.  
 11 Q Did you report that to the board?  
 12 A I'm sure I did.  
 13 Q Did anyone object to that?  
 14 A Not that I know of.  
 15 Q Again, Exhibit 132 is dated November 11,  
 16 2010.  
 17 A Yes.  
 18 Q Just for our frame of reference.  
 19 (Exhibit No. 133 marked for  
 20 identification.)  
 21 BY MR. KELLY:  
 22 Q Exhibit 133 is an e-mail from Gary  
 23 Freeman to you dated November 12, 2010. You're  
 24 welcome to read the entire e-mail, but I'm going to  
 25 ask you questions only about paragraphs one, two and

1 three.

2 A Okay. Go ahead.

3 Q On November 12, 2010, Gary Freeman told  
4 you that the aluminum storefront and glazing system  
5 that has been installed at the oceanfront window  
6 openings of the first three floors of buildings A  
7 and B does not meet the current building code  
8 requirements of impact-resistant systems. Correct?

9 A Yes.

10 Q Did you have any questions as to what  
11 that statement meant?

12 A No. I think I was probably in total  
13 panic about that time, because the project was, I  
14 believe, either in full swing or about finished. I  
15 don't remember the time frame start to finish of the  
16 project. But, once again, Bob Wiggins continued to  
17 say to us and believe himself that it was a  
18 continuation, so that everything was okay. And that  
19 Gary Freeman -- or Gary Morgan of Charleston Glass  
20 had provided something saying that we were good. We  
21 had nothing else to go on. We believed them.

22 Q Has anyone suggested to you during the  
23 course of this litigation that Mr. Wiggins' belief  
24 was incorrect?

25 A I don't know.

1 conversations.

2 Q Have you had any conversations with the  
3 Isle of Palms building officials as to whether or  
4 not Mr. Wiggins' belief was correct in 2010?

5 A I have not had any conversations with the  
6 building department of the Isle of Palms, but I do  
7 know that Jeff Miller went to them and asked them if  
8 we could be grandfathered in with the doors that  
9 were already in place. And they said no, that we  
10 had to replace them to impact glass because that's  
11 what we should have done.

12 Q We are going to talk about all of that  
13 here in a little while. So we'll table that for the  
14 time being.

15 Exhibit No. 133, looking back at this  
16 e-mail from Gary Freeman to you on November 12,  
17 2010, in paragraph three Mr. Freeman tells you that  
18 the windows in the first three floors must be impact  
19 rated or otherwise the opening must have protection  
20 such as shutters, plywood, et cetera. Correct?

21 A Correct.

22 Q Did you have any misunderstanding as to  
23 what he was telling you there?

24 A No, I don't think so.

25 Q No. 3 in Exhibit 133, Mr. Freeman tells

1 Q Have you had any conversations with Jeff  
2 Miller or Greg Isaacs or Mike Parker as to whether  
3 or not their belief was incorrect?

4 A Oh, those, yes.

5 Q Tell me about those conversations.

6 A Well, they did a report for Shipwatch,  
7 and in that report they stated that they should have  
8 been impact glass and that they were not.

9 Q Tell me about that report. I don't think  
10 I've ever seen that.

11 A Oh, I'm sure it's been provided. It was  
12 an investigation report done in 2011, 2012.

13 Q I've seen a 2012 report of SKA which was  
14 pretty comprehensive, but it doesn't talk about the  
15 doors or windows not being impact-resistant glass.  
16 Are you aware of any other report?

17 A No, not specifically.

18 Q Do you recall any conversations -- Tell  
19 me about the conversations you've had with Jeff  
20 Miller about whether Mr. Wiggins' belief as to his  
21 work being done under the 1997 Standard Building  
22 Code was proper or not.

23 A I don't know that I've had any specific  
24 conversations with Jeff or Greg about Bob Wiggins  
25 and his opinion. I honestly don't recall any

1 you on November 12, 2010, that Mr. Wiggins believes  
2 the 1997 Standard Building Code to be in effect for  
3 this work in 2010 and that the products that are  
4 being installed could be non-impact rated. Is that  
5 correct?

6 A That's what it says, yes.

7 Q Mr. Freeman goes on to tell you in that  
8 November 12, 2010 e-mail that he disagrees with  
9 Mr. Wiggins as to the applicability of that code.  
10 Is that correct?

11 A That is correct.

12 Q After receiving this e-mail from  
13 Mr. Freeman on November 12, 2010, what did you do  
14 with it?

15 A I had asked Bob Wiggins, Carolina  
16 Concrete, about a permit, because I needed to put a  
17 permit in the window, and I continually asked him  
18 for that permit. He said, well, he had it  
19 somewhere. He had a lot of stuff on Shipwatch and  
20 he would provide it and was never ever able to come  
21 up with it.

22 Once again, by then the project was close  
23 to completion, if not completed. So there really  
24 wasn't much we could do.

25 Q You could require that he take the

1 windows out and replace them. Right?  
 2 A Well, first, you have to have a  
 3 replacement window to put in it. So that would have  
 4 meant somebody had to design and somebody had to  
 5 order and somebody had to pay for replacing what was  
 6 already done. It's a little late to take much  
 7 action.

8 Q So the 72 windows that had been installed  
 9 were left in place. Correct?

10 A Yes.

11 Q And they were accepted by the board even  
 12 though the board knew that the windows did not  
 13 contain impact glass and that impact glass was  
 14 required?

15 MR. RAMSEY: Object to the form.

16 A They were pretty ticked off.

17 BY MR. KELLY:

18 Q They didn't reject them. Right?

19 MR. RAMSEY: Object to the form.

20 BY MR. KELLY:

21 Q Did they reject the windows?

22 A No. They are still in place.

23 Q Is there any writing to anyone saying  
 24 take these windows out of our building?

25 A I don't believe so.

1 Mr. Freeman. Is that right?

2 A Yes.

3 Q And in that e-mail on December 7, 2010,  
 4 at 10:30 a.m. you told Mr. Freeman that the board  
 5 considers the sliding doors regular maintenance.  
 6 Correct?

7 A Yes.

8 Q And you also tell Mr. Freeman that the  
 9 board chose the doors they wanted and approved the  
 10 installation in 2002?

11 A That's what I said.

12 Q So in 2010 when Mr. Wiggins and  
 13 Mr. Morgan were installing sliding glass doors at  
 14 Shipwatch it was the board's desire that those doors  
 15 conform to the doors that were installed back in  
 16 2004. Correct?

17 A Yes.

18 Q Is that so that unit owners would have  
 19 the same product?

20 A I guess.

21 Q And prior to this December 7, 2010 e-mail  
 22 that we've marked as Exhibit 134, Mr. Freeman had  
 23 suggested that the sliding glass doors did not  
 24 contain impact glass and were required to have  
 25 impact glass under the current building code. Is

1 Q Was there any contact made to EFCO as to  
 2 whether or not they would provide a replacement  
 3 product?

4 A Not by me.

5 Q During this same time period sliding  
 6 glass doors were being replaced. Correct?

7 A Yes.

8 Q And the board at Shipwatch considered the  
 9 sliding glass door replacement work to be regular  
 10 maintenance. Correct?

11 A No, I don't think so. It's capital  
 12 money. Apparently, we do.

13 (Exhibit No. 134 marked for  
 14 identification.)

15 BY MR. KELLY:

16 Q In Exhibit 134 there are two e-mails, one  
 17 from Gary Freeman to Bob Wiggins where you're copied  
 18 on December 7, 2010, at 10:23 a.m. Correct?

19 A Yes.

20 Q And in that e-mail Mr. Freeman is asking  
 21 questions about the slider doors, about their DP  
 22 rating, about manufacturer's requirements and  
 23 manufacturer's information. Is that correct?

24 A Yes.

25 Q And seven minutes later you respond to

1 that right?

2 A Yes.

3 Q I know on Tuesday and perhaps in your  
 4 first day of deposition -- in fact, it may have only  
 5 been the first day of your deposition -- you  
 6 testified that some of the owners wanted to purchase  
 7 sliding glass doors off the shelves, like at Lowe's?

8 A Yes.

9 Q Is it fair to say that the owners were  
 10 concerned about the cost of the doors and thought  
 11 they could get doors for less money than what the  
 12 regime was having to pay?

13 A That's correct.

14 Q And was Tom Miller one of those people?

15 A Probably.

16 Q Is Tom Miller on the board?

17 A He is now, yes.

18 Q Was he in 2010?

19 A I don't know for sure. Yes, he was.

20 (Exhibit No. 135 marked for  
 21 identification.)

22 BY MR. KELLY:

23 Q Exhibit 135 is another one of these  
 24 e-mails I was able to get from the document  
 25 production made on Monday. Do you see in the bottom

1 right-hand corner it says PL 033455?  
 2 A Mm-hmm.  
 3 Q And the bottom e-mail seems to be from  
 4 you to Jim McDonough dated September 14, 2010. And  
 5 I read Exhibit 135 to indicate that Tom Miller went  
 6 to Randy Morgan's office at Charleston Glass to try  
 7 to talk to him about obtaining a less-expensive  
 8 sliding glass door.  
 9 A Yes.  
 10 Q And on September 14, 2010?  
 11 A Correct.  
 12 Q Tell me about that, please. What all do  
 13 you remember?  
 14 A I'm kind of remembering after reading  
 15 this. He just believed that we were paying too much  
 16 money for sliding glass doors, and he just wanted to  
 17 talk to the provider or the contractor for that. He  
 18 does that. He just has -- he likes to talk to  
 19 people directly. So he does that sometimes.  
 20 Q You seem concerned about it because you  
 21 e-mailed Jim McDonough to see whether or not "we"  
 22 were asking for an appointment with Randy Morgan?  
 23 A Well, they were asking me if we wanted  
 24 the appointment. Was it Shipwatch, or was it just  
 25 an owner? That they didn't want to particularly

1 Q Do you remember that to be the case?  
 2 A I know she brought it up several times.  
 3 I do recall that.  
 4 Q Other than Mr. Miller and Ms. Lehner,  
 5 were other people on the board concerned about the  
 6 cost of the sliding glass doors?  
 7 A Well, everyone was concerned about the  
 8 cost. They are very expensive. But the  
 9 misunderstanding was the word "custom." When you  
 10 say we have custom doors, they are thinking that  
 11 they went in every unit and made a measurement of  
 12 the hole and then built a door to fit that hole,  
 13 which is not the case.  
 14 The doors are custom, but they are most  
 15 all of them the same size. The fourth and fifth  
 16 floors are larger, but the first, second and third  
 17 floors, those doors are all the same size but they  
 18 are custom made. You could not go to Lowe's and get  
 19 a door that size to fit.  
 20 (Exhibit No. 137 marked for  
 21 identification.)  
 22 BY MR. KELLY:  
 23 Q Ms. Jernigan, we're marking as Exhibit  
 24 No. 137 another e-mail that came from these files  
 25 produced on Monday marked PL 024987. This one is

1 talk to just anybody that came up. And so they  
 2 wanted to know if we wanted them to provide him  
 3 information, I guess. So I was just calling to  
 4 confirm that Shipwatch -- He was going to be there  
 5 representing Shipwatch, not just himself.  
 6 Q Mr. Miller was not the only person  
 7 concerned about the cost of those doors who served  
 8 on the board. Correct?  
 9 A Correct.  
 10 Q Is it Audrey Lehner?  
 11 A Lehner.  
 12 (Exhibit No. 136 marked for  
 13 identification.)  
 14 BY MR. KELLY:  
 15 Q Let me show you Exhibit 136. You can  
 16 again read the whole thing. I'm mostly concerned  
 17 about her e-mail, which is in the middle of the  
 18 first page of Exhibit 136.  
 19 A Okay.  
 20 Q On this e-mail which is August 22, 2013,  
 21 Ms. Lehner says that she has been on the board for  
 22 12 years and had brought up the question as to the  
 23 sliding glass door size and associated costs every  
 24 year. Is that right?  
 25 A Yes.

1 dated January 6, 2009. It seems to be an e-mail  
 2 exchange between you and Colleen Moring.  
 3 A Yes.  
 4 Q Who is Colleen Moring?  
 5 A She is an owner in a partnership that  
 6 owns A402.  
 7 Q On January 6, 2009, did you tell  
 8 Ms. Moring that the board can only replace so many  
 9 doors a year to keep regime expenses affordable?  
 10 A Okay.  
 11 Q I'm referencing the last line of the  
 12 first paragraph on Exhibit 137.  
 13 On January 6, 2009, did you tell  
 14 Ms. Moring that the regime can only afford to  
 15 replace so many doors a year to keep regime expenses  
 16 affordable?  
 17 A I don't think that's the essence of this  
 18 e-mail exchange. She was asking about repairing  
 19 work -- repairing stuff inside her unit, and I was  
 20 saying that we were not going to make the interior  
 21 repairs, but she would have a \$500 credit when her  
 22 sliding glass doors were replaced to spend on  
 23 interior repairs that were caused by the exchange of  
 24 the door.  
 25 Our bylaws say that as long as we are

1 attempting to make repairs, then we are not as an  
2 association responsible for interior damage as long  
3 as we are actively trying to stop the problem. And  
4 that's what I was saying to her.

5 Q So why would you have referenced so many  
6 doors in that sentence as to the regime expenses?

7 A Because that's how many sliding glass  
8 doors we have. And if I went in and made repairs to  
9 every door, her regime fee would be extremely high.  
10 Because you have to remember -- and what I have to  
11 constantly remind owners is -- there is no them and  
12 us. They are the association. And every dollar I  
13 spend, part of that dollar comes from their pocket.  
14 So if everything was done for everyone, they  
15 wouldn't be able to afford the regime fees. That  
16 was the point I was trying to make.

17 Q In January 2009, was the regime concerned  
18 about the expenses that would be incurred if it  
19 replaced all the sliding glass doors at the  
20 Shipwatch buildings?

21 A I'm sorry?

22 Q In January of 2009, was the regime  
23 concerned about the expenses that would be incurred  
24 to replace all sliding glass doors at the Shipwatch  
25 buildings?

1 welcome to review the whole thing. I'm mostly  
2 concerned about the e-mail in the middle here right  
3 above your name.

4 A Okay.

5 Q The way I read this e-mail, September 14,  
6 2010, from you to Ms. Ossewaarde was that Jim -- who  
7 I assume was the president of the board?

8 A Yes, at that time.

9 Q -- was planning to do no sliding glass  
10 door replacement in 2011 to keep the assessment as  
11 low as possible. Is that correct?

12 A Since I only ordered 11 sliding glass  
13 doors this year, is that --

14 Q Yes, ma'am.

15 A Okay. I'm lost on the question. Sorry.

16 Q You read the first part. "I only ordered  
17 the 11 sliding doors for this year, and I think Jim  
18 is going to discuss doing none next year to keep the  
19 operating the same and the assessment as low as  
20 possible." Do you see that?

21 A Yes, I do.

22 Q Was the president of the board of  
23 directors of Shipwatch concerned in September of  
24 2010 about the cost of replacing sliding glass doors  
25 because of the assessment that would be required to

1 A I wasn't talking about replacing them. I  
2 was talking about making repairs. But, of course,  
3 replacing 264 doors at one time would have been  
4 extremely expensive, is the point I was trying to  
5 make.

6 Q This is post Lehman Brothers crash.  
7 Right? We are in the recession in January of 2009.

8 A I don't remember. Yeah, I guess that  
9 was. That was in 2008.

10 Q In January of 2009, was the board of  
11 Shipwatch concerned about the finances of the regime  
12 and the impact and assessment it would have on the  
13 homeowners to replace all sliding glass doors at  
14 Shipwatch?

15 A Yes, I would imagine so.  
16 (Exhibit No. 138 marked for  
17 identification.)

18 BY MR. KELLY:

19 Q Exhibit 138 is another one of these  
20 e-mails I took from the documents produced to us  
21 recently. It appears to be an e-mail exchange dated  
22 September 14, 2010, with you and -- I'm going to  
23 need help with her last name.

24 A Ossewaarde.

25 Q Anne Ossewaarde. And again, you're

1 the homeowners?

2 A Yes.

3 Q Was it your understanding that regular  
4 maintenance work involving the replacement of the  
5 sliding glass doors did not have to meet the  
6 requirements of the current building code?

7 A I would not think that, no.

8 Q You would not think that?

9 A No. Oh, wait a minute. Let me think  
10 about that. Okay. This is what Bob Wiggins  
11 explained to me. Unless you did more than 50  
12 percent replacement or remediation, you were not  
13 required to bring everything up to today's code.  
14 And that was another reason why he believed that  
15 this was a continuation of the project and it was  
16 never more than 50 percent, if that makes sense.  
17 I'm only repeating what I think I know, what I was  
18 told.

19 Q Did you ever relay that conversation to  
20 Jeff Miller or Greg Isaacs to obtain their opinion?

21 A I probably did, because it's like I just  
22 repeated to you what I've been told, and that would  
23 be my route. I would say that to you or to anyone  
24 that asked me. This is my understanding. As long  
25 as you do less than 50 percent at any one time, you

1 do not have to bring the buildings up to the current  
2 code. And because of the work that we are doing now  
3 being so extensive, we are required to bring  
4 everything up to today's building code.

5 MR. KELLY: I think we're probably  
6 at a pretty good place to break.

7 (Lunch recess taken.)

8 BY MR. KELLY:

9 Q Over lunch did you have any additional  
10 thoughts about the impact glass issue as it related  
11 to the 2010 fall repairs?

12 A No.

13 Q Exhibit 96 is a document that was  
14 previously marked, I think, by Mr. Cobb on Tuesday  
15 dated March 9, 2007. Do you recall looking at this  
16 building report with Mr. Cobb?

17 A Actually, no.

18 Q To help you, I'm just going to ask you  
19 questions about the second page. So if you just  
20 want to scan through that or read it word for word,  
21 whatever your pleasure.

22 A Okay.

23 Q There is a reference to a gentleman named  
24 Arnie. Remind me of who that is, please?

25 A Arnie Schaewe.

1 on the fourth and fifth floors at Shipwatch?

2 A Yes.

3 Q I think you said the board ultimately  
4 decided to go with the per unit price exterior  
5 sliding glass doors rather than a lump sum cost. Is  
6 that right?

7 A I don't remember that that was the  
8 discussion or the decision. This was just a  
9 proposal for a per door price that they chose to  
10 accept.

11 Q The second page of this Exhibit 103 or 33  
12 reads, "We have not been able to secure a price for  
13 the impact-resistant glass yet but are still working  
14 on this price." Do you see that?

15 A Yes.

16 Q Was the price for impact-resistant glass  
17 provided to you on behalf of Shipwatch for this 2008  
18 sliding glass door replacement work?

19 A Not that I remember.

20 Q Would you agree with me that as of  
21 September 2007 some consideration was being given to  
22 using impact-resistant glass in the sliding glass  
23 doors at Shipwatch?

24 A I honestly don't know specifically, but  
25 it certainly says here that he was trying to secure

1 Q What was Arnie's role at Shipwatch in  
2 March of 2007?

3 A I'm not sure if he was still board  
4 president or if he was just a member of the board.

5 Q Exhibit 96 indicates that Mr. Schaewe  
6 suggested using EFCO doors as part of the exterior  
7 sliding door replacement project?

8 A Yes. The EFCO doors had been chosen for  
9 the previous door replacement and they wanted to  
10 continue using the same door.

11 Q It indicates that Mr. Schaewe was very  
12 satisfied with the EFCO products?

13 A Yes.

14 Q Do you remember that being the case in  
15 2007?

16 A Yes. I think they were satisfied with  
17 the doors enough to continue using them.

18 Q We've marked twice an exhibit that was  
19 given I think No. 33 and No. 103, which is a  
20 Carolina Concrete Systems, Inc., proposal dated  
21 September 6, 2007. Again, this proposal was from  
22 Carolina Concrete Systems to you for Shipwatch?

23 A Yes.

24 Q And part of this proposal was for the  
25 removal and replacement of new sliding glass doors

1 a price. So they must have been aware that there  
2 might be one coming.

3 Q Even though he hadn't secured a price for  
4 impact-resistant glass yet, he gave you a price for  
5 removal and replacement of new doors. Right?

6 A Yes.

7 Q Is it fair for me to understand that  
8 Exhibit 103 is a quote for the replacement of  
9 sliding glass doors without impact glass?

10 A Correct.

11 (Exhibit No. 139 marked for  
12 identification.)

13 BY MR. KELLY:

14 Q Exhibit 139, you'll see, has Bates labels  
15 in the bottom right-hand corner of CCS 1086. This  
16 came from Carolina Concrete's file, and it appears  
17 to be a fax to Carolina Concrete from Randy Morgan  
18 at Charleston Glass. Have you ever seen this  
19 document before?

20 A I don't believe so.

21 Q It's dated January 18, 2008, and purports  
22 to be a proposal for the replacement of 16 sliding  
23 glass doors. Would you agree with that?

24 A Yes.

25 Q And inclusive of material, meaning the

1 doors, the quote is for \$63,120?  
 2 A Correct.  
 3 Q Were you made aware in January of 2008  
 4 that a proposal for sliding glass doors had been  
 5 made by Charleston Glass for \$63,120?  
 6 A I don't recall. They ultimately did the  
 7 work, but I don't recall any discussion about their  
 8 proposal to Carolina Concrete.  
 9 Q Do you see any reference to impact glass  
 10 on this Exhibit 139?  
 11 A No, I do not.  
 12 Q Do you see the line that says, "Doors  
 13 will match previous doors"?  
 14 A Yes.  
 15 Q Was it your understanding that Charleston  
 16 Glass as the subcontractor to Carolina Concrete was  
 17 to use the same type of door that had been installed  
 18 at Shipwatch in 2004?  
 19 A Correct.  
 20 Q Did you have discussions with Mr. Morgan  
 21 or Mr. Wiggins about that desire that the doors  
 22 match what was installed at Shipwatch in 2004?  
 23 A I don't remember any discussion.  
 24 Q And the way I understood it was that in  
 25 2007 when you got the quote and then in January of

1 installed in January ordered in the prior fall  
 2 typically?  
 3 A I can't remember for sure what happened.  
 4 It seems like we did some doors early, which looks  
 5 like we did more than we would ordinarily have done.  
 6 Like I might have budgeted for ten, and we put in  
 7 16, and I was making clear that everybody understood  
 8 that six would have been done in January, which  
 9 would have been the next budget year, but it was  
 10 done earlier.  
 11 Q In 2010, it was done earlier because  
 12 Mr. Wiggins and Carolina Concrete were out there  
 13 working on the EIFS. Right?  
 14 A I assume so.  
 15 Q In other words, the units that are marked  
 16 with 2011 on them were installed in that fall time  
 17 period where Mr. Wiggins and Mr. Morgan were  
 18 removing and replacing sliding glass doors at  
 19 Shipwatch?  
 20 A Yes.  
 21 Q If I look at unit D431, do you see that?  
 22 A Yes.  
 23 Q That's Dr. Mendiondo's unit?  
 24 A Yes, it is.  
 25 Q So his sliding glass doors that were

1 2008 you got the quote, that those doors would have  
 2 been installed later in 2008. Is that right?  
 3 A It appears to be, yes.  
 4 Q And then in the fall of 2008 would you  
 5 have been ordering doors to be installed in 2009?  
 6 A I would assume so, since it says they  
 7 will try to ship by February of 2008.  
 8 (Exhibit No. 140 marked for  
 9 identification.)  
 10 BY MR. KELLY:  
 11 Q I've marked as Exhibit 140 another  
 12 document that came from the files produced by the  
 13 plaintiffs' lawyers. Who generated the document?  
 14 A I did.  
 15 Q And why was this document generated?  
 16 A I always keep track of the doors that are  
 17 replaced; and when they are replaced, to keep track  
 18 of those that have been done and those that still  
 19 need to be done.  
 20 Q And in the top right-hand corner it says,  
 21 "2011 doors actually installed September 2010 would  
 22 usually be installed January 2011." Do you see  
 23 that?  
 24 A Yes.  
 25 Q So were the doors that were usually

1 replaced in the fall of 2010 were the doors we  
 2 talked about earlier today. Right?  
 3 A Yes.  
 4 Q Those were the doors that Mr. Freeman had  
 5 questioned and suggested did not contain impact  
 6 glass?  
 7 A No.  
 8 Q Those are not?  
 9 A That was not part of the project that --  
 10 The 2010 project was A and B buildings ocean side.  
 11 I consider the fourth and fifth floor sliding glass  
 12 doors as something separate, because we didn't do  
 13 all of them. And this was in building D, not in A  
 14 and B.  
 15 Q If we look back at Exhibit 130, let's  
 16 just start with that. That's the e-mail from  
 17 Mr. Freeman to Bob Wiggins where you're copied on  
 18 November 5, 2010, asking for a meeting to discuss,  
 19 among other things, whether impact glazing is  
 20 required for the windows. Right?  
 21 A Yes.  
 22 Q And the last paragraph, the first  
 23 sentence says, "The same questions that he has about  
 24 the windows, including the impact glazing, apply to  
 25 slider doors."

1 A Correct.

2 Q So the slider doors that were installed  
3 in 2010 in the fall were part of the same work that  
4 Mr. Wiggins and Carolina Concrete was performing?

5 A Yes. But in my mind, I have to keep them  
6 separate for my sanity. But, yes, obviously it was  
7 all to be done at that time. But because it wasn't  
8 part of specific building A and B, in my mind it's  
9 something separate.

10 But, yes, it was part of the work they  
11 did in that time.

12 Q If we look at Exhibit 132, Mr. Morgan  
13 says in that first paragraph that 11 sliders are  
14 ready to be installed that are non-impact. Right?

15 A Yes.

16 Q So these sliders that were installed in  
17 the fall of 2010 that were known to not have impact  
18 glass were installed in a number of units including  
19 that of Dr. Mendiondo?

20 A Correct.

21 Q Looking at this Exhibit 140, we talked  
22 already about the doors that were installed in 2008.  
23 Correct?

24 A Yes.

25 Q Just so we're clear, since you've been at

1 glass door was installed in that unit in that year?

2 A Correct.

3 Q And the same thing goes for 2009?

4 A Correct.

5 Q Did the regime choose to use the same  
6 door as part of its replacement in 2009 that it used  
7 in previous years?

8 A Yes.

9 Q Was any consideration given in 2009 to  
10 using a different product?

11 A Not to my knowledge.

12 Q While we're on that subject, in 2010  
13 there seemed to be an estimate from Gary Moore with  
14 Salem or Structural Preservation -- whatever the  
15 name of the group is -- Structural SPS for sliding  
16 glass door replacement at Shipwatch?

17 A Oh.

18 Q Do you recall obtaining an estimate from  
19 Structural in 2010?

20 A I do now, yes.

21 Q Why was that estimate obtained?

22 A I think it was -- I don't know that it  
23 was really solicited. I think they came and knew  
24 that we were doing work and wanted to give us a  
25 price. And it was the same type door, just a

1 the regime prior to the time of this 2013/2014 work,  
2 the only sliding glass doors that were replaced with  
3 EFCO products were on the fourth and fifth floors.  
4 Right?

5 A No. All of the master bedrooms on the  
6 first, second and third floor, all four buildings,  
7 were replaced with EFCO doors before I came. And  
8 when they refer to the same EFCO doors, that's what  
9 they are referring to.

10 Q I tend to mumble and am not clear all the  
11 time. Let me try to rephrase my question.

12 Since you came back to the regime in  
13 2005, you did not coordinate the installation of any  
14 EFCO doors on floors one, two or three of any of the  
15 buildings?

16 A Correct.

17 Q So the only EFCO doors that were  
18 installed during your second tenure as property  
19 manager were on floors four and five. Correct?

20 A Yes.

21 Q We've talked already about the ones that  
22 were installed in 2008. Correct?

23 A Yes.

24 Q So on Exhibit 140 if I see where 2008 is  
25 written next to a unit, I can assume an EFCO sliding

1 different -- It was an EFCO door. Just by someone  
2 in North Carolina or something. And they felt like  
3 they could give us a better price. So they made a  
4 proposal.

5 Q What were they given to quote that job?

6 A I don't know.

7 Q Was there any sort of specifications  
8 given to them?

9 A I honestly don't know. I really think  
10 that it was like unsolicited. They just knew that  
11 we were doing work and just wanted to see if they  
12 could give us a better price.

13 Q Were they asked to give a proposal? I  
14 know you're saying it was unsolicited. But once  
15 they came in and told you that we would like to do  
16 this, were they asked to give a quote for the same  
17 type of door that had been installed previously?

18 A I honestly don't know. I would assume so  
19 since that's what they gave us. Honestly, I just  
20 barely remember that that happened.

21 Q Who did you deal with? There's a guy  
22 named Greg Fuquay (phonetic) and then there's Gary  
23 Moore.

24 A It was Gary Moore, I'm thinking. I just  
25 kind of barely remember it. I had forgotten



1 completely until you brought it up.  
 2 (Exhibit No. 141 marked for  
 3 identification.)  
 4 BY MR. KELLY:  
 5 Q Exhibit 141 is another one of these  
 6 e-mails I found in this recent production between  
 7 what appears to be you and Mike Parker at  
 8 Sutton-Kennerly dated June 5, 2009.  
 9 A Yes.  
 10 Q I think this pre-dates any report that  
 11 Sutton-Kennerly issued for Shipwatch. I could be  
 12 wrong about that, but I believe that's the case.  
 13 It looks to me from reading this e-mail  
 14 that there was some sort of communication prior to  
 15 this June 5, 2009 e-mail based on the way it's  
 16 worded.  
 17 A Yes. But can I read it?  
 18 Q Oh, absolutely. Take your time.  
 19 A Okay.  
 20 Q Exhibit 141, a June 5, 2009 e-mail from  
 21 you to Mike Parker. Correct?  
 22 A Yes.  
 23 Q It looks to me reading it based on the  
 24 verbiage that there was a conversation or a  
 25 communication that preceded this e-mail.

1 A Yes.  
 2 Q Can you tell me about that, please?  
 3 A Bob Wiggins introduced me to Mike Parker  
 4 from Sutton-Kennerly at a lunch, just because we  
 5 were having issues that we needed to make sure  
 6 proper maintenance was done each year. And he said  
 7 that this is a good firm, they are highly respected,  
 8 I know of no one that would criticize them. So I  
 9 said sure.  
 10 So we had lunch and he gave me his card  
 11 and wanted me to send him apparently information,  
 12 and it was put on my desk with everything else.  
 13 When I finally came across it again, I said that I  
 14 would meet with him.  
 15 Q Do you recall how far in advance of this  
 16 e-mail that was? You indicated it's taken a long  
 17 time to get back to him, so I'm assuming it's some  
 18 period of time.  
 19 A I said it is the season, which means it  
 20 was May, June, July, August. And then I refer again  
 21 to I had to have something in August. So I probably  
 22 told him I would do it that day or the next day, and  
 23 it was a few weeks or a month later. Just guessing.  
 24 Q Probably spring of 2009?  
 25 A Well, you don't think it was the same

1 year?  
 2 Q This e-mail says June 5, 2009. So I was  
 3 saying the spring of 2009, you think it was?  
 4 A I'm assuming, yes.  
 5 Q At that meeting was it just you,  
 6 Mr. Wiggins and Mr. Parker?  
 7 A I believe so, yes.  
 8 Q And was the recommendation for Mr. Parker  
 9 made prior to the meeting or during the meeting?  
 10 A I think that Bob just -- I was looking  
 11 for someone to give me guidance in maintenance.  
 12 Like we used to have a 20-year plan. It was no  
 13 longer working. I needed something else. And Bob  
 14 recommended -- he knew Mike Parker with  
 15 Sutton-Kennerly, and that they would be very good at  
 16 that. And so we just met him for lunch.  
 17 Q Did Mr. Wiggins recommend anyone else  
 18 with Sutton-Kennerly?  
 19 A I don't think so. He just introduced me  
 20 to Mike Parker.  
 21 Q So his recommendation at that time was  
 22 for Mr. Parker as opposed to Jeff Miller?  
 23 A Well, it wasn't really a recommendation  
 24 other than this is an excellent person if you're  
 25 interested and I will introduce you, and what you do

1 beyond that does not concern me. It was more of  
 2 that.  
 3 Yes, Mike Parker is the person that I met  
 4 and apparently contacted for the first visual  
 5 inspection that was done.  
 6 Q The reason I ask, it seemed like you said  
 7 earlier that Mr. Wiggins recommended  
 8 Sutton-Kennerly, and I was just trying to understand  
 9 whether he actually recommended Sutton-Kennerly as a  
 10 firm or Mr. Parker.  
 11 A Well, that's a good question. I don't  
 12 think of one different from the other. He probably  
 13 had a project going with Mike Parker or something.  
 14 He recommended Sutton-Kennerly. But Mike Parker is  
 15 the person he introduced me to that was from  
 16 Sutton-Kennerly. But I don't think of them  
 17 separately.  
 18 Q I understand that. My curiosity is when  
 19 he said I've got -- Did he say I have someone I  
 20 would like to introduce you to, or I have a group  
 21 that does this that I want to introduce you to?  
 22 A He referred to it as Sutton-Kennerly  
 23 always.  
 24 Q Back on Exhibit 141, in that second  
 25 paragraph there is a discussion about the kick-out

1 situation. Do you see that?  
 2 A Yes.  
 3 Q And you indicate you think it's a matter  
 4 of forcing the contractor to do the work as part of  
 5 a larger contract?  
 6 A Yes.  
 7 Q Who was that contractor you're referring  
 8 to?  
 9 A Glasgow Roofing.  
 10 Q And you indicate you believe the design  
 11 would have already been agreed upon?  
 12 A Correct.  
 13 Q What design are we talking about?  
 14 A This would go back to the project that  
 15 was -- what I would say is Bob Sisroy was the  
 16 engineer representing Shipwatch doing the design  
 17 work for them at that time. And the kick-outs are  
 18 part of the roofing system. So that would have been  
 19 Glasgow Roofing, is my reason for saying that.  
 20 Q Apparently during your conversation with  
 21 Mr. Parker he had some concern about the EFCO doors  
 22 that were being installed at the regime. Is that  
 23 right?  
 24 A We were having problems with them  
 25 leaking, I think, is why I brought that up, because

1 I said I certainly hope we have done it correctly.  
 2 Q Right, and you say there are over a  
 3 hundred that have been installed already?  
 4 A Correct.  
 5 Q But not all of them are leaking. Right?  
 6 A Correct.  
 7 Q It sounds like from your prior testimony  
 8 there were a few new ones that had leaks around them  
 9 after they were installed?  
 10 A Correct.  
 11 Q I'm interpreting your e-mail to suggest  
 12 Mr. Parker had a concern that was more systemic. Am  
 13 I misinterpreting that?  
 14 A Honestly, I don't remember. I just  
 15 honestly don't remember. "Also, the EFCO doors we  
 16 are installing, we have already done over 100, so I  
 17 certainly hope we have done it correctly." He was  
 18 just going to come and do a visual inspection of the  
 19 buildings, I believe, to see that we were doing  
 20 things right. Just a confirmation that we had done  
 21 things right.  
 22 Q Did Mr. Parker talk to you about a  
 23 concern over the design pressure rating of the doors  
 24 being installed at Shipwatch back in 2009?  
 25 A I don't remember having any -- I think

1 really the only conversation I had with him was over  
 2 lunch, maybe on the phone once after that. But  
 3 after that, I never dealt with him again or talked  
 4 to him.  
 5 Q In June of 2009, did Mr. Parker raise any  
 6 questions with you about whether the EFCO products  
 7 needed to have impact glass?  
 8 A I don't remember that.  
 9 Q When these door replacements took place  
 10 in 2008, 2009, 2010, did the unit owners or their  
 11 tenants have to vacate those premises?  
 12 A Yes.  
 13 Q For how long?  
 14 A For however long it took them to take  
 15 them out and put them back in.  
 16 Q Let's take it by unit. D429 is  
 17 Mr. Cipkala's unit?  
 18 A Yes.  
 19 Q And he had his master bedroom slider  
 20 replaced in 2009?  
 21 A Correct.  
 22 Q And that's on the fifth floor?  
 23 A Correct.  
 24 Q Did he have to vacate his entire unit for  
 25 some period of time while that single door was

1 replaced?  
 2 A Yes.  
 3 Q Was there additional work that was being  
 4 done to the fifth floor of his unit while that door  
 5 was being replaced?  
 6 A No.  
 7 Q Just the door replacement?  
 8 A Just the door.  
 9 Q And your testimony is you don't know how  
 10 long he had to vacate his unit for that door  
 11 replacement?  
 12 A I honestly don't. I honestly don't  
 13 remember. I'm sure he could tell you.  
 14 Q Less than a week?  
 15 A Probably more like a couple of weeks or  
 16 so.  
 17 Q Have you managed any regimes that have  
 18 had doors removed and replaced while owners stayed  
 19 in their units?  
 20 A No.  
 21 Q Are you aware of other regimes that have  
 22 had unit owners stay in the units while doors or  
 23 windows were replaced?  
 24 A I don't know any that have or have not.  
 25 Q Was there a requirement imposed by the

1 regime that the unit owner vacate the unit during  
2 the door replacement work?

3 A Well, I think it probably was at the  
4 requirement of the contractor so that they were not  
5 liable for anybody being injured while the door was  
6 going in, going out or out. They put plywood over  
7 the whole opening which made it very dark.

8 Q You're thinking on the outside two weeks  
9 is about the time it takes to replace a single door?

10 A I'm really embarrassed to tell you, I  
11 just have no clue. I just don't remember. If it's  
12 just a door, no outside work being done, they remove  
13 the door, they do whatever they have to do to the  
14 framing, they pour a concrete curb, that takes 24  
15 hours to dry. So a week or two would be my thought,  
16 but I sure wouldn't want to take it to the bank. I  
17 don't remember specifically.

18 Q There's been a general discussion in the  
19 prior two days of your deposition and a few moments  
20 ago about some door leaks.

21 A Yes.

22 Q It's my understanding that a certain  
23 number of newer doors had water coming in around  
24 them after they were replaced. Is that right?

25 A Yes. Correct.

1 you using it generically to say water is coming in  
2 the location where the door is in the hole?

3 A Generically to tell you that the carpet  
4 was wet around a sliding glass door area.

5 Q So it's fair to say that you have not  
6 made a determination when you say "door leak" that  
7 water has penetrated through the EFCO door?

8 A No, not at all. There's a wall, ocean  
9 side. There's the sliding glass door. We would  
10 check from corner to corner, and any wetness from  
11 corner to corner would be noted, and it would be  
12 said to the left of the door, right of the door.  
13 But it was never specifically meant to say that  
14 there was water coming in around that glass. That's  
15 not -- My terminology may be really bad for  
16 lawsuits. It's just a water leak is wet carpet.

17 Q So if someone interprets your testimony  
18 about door leaks to mean the EFCO product itself  
19 leaked, meaning water came through it, that would be  
20 an incorrect interpretation?

21 A That would be incorrect.

22 Q In your tenure as property manager, has  
23 the glass with any sliding glass doors or windows  
24 been broken?

25 A Not to my knowledge. I don't think so.

1 Q Can you give me a number of how many  
2 doors, new EFCO doors have experienced water  
3 intrusion through or around them?

4 A No. I'm sure it's recorded somewhere.

5 Q How would I find where it's recorded?

6 A Well, one of the items that we had  
7 yesterday or Tuesday was when we had gone in to look  
8 to see leaks and they were recorded and how many  
9 times they had leaked. That was one of the items  
10 that would say which of the new doors had leaked.

11 Q Is that the best place to look to find  
12 historical data about leaks at new EFCO doors?

13 A Yes, I think so.

14 Q When you're talking about a door leak, it  
15 was my understanding from your testimony on Tuesday  
16 that you determined a leak by determining wetness  
17 around the door?

18 A That's correct.

19 Q Have you ever actually observed water  
20 coming in, around or through glass?

21 A No. I only went in afterwards to feel  
22 the carpet. That's the only -- I don't think I've  
23 ever been in a condo when the rain was pouring down.  
24 It was usually afterwards that I would go in.

25 Q When you used the term "door leak," are

1 Q Does the regime have a policy on how it  
2 handles glass replacement within sliding glass doors  
3 and windows?

4 A I don't know that we have a policy. I  
5 only remember it happening once or twice. And it  
6 was because glass fogged up and we replaced glass  
7 because of that. I don't think we've ever had a  
8 broken sliding glass door.

9 Q Who paid for the cost to replace the  
10 fogged glass?

11 A On the sliding glass door, I believe  
12 Shipwatch paid for it, considering it -- since we  
13 are responsible for the door, we did.

14 There was a window or two, the stationary  
15 living room windows, first, second and third floor,  
16 I think there were a couple of those that were  
17 foggy. But they were not in the budget, and so the  
18 owner was offered, if you want to have it done, I'll  
19 get the work done, but you have to pay for it. And  
20 I don't believe they did it.

21 (Exhibit No. 142 marked for  
22 identification.)

23 BY MR. KELLY:

24 Q I've marked as Exhibit 142 what's  
25 entitled the Master Deed of Shipwatch Horizontal

1 Property Regime. It says phase one at the bottom.  
 2 I'll tell you that I don't know if this is a  
 3 complete copy of it. If you could flip through and  
 4 tell me whether this is a document that you  
 5 recognize as the master deed.

6 A I recognize it, yes.

7 Q Do I seem to be missing any substantial  
 8 part of this exhibit?

9 A This is complete in that it's all of the  
 10 verbiage. It's incomplete as far as the amendment,  
 11 which would just be drawing in buildings C and D.  
 12 So I would consider it complete.

13 Q I've flagged a page in what I've handed  
 14 you and marked as Exhibit 142 just for your  
 15 reference. You'll actually need to turn back to  
 16 page 10. At the bottom where it says "maintenance  
 17 and repair by co-owners of apartments," can you just  
 18 read that to yourself, read that paragraph, please.

19 A Okay.

20 Q On the page I've marked, page 11 of  
 21 Exhibit 142, that first full sentence reads, "Such  
 22 co-owner shall further be responsible and liable for  
 23 maintenance, repair and replacement of any and all  
 24 window glass, glass doors, wall, ceiling and floor  
 25 surfaces or coverings," et cetera.

1 A Yes.

2 Q Has the board taken a position on whether  
 3 or not the regime or the unit owners themselves are  
 4 responsible for the replacement of glass versus the  
 5 entire frame of the door or window?

6 A That's what I was referring to earlier.  
 7 For example, A407 had fogged glass in the sliding  
 8 glass door. And I had that glass replaced at  
 9 association expense.

10 Q Have any amendments been filed to the  
 11 master deed attempting to clarify or change the way  
 12 in which glass or glass for doors or windows falls  
 13 upon the unit owner as the responsible party?

14 A There have been amendments, but I think  
 15 it really leans more to clarifying that the  
 16 association will be responsible for replacement. It  
 17 recognizes that the limited common area, which would  
 18 be the balcony, stating that the owner would be  
 19 responsible for keeping that clean, they would be  
 20 responsible for screens. But that's the only  
 21 changes that have been made. More to that rather  
 22 than the regime being responsible for replacing a  
 23 broken door.

24 Q Look back at 140. I don't know if you've  
 25 still got it there. We talked about D429, Cipkala,

1 A Correct.

2 Q Does the regime understand that provision  
 3 of the master deed to make the glass in the sliding  
 4 glass doors and the windows the responsibility of  
 5 the unit owner to replace?

6 A It's one of the biggest arguments that we  
 7 have in the association. To me, when I read it, I  
 8 interpret it as, yes, they are responsible. The  
 9 association chooses to relay that as -- If you read  
 10 farther on, in areas it will describe the common  
 11 areas and the limited common areas, and the doors  
 12 and windows are listed as limited common. And there  
 13 is a section that says that those are the  
 14 responsibility of the association.

15 So when I tell you that the maintenance  
 16 of it, which we talked about Tuesday -- cleaning the  
 17 tracks and replacing the handle -- that, to me, is  
 18 maintenance. And the board allows me to tell the  
 19 owner you have to take care of it. But when it  
 20 comes to replacing a door or a window, the  
 21 association does that.

22 Q I assume you know it from your past  
 23 experience managing regimes. It's possible to  
 24 replace just glass and not the entire window or door  
 25 frame?

1 and Dr. Mendiondo's unit D431.

2 A Yes.

3 Q D431, Dr. Mendiondo had two sliding glass  
 4 doors replaced in the fall of 2010. Right?

5 A Correct.

6 Q And Mr. Cipkala only had one door  
 7 replaced in 2009. Right?

8 A Correct.

9 Q And B409 is Mr. Trombino. Is that right?

10 A Yes.

11 Q Is that an end unit?

12 A That's an end unit townhouse.

13 Q So it's different than Dr. Mendiondo's  
 14 unit. Correct?

15 A Correct.

16 Q Even though Dr. Mendiondo is on the  
 17 fourth and fifth floor and Mr. Trombino is, their  
 18 units are different?

19 A Only in that Mr. Trombino being on the  
 20 end has windows on the outside wall. Mr. Mendiondo  
 21 is an interior unit, so he has another unit on each  
 22 side.

23 Q And Mr. Cipkala is an interior unit as  
 24 well?

25 A Correct.

1 Q And all three of those units are  
2 different than every unit on the first through three  
3 floors of buildings A, B, C and D?

4 A Yes.

5 Q In terms of windows and doors, buildings  
6 C and D before this latest repair and interior unit  
7 on floors one through three only had one EFCO  
8 sliding glass door. Right?

9 A I'm sorry?

10 Q Let me try again. Floors one through  
11 three on buildings C and D before this latest round  
12 of repairs, an interior unit on those floors only  
13 had one EFCO product installed?

14 A Correct.

15 Q And the end units would have had the same  
16 one sliding glass door, but it may have had some  
17 windows as well?

18 A Correct.

19 Q In fact, it would have had one sliding  
20 glass door in the bathroom as an EFCO product.  
21 Right?

22 A The end unit, first, second and third  
23 floor, had a bathroom window on the outside that was  
24 replaced during that first project.

25 Q And buildings A and B, the units on

1 Q No owners paid for the installation of  
2 impact glazing in doors and windows installed at  
3 Shipwatch either. Right?

4 A Not to my knowledge.

5 Q And the regime did not contract with any  
6 contractors to install impact glazing in the doors  
7 and windows at Shipwatch. Right?

8 A Prior to?

9 Q Prior to 2013 or 2014.

10 A Correct.

11 Q Would you agree with me that impact glass  
12 is much more expensive than regular insulated glass?

13 MR. RAMSEY: Object to the form.

14 A I don't -- I would assume that it is. I  
15 don't know that I looked at the bill for an  
16 impact-rated sliding glass door. I don't know that  
17 I've looked at it. That would be my assumption.

18 BY MR. KELLY:

19 Q And as part of the 2013/2014 repairs,  
20 additional structural support is being added to the  
21 window and door openings on buildings C and D.  
22 Correct?

23 A Correct.

24 Q Would you agree with me that Shipwatch  
25 did not pay any contractors to install that

1 floors one through three would have had an EFCO  
2 sliding glass door -- or still do have an EFCO  
3 sliding glass door and two stationary EFCO windows?

4 A Correct.

5 Q And Dr. Mendiondo's unit, for example,  
6 D429, does not have those stationary windows?

7 A It does not.

8 Q Neither does Mr. Cipkala's or  
9 Mr. Trombino's?

10 A Correct.

11 Q Do you agree that adding windows and  
12 doors to the Shipwatch buildings that have  
13 impact-rated glass is an upgrade?

14 A It would depend on what you were talking  
15 about. It's an upgrade if you're talking about  
16 property values. But it's a requirement when you're  
17 talking about code requirements.

18 Q Do you agree with me that the Shipwatch  
19 regime did not pay for impact glass in any of the  
20 doors or windows installed at Shipwatch?

21 A Previously?

22 Q Before the repairs done in 2013/2014, the  
23 regime did not pay for any impact glass in sliding  
24 glass doors or windows?

25 A Correct.

1 additional support prior to 2013 and 2014 at  
2 buildings C and D?

3 A I don't know how to answer that.

4 Q Tell me what's troubling you and I'll see  
5 if I can try and reword it.

6 A When you say we didn't pay anyone to beef  
7 up the studs prior to this project, we paid a  
8 contractor to install a sliding glass door to  
9 replace the -- the synthetic stucco, replace it with  
10 the Durock stuff. We just paid them to do the job.  
11 If it required studs, they were to do that.

12 Q You've dealt with contractors for a long  
13 time as a regime manager. Right?

14 A Yes.

15 Q And you understand that they price or  
16 make quotes based on the amount of work and the  
17 amount of materials the job requires. Right?

18 A Yes.

19 Q So they did not quote you or charge you  
20 based on going in to structurally improve or enhance  
21 these door and window openings when they did the  
22 work back in 2010 or prior. Correct?

23 A I don't remember, other than it seems  
24 like there's -- it's like a per unit cost. If they  
25 add a stud, you're going to be charged X amount for

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
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| <p style="text-align: right;">Page 482</p> <p>1 it. That's why, I'm sorry, I don't really know how<br/>2 to answer it, because I don't know that they were<br/>3 told to add studs. I just know that if there was<br/>4 one that needed to be replaced or sistered, that<br/>5 they would do that and bill us for it.<br/>6 Q Is it your understanding that the work<br/>7 that is being done around windows and doors on<br/>8 buildings C and D at Shipwatch to enhance or improve<br/>9 the structural capacity of openings is being done to<br/>10 support these wind rated and higher DP rated windows<br/>11 and doors?<br/>12 A That is my understanding, yes.<br/>13 Q Would you agree with me that the regime<br/>14 did not ask Carolina Concrete or any other<br/>15 contractor to do the same beefing-up work around the<br/>16 doors and windows prior to 2013/2014?<br/>17 A I don't think I can agree with that,<br/>18 because they gave us a proposal to replace or put in<br/>19 studs as needed. So I don't think that the<br/>20 association would have said specifically put them<br/>21 in. They said put them in as necessary and they<br/>22 gave us a price. If we put them in, this is what<br/>23 it's going to cost you.<br/>24 Q In 2010 when Carolina Concrete was<br/>25 replacing 72 stationary windows and whatever number</p> | <p style="text-align: right;">Page 484</p> <p>1 Beth Wilkins at Wells Fargo Home Mortgage?<br/>2 A Yes.<br/>3 Q Who is Mary Beth Wilkins at Wells Fargo<br/>4 Home Mortgage?<br/>5 A I have no clue. It must have been<br/>6 someone trying to refinance their condo or<br/>7 something.<br/>8 Q So this would not have related to any<br/>9 loan that the regime was taking out or attempting to<br/>10 take out?<br/>11 A I don't think so. With Wells Fargo Home<br/>12 Mortgage? No.<br/>13 Q On June 19, 2012, in your letter to<br/>14 Ms. Wilkins, you're telling her that Shipwatch<br/>15 regime plans upgrades to the buildings beginning<br/>16 2012 that include replacing doors and windows with<br/>17 impact glass. Correct?<br/>18 A Let me find that. Okay. I'm looking for<br/>19 the word "upgrade." I don't see that.<br/>20 Q Word five of the only paragraph.<br/>21 A Oh, okay. I was looking farther down.<br/>22 Upgrades and repairs to the buildings, yes.<br/>23 Q In writing this letter to Ms. Wilkins,<br/>24 were you telling her that the replacement of doors<br/>25 and windows with impact glass was an upgrade to the</p> |
| <p style="text-align: right;">Page 483</p> <p>1 of doors -- 11, I believe -- was it your expectation<br/>2 that they were going to go into the walls in<br/>3 buildings A through D at Shipwatch and install new<br/>4 support?<br/>5 A If it was needed, yes.<br/>6 Q Did you believe that if it was needed you<br/>7 would have to pay more money as part of a change<br/>8 order?<br/>9 A I'm pretty sure there was a price for<br/>10 extra studs. I don't just don't remember specific.<br/>11 Q So if extra stud work was going to be<br/>12 done around the window and door openings, the regime<br/>13 would have had to pay for it back in 2010?<br/>14 A Extra stuff, yes.<br/>15 Q And you can't tell me today whether it<br/>16 did, in fact, or did not pay for extra studs to be<br/>17 added to support the new windows and doors that were<br/>18 being installed?<br/>19 A I cannot answer specifically. It gets<br/>20 very complicated.<br/>21 (Exhibit No. 143 marked for<br/>22 identification.)<br/>23 BY MR. KELLY:<br/>24 Q Exhibit 143 appears to be a letter from<br/>25 you sent via e-mail dated June 19, 2012, to Mary</p>                                                                                                                                                                                                         | <p style="text-align: right;">Page 485</p> <p>1 Shipwatch buildings?<br/>2 A Not necessarily, I don't think.<br/>3 Q We are going to fast forward to the<br/>4 2013/2014 time frame and perhaps the 2012 time<br/>5 frame. So maybe we're not fast forwarding that<br/>6 much.<br/>7 The original plan for the repairs or<br/>8 renovations at Shipwatch was to leave in the, quote,<br/>9 new EFCO product. Right?<br/>10 A Yes.<br/>11 Q And the Shipwatch regime was happy with<br/>12 the performance of the EFCO products?<br/>13 MR. RAMSEY: Object to the form.<br/>14 A I believe so, yes.<br/>15 (Exhibit No. 144 marked for<br/>16 identification.)<br/>17 BY MR. KELLY:<br/>18 Q I've marked as Exhibit 144 a document<br/>19 that I'm going to tell you I think Mr. Trombino<br/>20 prepared based on the data behind the data of<br/>21 electronic documents that you produced. Do you<br/>22 recognize the document that I marked as Exhibit 144?<br/>23 A Not specifically, but I'm sure I've seen<br/>24 it.<br/>25 Q We kind of alluded to this earlier. I'll</p>                                                                             |

28 (Pages 482 to 485)

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1 call your attention to the last two paragraphs.  
 2 A Okay.  
 3 Q I believe you testified earlier that Jeff  
 4 Miller and Sutton-Kennerly Associates were  
 5 attempting to get the EFCO products installed at the  
 6 buildings grandfathered in. Correct?  
 7 A They did ask, yes.  
 8 Q And it was the building official at the  
 9 Isle of Palms building department that informed  
 10 Mr. Miller that because of these repairs that were  
 11 taking place at Shipwatch all of the products had to  
 12 meet the current building code. Is that right?  
 13 A I think it's my understanding he said  
 14 that they had to be replaced.  
 15 Q Has anyone talked to you about whether or  
 16 not they could have stayed in had they not come out  
 17 of their hole? Do you understand what I'm talking  
 18 about?  
 19 A Well, I think one of the questions that  
 20 Jeff Miller at Sutton-Kennerly asked was if there's  
 21 something we could do, like put up hurricane  
 22 shutters, to protect them, and they said no.  
 23 Q Is that information coming from  
 24 Mr. Miller?  
 25 A That was told to us by Mr. Miller, yes.

1 in the doors and windows at Shipwatch be impact  
 2 rated increases the projected cost of the project by  
 3 about \$1 million. Correct?  
 4 A Correct.  
 5 Q Do you understand that to be the case?  
 6 In other words, do you have any disagreement with  
 7 Mr. Trombino's report?  
 8 A Yeah, I can't substantiate it, but I  
 9 wouldn't disagree with it.  
 10 Q It also indicates in the next paragraph  
 11 that due to the extensive framing and drywall work  
 12 that has to be done to make the building walls code  
 13 compliant, an additional increase of approximately  
 14 \$400,000 is needed.  
 15 A Correct.  
 16 Q Any reason to disagree with his  
 17 recitation?  
 18 A No.  
 19 Q Was there any discussion with the  
 20 building official or Mr. Miller as to whether the  
 21 impact rating issue was for all floors or just  
 22 floors one through three?  
 23 A I don't remember.  
 24 (Exhibit No. 146 marked for  
 25 identification.)

1 Q Is it your understanding that the work is  
 2 having to comply with the code in effect in 2013?  
 3 A Yes.  
 4 Q That last paragraph of Exhibit 144 says  
 5 that based on the mandate from the Isle of Palms  
 6 building department, it's necessary to beef up the  
 7 framing around the windows and doors to meet the  
 8 code in effect in 2013. Right?  
 9 A Yes.  
 10 (Exhibit No. 145 marked for  
 11 identification.)  
 12 BY MR. KELLY:  
 13 Q Exhibit 145 is another document that came  
 14 from this recent production. Maybe we had it  
 15 before, but I don't remember seeing it.  
 16 A Me either.  
 17 Q Look at it for a minute and just kind of  
 18 give me an idea of what you think it is, that would  
 19 be helpful.  
 20 A I think this was just a report. And I  
 21 believe that it would be by Mr. Trombino to the  
 22 board of directors.  
 23 Q And Mr. Trombino's report here in Exhibit  
 24 145 about five paragraphs down indicates that the  
 25 building department's requirement that all the glass

1 BY MR. KELLY:  
 2 Q Exhibit 146 appears to be an e-mail  
 3 exchange on June 2, 2012, between Tom Miller and a  
 4 group of people that seems to include you. Is that  
 5 correct?  
 6 A Yes.  
 7 Q Do you recall this exchange?  
 8 A No, but I've been exposed to these things  
 9 before. So, yes, I'm sure I saw it.  
 10 Q Mr. Tom Miller is raising the question  
 11 with I guess the board and you as to whether the  
 12 sliding glass doors and windows that are being  
 13 completely removed and replaced can simply be  
 14 reglazed in place.  
 15 A Yes.  
 16 Q Was that question asked of Jeff Miller?  
 17 A I believe it probably was. Tom Miller,  
 18 he just came up with the idea of putting a coating  
 19 over the glass in place. And I think Jeff did  
 20 answer that saying that it would not meet the proper  
 21 wind loads or something. It was the same guy that  
 22 went to Charleston Glass on his own.  
 23 Q Did Mr. Miller contact anyone at EFCO to  
 24 determine whether or not that was possible?  
 25 A I don't know whether he talked to EFCO or

1 not. But I would think that he talked to someone,  
 2 another engineer, in his office or himself or  
 3 someone. He wouldn't just pop off. No matter how  
 4 silly the question that's asked, he always gives  
 5 them a sincerely serious, proper answer. He doesn't  
 6 just pop off like I do.  
 7 Q There's an e-mail that I didn't print  
 8 that was kind of a response saying Mr. Jeff Miller  
 9 is looking into it and intends to contact EFCO about  
 10 that option. I'm just wondering if Jeff Miller ever  
 11 reported to you or the board as to what he found  
 12 out, if anything, from EFCO or its dealer?  
 13 A I don't know if he reported to us that he  
 14 spoke with someone at EFCO. He did inform us that  
 15 that was not acceptable.  
 16 Q For any of the doors or windows?  
 17 A Correct.  
 18 (Exhibit No. 147 marked for  
 19 identification.)  
 20 BY MR. KELLY:  
 21 Q Exhibit 147 is another document produced  
 22 to us recently. You can look at the whole thing or  
 23 the highlighted portion. That's what I'm going to  
 24 ask you about.  
 25 A Okay.

1 Q First of all, these are draft minutes or  
 2 final minutes of the Shipwatch Horizontal Property  
 3 Regime Board of Directors?  
 4 A They would be final minutes.  
 5 Q Did you attend that meeting?  
 6 A I did.  
 7 Q I understand that paragraph and  
 8 particularly that highlighted portion to be saying  
 9 that the board is rescinding their policy of  
 10 permitting hurricane shutters because it would be  
 11 redundant to have hurricane shutters and  
 12 impact-rated glass.  
 13 A Correct.  
 14 Q How many units had hurricane shutters  
 15 prior to the commencement of work at Shipwatch in  
 16 2013?  
 17 A Maybe four or five units. But, of  
 18 course, that would be all doors in their unit. The  
 19 master deed states that nothing can be attached to  
 20 the building without board of director's approval,  
 21 which included storm shutters. And after Hugo so  
 22 many people requested that the board said, okay, if  
 23 you meet certain specifications, it has to be a real  
 24 hurricane shutter by a real hurricane company. They  
 25 have to be bronze. They would allow them to be

1 installed.  
 2 There's not that many. I don't even know  
 3 if I could go back and figure out who all had them.  
 4 But this was just saying that they would no longer  
 5 allow those to be attached to the new stucco.  
 6 Q On buildings C and D. Correct?  
 7 A Well, in any building after this work is  
 8 completed.  
 9 Q So what about at buildings A and B when  
 10 the work has not yet been done, can they put  
 11 hurricane shutters on their windows and doors?  
 12 A I'm sure they could if they wanted to  
 13 spend that kind of money for one month.  
 14 Q Dr. Mendiondo had hurricane shutters on  
 15 his sliding glass doors?  
 16 A Yes, he did.  
 17 Q When were those removed?  
 18 A Prior to this project. Prior to  
 19 September 2013.  
 20 Q What about Mr. Trombino? Does he have  
 21 hurricane shutters?  
 22 A Yes.  
 23 Q What about Mr. Cipkala?  
 24 A I don't know. I don't remember for sure.  
 25 Q I read the comment here on Exhibit 147

1 about the redundancy of hurricane shutters with  
 2 impact-rated glass to mean that they accomplish the  
 3 same purpose?  
 4 A Correct. That's what I would think, yes.  
 5 Q Tell me about the policy, how it actually  
 6 works. When Dr. Mendiondo, for example, decided he  
 7 wanted hurricane shutters on his unit, does he come  
 8 through you to do that?  
 9 A No. He would have contacted me to say  
 10 that he wanted to get hurricane shutters, and I  
 11 would just remind him that they had to be bronze.  
 12 They had to be real hurricane shutters installed by  
 13 a real company, a reputable company. And that's  
 14 all.  
 15 Q Who brought up the idea of the hurricane  
 16 shutters? Was that while you were there or before?  
 17 A It was after I left. I was there until  
 18 1993. Up until that time, no one had them. And  
 19 apparently new owners coming in felt the need  
 20 because of Hugo. So the board decided to allow it.  
 21 Q When you came back in 2005, was the  
 22 policy already in place?  
 23 A Yes. There were some hurricane shutters  
 24 on the building.  
 25 Q Did people add hurricane shutters after



1 you came back in 2005?  
 2 A Dr. Mendiondo. I think the owners of  
 3 B311. That's all I remember for sure.  
 4 Q Mr. Trombino had his master bedroom  
 5 slider and his guest bedroom slider replaced in  
 6 2008/2009. I guess they would have had to remove  
 7 his hurricane shutters and reinstall them?  
 8 A Correct.  
 9 Q For example, for Mr. Trombino on the  
 10 hurricane shutters going back in 2008 and 2009, the  
 11 regime knew that the glass in those sliding glass  
 12 doors were not impact rated. Right?  
 13 A Say it again.  
 14 Q For Mr. Trombino, unit B409, when his  
 15 hurricane shutters were removed, his master bedroom  
 16 slider was replaced and the hurricane shutters were  
 17 reattached, the regime knew at that time that the  
 18 glass in his exterior sliding glass door in the  
 19 master bedroom was not impact rated?  
 20 A In what year?  
 21 MR. RAMSEY: Object to the form.  
 22 BY MR. KELLY:  
 23 Q 2008.  
 24 A Wasn't that something that we already  
 25 discussed in 2010? I don't remember, other than

1 what we've talked about today.  
 2 Q If hurricane shutters accomplish the same  
 3 purpose as impact glass, why would the hurricane  
 4 shutters be needed if the regime believed that the  
 5 glass in the windows and doors were impact rated?  
 6 A I don't know that we believed they were  
 7 impact.  
 8 Q That's my question. Did the regime  
 9 believe in 2008 and 2009 when Mr. Trombino  
 10 reattaches hurricane shutters to the outside of his  
 11 sliding glass doors that the glass in those doors  
 12 were impact rated?  
 13 MR. RAMSEY: Object to the form.  
 14 A I think that they had in their hands the  
 15 engineering report from Mr. Broadway that they were  
 16 sufficient. But I don't think that we used the term  
 17 "impact" in our normal conversations. To me, it was  
 18 always wind rated, 120 mile or 140 mile an hour wind  
 19 rated windows.  
 20 BY MR. KELLY:  
 21 Q Mr. Broadway's report didn't get  
 22 generated until 2010, November. And Mr. Trombino's  
 23 sliding glass doors and hurricane shutters were  
 24 reattached in 2008, 2009.  
 25 A So the question is?

1 Q They couldn't have had the Broadway  
 2 report at that time. Right?  
 3 A Okay. So the question is did we believe  
 4 they were impact glass at that time?  
 5 Q Right.  
 6 A I don't know that we'd even thought about  
 7 it.  
 8 MR. KELLY: I think those are all  
 9 the questions I have for you. Thank you for your  
 10 time.  
 11 (Recess taken.)  
 12 EXAMINATION  
 13 BY MR. BARFIELD:  
 14 Q I'm Michael Barfield. I represent Gary  
 15 Freeman and Gary Freeman Architects, Inc., in this  
 16 case. I understand there's already been some  
 17 discussion today about Mr. Freeman's work at  
 18 Shipwatch, but obviously I want to get into some  
 19 pretty significant detail as to what he did, what he  
 20 was supposed to do and your recollection of his time  
 21 out there.  
 22 I've got some documents to show you, but  
 23 first I would like to just talk to you and get your  
 24 recollection of how Mr. Freeman came to be on the  
 25 project and your preliminary discussions with him.

1 A Well, what I remember is we were shopping  
 2 for an engineer or architect to guide us through the  
 3 project that was to replace the synthetic stucco on  
 4 the ocean side of A and B building and install the  
 5 DEFS, the Durock thing.  
 6 And I was just looking for different  
 7 ones, and Bob Wiggins said he had a project going  
 8 that Gary Freeman was the architect on. Shipwatch  
 9 is always so mindful of their money. He said he  
 10 works by himself. I think he's very reasonable if  
 11 you'd might like to meet with him. So I called Gary  
 12 and set up an interview.  
 13 Q Now, before we talk about that initial  
 14 interview, I would like to put a finer point on what  
 15 you mean by you were looking for an architect or  
 16 engineer to, quote, guide you through the project.  
 17 What did you mean by guide?  
 18 A Well, you have a contractor and you have  
 19 me. There has to be somebody that keeps the  
 20 contractor on target appropriately, properly, and  
 21 that's not me. And I was not comfortable -- Even  
 22 though it was a continuation of the previous  
 23 projects, I was not comfortable going through it  
 24 myself.  
 25 Q I think we can both agree that

1 Mr. Freeman -- it was never contemplated that  
2 Mr. Freeman was going to be doing any actual design  
3 work at Shipwatch. Is that correct?

4 A That's correct.

5 Q You set up an initial interview with him.  
6 Did that meeting take place?

7 A I'm sure it did. I honestly don't  
8 remember it.

9 Q What is the first direct interaction with  
10 Gary Freeman that you do recall?

11 A I'm sorry. I honestly cannot pinpoint  
12 specific meetings with him. I know I talked to him  
13 on the phone several times. I know he came to my  
14 office. I know he visited the job site. If he  
15 walked in the room, I would know who he is. He  
16 always wore a hat. But specific times, dates,  
17 reasons, I can't tell you.

18 Q Do you recall discussing with him as a  
19 preliminary matter what it is that you were  
20 retaining him to do?

21 A I would think, yes. I think that is the  
22 reason why I contacted both Bob Wiggins and Bob  
23 Sisnroy to ask them for the original design so that  
24 he would have something to know how to guide these  
25 people through the job they were getting ready to

1 the conversations that I had with him. So  
2 specifically I can't say.

3 Q Let me show you what's already been  
4 marked as Exhibit 128. This is a letter from  
5 Mr. Freeman to you dated September 22, 2010. You  
6 can look at that again just to refresh your  
7 recollection.

8 A Okay.

9 Q What is that document, to the best of  
10 your recollection?

11 A It looks to me like it's an introduction  
12 letter showing his interest in working for us and  
13 what he would need or why he thought that he would  
14 be a good fit for the job.

15 Q Let me show you another letter dated a  
16 couple of weeks before from Mr. Freeman. This is  
17 dated September 3, 2010. I've marked it as Exhibit  
18 148.

(Exhibit No. 148 marked for  
identification.)

21 A It's the same letter.

22 BY MR. BARFIELD:

23 Q Not quite. Have you had an opportunity  
24 to compare?

25 A I did. I see a couple of sentences in

1 do. Neither one of them could supply it, and the  
2 job started.

3 Q To the best of your recollection,  
4 Mr. Freeman performed his work start to finish  
5 without the benefit of any design drawings?

6 A Yes, no specific design drawings from Bob  
7 Sisnroy, other than there was information in one of  
8 the notebooks there that Bob Sisnroy had stated that  
9 he preferred to use an Acrocrete wall system. That  
10 was his recommendation. So that would have been the  
11 only thing that Gary Freeman would have had to guide  
12 him through the work.

13 Q If I may, how was Mr. Freeman supposed to  
14 guide, to use your word, the contractor through the  
15 process if he did not have any documents to inform  
16 him as to what he was guiding the contractor  
17 through?

18 MR. RAMSEY: Object to the form.

19 A I don't know, other than he is an  
20 architect. He knows stuff. And he knows an  
21 Acrocrete wall system that he would be looking at.

22 BY MR. BARFIELD:

23 Q Are you certain that he is familiar with  
24 the Acrocrete product or was at the time?

25 A Well, like I said, I don't even remember

1 here that are different.

2 Q So do you recall receiving the first  
3 letter from Mr. Freeman?

4 A Again, I remember talking to him. I know  
5 he sent me a lot of letters and stuff. And I  
6 remember him. But specifics, I'm sorry, I just  
7 don't.

8 Q Well, would you agree with me that the  
9 scope of work that he's proposing from one letter to  
10 the next is slightly different?

11 A No. But if you'd help me, I probably  
12 would.

13 Q Let's walk through the two paragraphs --  
14 the paragraph in each letter that begins, "My  
15 services include".

16 A Yes.

17 Q So in the September 3rd letter, he says,  
18 "My services include reviewing the existing contract  
19 documents to familiarize myself with the design and  
20 their intent."

21 A Yes.

22 Q That line is identical in the September  
23 22nd letter. Correct?

24 A Yes.

25 Q September 3rd, the next line reads, "At

1 the start of the work I will conduct a  
 2 pre-construction meeting with the contractor, the  
 3 major subcontractors and your staff to ensure  
 4 everyone's awareness of safety concerns, the work  
 5 schedule and any issues that should be discussed  
 6 impacting the project."  
 7 A Yes.  
 8 Q Would you agree with me that that line is  
 9 absent from the later letter?  
 10 A Yes, I would.  
 11 Q So the next line on the earlier letter  
 12 says, "During construction, I will visit the site  
 13 weekly to meet with the construction team to discuss  
 14 any issues or concerns and to observe the status of  
 15 the work."  
 16 A Yes.  
 17 Q The line in the September 22nd letter is  
 18 similar but slightly different. It reads, "During  
 19 construction, I will visit the site on a weekly  
 20 basis to observe and document the status of the  
 21 work."  
 22 A Yes.  
 23 Q Next line on the September 3rd letter  
 24 reads, "I document these meetings with photographs  
 25 and a field report of the items discussed."

1 A Yes.  
 2 Q That line is missing from the later  
 3 letter, is it not?  
 4 A Yes.  
 5 Q Going back to the September 3rd letter,  
 6 "When pay applications are submitted, I will review  
 7 them for compliance with the work to ensure the  
 8 percentage of work complete is in accordance with  
 9 the percentage of the costs being requested."  
 10 A Yes.  
 11 Q That line is also absent from the later  
 12 letter, is it not?  
 13 A Yes.  
 14 Q And then the September 3rd letter goes to  
 15 the next paragraph, but the September 22nd letter  
 16 goes on to say, "After each site visit, I will  
 17 prepare a field report listing the general status of  
 18 the work and any items discussed on site with the  
 19 contractor. Per our discussion on September 21,  
 20 2010, there will not be a need to review and approve  
 21 monthly applications for payment."  
 22 A Correct.  
 23 Q So having compared those two paragraphs  
 24 line by line, you would agree with me that the scope  
 25 of work being proposed is somewhat different on

1 September 22nd than it was initially on September  
 2 3rd?  
 3 A I would agree.  
 4 Q And would you have any reason to disagree  
 5 with Mr. Freeman's statement that there was a  
 6 meeting with you on September 21, 2010?  
 7 A No.  
 8 Q Do you recall anything about that  
 9 meeting?  
 10 A No.  
 11 Q Do you recall meeting with him at any  
 12 point between September 3rd and September 22, 2010,  
 13 to discuss exactly what it was you were retaining  
 14 him to do?  
 15 A Well, once again, I remember him. I  
 16 remember having conversations with him. I remember  
 17 meeting him. And when I read these things, I  
 18 remember discussions with him. Specifics, I can't  
 19 say I remember specifically meeting face to face or  
 20 talking to him on the phone between September 3rd  
 21 and September 22nd, but I will say, yes, I'm sure I  
 22 did.  
 23 Q Would it be a fair statement to say that  
 24 based on meetings or negotiations with you his  
 25 initial proposed scope of work was dialed back to

1 something less?  
 2 A Yes, I would agree with that.  
 3 Q He was not retained to approve pay  
 4 applications. Correct?  
 5 A Correct.  
 6 Q Who did approve pay applications?  
 7 A That probably would have been done by a  
 8 board member.  
 9 Q If I told you that your signature was on  
 10 pay app approvals, would that refresh your  
 11 recollection?  
 12 A Well, I would have approved them after  
 13 being told I could approve them by a board member,  
 14 whether it be verbally or what. But, yes, I'm not  
 15 surprised.  
 16 Q Speaking of the board, I meant to ask you  
 17 this earlier. Did Gary Freeman ever interact  
 18 directly with the board, or was it always through  
 19 you?  
 20 A I honestly don't know, but it would not  
 21 surprise me if it was only through me. But I don't  
 22 know.  
 23 Q I'll represent to you that I've seen  
 24 nothing in writing in the way of meeting minutes  
 25 that reflects him having dealt with anybody but you.

1 A Right.

2 Q I'm going to show you -- For some reason,  
3 I only have one copy of this. But I'm going to show  
4 you a document bearing Mr. Freeman's letterhead that  
5 says Professional Services Agreement. This will be  
6 149.

7 A I have seen it, and I signed it.  
8 (Exhibit No. 149 marked for  
9 identification.)

10 BY MR. BARFIELD:

11 Q Do you recall it?

12 A Not specifically do I recall it, but I am  
13 the only person that is there to receive these  
14 things. And with board approval, whether it be  
15 verbal or otherwise, I signed them.

16 Q Would you agree with me that that  
17 document reflects the terms and conditions of your  
18 contract with Mr. Freeman?

19 A I would, yes.

20 Q And when I say Mr. Freeman, I want to  
21 make sure that we're on the same page. Gary Freeman  
22 individually is a defendant in this case. Gary  
23 Freeman Architect, Inc., his company, is also a  
24 defendant in this case. I'll represent to you that  
25 in the complaint that's been filed in this case no

1 mind the contract with Gary Freeman Architect, Inc.,  
2 was a contract with Gary Freeman?

3 A I would have to assume so.

4 Q Now, the terms and conditions outlined in  
5 that Professional Services Agreement don't address  
6 specifically what it is he was being hired to do?

7 A No.

8 Q Would you agree with me that what -- that  
9 the last written word on what he was being hired to  
10 do, as far as you know, is in the September 22, 2010  
11 letter?

12 A As far as I know, yes.

13 Q Let me show you another document that  
14 will just take hopefully a second to address.

15 (Exhibit No. 150 marked for  
16 identification.)

17 BY MR. BARFIELD:

18 Q I don't know if this has already been  
19 made an exhibit at some point along the way. I  
20 apologize if I'm double marking something. I marked  
21 this as 150. This is an AIA Standard Form Contract  
22 Between Owner and Contractor, signed by Bob Wiggins.  
23 I'm going to ask you if you recall that document?

24 A I'm sure I've seen this before.

25 Q Do you know whose handwriting that is on

1 distinction is made between work done by Mr. Freeman  
2 individually or work done by his entity.

3 When you executed that contract with Gary  
4 Freeman Architect, Inc., did you distinguish between  
5 the individual and the company in your mind?

6 A No.

7 Q So in your mind, Gary Freeman, the  
8 individual, and Gary Freeman, the company, were the  
9 same thing?

10 A I would not even have thought to think  
11 that. I knew that he worked alone. So as far as  
12 thinking about him, the company and him the  
13 individual, that's not my thought process.

14 Q So whatever terms and conditions in that  
15 contract in your mind that would apply to the  
16 company, you would hold Mr. Freeman individually to  
17 those terms as well. Correct?

18 A See, I don't know how to answer that,  
19 because I've never been in a lawsuit before. I  
20 don't know legal things. I don't think about them  
21 separately or as one. So I don't know how to answer  
22 that.

23 Q Well, I'm asking you as a party to the  
24 contract or at least a representative of a party to  
25 the contract. I just want to make sure that in your

1 the first page?

2 A This one (indicating)?

3 Q Yes.

4 A It kind of looks like the same  
5 handwriting as Bob Wiggins, Carolina Concrete.

6 Q Somebody has handwritten on the first  
7 page of that document that Gary Freeman is the  
8 architect for purposes of that contract. Correct?

9 A Correct.

10 Q If you look at that contract, it  
11 contemplates that the architect is performing design  
12 services, but that is not the case. Correct?

13 A That's correct.

14 Q Gary Freeman never signed a contract to  
15 perform design services --

16 A He did not.

17 Q -- on this job. And Gary Freeman is not  
18 a signature to that AIA contract, is he?

19 A He is not.

20 Q Do you recall Mr. Freeman taking issue  
21 with being referred to as the architect, defined  
22 term, when he saw that contract?

23 A I don't know.

24 Q I want you to look at paragraph four in  
25 Exhibit 133. This is an e-mail from Mr. Freeman to

1 you dated November 12, 2010. Could you read that  
2 out loud, please?

3 A Out loud? No. 4?

4 Q Yes.

5 A "The AIA contract that I received  
6 yesterday is not dated, and the copy I received was  
7 not signed by a representative of the regime. Is  
8 there a signed copy? I am listed as the architect.  
9 That is not true as there was no original design  
10 architect. I am, however, providing architectural  
11 services in the form of limited construction  
12 administration per my agreement with the regime  
13 initiated by me on 9/21/10."

14 Q Do you disagree with anything in that  
15 paragraph?

16 A I do not.

17 Q I'm going to try and save us a little  
18 time. I know that earlier Mr. Kelly asked you a  
19 series of questions about the selection of the  
20 windows during the period of time that Mr. Freeman  
21 was involved. Do you recall those questions?

22 A I recall being asked questions.

23 Q Fair enough. Do you recall him asking  
24 some questions about Mr. Freeman's role in that  
25 process?

1 A Yes.

2 Q Would you agree with me that Mr. Freeman  
3 raised some concerns about the windows that had been  
4 selected for that scope of work?

5 A Yes.

6 Q And would you also agree with me that  
7 acting on those concerns you, Mr. Wiggins and  
8 ultimately an engineer by the name of Broadway  
9 undertook to investigate the appropriateness of  
10 those windows?

11 A Yes.

12 Q And ultimately that group of individuals,  
13 including yourself, were satisfied that the windows  
14 were satisfactory to install?

15 A Yes.

16 Q Ultimately that was reported back to  
17 Mr. Freeman?

18 A I would assume so.

19 Q You would also agree with me that  
20 Mr. Freeman was told that he was not to concern  
21 himself with anything related to the sliding glass  
22 doors?

23 A I know that I was shown a letter earlier  
24 that I sent saying that -- I think it was the one  
25 that said that we were considering it maintenance,

1 so he did not need to act further.

2 Q To the best of your recollection, when  
3 the work started in 2010, what was Gary Freeman out  
4 there doing?

5 A Well, the whole idea to me to hire him to  
6 begin with was to oversee the work being done to  
7 ensure that it was done properly and appropriately.  
8 That was my whole idea. So in my mind that's what  
9 his purpose was.

10 Q How was he supposed to know if the work  
11 was being done appropriately if he had nothing to  
12 show him what the work was?

13 MR. RAMSEY: Object to the form.

14 A I'm supposed to try to answer that?

15 BY MR. BARFIELD:

16 Q Please.

17 A Well, once again, I have to say that as a  
18 professional architect, knowing that they were using  
19 a specific system, that he would know what was  
20 required and how to do it. Maybe I was wrong, but  
21 that was my thought process.

22 Q Well, we've already established that his  
23 letter of September 22, 2010, sets forth what it is  
24 that he was being paid to do. Can you look back  
25 over that letter and tell me what line in that

1 letter or what part of that letter says he was  
2 supposed to do what you just described?

3 A Well, there may be something in here  
4 further that refutes that. But it says, "Most of my  
5 work involves water intrusion and the investigation  
6 of its causes and effects. A majority of the  
7 failures I see are a result of either improper  
8 design or improper installation of the components of  
9 the building envelope. Many of these problems can  
10 be avoided with the involvement of a design  
11 professional during construction."

12 So I could be wrong, but to me that says  
13 I know that if it's not done properly you can have  
14 leaks, and I can identify improper procedures.  
15 That's why I would think that if he was there and he  
16 looked at the work they were doing, he would  
17 instantly know that if they weren't putting in  
18 backer rod, that they were wrong. I mean, to me,  
19 that was the whole idea of him being there. And, to  
20 me, that's what he was going to do and what he did.

21 Q But that's not the part of the letter  
22 that says what he's agreeing to do, is it?

23 A Why don't you just tell me what you  
24 understand out of this and I'll try to understand  
25 it.

1 Q The paragraph that we compared line by  
2 line with the earlier letter, that says what he's  
3 being hired to do, doesn't it?

4 A He says, "Each week, I estimate spending  
5 from two to four hours with the site visit and  
6 preparing and issuing the field report." And the  
7 field report to me is to tell me what he saw and any  
8 problems that he might have envisioned. Isn't that  
9 what a field report is?

10 Q You tell me. Mr. Freeman did submit  
11 field reports, did he not?

12 A Yes, I believe so. I never did say he  
13 didn't do what I asked him to do. You were the one  
14 who was suggesting that I was out in left field.

15 Q So you believe Mr. Freeman did do what he  
16 was hired to do?

17 A I would not be wanting to say that he did  
18 not. Whether he did it efficiently and  
19 appropriately and timely, I would not say. But as  
20 far as I'm concerned, he was hired to look over the  
21 shoulders and make sure they weren't doing anything  
22 wrong.

23 Q With regard to the frequency of his  
24 visits out there, he was to be out on that job  
25 site --

1 illness out of state. He was gone a lot. A lot of  
2 our conversations and correspondence were done on  
3 the phone. When he would come back into town,  
4 sometimes the crews had already quit for the day,  
5 and Gary would be out there going around behind  
6 them. So, yes, I think he did the best he could.

7 Q He did, in fact, make some observations  
8 about concerns he had?

9 A Yes, he did.

10 Q Despite his concerns, the work progressed  
11 as it was originally?

12 A I could be wrong, but the way I remember  
13 it --

14 MR. RAMSEY: Object to the form.

15 A -- his field reports were -- which is  
16 typical of field reports, but this was a very short  
17 project. And his field reports would come in, and  
18 the work -- considerable work had been done since  
19 before the report was received, and so it just  
20 continued on. So, yes, it continued on as they had  
21 done in previous contracts because they just kept  
22 moving forward, even though he did bring up  
23 questions, yes.

24 BY MR. BARFIELD:

25 Q Going back to Exhibit 133, this was the

1 A Each week.

2 Q For how long does he estimate?

3 A Two to four hours.

4 Q You would agree with me that even if his  
5 scope of work was, as you say it was, to look over  
6 the shoulder and report anything wrong, that his  
7 ability to do that was relegated to the time that he  
8 was out there. Correct?

9 A Yes.

10 Q So crews were out there five days a week  
11 at that time?

12 A Yes.

13 Q And they are working full days. Correct?

14 A Yes, I think so.

15 Q If your expectation of Mr. Freeman was  
16 that he was supposed to catch everything that was  
17 going wrong, how was he supposed to do that in two  
18 to four hours a week on a job of that size?

19 A That was his determination, not mine. I  
20 told him what I needed, and this is what he came up  
21 with that he was willing to do or could do or that  
22 we could pay for or whatever.

23 And I will tell you this. I think he did  
24 fine when he was there. But there was a period  
25 of -- During this period of time, he had a family

1 November 12, 2010 e-mail, if you look at paragraph  
2 three, would you agree with me that Mr. Freeman  
3 raised a concern when he discovered that the work  
4 that was being done in 2010 was being conducted  
5 under a permit that was pulled in 2003?

6 A Yes, he did.

7 Q Do you remember discussing that with  
8 Mr. Freeman?

9 A I don't specifically remember discussing  
10 it with Mr. Freeman. I certainly remember  
11 discussing it with Mr. Wiggins.

12 Q And what was the take-away from that  
13 discussion?

14 A Mr. Wiggins continued to say that he felt  
15 it was a continuing part of a project, not a new  
16 project, but a continuation of what he had done  
17 before. Therefore, he felt that he could work under  
18 the same permit, and that was less than the 50  
19 percent that would require bringing it up to the  
20 building code of today. And he believes that.

21 Q And you were satisfied with that?

22 A I was concerned about it, but it was  
23 almost over. I didn't know what else I could do.

24 Q Do you recall responding to that concern  
25 that Mr. Freeman raised?

1 A Responding to Mr. Freeman?  
 2 Q Yes.  
 3 A I'm sure we talked about it, yes. I  
 4 don't remember, no. But, yes, I'm sure we talked  
 5 about it, because it upsets me very much that we  
 6 could have been doing something that was  
 7 inappropriate as far as the building department of  
 8 the Isle of Palms would think.  
 9 Q Do you remember Mr. Freeman expressing  
 10 surprise that the work was being done that way  
 11 independent of this e-mail?  
 12 A Surprised at what?  
 13 Q That the work in 2010 was being done  
 14 pursuant to a permit that was pulled in 2003?  
 15 A Yeah, he was surprised. I was shocked.  
 16 Q But what Mr. Wiggins told you about his  
 17 interpretation of the code satisfied you  
 18 sufficiently to allow the work to complete?  
 19 A I can't say that it satisfied me at all.  
 20 But the work was about finished, and I just went to  
 21 the board and told them this is our predicament.  
 22 And by then he was about finished.  
 23 Q Did you have Mr. Freeman come and talk to  
 24 the board to talk more specifically about why that  
 25 would be a concern?

1 A I don't think so. My board is basically  
 2 all out of state. They only come in, you know --  
 3 required to come in twice a year. I don't know that  
 4 any of them actually met Mr. Freeman.  
 5 Q Do you remember having any conversations  
 6 with Mr. Freeman about why it would not be a good  
 7 idea for him to speak with any of the town officials  
 8 about that issue?  
 9 A I don't remember any conversation about  
 10 that. Did he have a conversation with them?  
 11 Q Not that I'm aware of. Do you not  
 12 remember telling Mr. Freeman that the relationship  
 13 between the town and Shipwatch was less than ideal  
 14 and it would be best not to get the town involved?  
 15 A I tell everybody the situation between  
 16 the city building inspector and Linda Jernigan is  
 17 anything but good, and it's never a good idea to  
 18 draw attention to the fact that they are dealing  
 19 with her. So I probably did say that. I don't  
 20 think I would ever say don't contact them. I'm just  
 21 saying we're asking for trouble, because they don't  
 22 like me down there.  
 23 Q Why are they not Linda Jernigan fans down  
 24 there?  
 25 A Two reasons. Number one, which is

1 another reason why this is embarrassing at the time  
 2 for me, I don't allow any homeowner contractor to do  
 3 any work without getting a building permit. I  
 4 insist and make them do it, even though it may not  
 5 be something the city requires. I make them do it  
 6 anyway. So if I make everybody else go get a  
 7 permit, why wouldn't I get one myself?  
 8 The other reason that I'm not popular  
 9 down there was beach erosion. We placed our sand  
 10 bags in a logical place, but it's not the place that  
 11 they wanted them placed, and they sued us. And  
 12 being the representative, I had to go to court and  
 13 we won.  
 14 Q Approximately when was that? What  
 15 year?  
 16 A 2008, 2009.  
 17 Q With regard to the field reports that  
 18 Mr. Freeman was drafting during this time frame,  
 19 were you the person that he was submitting those  
 20 reports to?  
 21 A I was a recipient, yes.  
 22 Q And what was it that you did with reports  
 23 when you received them?  
 24 A I would share them with the board and  
 25 just file them.

1 Q Did you read them?  
 2 A Yes.  
 3 Q Did you look at the photographs?  
 4 A Yes.  
 5 Q To the extent that a given report raised  
 6 any particular concern, what would you do about that  
 7 issue?  
 8 A What I do is pass on any concerns I have  
 9 to the board of directors, building committee, if  
 10 not the whole board. And I would not be afraid to  
 11 ask Bob Wiggins.  
 12 We trusted Bob Wiggins with everything we  
 13 did at Shipwatch. So it would not be uncommon for  
 14 me to go to Bob and say what is this.  
 15 Q So in that circumstance you would go  
 16 directly to Bob because you had that comfort level  
 17 with him?  
 18 A Because of that concern, yeah.  
 19 Q Were you satisfied with the amount of  
 20 photographic documentation that Mr. Freeman provided  
 21 with his weekly field reports?  
 22 A Yes.  
 23 Q Did you look at the photos yourself?  
 24 A Yes.  
 25 Q Did you ever share the photos with

1 Mr. Wiggins?  
 2 A Wasn't he copied on the field report?  
 3 Q Actually, he was, you're right. So you  
 4 didn't have to. Mr. Wiggins saw the photos. Any  
 5 concerns by Mr. Freeman would have been raised  
 6 directly to Mr. Wiggins?  
 7 A Yes.  
 8 Q At the same time they were raised to you?  
 9 A Yes.  
 10 Q Did you use Mr. Freeman's field reports  
 11 to provide you with sufficient information to  
 12 approve the pay apps?  
 13 A I don't know. I don't know. I don't  
 14 remember. I don't even remember how many pay apps  
 15 there were. Was there more than one or two? It  
 16 just all goes to timing.  
 17 Q Do you know whether or not Mr. Freeman  
 18 was ever provided with the manufacturer's  
 19 installation instructions for the Durock system?  
 20 A I'm not sure, but I'm thinking that he  
 21 printed it off himself from the internet.  
 22 Q What makes you think that?  
 23 A It just seems like I remember that.  
 24 Q Did you ever communicate to Mr. Freeman  
 25 that you were dissatisfied with the amount of time

1 your deposition is being kept open because nobody  
 2 has had an opportunity to review all 70,000  
 3 something documents. I've tried my best but have  
 4 not made it through all of them.  
 5 I'm going to try and make today's  
 6 questioning fairly brief to try and enable some of  
 7 the other folks in the room to go forward. I know  
 8 you've heard that before. I'm going to shoot for an  
 9 hour today.  
 10 If you need to take a break at any time,  
 11 go ahead and let me know.  
 12 As we continue today, if I ask you a  
 13 question and you answer my question, is it fair for  
 14 me to assume that you've understood my question and  
 15 that you've answered it truthfully?  
 16 A The truthful part, yes.  
 17 Q Well, part and parcel of that, I don't  
 18 want you to answer any question of mine that you  
 19 don't understand.  
 20 A I understand.  
 21 Q So if you do not understand one of my  
 22 questions, simply ask me to rephrase it and I'll  
 23 attempt to do so. Okay?  
 24 A Okay.  
 25 Q How many years did you work with my

1 he was spending out there?  
 2 A I don't think so.  
 3 Q To the best of your knowledge, did  
 4 Mr. Freeman visit the job site with the frequency  
 5 that he proposed in his September 22, 2010 letter?  
 6 A I don't even know whether he did or not.  
 7 I just remember that he was out of town with his  
 8 parents, which is anybody's priority, and I  
 9 understood that and I knew that. He would come in  
 10 when he could. And he would do his reports based on  
 11 what he could see. How can you not say you're  
 12 satisfied, because I know where my priority would  
 13 have been.  
 14 MR. BARFIELD: I think that's all I  
 15 have for the time being. We are leaving it open.  
 16 THE WITNESS: Well, apparently I've  
 17 moved in.  
 18 (Recess taken.)  
 19 EXAMINATION  
 20 BY MR. WINTON:  
 21 Q Ms. Jernigan, my name is Tyler Winton.  
 22 I'm an attorney at Carlock upstairs. And I'm here  
 23 today on behalf of Bob Sisnroy and Sisnroy  
 24 Engineering.  
 25 Everybody said this, but I'll repeat that

1 client? When I refer to my client, obviously Bob  
 2 Sisnroy or Sisnroy Engineering.  
 3 A Personally, I came in 2005. So at least  
 4 up until 2010.  
 5 Q You believe that Mr. Sisnroy was involved  
 6 out at Shipwatch until 2010?  
 7 A Well, I won't say how long. I'm just  
 8 guessing. But I know my first involvement was with  
 9 2005, and I don't remember when it ended.  
 10 Q Yesterday I was happy to hear that you  
 11 said that my client was an excellent engineer.  
 12 However, there are a couple of things that I just  
 13 need to confirm.  
 14 During the time that you worked with  
 15 Mr. Sisnroy, did you find him to be trustworthy?  
 16 A Yes.  
 17 Q Did you find him to be professional at  
 18 all times?  
 19 A Yes.  
 20 Q Did you find him to be thorough in his  
 21 work and services that he provided?  
 22 A Oh, yes.  
 23 Q You kind of rolled your eyes. Why was  
 24 that? Do you consider him to be very nitpicky --  
 25 A Very detailed. Very detailed.



STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

THE COURT OF COMMON PLEAS

|                                  |   |                 |
|----------------------------------|---|-----------------|
| SHIPWATCH CONDOMINIUM            | ) |                 |
| ASSOCIATION,                     | ) |                 |
|                                  | ) |                 |
| Plaintiff,                       | ) |                 |
|                                  | ) | Case No.:       |
| -versus-                         | ) | 2012-CP-10-3858 |
|                                  | ) |                 |
| CAROLINA CONCRETE SYSTEMS,       | ) |                 |
| INC., et al.,                    | ) |                 |
|                                  | ) |                 |
| Defendants.                      | ) |                 |
| OSCAR MENDIONDO, Individually    | ) |                 |
| and as representative of a       | ) |                 |
| class of similarly situated      | ) |                 |
| owners of condominium units in   | ) |                 |
| the horizontal property regime   | ) |                 |
| known as SHIPWATCH CONDOMINIUMS, | ) |                 |
|                                  | ) |                 |
| Plaintiffs,                      | ) |                 |
|                                  | ) |                 |
| -versus-                         | ) |                 |
|                                  | ) |                 |
| CAROLINA CONCRETE SYSTEMS,       | ) |                 |
| INC., et al.,                    | ) |                 |
|                                  | ) |                 |
| Defendants.                      | ) |                 |

THE DEPOSITION OF FRED TROMBINO was taken as a witness on behalf of the Defendants, pursuant to South Carolina Rules of Civil Procedure, at 10:00 a.m. on Friday, the 18th day of July 2014, at the offices of Carlock Copeland, 40 Calhoun Street, Suite 400, Charleston, South Carolina, before Janice O. Darby, Registered Professional Reporter and Notary Public in and for the State of South Carolina.

Janice Ohlendorf Darby, RPR  
(843) 814-7666 jodarby@comcast.net

1 BY MR. COBB:

2 Q Before 2011, the board had decided that  
3 it was going to remove all the sliding glass doors?

4 A Yes.

5 Q The board had decided that it was going  
6 to remove all of the EIFS off the buildings.

7 Correct?

8 A Yes.

9 Q And the board wanted to do those over a  
10 number of years because of the concern about cost  
11 and occupancy?

12 A Correct.

13 Q And those two considerations primarily  
14 drove the decision not to do all of that work at  
15 once at some point in 2009, 2010, 2011. Correct?

16 A Yes.

17 Q That's the work that's being done now as  
18 part of these 2013/2014 repairs. Correct?

19 A That is correct.

20 Q When did you first learn that there was  
21 an issue at Shipwatch about the synthetic stucco or  
22 EIFS?

23 A When I was on the board the first time.

24 Q So sometime in the 2005 to 2007 time  
25 period you learned as a board member that synthetic

1 stucco was a problem for Shipwatch?

2 A That is correct.

3 Q What did you learn?

4 A I learned that the synthetic stucco was a  
5 problem, not the right application for a coastal  
6 environment.

7 Q Who told you that?

8 A I believe the insurance company told us  
9 they were charging us a premium for insurance for  
10 the EIFS.

11 Q Did you also get told at that point in  
12 time about issues with water intrusion and EIFS?

13 A Yes.

14 Q What were you told about that?

15 A We were told that EIFS has a tendency  
16 to -- water tends to get behind the EIFS, rotting  
17 the studs, causing failure.

18 Q Did the board hire anyone in 2005, 2006  
19 or 2007 to inspect the buildings to see if there  
20 were problems to the structure because of EIFS or  
21 any water intrusion to the building because of EIFS?

22 A Not that I'm aware of.

23 Q And why not?

24 A We were in the process of removing the  
25 EIFS, replacing studs, probably the reason.

1 costs associated with replacing the original  
2 synthetic stucco that was installed on the  
3 buildings?

4 A Yes.

5 Q Would you agree with me that none of  
6 these defendants have responsibility for the costs  
7 associated with repairing or replacing the metal  
8 roof which the insurance company paid Shipwatch  
9 \$500,000 for?

10 A Yes.

11 Q Would you agree with me that none of  
12 these defendants have responsibility for the cost  
13 associated with the remediation and recoating of the  
14 balcony ceilings on the breezeways on the street  
15 side of the buildings?

16 A I don't know.

17 Q How long has the issue about the  
18 condition of the ceilings in the breezeways on the  
19 street side been present at Shipwatch?

20 A It's been a constant problem.

21 Q Since when?

22 A Since I've been on the board.

23 Q Since 2005?

24 A At least.

25 Q And what were those concerns about those

1 ceilings?

2 A Peeling.

3 Q Since 2005, has Shipwatch ever paid for  
4 any type of repairs or replacement or repainting of  
5 those breezeway ceilings?

6 A 2005? I don't recall if we painted them  
7 during that time.

8 Q Would you agree with me that none of  
9 these defendants have any responsibility for the  
10 costs associated with the installation of the new  
11 handrails at the buildings?

12 A Yes.

13 Q When the homeowners or the board decided  
14 to move forward with the curtain elevator repairs in  
15 2012, how were those repairs funded?

16 A Through assessment.

17 Q Do you recall the amount of the  
18 assessment?

19 A No.

20 Q When the repairs were decided with  
21 regards to building C and D and then now A and B  
22 with 2013/2014, when was that first communicated to  
23 the homeowners?

24 Let me back up. Were you on the board  
25 that decided to take the issue to the homeowners or

1           Q       Did it leak after Mr. Wiggins performed  
2   repair work?

3           A       No.

4           Q       Is there currently any water intrusion  
5   into your unit?

6           A       No.

7           Q       I'm going to hand you a document. This  
8   is Jernigan Exhibit No. 96. If you'll take a look  
9   at that, the second page for me. You may want to  
10   take a look at the whole thing, because I'm going to  
11   ask you if you know who wrote this.

12          A       This looks like I might have wrote this.

13          Q       And this would have been written while  
14   you were a board member?

15          A       Yes..

16          Q       If I look on the second page, it says  
17   sliding glass doors.

18          A       Yes.

19          Q       And it reads, "It's been well known by  
20   past boards that there's been a leakage problem with  
21   a good number of sliding glass doors."

22                   How far back was the board aware that  
23   there was a leakage problem with the sliding glass  
24   doors?

25          A       How far back? As far back as when I

1 first got onto the board in 2005. That's when I  
2 became aware there was sliding glass door issues.

3 Q Because you said past boards. I didn't  
4 know if you had talked to any previous board members  
5 that informed you, hey, this has been going on  
6 for --

7 A No. Just me being a full-time resident  
8 at Shipwatch, I would have conversations with Linda,  
9 and she would let me know that we've had problems  
10 with sliding glass doors.

11 Q Did she let you know about the problems  
12 with sliding glass doors before you became a board  
13 member?

14 A No.

15 Q So you wouldn't know -- you didn't know  
16 about any problems until 2005 when you became --

17 A That's correct.

18 Q It says here there are 16 doors that need  
19 to be replaced as soon as possible. Do you know how  
20 or why those 16 doors were the ones that needed to  
21 be replaced as soon as possible as opposed to the  
22 other doors that may have been leaking?

23 A Well, usually we would identify it as a  
24 door that needed to be replaced as soon as possible  
25 if it was leaking.

**Deposition of  
Arnold E. Schaewe**

July 21, 2014

Shipwatch Condominium Association, Inc. v. Carolina Concrete Systems, Inc., et  
al.

Case Number: 2012-CP-10-03857&58



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1 area, or did you do any investigation as to where  
2 the water was coming from?

3 A. I in -- I investigated the sliding  
4 door. And I thought it might be a leak at the  
5 lower -- lower joint in the door. And I caulked  
6 it.

7 Q. Why did you think it was a problem with  
8 the joint at the bottom of the door?

9 A. That -- it -- that's when the original  
10 doors at Shipwatch -- it was installed in 1990  
11 after Hugo, so it was rather old. And I thought  
12 the caulk that was there was either missing or  
13 leaking.

14 Q. Where was this caulk located?

15 A. At the -- the bottom of the door has a  
16 catch pan. And then the left side -- the left  
17 side of the door, which is part of the door  
18 frame, butts into that.

19 And so it was the lower -- the lower  
20 left corner of the door.

21 Q. Is that where it butts up against the  
22 cladding, the exterior cladding, the stucco?

23 A. No. It actually butts up against the  
24 wood stud at the -- the vertical wood stud that  
25 the door is mounted to.

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1 work that we did at that time on -- on the ocean  
2 side walls and the two end walls on each  
3 building.

4 Q. Do you know specifically why  
5 Mr. Wiggins suggested that work? What did he  
6 find that would have suggested that you all  
7 replace cladding on the end walls on the ocean  
8 side?

9 A. Well, we knew we had -- we knew we had  
10 leakage problems in various parts of the building  
11 on the -- on the ocean side through -- through  
12 doors. He discovered that we had leakage due to  
13 construction of the partition walls on the  
14 oceanfront balconies.

15 We had -- we knew we had water  
16 intrusion in the bay window areas on the first  
17 three floors of the end walls. So we knew we had  
18 problems of water intrusion from the exterior at  
19 Shipwatch.

20 And we were being advised by  
21 Mr. Wiggins on what we could do about that, so --

22 Q. And is that then what led to removing  
23 the stucco on the end walls and the ocean side --

24 A. Yes, exactly.

25 Q. -- and various areas?

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1           A.    Well, we found rusted studs -- you have  
2   to remove the cladding to find rusted studs.  So  
3   when we removed -- when we removed the original  
4   EIFS cladding, we found many rusted studs.

5           Q.    Was that on both the end walls?

6           A.    Both -- both the ocean side and end  
7   walls.

8           Q.    Was this done on all four buildings?

9           A.    Yes.

10                  (Off the record.)

11   BY MS. SMITH:

12           Q.    Mr. Schaewe, just to clarify, when  
13   you're talking about the removal of the synthetic  
14   stucco from the end walls and the ocean side and  
15   the corroded and rusted metal stud framing that  
16   we're just speaking of, you're talking about in  
17   the 2003, 2004 time frame, approximately?

18           A.    If -- if that's what you're saying.  
19   Again, I don't recall the exact dates of that.  
20   But I'm certain you have the record there, so if  
21   it -- if you say it's 2003, 2004, then it's 2003,  
22   2004.  So --

23           Q.    Okay.  Do you know at that point if  
24   there was any issue with the deck sloping?

25           A.    With -- with the what?

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1 Q. Same type of question regarding the  
2 storefront windows.

3 There's a number of storefront windows  
4 that have not been replaced and that are original  
5 to the construction of the building in the 1980s.

6 Should Mr. Wiggins be responsible for  
7 the replacement and the cost to replace those  
8 specific original windows?

9 MR. FLYNN: Same objection.

10 A. That one's a little bit harder for me  
11 to answer. If the cladding around the windows --  
12 if the cladding around the windows was replaced,  
13 then the answer is yes.

14 If it wasn't, then the answer is no.

15 BY MS. SMITH:

16 Q. Okay. I don't understand your answer  
17 in the fact that I'm talking about the windows  
18 themselves, the cost associated with removing and  
19 replacing those original windows.

20 Should Mr. Wiggins be held responsible  
21 for that cost of replacement?

22 MR. FLYNN: Object to form.

23 A. My answer is no.

24 BY MS. SMITH:

25 Q. The handrails that are being replaced

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1 during the current repairs, are those handrails  
2 original to the construction of the buildings in  
3 the 1980s?

4 A. No. They were 1990 vintage.

5 Q. They were installed, as you said, in  
6 the 1990s --

7 A. In 19- --

8 Q. -- should Mr. Wiggins -- I'm sorry?

9 A. In -- in 1990. That was a Hugo piece  
10 of work.

11 Q. Okay. Another post-Hugo repair.

12 Should Mr. Wiggins be responsible for  
13 the removal and replacement of the handrails  
14 in this litigation?

15 A. My answer is no.

16 Q. Do you have a current contract yet for  
17 the buildings A and B?

18 A. Do we have a current contract for the  
19 work on -- the remediation work on --

20 Q. On buildings A and B?

21 A. No, we do not.

22 Q. Okay. Have you received bids for the  
23 repair work on A and B?

24 A. Yes.

25 Q. And who have you received bids from?

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1 sliding glass doors were leaking in various  
2 units; is that not correct?

3 A. Well, I believe it said at this point  
4 in time -- I think -- I believe it was Carl  
5 working with Mr. Wiggins. At that point it says,  
6 had identified 15 as a problem.

7 Q. And from that point forward, did you  
8 all continue to inspect the sliding glass doors  
9 for leaks?

10 A. Yes.

11 Q. And, additionally, you had homeowners  
12 reporting that they had leaking sliding glass  
13 doors?

14 A. Yes.

15 Q. And throughout the years after 2006,  
16 the board decided to replace certain sliding  
17 glass doors based on those inspections and  
18 complaints by homeowners?

19 A. Yes.

20 Q. And each year, would the board  
21 determine how much it could afford as far as the  
22 number of doors that it could replace?

23 A. I believe I left the board after 2007,  
24 I believe. So I do not know what discussions the  
25 board had between my leaving the board and my

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1 coming back to the board in 2012.

2 Q. Fair enough. But during that time  
3 period, additional doors were replaced every  
4 year, is that not correct?

5 A. Yes. As I mentioned earlier, I believe  
6 we stand somewhere around 160 right now.

7 Q. Okay.

8 (Off the record.)

9 (Lunch recess was taken from 12:30 to  
10 1:48.)

11 BY MS. SMITH:

12 Q. Okay. Mr. Schaewe, we're back on the  
13 record. And I just have some few short questions  
14 regarding some of the documents that you produced  
15 this morning to us.

16 Specifically, I am looking at what's  
17 been Bates stamped AS0297. Do you have those  
18 documents in front of you?

19 A. No, I don't have those with me.

20 Q. You don't have any of those  
21 documents?

22 A. They're out in the car, in fact.

23 MS. SMITH: Are we all going to be  
24 asking him about the documents?

25 MR. ROOT: His documents?

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STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

THE COURT OF COMMON PLEAS

SHIPWATCH CONDOMINIUM  
ASSOCIATION,

Plaintiff,

-versus-

CAROLINA CONCRETE SYSTEMS,  
INC., et al.,

Defendants.

OSCAR MENDIONDO, Individually  
and as representative of a  
class of similarly situated  
owners of condominium units in  
the horizontal property regime  
known as SHIPWATCH CONDOMINIUMS,

Plaintiffs,

-versus-

CAROLINA CONCRETE SYSTEMS,  
INC., et al.,

Defendants.

THE DEPOSITION OF GREG ISAACS was taken as a witness on behalf of the Defendants, pursuant to South Carolina Rules of Civil Procedure, at 9:30 a.m. on Monday, the 28th day of April 2014, at the offices of Sutton-Kennerly & Associates, 4651 Charlotte Park Drive, in the City of Charlotte, State of North Carolina, before Janice O. Darby, Registered Professional Reporter and Notary Public in and for the State of South Carolina.

Janice Ohlendorf Darby, RPR  
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1 curtain walls.

2 BY MR. COBB:

3 Q So you've got the January 11, 2012 report  
4 and the January 25, 2012 addendum?

5 A Which is signed by Tim Cook.

6 Q What's the next one?

7 A Proposal for performing additional  
8 evaluation of direct-applied exterior finish systems  
9 and providing preliminary schematic design services,  
10 February 10, 2012.

11 Q Signed by?

12 A Jeff Miller and myself.

13 Q The next one?

14 A The next one is a draft. I couldn't find  
15 our hard copy of the report of evaluation of  
16 direct-applied exterior finish systems. My draft  
17 here is dated March 27, 2012. I believe the final  
18 sealed copy was early April, but I couldn't locate  
19 our hard copy of that.

20 Q Who signed that?

21 A Again, this is the draft, but no one  
22 signed this draft. But it will be Jeff Miller and  
23 myself for the final report.

24 Q Are there any other reports or documents  
25 after April 2012?

Janice Ohlendorf Darby, RPR  
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1           A       We are involved in the repairs going on  
2 now, so it depends on how much you want to get into  
3 those documents.

4           Q       We are going to get into all of it.  
5 What's the easiest way to get a copy of everything  
6 that you've generated since that date?

7                   I know we sent a subpoena, but one of the  
8 things we're trying to do is verify that we've got  
9 everything, because the production has been somewhat  
10 stop and go, stop and go.

11          A       I was under the impression that everybody  
12 had everything.

13          Q       Do you have a list? Is there a way for  
14 you to get a list or a chart of what you've  
15 generated since April of 2012?

16          A       That would be a very extensive list. Are  
17 you looking for just reports and proposals, or what  
18 exactly are you looking for?

19          Q       Anything in writing.

20          A       Anything in writing. I mean, that pile  
21 of papers is what we have. We're working on the  
22 current repairs going on, and it's an ongoing  
23 project, and there are a lot of field reports and a  
24 lot of materials that should be included in the  
25 documents.

Janice Ohlendorf Darby, RPR  
(843) 814-7666   jodarby@comcast.net

STATE OF SOUTH CAROLINA  
THE COURT OF COMMON PLEAS  
COUNTY OF CHARLESTON

SHIPWATCH CONDOMINIUM )  
ASSOCIATION, )

Plaintiff, )

) Case No.:  
-versus- ) 2012-CP-10-3858

CAROLINA CONCRETE SYSTEMS, )  
INC., et al., )

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OSCAR MENDIONDO, Individually )  
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the horizontal property regime )  
known as SHIPWATCH CONDOMINIUMS, )

Plaintiffs, )

-versus- )

CAROLINA CONCRETE SYSTEMS, )  
INC., et al., )

Defendants. )

THE CONTINUATION OF THE DEPOSITION OF GREG  
ISAACS was taken as a witness on behalf of the  
Defendants, pursuant to South Carolina Rules of  
Civil Procedure, at 9:30 a.m. on Tuesday, the 29th  
day of April 2014, at the offices of Sutton-Kennerly  
& Associates, 4651 Charlotte Park Drive, Charlotte,  
North Carolina, before Janice O. Darby, Registered  
Professional Reporter and Notary Public in and for  
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|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">Page 251</p> <p>1 GREG ISAACS</p> <p>2 having been previously duly sworn, was called as a</p> <p>3 witness herein and was examined and testified as</p> <p>4 follows:</p> <p>5 EXAMINATION</p> <p>6 BY MR. COBB:</p> <p>7 Q Good morning. I need to ask you a couple</p> <p>8 of questions about the deck coating on the</p> <p>9 breezeway. Were you there when the EIFS was removed</p> <p>10 off the breezeway on the street side of the</p> <p>11 building?</p> <p>12 A Some of it, yeah.</p> <p>13 Q Was there any resulting damage because of</p> <p>14 the way the deck coating ended at the EIFS?</p> <p>15 A There was corrosion on the metal studs</p> <p>16 behind the EIFS.</p> <p>17 Q And can you attribute that to the deck</p> <p>18 coating?</p> <p>19 A I'm not exactly sure whether -- the point</p> <p>20 of entry where that water came in.</p> <p>21 Q Any other issues with any damage observed</p> <p>22 after the EIFS was removed?</p> <p>23 A The corrosion, and I guess there was also</p> <p>24 some black staining that we talked about</p> <p>25 yesterday.</p>                                                                                                                                                                   | <p style="text-align: right;">Page 253</p> <p>1 elements in the facade adjacent to the windows.</p> <p>2 Q How many of the windows that are being</p> <p>3 replaced are original to the building?</p> <p>4 A I'm not sure. Approximately most of the</p> <p>5 breezeway windows. Approximately half of the</p> <p>6 U-shaped bay windows. And I would have to look into</p> <p>7 our field notes and photos to comment on the fixed</p> <p>8 windows, how many of those were done.</p> <p>9 Q So most of the breezeway windows, half of</p> <p>10 the U-shaped windows and some portion of the fixed</p> <p>11 windows are all original to the building?</p> <p>12 A I believe so, yes.</p> <p>13 Q Any idea of the total number of windows</p> <p>14 that are being replaced?</p> <p>15 A Not off the top of my head. I can look</p> <p>16 it up.</p> <p>17 Q How long will that take you to do?</p> <p>18 A A couple of minutes.</p> <p>19 Q If you don't mind, yeah, because I would</p> <p>20 like to have a range of the number of windows being</p> <p>21 replaced and the number that are original to the</p> <p>22 building.</p> <p>23 A For the four buildings, based on this</p> <p>24 count we have 144 of the fixed windows, which are</p> <p>25 about eight foot by three foot.</p> |
| <p style="text-align: right;">Page 252</p> <p>1 Q Can you attribute the black staining at</p> <p>2 all to the deck coating?</p> <p>3 A I do not know the specific point of entry</p> <p>4 of that water.</p> <p>5 Q We stopped yesterday with the issue of</p> <p>6 the removal of the sliding glass doors. I talked to</p> <p>7 you about page 6 of your January 11, 2012 report,</p> <p>8 item D, No. 2, item C, "New replacement fixed</p> <p>9 windows are" -- The syntax is not comprehensible,</p> <p>10 because it says, "New replacement fixed windows are</p> <p>11 on installed on the first three floors of the ocean</p> <p>12 side balconies." Do you see where I am?</p> <p>13 A I do.</p> <p>14 Q How should that be worded?</p> <p>15 A I think that should probably read, New</p> <p>16 replacement fixed windows have been installed on the</p> <p>17 first three floors of the ocean side of balconies.</p> <p>18 Q Is that all four buildings?</p> <p>19 A I'm not sure.</p> <p>20 Q What repairs are being done with regards</p> <p>21 to any windows now?</p> <p>22 A We are replacing all of the windows.</p> <p>23 Q And what engineering theories support the</p> <p>24 removal and replacement of all the windows?</p> <p>25 A The tying-in of the waterproofing</p> | <p style="text-align: right;">Page 254</p> <p>1 Q They are what? 144 of the fixed windows</p> <p>2 are what?</p> <p>3 A Total on the four buildings.</p> <p>4 Q So that's the total number of fixed</p> <p>5 windows?</p> <p>6 A Yes, on the project.</p> <p>7 Q And how many of those 144 fixed windows</p> <p>8 are being removed? All of them?</p> <p>9 A All of them.</p> <p>10 Q And how many of the 144 are original to</p> <p>11 the building?</p> <p>12 A That's probably another note. I've got</p> <p>13 totals here of each type. I would have to go</p> <p>14 through --</p> <p>15 Q Let's do the totals and then we'll go ...</p> <p>16 A Windows that are approximately four foot</p> <p>17 by four foot, the total for all four buildings is</p> <p>18 144.</p> <p>19 Q Are these also fixed windows?</p> <p>20 A These are sliding -- I'm sorry,</p> <p>21 single-hung windows. Excuse me. They were</p> <p>22 previously sliding. I believe we are installing</p> <p>23 single-hung.</p> <p>24 Then there are 32 small windows that are</p> <p>25 approximately two foot by three and a half feet.</p>                                                                                                                                                                          |

2 (Pages 251 to 254)

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1 And there are 32 total of those on the four  
2 buildings.

3 Q And what are they being replaced with?

4 A They are being replaced with a  
5 single-hung window.

6 And then on the U-shaped bay windows,  
7 there are 24 total for the four buildings.

8 Q So there are no other windows other than  
9 those four categories. Correct?

10 A Within -- I mentioned approximately four  
11 foot by four foot windows. In our repairs we found  
12 the breezeways were all one type at four foot by  
13 four foot. A couple of those on the end walls were  
14 a couple inches different. But in terms of getting  
15 quantities, I grouped those together.

16 Q So if we do the math, whatever 144 plus  
17 144 plus 32 plus 24, that's the total number of  
18 windows?

19 A Yes.

20 Q Now, have you got notes that indicate how  
21 many of the 144 eight foot by three foot fixed  
22 windows were original to the building?

23 A I should.

24 Q Before we start talking about them, what  
25 are the four pages that you pulled? What are those?

1 A Yes. Ocean elevation, sliding glass  
2 doors, fixed windows and the bay windows.

3 Q Help me decipher what you've got here.

4 A Okay. Basically the N is for new, the O  
5 is for old. There is an elevation -- ocean  
6 elevation of each building. Subtotal on each page  
7 for each building. And then building D -- The page  
8 for building D has a total of those amounts for new  
9 sliders, new fixed, old sliders and old fixed.

10 Q If we go to the fourth page, which is  
11 labeled building D, the window counts are only for  
12 the ocean side?

13 A Correct.

14 Q Do you have window counts for the other  
15 three elevations?

16 A In terms of old versus new, I don't have  
17 field notes on that. But all breezeway windows are  
18 old windows. And to the best of my knowledge, all  
19 the end wall windows, you know, not including the  
20 U-shaped bay windows, on north and south elevations  
21 are also new.

22 Q So all breezeway windows are old. All  
23 end wall, not including the U-shaped, windows are  
24 new?

25 A Yes.

1 A These are field notes taken from either  
2 the ground or a balcony which are -- Basically I've  
3 marked -- That's an elevation drawing of the  
4 building, and I've marked whether it appears to be  
5 an old or new either door or window. So going  
6 through these, there should be a total.

7 Q I want to mark that as an exhibit. Is  
8 that something I can give to Janice and have her  
9 reproduce and then mail back to you, or can you-all  
10 make color copies?

11 A We can make copies right now.

12 Q Can you make color copies?

13 A Yeah.

14 Q If we can have a color copy made.

15 (Recess taken.)

16 A I should clarify. These are  
17 approximations taken some from the balcony but some  
18 notes from the ground. So there may be a small  
19 margin of error in these.

20 (Exhibit No. 57 marked for  
21 identification.)

22 BY MR. COBB:

23 Q If we do the math -- What we've marked as  
24 Exhibit 57 also includes the sliding glass doors as  
25 well?

1 Q Are there any other windows on the  
2 breezeway street side other than old windows?

3 A There is not.

4 Q Are there any of the windows on the end  
5 walls other than the U-shaped windows and then these  
6 new windows that you just described?

7 A No. I think there are six of those other  
8 windows per end wall. That's not shown on these  
9 sheets.

10 Q So the end walls, there are a total of  
11 six non-U-shaped windows?

12 A Yes.

13 Q And then there's three U-shaped windows  
14 per side. Correct?

15 A Yes.

16 Q With regards to the total, on the ocean  
17 side of the four buildings there's, by your  
18 calculation, 111 new sliding glass doors that are  
19 being replaced?

20 A Correct.

21 Q 72 fixed windows being replaced?

22 A Correct.

23 Q 97 old sliding glass doors being  
24 replaced?

25 A Correct.

- 1 Q And 72 old fixed windows being replaced?  
 2 A Correct. Again, these were field notes  
 3 taken from the ground level. So they may not be  
 4 perfect, but they are the best I could decipher from  
 5 the ground.  
 6 Q Of the fixed windows that are new and  
 7 old, how many of those are the 8 x 3s versus the  
 8 4 x 4s?  
 9 A All fixed windows are 8 x 3s.  
 10 Q On the ocean side?  
 11 A Yes.  
 12 Q So when you gave me earlier a total of  
 13 144 fixed windows 8 x 3, 72 of them are old and 72  
 14 are new. So the math works out as 50 percent?  
 15 A Yes.  
 16 Q The 144 4 x 4 sliding windows that are  
 17 being replaced with single-hung, where are they  
 18 located?  
 19 A That includes all the breezeways and two  
 20 windows on each end wall.  
 21 Q If there are two on each end wall, that's  
 22 four per building. So that's 16?  
 23 A Yes.  
 24 Q So of the 144 4 x 4 sliding windows being  
 25 replaced with single hung, only 16 of those are new

- 1 some point during some repair?  
 2 A Right. New referring to something that  
 3 appears to have been replaced in the last maybe ten  
 4 years or so, and then old being -- appearing to be  
 5 quite older than ten years.  
 6 Q How many of these windows did you water  
 7 test?  
 8 A I'd have to look in our report here.  
 9 Looking at this sheet in our 2012 report, the final  
 10 in April, the site plan, it looks like five of our  
 11 15 -- I'm sorry, five of our 14 test areas included  
 12 windows.  
 13 Q Which windows?  
 14 A Test area three includes small windows on  
 15 building C, south elevation. And those are the  
 16 small two foot windows.  
 17 Q South elevation is one of the sides?  
 18 A Yes. Building B, test area 11, ocean  
 19 elevation, unit 108 is a tall eight foot fixed  
 20 window.  
 21 Q And looking at the chart, is that an old  
 22 window or a new window?  
 23 A It looks like a new window.  
 24 Q What's the third one?  
 25 A Test area two is on building B, south

- 1 windows and the remaining 128 are old windows?  
 2 A Yes.  
 3 Q The 32 2 x 3 and a half foot windows  
 4 being replaced with single-hung windows, where are  
 5 they located?  
 6 A On the first, second and third floor of  
 7 the end walls. I'd have to look at a photograph. I  
 8 think there's also one on the fifth floor that's not  
 9 shown on these marked-up drawings that we're looking  
 10 at.  
 11 Q Are those original windows or new  
 12 windows?  
 13 A Those are new.  
 14 Q And then the 24 U-shaped bay windows are  
 15 on the sides of the building?  
 16 A Yes.  
 17 Q And there are six per building?  
 18 A Yes.  
 19 Q Are those old or new?  
 20 A Earlier I estimated about half and half.  
 21 Let's see. 12. So it looks like it is half are old  
 22 and half are new based on these notes.  
 23 Q And then for purposes of our discussions  
 24 years from now, old is -- you equate old to be  
 25 original, new being something that was replaced at

- 1 elevation, unit 416, and that's a fifth floor  
 2 window.  
 3 Q Is that an old or a new window?  
 4 A It should be a new window. Yes, that  
 5 looks like a new window.  
 6 Q No. 4?  
 7 A Test area one, bay windows at building B,  
 8 as in boy, south elevation. In that location our  
 9 water was sprayed above the third floor window and  
 10 cascaded down all three. The top two, second floor  
 11 and third floor are old. The first floor is new.  
 12 Q Did any of those windows leak?  
 13 A They did. The second floor window.  
 14 Q Did the first floor window leak?  
 15 And I guess just to be precise, did the  
 16 first floor window fail your water testing?  
 17 A We had water intrusion on level two and  
 18 three. We did not observe water intrusion on level  
 19 one.  
 20 Q If there is no observable water intrusion  
 21 on the new window which is at the first level, why  
 22 is that window being replaced?  
 23 A Similar to what we've discussed  
 24 yesterday, in tying the surrounding wall cladding  
 25 elements into that opening is preferred to trying to



1 leave a unit in place and tie into an existing  
2 window or door, either pulling it out and putting it  
3 back in or tying into the in-place unit.

4 Q Is there a construction deficiency that  
5 justifies the removal and replacement of that  
6 window?

7 A Of that window on -- that specific  
8 window? I would have to look into that to see if  
9 that falls into our impact-rated concerns. I'm not  
10 sure.

11 Q Other than there being some issue about  
12 the window possibly not being impact rated, is there  
13 any other construction deficiency that would justify  
14 the removal of that window?

15 A The tying in of the components and  
16 cladding adjacent to it.

17 Q What's wrong with the cladding adjacent  
18 to that window?

19 A Based on our test cuts, the waterproofing  
20 is not tied into the windows in those areas.

21 Q But you just water tested it and it  
22 didn't leak. Correct?

23 A Yes, sir.

24 Q That would indicate, wouldn't it, that  
25 the waterproofing was adequate for the volume of

1 window.

2 A No water intrusion was observed in that  
3 area.

4 Q What's the basis of removing and  
5 replacing that window if it passed your spray test?

6 A The same concerns as the others in the  
7 tying in of the cladding to that window.

8 Q How much water did you subject that  
9 window to?

10 A We did a two hour cascading water test  
11 with no pressure.

12 Q Are you aware of that window being  
13 exposed or subjected to that volume of water in the  
14 historical use of that window?

15 A I have not looked into that.

16 Q Do you know whether your spray test  
17 subjected the window to more water than it has ever  
18 been subjected to during its existence at that  
19 project?

20 A I do not know that.

21 Q Isn't that one of the requirements of the  
22 AAMA testing?

23 A AAMA in forensic testing allows for some  
24 judgment to be used in using procedures from other  
25 AAMA tests, and we have seen in previous cases of

1 water that you subjected that window to?

2 A In that particular case, yes. But if  
3 those are representative installations of the rest  
4 of the building, then we are concerned with those  
5 installations.

6 Q You have concerns, but you tested your  
7 concern at least as to that window, and that window  
8 did not exhibit any signs of leaking. Correct?

9 A That specific window did not.

10 Q So you would agree with me that there is  
11 no known construction deficiency that justifies the  
12 removal of that window?

13 MR. FLYNN: Object to the form.

14 A Within the manufactured unit of the  
15 window, that would get into our impact rating  
16 discussion. But besides that, within the  
17 manufactured unit, I'm not aware of whether there  
18 are issues there.

19 BY MR. COBB:

20 Q Let's jump back. The first three windows  
21 where you spray tested, did those three leak?

22 A Which one do you want to look at first?

23 Q No. 3.

24 A Test area three?

25 Q Small window, C elevation, small two foot

1 water testing where, you know, water saturates  
2 through the components and can be an issue, and that  
3 is what we addressed there.

4 Q I'm going to be fair to you. I represent  
5 some window manufacturers. Where in AAMA 511 does  
6 it say what you just said?

7 A Do you have --

8 Q I do not have a copy with me.

9 A I believe it discusses cascading water  
10 tests.

11 Q Didn't AAMA 511 also require there to be  
12 some historical investigation into the amount of  
13 water or the problems?

14 A It might.

15 Q Do you know that?

16 A It probably does.

17 Q And you didn't do that, did you?

18 A I did not do that.

19 Q Does AAMA 511 specifically say that you  
20 can use other methodologies and comply with AAMA  
21 511, or does it say that AAMA 511 is the sole test  
22 to be done on a forensic examination of a window  
23 that's been installed for greater than six months?

24 A AAMA 511 references -- I believe it's  
25 AAMA 502 and 503.

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">Page 267</p> <p>1 Q And 502 refers to newly manufactured<br/>2 windows. Correct?<br/>3 A I would have to pull them up.<br/>4 Q If 502 refers to newly installed or newly<br/>5 manufactured windows, that would not apply to what<br/>6 was done at Shipwatch. Correct? Or likewise --<br/>7 A Again, if we can pull that up, we can<br/>8 look at it and I'll confirm that.<br/>9 Q Likewise, if 511 says that it's the sole<br/>10 test for windows that have been installed in the<br/>11 field for greater than six months, that would be the<br/>12 test that AAMA would recognize as appropriate for<br/>13 Shipwatch. Correct?<br/>14 A Yeah, we'd have to look at that.<br/>15 Q Spray test No. 2 was test No. 11D, ocean<br/>16 side, unit 108. Did that window fail your spray<br/>17 test?<br/>18 A In that location we tested the<br/>19 surrounding components and cladding only and water<br/>20 intrusion was observed within the metal stud<br/>21 framing.<br/>22 Q How much water did you subject that<br/>23 window to?<br/>24 A We did a 30 minute cascading water test.<br/>25 Q How much pressure?</p> | <p style="text-align: right;">Page 269</p> <p>1 building A. Water spray testing was not performed.<br/>2 We did a sill dam test. And this test area includes<br/>3 two different windows on level five of unit 408.<br/>4 Q What AAMA test authorizes a sill dam<br/>5 test?<br/>6 A I can't recall.<br/>7 Q Are you aware whether any AAMA testing<br/>8 protocol authorizes a sill dam test?<br/>9 A I am not.<br/>10 Q Did either of these windows fail your<br/>11 sill dam test?<br/>12 A They did not.<br/>13 Q And were those new windows or old<br/>14 windows?<br/>15 A Those were new windows.<br/>16 Q What size windows?<br/>17 A One of them was approximately 4 x 4, and<br/>18 the other was one of the two foot windows.<br/>19 Q So what's the justification for replacing<br/>20 either of those windows?<br/>21 A That would get into the impact-rated<br/>22 concerns and the tying in of the surrounding<br/>23 components and cladding to those windows.<br/>24 Q And you would agree with me that the<br/>25 volume pressure on your sill dam test was probably</p>    |
| <p style="text-align: right;">Page 268</p> <p>1 A Zero pressure.<br/>2 Q How far away was the nozzle?<br/>3 A 12 inches.<br/>4 Q In your opinion does that accurately<br/>5 replicate wind-driven rain?<br/>6 A Because we didn't have air pressure<br/>7 pulled on it, I guess not wind-driven rain.<br/>8 Q The third spray test is at test No. 2, B<br/>9 building south, unit 416. Did that window fail your<br/>10 spray test?<br/>11 A You said test area two. Correct?<br/>12 Q You told me that it was No. 2, B south,<br/>13 unit 416, fifth floor.<br/>14 A Yes.<br/>15 Q How much water did you subject that<br/>16 window to?<br/>17 A We ran the test for 75 minutes. We<br/>18 observed water 30 minutes into the test.<br/>19 Q How much pressure?<br/>20 A No pressure.<br/>21 Q And how far away was the nozzle?<br/>22 A 12 inches.<br/>23 Q Let's go to the fifth spray test. We<br/>24 haven't talked about that one yet.<br/>25 A Test area 13 is on the south side of</p>                                                                                                                                                            | <p style="text-align: right;">Page 270</p> <p>1 greater than either of those windows would be<br/>2 subjected to during a normal rain event. Correct?<br/>3 A During an average rain event, yes, it<br/>4 would be more than average.<br/>5 Q Let's talk about the sliding glass door<br/>6 count. According to the fourth page of Exhibit 57,<br/>7 there are 208 sliding glass doors on the property?<br/>8 A That only counts the ocean elevation.<br/>9 Q So 208 sliding glass doors on the ocean<br/>10 elevation?<br/>11 A Correct.<br/>12 Q And you've got that of the 208, 111 are<br/>13 considered new and 97 are considered old or<br/>14 original. Correct?<br/>15 A Yes, sir.<br/>16 Q And the repairs include removing and<br/>17 replacing all 208 of those sliding glass doors on<br/>18 the ocean side. Correct?<br/>19 A Yes.<br/>20 Q How many sliding glass doors are there<br/>21 elsewhere on the property?<br/>22 A The fifth floor street or west elevations<br/>23 have eight total sliding glass doors per building.<br/>24 Q So 32 total.<br/>25 A And then --</p> |

6 (Pages 267 to 270)

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1 Q How many of those 32 are old and new?  
 2 A That's probably in another set of notes  
 3 that I can look for if you'd like me to.  
 4 Q Sure. While you're doing that, there  
 5 aren't any other sliding glass doors, are there?  
 6 A There are some right here (indicating).  
 7 We've been calling those corner balconies. It's  
 8 facing the street, but it's on the end wall.  
 9 There's one on each floor, floors one, two and  
 10 three.  
 11 Q So end wall corners have one sliding  
 12 glass door per side?  
 13 A Per balcony, yeah, per floor. So six per  
 14 building, three per side.  
 15 Q So six per building?  
 16 A 24 on the total property.  
 17 Q For a grand total of 264 sliding glass  
 18 doors.  
 19 A I've got notes on three buildings. I  
 20 would have to dig through photographs to find that  
 21 information on building D. Is that something you'd  
 22 like me to do?  
 23 Q No. Let's see if we can plug along. So  
 24 the fifth floor street side, 32 sliding glass doors,  
 25 you've got three of the four buildings?

1 A Yes. I have field notes for three of the  
 2 four buildings on whether or not they are old or  
 3 new.  
 4 Q So just give me the building and old or  
 5 new.  
 6 A Building A, the notes are showing seven  
 7 of the eight.  
 8 Q Are?  
 9 A Are new.  
 10 Q Building B?  
 11 A Building B, the notes are showing three  
 12 of the sliding doors are new. These notes are by  
 13 Ryan Weyant, W-e-y-a-n-t.  
 14 Building C, notes show three of the eight  
 15 sliding doors are new on the fifth floor street  
 16 side.  
 17 Q Did any of the water spray testing that  
 18 you performed involve any of the fifth floor street  
 19 side sliding glass doors?  
 20 A I believe so. Test area 12.  
 21 Q Where was that?  
 22 A That is the fifth floor street side of  
 23 building D, unit No. 427.  
 24 Q Did that sliding glass door fail your  
 25 spray test?

1 A We observed water intrusion in the  
 2 adjacent wall components.  
 3 Q Is that an old or a new sliding glass  
 4 door?  
 5 A That is new.  
 6 Q And how long did it take for the water to  
 7 appear?  
 8 A That is not in this report. That may be  
 9 in notes that are on the digital files; or it could  
 10 be that we ran the water, and that when we stopped  
 11 and cut open, we saw water. I'm not sure based on  
 12 what we're showing here exactly when that water  
 13 began.  
 14 Q What was the construction deficiency that  
 15 led to the water intrusion?  
 16 A Improper terminations of the facade  
 17 components adjacent to the door.  
 18 Q What does that mean?  
 19 A Waterproofing wasn't tied in in the wall.  
 20 Q Did you spray test any other fifth floor  
 21 street side sliding glass door?  
 22 A We did not.  
 23 Q The sliding glass doors that are at the  
 24 end wall corners, which are six per building, are  
 25 those old or new?

1 A I'm not sure. That, I would have to look  
 2 at photographs. I'm not sure we have field notes on  
 3 that.  
 4 Q Did you spray test any of those?  
 5 A We did not.  
 6 Q Do you have photographs that you can look  
 7 at to tell me whether or not they are old or new?  
 8 A Yeah.  
 9 Q Can you do that real quick?  
 10 A I can do it. I'm not sure how long that  
 11 will take, but I can try to.  
 12 Q When we go out there and look at this  
 13 area that you described as the end wall corners,  
 14 what would we be looking for to decide whether it is  
 15 an old sliding glass door or a new sliding glass  
 16 door?  
 17 A The old versus the new are visibly  
 18 different in terms of color and size of the aluminum  
 19 frame.  
 20 Q What's the difference in color?  
 21 A The older ones are a lighter brown, where  
 22 the newer ones are a darker bronze.  
 23 Q Thanks for looking. Let's see if we can  
 24 move on a bit.  
 25 Going back to Exhibit 57, I want to

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
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| <p style="text-align: right;">Page 275</p> <p>1 confirm a couple of things. With regards to the<br/> 2 windows, the totals, you told me that there were 72<br/> 3 old eight foot by three foot windows. Correct? On<br/> 4 the ocean side. Correct?<br/> 5 A Yes.<br/> 6 Q And the 72 old eight foot by three foot<br/> 7 windows are all located on the ocean side of<br/> 8 building C and D. Correct?<br/> 9 A That's correct.<br/> 10 Q There are no new eight foot by three foot<br/> 11 windows currently installed on the ocean side of<br/> 12 buildings C and D. Correct?<br/> 13 A Right, prior to our work.<br/> 14 Q So the repair work that's being done is<br/> 15 the removal of the 72 old eight foot by three foot<br/> 16 windows on the ocean side of buildings C and D.<br/> 17 Correct?<br/> 18 A Yes.<br/> 19 Q With regards to the sliding glass doors,<br/> 20 there are 52 sliding glass doors on the ocean side<br/> 21 of each building. Correct?<br/> 22 A That sounds correct.<br/> 23 Q One sliding glass door per unit.<br/> 24 Correct?<br/> 25 A Yes. The fourth floor -- fourth and</p>                                                                                                                                  | <p style="text-align: right;">Page 277</p> <p>1 ocean side of C and D. The exact locations, I'm not<br/> 2 a hundred percent sure where it stops and starts.<br/> 3 I'm not sure that I know of a pattern of it.<br/> 4 Q Where is the DEFS installed on the ocean<br/> 5 side of buildings C and D?<br/> 6 A I'm not sure. There is some EIFS and<br/> 7 some DEFS. I would say most of it is DEFS, but I<br/> 8 couldn't quantify that, or I have not quantified<br/> 9 that.<br/> 10 Q Is there DEFS on the first floor of the<br/> 11 ocean side of building C and D?<br/> 12 A I believe there was, yes.<br/> 13 Q Can you tell me where?<br/> 14 A Again, I specifically don't know. You<br/> 15 know, during our demo of the current work, there was<br/> 16 EIFS and DEFS. Most of it DEFS. Some of it EIFS.<br/> 17 I can't recall where one portion specifically<br/> 18 stopped and the other began. During their demo can<br/> 19 be -- they don't want necessarily want engineers<br/> 20 standing right behind them.<br/> 21 Q Let's move along. Page 7 of your January<br/> 22 11, 2012 report, item 2, little e, "Some doors have<br/> 23 storm shutters installed on the outside face of the<br/> 24 surrounding facade and top of the balcony deck. The<br/> 25 shutters have been moved in many locations leaving</p> |
| <p style="text-align: right;">Page 276</p> <p>1 fifth floor is one unit. So they will have a slider<br/> 2 on the fourth floor -- one slider on the fourth and<br/> 3 one on the fifth. That is a two-story unit.<br/> 4 Q And exactly half of the sliding glass<br/> 5 doors being removed and replaced on buildings C and<br/> 6 D are old. Correct?<br/> 7 A Half of sliders, C and D?<br/> 8 Q 52 out of 104. 26 per building.<br/> 9 A That sounds correct. Would you repeat<br/> 10 that again? Half of the old sliders on -- Yes.<br/> 11 Yes, that's correct.<br/> 12 Q And you would agree with me that none of<br/> 13 the folks involved in subsequent repairs after<br/> 14 original construction are responsible for the<br/> 15 problems associated with the old sliding glass doors<br/> 16 or the old windows. Correct?<br/> 17 MR. FLYNN: Object to the form.<br/> 18 A We're getting into, again, the tying in<br/> 19 of components to an opening and evaluating<br/> 20 responsibility for that, and I have not done that.<br/> 21 BY MR. COBB:<br/> 22 Q On the ocean side of these buildings C<br/> 23 and D, are the old windows installed in anything<br/> 24 other than EIFS?<br/> 25 A On C and D? There is some DEFS on the</p> | <p style="text-align: right;">Page 278</p> <p>1 unsealed fastener holes through the deck coating and<br/> 2 wall cladding."<br/> 3 Did you do anything to spray test those<br/> 4 areas to find out how much water intrusion had<br/> 5 occurred as a result of the removed storm shutters<br/> 6 and lack of sealant on those holes?<br/> 7 A Can you repeat the page that you're on?<br/> 8 Q Page 7.<br/> 9 A Of the April 2012?<br/> 10 Q Of the January 11, 2012 report.<br/> 11 A Could you please repeat the question?<br/> 12 Q That paragraph (indicating).<br/> 13 A Right. I was flipping to that.<br/> 14 Q Did you do any water testing to determine<br/> 15 if there's water intrusion where folks did not seal<br/> 16 the fastener holes?<br/> 17 A I did not do water testing in that<br/> 18 location.<br/> 19 Q Any idea of when you say "some doors have<br/> 20 storm shutters that have been removed" what the<br/> 21 count is?<br/> 22 A Actually, I don't. It was hit or miss<br/> 23 where those storm shutters were.<br/> 24 Q Let's talk about the deck coating, which<br/> 25 is item No. 3 on page 7 of the January 11, 2012</p>                                                                                                                                                                           |

8 (Pages 275 to 278)

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1 Carolina Concrete and its subs during the work with  
 2 regards to when they discovered a corroded stud what  
 3 to do?  
 4 A I'm not aware of that.  
 5 Q So you're not aware of the instructions  
 6 that the Shipwatch folks gave to Carolina Concrete  
 7 about that?  
 8 A No, I'm not.  
 9 Q With regards to the chimney framing  
 10 issue, what is the problem with the chimneys that  
 11 necessitated a complete rebuild?  
 12 A Our structural engineer, Tim Cook,  
 13 determined that they would not adequately meet the  
 14 wind load requirements.  
 15 Q And why not?  
 16 A Just the framing components and  
 17 connections were inadequate.  
 18 Q Did you-all test the original  
 19 construction of the chimneys, or are these  
 20 remediated chimneys?  
 21 A These are the chimneys as we found them  
 22 in this phase of work.  
 23 Q Do you know whether they were original to  
 24 the building or whether or not they were at some  
 25 point added later?

1 A I do not.  
 2 Q Did it appear that they were added later?  
 3 A It's hard to tell. I don't know.  
 4 Q Did anybody do any type of investigation  
 5 about the chimney caps, whether or not they were  
 6 leaking or whether or not they needed to be replaced  
 7 as well?  
 8 A Chimney caps?  
 9 Q Or the spark arrestor or whatever the  
 10 apparatus is.  
 11 A Oh, those are being replaced. They were  
 12 corroded and had broken components -- broken metal  
 13 pieces on them. The caps themselves, I'm not sure  
 14 if we did water testing on those.  
 15 Q Are you aware of any warnings given by  
 16 Bob Wiggins to Shipwatch about the chimneys, the cap  
 17 and the spark arrestors during the history of  
 18 Carolina Concrete's work at the project?  
 19 A It's my understanding that Linda Jernigan  
 20 prior to our work, our design work beginning, was  
 21 aware of the problems associated with the spark  
 22 arrestor pieces.  
 23 Q And what was she aware of?  
 24 A That they needed to be replaced.  
 25 Q And who told her about that?

1 A I do not know.  
 2 Q It would be safe to assume that she  
 3 didn't climb up and inspect that area. Correct?  
 4 A That's a reasonable assumption.  
 5 MR. COBB: Since we finally agree on  
 6 something, I'll quit asking you questions. Thank  
 7 you for your time.  
 8 (Recess taken.)  
 9 EXAMINATION  
 10 BY MR. KELLY:  
 11 Q Mr. Isaacs, my name is Britt Kelly. I'm  
 12 down in Charleston. I'm sorry I couldn't be there  
 13 with you today, but I'll try to do my best over the  
 14 phone.  
 15 If you would, please allow me to finish  
 16 my question before you begin to respond and  
 17 hopefully we'll be okay.  
 18 A Okay.  
 19 Q My first question for you, have you ever  
 20 worked for a window manufacturer or distributor?  
 21 A I have not.  
 22 Q Have you ever worked for any product  
 23 supplier?  
 24 A I have not.  
 25 Q Do you believe you're an expert

1 concerning the duties and responsibilities of a  
 2 product manufacturer or a distributor?  
 3 A I am not.  
 4 Q At various points during your examination  
 5 by Mr. Cobb you referenced -- I think your term was  
 6 "impact-glass concerns." Do you remember that?  
 7 A Yes, sir.  
 8 Q Can you describe that for me, please?  
 9 What exactly are you talking about there?  
 10 A When we were looking into information on  
 11 the sliding doors and windows, our research led us  
 12 to believe that the sliders are not impact rated. I  
 13 don't have the notes in front of me, but I think  
 14 that came from discussions with EFCO technical  
 15 services and finding out what actual units were on  
 16 the building.  
 17 Q Did you have those discussions with the  
 18 EFCO technical services people?  
 19 A I can't recall. That sounds correct. We  
 20 could look -- I'm not sure if we have notes on that.  
 21 Q Do you typically take notes like that?  
 22 A Yeah, we should have something related to  
 23 that.  
 24 Q Do you have your entire file in front of  
 25 you?

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1 A We do.

2 Q Not right now, but maybe at some point we

3 can pull those out. But my question, I guess, what

4 I'm trying to get at is, do you know if the phone

5 call was with the EFCO people at one of their

6 locations or W.C. Johnston folks?

7 A I can't recall specifically.

8 Q How long do you think it would take you

9 to put your hands on that note?

10 A We've got a big pile here. I'm just not

11 sure. I could take some time and start digging.

12 Q Why don't we table that for a second and

13 we'll come back to that before we wrap up.

14 Was there any other research that you did

15 to determine whether or not any of the EFCO products

16 was impact rated?

17 A We did not. I don't think so.

18 Q Your concern about the impact rated or

19 impact ratings of the glass of the EFCO product, is

20 that limited just to the sliding glass doors, or

21 does it relate to other products?

22 A I believe it relates to the other

23 products.

24 Q What other products at Shipwatch do you

25 believe EFCO manufactured and distributed?

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1 A I'm not sure. Off the top of my head,

2 I'm not sure. I guess I was under the assumption

3 that most of the new materials that we discussed in

4 the previous questioning were generally EFCO

5 products -- sliding windows and fixed windows and

6 bay windows. It's my understanding that those were

7 also EFCO. But I don't have notes on that in front

8 of me.

9 Q How did you gain the understanding that

10 the bay windows were EFCO products?

11 A Again, I'm not sure. I would have to

12 look in my notes to see if they are or not.

13 Q What type of notes did you make to show

14 the manufacturer of a product?

15 A I know on several of the products there

16 are some notes from the manufacturers, either

17 stamped on the aluminum frame or perhaps on the

18 glass.

19 We've also had some -- I guess some

20 verbal communication with the owner indicating that

21 in general most of the products were EFCO products.

22 Q Who is the owner you're referring to?

23 A Linda Jernigan.

24 Q Mr. Cobb referenced a number of original

25 door and window units on the project. I'm trying to

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1 use his language as best I can. You know when

2 you're out there -- I guess buildings C and D are

3 undergoing the repairs now. But before they did, if

4 you were in one of the units in the living room,

5 there's a sliding glass door and then some fixed

6 windows next to that sliding glass door. Does that

7 sound familiar?

8 A Yes.

9 Q The majority of those units, at least you

10 believe that the sliding glass doors and the fixed

11 windows that were installed prior to this latest

12 round of construction work were original to the

13 building?

14 A I'll pull up that sheet that I just had.

15 It looks like based on these notes -- I forget what

16 exhibit that was, but these elevation drawings of

17 making notes of old versus new, it appears that in

18 the family room most of those sliding doors are old.

19 Q What about the fixed windows that are

20 next to those sliders on floors one through three of

21 buildings C and D?

22 A Buildings C and D, those fixed windows

23 are all old according to these notes.

24 Q Did you gain an appreciation for how old

25 those fixed windows and sliding glass doors in the

Page 306

1 living rooms of floors one through three of

2 buildings C and D were?

3 A Again, what we're calling new was

4 probably within the last eight to ten years

5 approximately. And then what we're calling old,

6 based on the color and things we discussed

7 previously, definitely more than that. 20 plus

8 years would be a reasonable approximation.

9 Q Remind me how you described the

10 differences between the new product and the old

11 product.

12 A For these notes, you know, taken from the

13 ground and looking up at the building, and in

14 general when we did go to actual units on balconies

15 and end units, the new windows had a much darker

16 bronze frame with much wider aluminum frame

17 components, and the older units had a noticeably

18 faded color to a lighter brown and more narrow

19 aluminum components.

20 Q How would you describe the difference, if

21 any, in the glass between the new and the old

22 product?

23 A I'm not sure I looked too closely at the

24 glass itself. There is a slightly different color

25 in terms of thickness. I'd have to refer back to

15 (Pages 303 to 306)

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1 photographs.

2 Q Based on your experience and your  
3 observations in the field at Shipwatch on buildings  
4 C and D on floors one through three, you believe  
5 that the old doors and fixed units have impact glass  
6 within them?

7 A I do not believe that they had that.

8 Q When was the decision made to replace all  
9 the windows and doors at Shipwatch with impact-rated  
10 glass product?

11 A I guess that would be after our  
12 investigative reports. So our last one was April  
13 12th. And after that April 12th report, we met with  
14 the Shipwatch HOA and discussed remediation.  
15 Specifically a date, I'm not sure of a specific  
16 date.

17 Q Who was at that meeting?

18 A These were telephone calls and site  
19 meetings between Jeff Miller and Shipwatch.

20 Q Were you part of those?

21 A I was not an integral part. I may have  
22 listened into some phone calls or attended one or  
23 two meetings that I don't remember specifically.  
24 But Jeff was in charge of leading those discussions.

25 Q What do you remember about the first

1 Q How were you under that impression?

2 A We were told by Shipwatch.

3 Q Do you recall if the suggestion to  
4 replace all the windows and doors was raised by  
5 someone at Sutton-Kennerly or raised by the owners?

6 A That was likely an SKA decision. I think  
7 we considered the idea. I think we tried to find  
8 out if we could improve the existing newer products,  
9 and I think the conclusion was that that was not a  
10 preferred method of repairs in terms of, I guess,  
11 cost and time. I can't remember if it could or  
12 could not have been done at all.

13 Q It sounds like to me someone reached a  
14 conclusion that windows and doors that may not be  
15 impact rated could not remain in the buildings at  
16 Shipwatch. Is that accurate?

17 A That's correct.

18 Q Who made that determination?

19 A Sutton-Kennerly.

20 Q Did you participate in that analysis?

21 A I assisted Jeff Miller in that analysis.

22 Q How was that determination made that  
23 non-impact rated product could not remain in the  
24 buildings at Shipwatch?

25 A Because they are in a wind region that

1 meeting or phone call you had where an issue was  
2 brought up about removing and replacing the windows  
3 and doors at Shipwatch because of impact glazing?

4 A What's the question about the impact  
5 glazing?

6 Q What do you recall about the first  
7 meeting or phone call that you participated in where  
8 an issue was brought up about replacing the windows  
9 and doors because of impact-rating concerns?

10 A I don't recall specifically. I'm sure  
11 after we discovered they were not impact rated, we  
12 mentioned that to them. I don't specifically  
13 remember doing that or when it happened.

14 Q In 2009, you authored a report with  
15 Mr. Parker about the conditions of the building.  
16 Correct?

17 A That's correct.

18 Q And those same old windows and doors were  
19 installed in the building at that time. Right?

20 A That's correct.

21 Q And an observation could have been made  
22 to determine that those windows and doors did not  
23 have impact glazing. Correct?

24 A Yeah. We were under the impression that  
25 the owner had a schedule in place to replace those.

1 requires impact-rated components.

2 Q For new product?

3 A Yes. That's my understanding.

4 Q And what standard or authority are you  
5 relying upon for that proposition?

6 A I believe that's in the IBC,  
7 International Building Code.

8 Q What version of the IBC?

9 A I don't have those in front of me. Like  
10 we mentioned earlier, several phases of work were  
11 done at different times. So there may be different  
12 codes applicable at different times of work being  
13 performed.

14 Q What I'm talking about is what standard  
15 you believe governs the decision Sutton-Kennerly  
16 made to remove and replace all the product with an  
17 impact-rated product?

18 A I believe that was the building code. We  
19 have a structural engineer. I do not personally do  
20 structural engineering. And he is more familiar  
21 with the building code, and he also assisted Jeff  
22 Miller in reaching that conclusion. And he is more  
23 familiar with the building code and how it applies  
24 to wind-related items than myself.

25 Q What is his name?

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
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| <p style="text-align: right;">Page 311</p> <p>1 A Tim Cook, C-o-o-k.<br/> 2 Q It seems that over 50 percent of the<br/> 3 building had what was known to everyone as<br/> 4 non-impact glazing product within it for a number of<br/> 5 years and no recommendation was made to replace all<br/> 6 of that product with impact-rated glazing. So how<br/> 7 did it come about in 2012 that a decision was made,<br/> 8 okay, now we need to replace everything with<br/> 9 impact-glazed product?<br/> 10 A Again, we were under the impression in<br/> 11 2009 that a plan was in place already to update<br/> 12 those products.<br/> 13 Q So is it acceptable for non-impact rated<br/> 14 product to be in the building between 2000 and<br/> 15 2009?<br/> 16 A For it to be in the building at all?<br/> 17 Again, I'm not as familiar with the wind<br/> 18 requirements in the building code. I believe it<br/> 19 applies to the time of installation and repairs.<br/> 20 I'm just not sure.<br/> 21 Q What jurisdiction had authority over the<br/> 22 replacement work that was performed at Shipwatch in<br/> 23 the 2000s?<br/> 24 A Can you repeat that, please?<br/> 25 Q What jurisdiction relative to the</p> | <p style="text-align: right;">Page 313</p> <p>1 Q Have you reviewed any of the project<br/> 2 documents produced by Carolina Concrete?<br/> 3 A I have not.<br/> 4 Q Same question for Charleston Glass. Have<br/> 5 you reviewed any of their project documents?<br/> 6 A I have not.<br/> 7 Q What about EFCO or W.C. Johnston<br/> 8 Architectural Sales?<br/> 9 A I have not.<br/> 10 Q Did the 1997 Standard Building Code<br/> 11 require impact glazing in window and door products?<br/> 12 A I do not know for sure. I do not believe<br/> 13 that it did.<br/> 14 Q I've reviewed your reports and it looks<br/> 15 to me like Sutton-Kennerly &amp; Associates water tested<br/> 16 several EFCO products, some windows and doors. Do<br/> 17 you believe that to be the case?<br/> 18 A Yes.<br/> 19 Q Did any of the water testing performed by<br/> 20 Sutton-Kennerly &amp; Associates reveal failures with<br/> 21 the EFCO products?<br/> 22 A No. We had some -- a small amount of<br/> 23 water come in on one sliding door while applying<br/> 24 pressure, but that water did not drip over the edge<br/> 25 in order to constitute a leak. So, no, there was</p> |
| <p style="text-align: right;">Page 312</p> <p>1 building department had authority over the<br/> 2 replacement work at Shipwatch that occurred in the<br/> 3 2000s?<br/> 4 A Well, they would have used South<br/> 5 Carolina -- State of South Carolina adopts the<br/> 6 International Building Code, and whatever building<br/> 7 code they had adopted at that time would be their<br/> 8 governing code. And then the Isle of Palms -- the<br/> 9 City of Isle of Palms also has a building department<br/> 10 for construction work.<br/> 11 Q Do you know what the Isle of Palms' code<br/> 12 adoption history is?<br/> 13 A I do not.<br/> 14 Q Do you know if the Isle of Palms building<br/> 15 department had authority to permit work at Shipwatch<br/> 16 during the 2000s?<br/> 17 A I do not know that for sure, but that<br/> 18 seems reasonable.<br/> 19 Q The building official has the ability to<br/> 20 permit work under a certain version of the code?<br/> 21 A Yes. I would say, yes, that sounds<br/> 22 correct.<br/> 23 Q What building code was the Shipwatch<br/> 24 window and door replacement work permitted under?<br/> 25 A I'm not aware.</p>                                              | <p style="text-align: right;">Page 314</p> <p>1 not a failure.<br/> 2 Q Is that the one you referred to in the<br/> 3 report as spitting in the glass?<br/> 4 A That's correct.<br/> 5 Q But you deemed that to pass the test?<br/> 6 A I believe so. Let me look up that actual<br/> 7 area to remember.<br/> 8 That's correct. Test area 14, no water<br/> 9 intrusion was attributed to the manufactured door<br/> 10 unit.<br/> 11 Q Are you aware of any failures of the EFCO<br/> 12 products that have led to water intrusion into the<br/> 13 building or the building cavity?<br/> 14 A I'm not aware of that.<br/> 15 Q And I should specify or should clarify<br/> 16 that. I said building. I'm referring to all four<br/> 17 buildings at Shipwatch. Are you aware of any<br/> 18 failures of EFCO products that have led to water<br/> 19 intrusion into any of the four buildings or the<br/> 20 building cavity of the four buildings?<br/> 21 A I'm not aware of that.<br/> 22 Q Do you hold any opinions that the EFCO<br/> 23 products supplied at the project are defective in<br/> 24 design or fabrication?<br/> 25 A I do not have an opinion on that.</p>      |

17 (Pages 311 to 314)

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1 Q Do you know if anyone at SKA has an  
2 opinion as it relates to the products supplied to  
3 the Shipwatch job as to whether those EFCO products  
4 are defectively designed or fabricated?

5 A Jeff Miller, the project manager, would  
6 have that.

7 Q What do you believe Mr. Miller's opinion  
8 to be?

9 A I can't speak for him. But the water --  
10 You know, the manufactured units passed the water  
11 testing. So in terms of water testing that I did,  
12 they are not defective in shedding water away from  
13 the building.

14 Q Has Mr. Miller told you that he holds an  
15 opinion that the EFCO products supplied to the  
16 Shipwatch buildings are defective in some manner?

17 A He has not told me that.

18 Q But you believe he holds that opinion, or  
19 did I misunderstand you?

20 A I don't know.  
21 MR. KELLY: If you don't mind, would  
22 you take a moment to look for those notes we talked  
23 about. If you find them, I would like to get the  
24 dates on them. I want to make sure they've been  
25 produced to us.

1 A October 24, 1983.

2 Q And how long have you lived in the  
3 Charlotte area?

4 A I moved here in June of 2006.

5 Q Tell me about your education.

6 A I have a bachelor's degree in civil  
7 engineering from Clemson University.

8 Q When did you receive that?

9 A That was the spring of 2006.

10 Q Any formal education after that?

11 A No.

12 Q All of your registrations, licenses,  
13 certifications, could you list those for me?

14 A I am a professional engineer in North  
15 Carolina and South Carolina.

16 Q I am looking at Exhibit 58, and this is  
17 what you've handed to me in response to my request  
18 for a CV or resume. I think you gave it with the  
19 caveat that this may need updating.

20 A Yeah, I haven't -- I didn't produce that.  
21 That was -- I'm not sure when that was produced.  
22 But I asked our administrative assistant for a  
23 recent resume, and I haven't had a chance to review  
24 it since we sat down.

25 Q Is this something that is incorporated

1 (Lunch recess taken.)

2 (Exhibit Nos. 58 and 59 marked  
3 for identification.)

4 EXAMINATION

5 BY MR. ROOT:

6 Q Mr. Isaacs, my name is David Root. I  
7 represent BASF, which is a defendant in this lawsuit  
8 brought by the Shipwatch folks. I'll be asking you  
9 some questions today, as will these other attorneys.

10 Because we're not going to finish your  
11 deposition in total today, I'm going to limit my  
12 questions to a certain span of time reserving the  
13 right to ask you questions at a later date. Because  
14 there are a lot of photographs, et cetera, that I  
15 want to go over and get in some more detail, but at  
16 least I can cover some of the general issues today.

17 As I understood it from some of your  
18 earlier testimony, this is the first time you've  
19 been deposed?

20 A That's correct.

21 Q Let's do some background stuff, because I  
22 don't think we covered much of that. Where were you  
23 born?

24 A I was born in New Haven, Connecticut.

25 Q And when were you born?

1 within SKA's advertising, marketing-type materials?

2 A Yes.

3 Q When you speak of seven years of  
4 experience with SKA -- and we'll talk about that.  
5 We'll talk about it in reverse chronology. Have you  
6 had any jobs in the construction industry prior to  
7 SKA?

8 A I did summer work at a surveying company.

9 Q When was that?

10 A I would have to look that up. I believe  
11 that was the summer after my freshman year in  
12 college. So that would be most likely the summer of  
13 2003.

14 Q What was the nature of the surveying?

15 A It was a small surveying company that had  
16 a contract to define the boundary of the Redstone  
17 Arsenal in Huntsville, Alabama, which is a 30-plus  
18 mile perimeter of federal property, and they wanted  
19 to establish their property lines for security  
20 reasons.

21 Q When is the next job you held in the  
22 construction industry?

23 A In the construction industry, I did  
24 some -- I had some summer work at the University of  
25 Alabama Huntsville where I assisted graduate

STATE OF SOUTH CAROLINA  
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SHIPWATCH CONDOMINIUM )  
ASSOCIATION, )

Plaintiff, )

) Case No.:  
-versus- ) 2012-CP-10-3858

CAROLINA CONCRETE SYSTEMS, )  
INC., et al., )

Defendants. )

OSCAR MENDIONDO, Individually )  
and as representative of a )  
class of similarly situated )  
owners of condominium units in )  
the horizontal property regime )  
known as SHIPWATCH CONDOMINIUMS,) )

Plaintiffs, )

-versus- )

CAROLINA CONCRETE SYSTEMS, )  
INC., et al., )

Defendants. )

THE CONTINUATION OF THE DEPOSITION OF GREG  
ISAACS was taken as a witness on behalf of the  
Defendants, pursuant to South Carolina Rules of  
Civil Procedure, at 9:30 a.m. on Thursday, the 28th  
day of August 2014, at the offices of  
Sutton-Kennerly & Associates, 4651 Charlotte Park  
Drive, Charlotte, North Carolina, before Janice O.  
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1 when you did your more full report and then started  
2 work, do you know of any work that was done between  
3 that era or in that era?

4 A I'm unaware of that.

5 Q Have you reviewed your reports, the  
6 primary reports? By that, I mean the January and  
7 April reports. What have you-all been referring to  
8 today? The April report?

9 A Yes, April 2012.

10 Q Which I think encompasses most of the  
11 findings from the January report as well.

12 In any event, Exhibit 59, did you review  
13 that report prior to your deposition today, in  
14 preparation for the deposition?

15 A I did not.

16 Q You are familiar with the findings in  
17 that report. Correct?

18 A Yes.

19 Q Do you now deviate or have an opinion  
20 contrary to any of those findings?

21 A I do not.

22 Q Pro-Tec has been about two or so months  
23 late, for lack of a better term, in getting the job  
24 done. Correct?

25 A Yes.

1 expense allocation?

2 A We've had change orders, and we've had to  
3 address all of those.

4 Q As far as what would be responsive to  
5 that question, meaning something that was an  
6 atypical problem that was not perhaps anticipated  
7 when the project began, all of those type issues  
8 would be incorporated or encompassed within the  
9 change orders. Is that correct?

10 A Yeah, that's fine.

11 Q Is that fair enough?

12 A Okay.

13 Q Well, I'm asking you. Is that fair?

14 A Yes, that's fine.

15 Q You keep saying "that's fine." I'm  
16 trying to make the most succinct way to get about  
17 this, besides from going through all the change  
18 orders. If there's something else outside that  
19 realm, I wanted to speak about it. But if the  
20 change orders encompass the material changes to the  
21 work versus what was anticipated on the front end,  
22 then we are good. And you're saying yes?

23 A Yes.

24 Q Have you come to form any opinions that  
25 there was anything wrong with the DEFS as a product?

1 Q They were supposed to be done May 31st.  
2 Correct?

3 A Correct.

4 Q And it's my understanding that they got  
5 to substantial completion, in quotes, around August  
6 1st?

7 A Correct.

8 Q Do you know what the cause is for that  
9 delay?

10 A Allocating their resources, project  
11 management, getting people scheduled to do the right  
12 things at the right time. Just planning and  
13 scheduling.

14 Q On Pro-Tec's behalf?

15 A Correct.

16 Q Have there been any particular problems  
17 that you-all have experienced during the course of  
18 the construction or the remediation?

19 A Can you be more specific?

20 Q No, because I'm looking for anything that  
21 you've experienced. I don't mean just something  
22 that's a one-off or atypical, but something that was  
23 just simply not anticipated and has caused a great  
24 deal of -- I know there have been change orders, but  
25 a great deal of change in either time allocation or

1 Meaning not related to installation, but as to it as  
2 a product, in its manufacture or design, anything of  
3 that nature?

4 A No. That's more Jeff Miller's realm.

5 Q Same question as to the deck coating. Do  
6 you have any opinion that there are any deficiencies  
7 or problems in a general sense with the deck coating  
8 as a product, as it's designed or manufactured?

9 A In terms of the deck coating material  
10 itself?

11 Q Yes, sir.

12 A No.

13 Q Have you done any product literature  
14 review since we last spoke?

15 A No. Just I've been working on any new  
16 products that we use, but nothing previous.

17 Q Had any discussions with anyone from BASF  
18 since we last met?

19 A No.

20 MR. ROOT: Mr. Isaacs, those are all  
21 the questions I have for you. I appreciate your  
22 time.

23 EXAMINATION

24 BY MR. KELLY:

25 Q Mr. Isaacs, I'm on the phone. I've got

1 my kids in the car. This is probably going to be  
2 the worst deposition experience ever, but I'm going  
3 to give it a shot. I represent EFCO and W.C.  
4 Johnston Architectural Sales.

5 I asked you some questions the last time  
6 we had your deposition scheduled. And I heard some  
7 things today that made me want to clarify some of  
8 the testimony today and testimony previously. That  
9 will be the basis for my questioning today, and then  
10 we'll see how far we have to go.

11 At some point in coming up with repair  
12 plans for buildings C and D at Shipwatch, did  
13 Sutton-Kennerly & Associates consider reusing the  
14 EFCO products that were installed at those  
15 buildings?

16 A We did.

17 Q And if there were performance problems  
18 with the EFCO product installed at buildings C and  
19 D, would Sutton-Kennerly & Associates have  
20 considered reusing those products?

21 A Say that again.

22 Q If there were performance problems with  
23 the EFCO products that had been installed at  
24 buildings C and D, would Sutton-Kennerly &  
25 Associates have considered reusing those products?

1 photographs 6 and 7, but it was a small amount that  
2 is contained and, according to the AAMA guidelines,  
3 is not considered a leak.

4 Q I think you've referred to that at some  
5 point as spitting?

6 A Correct.

7 Q And you ended up passing that particular  
8 product that had been tested?

9 A That's correct.

10 Q Did any of the product you tested with  
11 water fail at Shipwatch?

12 A Can you repeat that question again as I  
13 look through these notes?

14 Q Yes, sir. I want to be very careful and  
15 precise with our language. So I want to make sure  
16 that I understand and everyone else understands that  
17 when you were testing window and door products at  
18 Shipwatch whether you were testing the window and  
19 door surrounds as far as how the product was  
20 installed or whether you were testing the product  
21 itself. Do you follow me?

22 A Yeah. We did a variety. Sometimes we  
23 would isolate the window or door itself and only  
24 test that manufactured product. Other times we  
25 would do the reverse and test only the surrounding

1 A No.

2 Q Did you administer the water testing that  
3 took place at Shipwatch?

4 A Yes. I participated in it with Eric  
5 Couch.

6 Q Did you compile the results, or was that  
7 Eric?

8 A It was both of us.

9 Q And it's my understanding from your prior  
10 testimony that you tested the EFCO product in  
11 isolation from the installation of the EFCO  
12 products. Is that correct?

13 A Yes, I believe so.

14 Q In testing the EFCO products in isolation  
15 from the installation methods, did you determine  
16 whether or not the EFCO product passed or failed the  
17 water testing?

18 A The EFCO product passed on -- Let's see.

19 Q Did you observe water penetrating through  
20 any of the EFCO product during the water test?

21 A Yes. I'm looking at test area 14. That  
22 is where we isolated just a new EFCO sliding door,  
23 covered up the surrounding facade. And we did not  
24 have a technical failure of the EFCO product.

25 We did have some water shown in

1 cladding. And then other times we would test both  
2 at the same time.

3 Q When you're considering testing a  
4 product, are you considering the way the product is  
5 installed or the way in which it has been  
6 manufactured?

7 A We are looking at the manufactured  
8 component, yes.

9 Q So when you tested the product to  
10 determine whether there were any failures of the  
11 manufacturing of the product, did you conclude that  
12 any of the tests were failures?

13 A I'm flipping through our report here.  
14 No.

15 Q Isn't it in fact only the installation  
16 methods that failed when you tested the product?

17 A That's correct.

18 Q So at various times in your deposition  
19 today when you have indicated that the window or  
20 door itself leaked, what do you mean by that?

21 A Do you have a specific location that we  
22 were talking about at the time, or are you just kind  
23 of saying in general?

24 Q I don't have anything written down. And  
25 I'll tell you my recollection is Mr. Elliott asked

1 you some leading questions that ended with the word  
2 "correct," and you agreed with him, and asked  
3 whether or not the door or window leaked. So what  
4 I'm trying to understand is, what did you mean in  
5 agreeing to those questions asked whether or not the  
6 door or window itself leaked?

7 MR. ELLIOTT: Object to the form.

8 A Okay. So we had some -- You know, that  
9 includes the installation of the surrounding  
10 cladding and the installation of the manufactured  
11 unit.

12 BY MR. KELLY:

13 Q Did you in any way intend to say that the  
14 product itself is permitting water to enter the  
15 building?

16 A We had water come through one of those  
17 bay windows, but I believe that was at a drilled  
18 hole on the inside, if my memory is correct.

19 Q Are those bay windows EFCO products?

20 A I don't know.

21 Q I didn't mean to cut you off. If you  
22 aren't finished with your testimony as to that  
23 drilling in the bay window, please continue.

24 A Just that the leaks are associated with  
25 the installation around the window or door.

1 Q So is it not fair for me to assume that  
2 you do not believe that the EFCO products themselves  
3 were permitting water to enter the building  
4 envelope?

5 A That's correct.

6 MR. KELLY: I believe those are all  
7 the questions I have for you. I appreciate your  
8 patience with me. Sorry if it's too hectic here.

#### 9 EXAMINATION

10 BY MR. ELLIOTT:

11 Q Mr. Isaacs, the sliding glass doors and  
12 the storefront windows, I asked you if -- We talked  
13 about your water test and the DEFS, whether or not  
14 it leaked. And I asked another question, did the  
15 doors leak. And you said yes. New sliding glass  
16 doors leak and new storefront windows leaked. And  
17 then I asked you further why are the new sliding  
18 glass doors and windows being replaced, and you  
19 agreed that it was because they leaked and because  
20 of the impact rating.

21 Now, the sliding glass doors, and we  
22 covered the oceanfront, tell me what is it you were  
23 talking about that leaked when you said the doors  
24 leaked.

25 A I guess I was using "doors" as too broad

1 Q So if someone were to use your testimony,  
2 your deposition transcript at a later date to  
3 suggest that the product supplied by EFCO for the  
4 Shipwatch buildings are leaking, the products  
5 themselves as opposed to installation, would that be  
6 an incorrect suggestion?

7 MR. FLYNN: Object to the form.

8 A The EFCO sliding door we tested did not  
9 leak. The manufactured unit did not leak in that  
10 test area 14.

11 BY MR. KELLY:

12 Q Did any EFCO product that you tested  
13 leak?

14 A Again, I'm not aware of -- didn't go back  
15 and dig back through manufacturers of who did what.  
16 But the newer door did not leak.

17 Q Would it make sense that Sutton-Kennerly  
18 was going to reuse EFCO products if it found that  
19 the EFCO products themselves leaked?

20 A Right. If we found a unit that was  
21 leaking, we would not want to reuse that. Correct.

22 Q But you had envisioned reusing the EFCO  
23 product that had been installed in buildings C and D  
24 as part of the repairs at Shipwatch. Right?

25 A That's correct.

1 of a term and not precise enough.

2 Q Let me ask you this. You tested doors  
3 and you tested the cladding. You separated the two.  
4 Right?

5 A Correct.

6 Q And water intrusion occurred when you  
7 tested the doors. What part of the door leaked?

8 A The components at the perimeter of the  
9 door.

10 Q What components?

11 A For example, test area 14, photograph 4,  
12 the water simply went underneath the sliding door  
13 unit.

14 Q Let me get to that real quick, because I  
15 remember we talked about it. It leaked under the  
16 door where the door meets the built-up --

17 A That's correct, curb.

18 Q So something about how the door was  
19 installed in a curb allowed the water intrusion to  
20 occur?

21 A Correct.

22 Q What about the installation, if you can  
23 tell me in that detail, caused the leak?

24 A Photographs 4 and 5, you can see a gap  
25 between the door and curb, and it goes through to

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a witness on behalf of the Defendants, pursuant to  
South Carolina Rules of Civil Procedure, at 9:30  
a.m. on Wednesday, the 30th day of April 2014, at  
the offices of Sutton-Kennerty & Associates, 4651  
Charlotte Park Drive, Charlotte, North Carolina,  
before Janice O. Darby, Registered Professional  
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1 BY MR. COBB:

2 Q Who is the first person, regardless of  
3 where they were, that mentioned to you that the  
4 homeowners were going to pursue a lawsuit,  
5 litigation, claim?

6 A I don't remember who the initial  
7 respondent was. I know that I was asked for names  
8 of potential attorneys that could provide assistance  
9 to Shipwatch in a litigation case.

10 Q When was that?

11 A I'm just guessing that would have been in  
12 the 2012 time frame. I may have some sort of  
13 handwritten scribble notes somewhere.

14 Q What time frame in 2012? Exhibit 64,  
15 which is your January 25, 2012 report, would have  
16 been about that period of time?

17 A Well, it could have been -- it may have  
18 been after that. I don't know the time frame,  
19 because we did a more in-depth report. This was  
20 basically a visual survey and a roof moisture  
21 survey. It wasn't until August of 2012 that we  
22 really got in and started opening up walls and that  
23 we got in and did water testing. So it could have  
24 been after the issuance of the second, more alarming  
25 report on August 5th that litigation questioning

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1           And then the second part of this addendum  
2 was to actually issue the infrared roof survey  
3 report, which I reviewed from our field guys that  
4 actually did that test. So I did co-sign and was in  
5 agreement with this report.

6           Q       Other than reviewing, did you do any  
7 actual hands-on on-site investigation that resulted  
8 in anything that's included in either the January  
9 25, 2012 report or the January 11, 2012 report, or  
10 were you simply just reviewing what other people had  
11 done?

12          A       No. I was on site and participated  
13 firsthand in observing and looking and authoring  
14 this report. So I actually participated on site in  
15 looking at each of the conditions. I sent down a  
16 task of my project engineers to do the testing, and  
17 then I witnessed a good portion of that testing, of  
18 the results, made my own test cuts, made my own  
19 observations, walked the site to see all that had  
20 been cut, so that I had full knowledge of what was  
21 going on in each and every one of these reports.  
22 And I believe that I probably wrote 80 percent of  
23 the text in both of those reports.

24          Q       Both the January 25, 2012 report and the  
25 January 11, 2012 report, or are you referring to the



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1 MS. MIARS: That is all I have.

2 Thank you very much for your time.

3 E X A M I N A T I O N

4 BY MR. EARHART:

5 Q My name is Marshall Earhart. I represent  
6 Charleston Glass. Are you familiar with Charleston  
7 Glass?

8 A Nothing other than they are in Charleston  
9 and they did some work on this job.

10 Q I'll represent to you that they installed  
11 some of the -- they installed some of the new  
12 sliders on the ocean-side balconies as well as some  
13 of the fixed windows on the ocean-side balconies and  
14 possibly some of the bay windows, U-shaped bay  
15 windows. I want to talk about -- I guess we can do  
16 this fairly methodically.

17 As it pertains to the sliders on the  
18 ocean-side balconies, what in your opinion did the  
19 installer do wrong?

20 A Well, that question can't be answered  
21 exactly, because that gets back to knowing what each  
22 of the individual defendants was responsible in  
23 doing. So at this point I can only point out the  
24 deficiencies and the defects that resulted in damage  
25 and problems that is responsible for one or more

1 mechanically anchored to the structural slab. So we  
2 found significant deficiencies in the attachment of  
3 the units to the framing structure.

4 Q Could you determine what the resulting  
5 damage was specifically from problems with the  
6 doors?

7 A Specifically with the door unit. The  
8 door units, at least one, maybe more, were isolated  
9 and water tested and successfully passed the water  
10 test performance that we did.

11 The problem with the doors was not the  
12 performance of the door units, but it was the  
13 impact, the attachment, and the lack or improper  
14 waterproofing around the door openings.

15 Q Right. Can you tell me what the  
16 resulting damage was with the attachment and lack of  
17 waterproofing of the door opening? Can you tell  
18 me --

19 A Well, the lack of proper waterproofing  
20 around the door openings resulted in staining and  
21 corrosion of stud framing and staining/deterioration  
22 of sheathing and finish components.

23 Q But there's also problems with the DEFS.  
24 Can you break out the damages, or can you  
25 determine -- Can you say this resulting damage is

STATE OF SOUTH CAROLINA  
THE COURT OF COMMON PLEAS  
COUNTY OF CHARLESTON

SHIPWATCH CONDOMINIUM )  
ASSOCIATION, )

Plaintiff, )

) Case No.:  
-versus- ) 2012-CP-10-3858

CAROLINA CONCRETE SYSTEMS, )  
INC., et al., )

Defendants. )

OSCAR MENDIONDO, Individually )  
and as representative of a )  
class of similarly situated )  
owners of condominium units in )  
the horizontal property regime )  
known as SHIPWATCH CONDOMINIUMS, )

Plaintiffs, )

-versus- )

CAROLINA CONCRETE SYSTEMS, )  
INC., et al., )

Defendants. )

THE CONTINUATION OF THE DEPOSITION OF JEFF  
MILLER was taken as a witness on behalf of the  
Defendants, pursuant to South Carolina Rules of  
Civil Procedure, at 9:30 a.m. on Wednesday, the 27th  
day of August 2014, at the offices of  
Sutton-Kennerly & Associates, 4651 Charlotte Park  
Drive, Charlotte, North Carolina, before Janice O.  
Darby, Registered Professional Reporter and Notary  
Public in and for the State of South Carolina.

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1 Q And you don't recall the substance of  
2 that conversation?  
3 A Unfortunately, no.  
4 Q I guess you said earlier that there was  
5 nothing substantive discussed. Is that correct?  
6 A I probably said that, yes.  
7 Q Sitting here today, you can't recall  
8 anything that you-all talked about yesterday. Is  
9 that correct? Do you think you talked about the  
10 Shipwatch project?  
11 A Obviously. The conversation was meant to  
12 be kind of an update prior to depositions. And  
13 obviously, I relayed to Pat that I had a hurt back  
14 and I was doped up. And I know he was going, I  
15 believe, through maybe some questions that the  
16 attorneys may be asking. But beyond that, I don't  
17 remember. A lot of talking. I probably said one or  
18 two words.  
19 Q You didn't receive anything in writing or  
20 any e-mails from Mr. Flynn?  
21 A No.  
22 Q Earlier in your prior deposition,  
23 specifically referenced on page 432 of that  
24 deposition, we talked about the process that took  
25 place in the drafting of your affidavit, the back

1 think I have any more questions for you at this  
2 time.  
3 MR. FLYNN: Janice, just for the  
4 record, I believe he does have all the documents  
5 that he needs. So I'm not aware of any additional  
6 documents that I have that he would need. So when  
7 he goes through them, if he can't find something,  
8 I'm happy to provide it to him. But he has all the  
9 reports that I'm aware of.  
10 THE WITNESS: So there are no other  
11 documents other than what was given to me like two  
12 years ago?  
13 MR. FLYNN: As far as I -- Yeah.  
14 MR. WINTON: I didn't know if you  
15 were testifying for him or what's going on here,  
16 but --  
17 MR. FLYNN: I'm talking to you.  
18 Because you asked the question about documents, and  
19 I wanted to make sure you were aware for the record  
20 that I've provided whatever documents he has. It  
21 should be in his files.  
22 MR. WINTON: Oh, relative to the  
23 affidavit?  
24 MR. FLYNN: No. Just whatever  
25 documents that I have in my files, particularly

1 and forth between you and Mr. Flynn and the use of  
2 handwritten notes by you on a pdf document that you  
3 believe was attached and sent back and forth via  
4 e-mail. Do you recall that testimony?  
5 A Yes.  
6 Q I'll represent to you that I looked in  
7 the documents, and I could have missed it, but I did  
8 not find that correspondence or that pdf document  
9 with handwritten notes. Is that something that you  
10 may be able to more easily put your hands on or  
11 something that you could put your hands on if you  
12 looked within your database or a staff member could?  
13 A It probably would have been easier to  
14 find until Debbie gathered everything. I'm not sure  
15 how she's messed up my files. But depending upon  
16 the hard copy documents that she has assembled, that  
17 may or may not be easy to find.  
18 Q I won't tell Debbie you threw her under  
19 the bus today, but I'm going to go ahead this  
20 afternoon since we probably have some time, if we  
21 could talk with her about the possibility of where  
22 she thinks it might be, and I'll look with her for  
23 that document. Is that acceptable?  
24 A That's fine.  
25 MR. WINTON: Mr. Miller, I don't

1 relating to Mr. Sisroy. To my knowledge, I've  
2 provided everything that he needs. I'm not aware of  
3 anything additional that he needs at this time.  
4 MR. WINTON: Understood.  
5 THE WITNESS: That will be easier  
6 then. I've got a certain amount of papers to  
7 review.  
8 (Lunch recess taken.)  
9 E X A M I N A T I O N  
10 BY MR. KELLY:  
11 Q Mr. Miller, we're back from lunch. Are  
12 you ready to proceed?  
13 A Yes, sir.  
14 Q My name is Britt Kelly. I represent W.C.  
15 Johnston Architectural Sales and EFCO Corporation in  
16 this case. I assume you're familiar with EFCO?  
17 A I am familiar with both, yes.  
18 Q And you know Greg Johnston with W.C.  
19 Johnston Architectural Sales?  
20 A I know him well, yes.  
21 Q Do you hold any opinions relating to W.C.  
22 Johnston Architectural Sales' involvement in the  
23 Shipwatch project?  
24 A I don't -- Say that question again.  
25 Q Do you hold any opinions in this case

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">Page 560</p> <p>1 related to any fault of W.C. Johnston Architectural<br/>2 Sales for the damages or the repair work that you<br/>3 have specified at the project?<br/>4 A Well, I guess the best way to answer the<br/>5 question is that obviously we had EFCO<br/>6 non-impact-rated doors and windows improperly<br/>7 installed on this project. And to what<br/>8 responsibility W.C. Johnston or EFCO had regarding<br/>9 those particular units being put into this building<br/>10 when they weren't supposed to is kind of a question<br/>11 mark.<br/>12 Q Let me try to make sure I fully<br/>13 understand that. So you do not currently hold any<br/>14 opinions relating to any fault of W.C. Johnston<br/>15 Architectural Sales or EFCO may have relating to the<br/>16 installation of non-impact-rated glass products in<br/>17 the buildings at Shipwatch?<br/>18 A Well, I think I said I don't have the<br/>19 information to thoroughly state -- You know, I don't<br/>20 know what W.C. Johnston or EFCO's role was in the<br/>21 project that would place liability on them or not on<br/>22 them. All I know is we've got an inferior, improper<br/>23 code, non-code compliant product that was put in<br/>24 when it shouldn't have been.<br/>25 Q You realize you've been designated by Mr.</p> | <p style="text-align: right;">Page 562</p> <p>1 times, and I'll give you the same answer. Until I<br/>2 have a chance --<br/>3 Q Yes, sir. That question calls for a<br/>4 yes-or-no answer. Can you please give me a<br/>5 yes-or-no answer?<br/>6 A I don't have an answer. I can give you<br/>7 an answer once I review the documents.<br/>8 Q Do you refuse to answer my question with<br/>9 a yes or no?<br/>10 A I think I said will be glad to provide<br/>11 the answer once I have documents to be able to form<br/>12 an opinion to give you a yes-or-no answer. I cannot<br/>13 give you a yes-or-no answer now. I know what your<br/>14 question is. You've said it ten times. Keep saying<br/>15 it. We'll keep going over the same thing.<br/>16 Q You don't have to read too much into it.<br/>17 It's simply a question of do you currently hold an<br/>18 opinion as to whether EFCO or W.C. Johnston<br/>19 Architectural Sales did something improper that led<br/>20 to the installation of non-impact-rated windows and<br/>21 doors in the Shipwatch buildings?<br/>22 A (No response.)<br/>23 MR. ROOT: You're not going to<br/>24 respond to him?<br/>25 THE WITNESS: I've already responded</p> |
| <p style="text-align: right;">Page 561</p> <p>1 Flynn's office as an expert witness for the<br/>2 plaintiffs in this case?<br/>3 A Yes.<br/>4 Q And this case has been pending for a<br/>5 couple of years now?<br/>6 A Whatever the time frame, yes.<br/>7 Q As we sit here today, do you hold any<br/>8 opinions that W.C. Johnston Architectural Sales or<br/>9 EFCO did anything improper that resulted in the<br/>10 installation of non-impact-rated glass in the<br/>11 buildings at Shipwatch?<br/>12 A I think you just asked me that question.<br/>13 Q Yes, sir. You didn't answer it, so I<br/>14 would like you to give me a direct answer. Do you<br/>15 or do you not hold an opinion?<br/>16 A I have not been able to form an opinion<br/>17 without seeing the documentation associated with the<br/>18 windows. Without reviewing the documentation,<br/>19 everything is purely speculative until I see that.<br/>20 Q So you do not hold an opinion as we sit<br/>21 here today as to the fault, if any, of W.C. Johnston<br/>22 Architectural Sales or EFCO related to the<br/>23 installation of non-impact-rated windows or doors in<br/>24 the buildings at Shipwatch?<br/>25 A You can say your same sentence 20 more</p>                                                                                                        | <p style="text-align: right;">Page 563</p> <p>1 twice. I'm not going to respond again.<br/>2 BY MR. KELLY:<br/>3 Q Mr. Miller, did you understand my<br/>4 question?<br/>5 A I did. I responded to it twice.<br/>6 Q A few minutes have gone by. Do you need<br/>7 some additional time to consider my question to give<br/>8 me a yes-or-no response?<br/>9 A Yeah, I need to have the documents in<br/>10 front of me for me to review, and then I'll answer<br/>11 your question.<br/>12 Q You need to have documents in front of<br/>13 you to give me an answer as to whether or not you<br/>14 hold an opinion related to those entities?<br/>15 A I cannot provide an opinion until I<br/>16 review the documents.<br/>17 Q I'm not asking you to give me an opinion.<br/>18 I'm asking you to tell me whether or not you have an<br/>19 opinion.<br/>20 A I've not reviewed any documents, so I<br/>21 therefore have no opinion. How's that?<br/>22 Q That is a perfectly fine answer. Thank<br/>23 you.<br/>24 A Thank you.<br/>25 Q Do you have any opinions related to the</p>                                                                                                                               |

27 (Pages 560 to 563)

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1 performance of the EFCO products that are installed  
2 in the Shipwatch buildings?

3 A I do.

4 Q What are those opinions, please?

5 A The EFCO products do not meet impact  
6 resistance and therefore do not meet code.

7 Q Do you hold any other opinions regarding  
8 the performance of the EFCO products that were  
9 installed or are currently installed at the  
10 Shipwatch buildings?

11 A That the sliding glass doors were  
12 inadequately fastened. There were no jamb  
13 fasteners.

14 Q Have you endeavored to assign fault to  
15 anyone for the fact that there are no jamb fasteners  
16 at the EFCO products you have observed at the  
17 Shipwatch buildings?

18 A I have not assigned blame as of yet.

19 Q Do you hold any other opinions regarding  
20 the performance of the EFCO products that were  
21 installed in buildings C and D at Shipwatch or  
22 currently installed at buildings A and B at  
23 Shipwatch?

24 A Since I've not had a chance to review the  
25 file, I am going to reserve that there may be other

1 be published in my reports.

2 Q Did any of the water testing performed by  
3 Sutton-Kennerly & Associates at the Shipwatch  
4 buildings reveal failures with the EFCO products?

5 A I don't believe they did.

6 Q Are you aware of any failure of EFCO  
7 products that has led to water intrusion at the  
8 Shipwatch buildings?

9 A Through the actual EFCO units, I am not.

10 Q When Sutton-Kennerly & Associates first  
11 designed a plan for remediating the issues it found  
12 at buildings C and D at Shipwatch, did it intend to  
13 reuse the EFCO products that were installed in those  
14 buildings?

15 A That was one of the considerations that  
16 we had, is to reuse those units, yes.

17 Q When that consideration was I guess still  
18 an option or being considered as an option, did the  
19 scope of work that Sutton-Kennerly & Associates  
20 envision involve removing those windows or doors in  
21 order to fix the other problems surrounding the  
22 windows and doors?

23 A In that scenario, yes, it was envisioned.  
24 That was one of the options that we looked at, if we  
25 could get the windows and doors grandfathered in

1 opinions. But for the time being, I'm going to say  
2 no.

3 Q Sutton-Kennerly & Associates had water  
4 testing performed at the Shipwatch buildings.  
5 Correct?

6 A That's correct.

7 Q Did you supervise the water testing at  
8 the Shipwatch buildings?

9 A I was aware of all the testing. I didn't  
10 supervise it.

11 Q Who did supervise the testing?

12 A I had one of my engineers perform the  
13 testing.

14 Q Who performed the testing at Shipwatch on  
15 your behalf?

16 A I don't recall.

17 Q Who compiled the reports as to whether or  
18 not a test resulted in a failure?

19 A Who provided the reports?

20 Q Yes, sir. Who compiled the reports?

21 A The engineer that did the testing.

22 Q What was Mr. Isaacs' role in that  
23 process?

24 A He may have been one of the testers. I  
25 just don't recall. All of that information should

1 and/or approved by the building official.

2 Q Under that scenario when you're going to  
3 take the windows and doors out of their openings,  
4 were you then going to have to go in and beef up the  
5 surrounds of those openings?

6 A We were going to have to beef up the  
7 surrounds as well as waterproof the surrounds that  
8 were not done properly.

9 Q Did I understand you to tell me that you  
10 went to the building official at Isle of Palms and  
11 attempted to grandfather in those EFCO products so  
12 that you could use them?

13 A To grandfather them in and allow them not  
14 to be impact rated, I tried that, yes.

15 Q And what was the response from the  
16 building department?

17 A That that was not acceptable. If it  
18 didn't meet code from an impact-rated standpoint,  
19 they had to come out and be replaced with  
20 code-compliant windows and doors.

21 Q Did they explain to you why that was not  
22 acceptable?

23 A Because these windows and doors do not  
24 meet code from an impact performance and they were  
25 not going to allow them in the building.

1 Q Is that the only explanation they gave to  
2 you?  
3 A Yes.  
4 Q Did they indicate whether or not that  
5 opinion that they gave to you held true for the  
6 windows and doors on floors four and five of the  
7 buildings?  
8 A That held true for every window and door  
9 on the project, yes.  
10 Q Did you attempt to have them grandfather  
11 in at least the doors on floors four and five even  
12 if they wouldn't accept the doors and windows on  
13 floors one through three?  
14 A Yes.  
15 Q Did they not agree to do that?  
16 A They did not.  
17 Q Did they give you a different explanation  
18 as to why they would not accept that?  
19 A The same reason.  
20 Q So their interpretation of today's code  
21 is that the doors on floors four and five had to be  
22 impact rated as well?  
23 A From small missile impact, yes.  
24 Q Do you share that belief?  
25 A I'm sorry?

1 Q Do you share that opinion?  
2 A I'd have to go back and look at the  
3 particular language of 2012 IBC, but I'm pretty sure  
4 that's the case.  
5 Q Did Sutton-Kennerly & Associates give any  
6 consideration to using hurricane shutters or some  
7 other method to protect the glass from impact?  
8 A That was also mentioned to the building  
9 official and denied.  
10 Q Was there an explanation as to why that  
11 was not going to be permitted?  
12 A There was, but I don't recall exactly  
13 what it was.  
14 Q Were any of those discussions in writing  
15 with the building official, or were they all oral?  
16 A I don't remember. It seems like I had a  
17 confirmation e-mail after my meeting with those  
18 guys, but I just can't remember.  
19 Q Who were you dealing with at the Isle of  
20 Palms building department?  
21 A William Seabrook.  
22 Q Did you have any discussions with  
23 Mr. Seabrook as to how it came to be that there was  
24 non-impact-rated products installed in the buildings  
25 to begin with?

1 A Did I have a conversation with him as to  
2 how I knew that they were not impact rated?  
3 Q No, sir. Did you have a conversation  
4 with him as to how it came to be that that product  
5 was installed in the buildings?  
6 A My explanation to him was that we had  
7 windows put in during the '02 to 2010 time frame  
8 that were not impact rated.  
9 Q Did he indicate why that was or how that  
10 was permitted if it was permitted?  
11 A He didn't know how that got permitted.  
12 There was no permit.  
13 Q Why do you say there was no permit?  
14 A Because he had no record of a permit of  
15 that.  
16 Q Did you deal with anyone else at the Isle  
17 of Palms building department as to whether or not  
18 they would permit the EFCO products to be  
19 reinstalled?  
20 A I did have some conversations with -- I  
21 think the guy's name is Doug Carr, Kerr, something  
22 like that. It seems like initially I spoke with  
23 both of those two gentlemen.  
24 Q What was Mr. Carr's or Mr. Kerr's  
25 position at the Isle of Palms building department?

1 A I don't have their titles in front of me.  
2 Q Did you gain an appreciation as to who  
3 was his superior or if they had the equivalent role?  
4 A I believe Mr. Kerr or Carr, I think, is  
5 the head of that division, and I think Seabrook  
6 reports to him.  
7 Q Is it one or both of them who told you  
8 you could not reuse the product?  
9 A I don't remember.  
10 Q Was consideration given to reglazing any  
11 of the EFCO products with impact-rated glass?  
12 A There was thought given to that, yes.  
13 Q Tell me what went into that thought. Was  
14 that something you were involved in or someone else  
15 at Sutton-Kennerly & Associates was involved in?  
16 A It seems like we pursued every avenue  
17 that we felt that we could to try to keep these  
18 windows that were performing from a water-resistant  
19 standpoint. They just weren't impact rated.  
20 It seems like we looked and talked about  
21 switching the glass out and how the glass set or fit  
22 into the frame and that the glazing pocket was such  
23 that it may or may not facilitate that.  
24 But I know there was some research and  
25 looking to see what, if anything, could be done to



1 facilitate that.

2 Q Was anyone at EFCO consulted as to  
3 whether or not impact glass can be installed in any  
4 of the EFCO products at Shipwatch?

5 A I believe there may have been. I believe  
6 we contacted somebody with EFCO to discuss that.

7 Q Who was that, please?

8 A I'd have to go back to the file. I don't  
9 remember.

10 Q Do you believe that was done via e-mail  
11 or phone call?

12 A I don't remember.

13 Q Perhaps we should back up. Was that a  
14 phone call or a communication that you recall being  
15 involved in, or someone had that communication on  
16 your behalf?

17 A I believe it was one of my staff  
18 engineers pursuing that for me.

19 Q Who was that staff engineer?

20 A I don't remember.

21 Q Was there any discussion with the  
22 building official related to the inability to reuse  
23 EFCO products because of how much construction work  
24 was going to be performed because of the repairs?

25 A I don't believe that weighed in on his

1 decision.

2 Q Have you been involved in construction or  
3 remediation projects where you were able to reuse  
4 windows or doors?

5 A I'm sure I have in the 25 years of my  
6 career. I just don't remember exactly when or  
7 where.

8 Q In those cases where you have, do you  
9 recall whether or not there was a percentage of  
10 construction work that was important to the building  
11 official as to whether or not you could remove or  
12 replace windows and doors?

13 A I don't recall. It's typically dictated  
14 by the entity with the county that you're actually  
15 working with. I just don't remember the specifics  
16 of these different projects.

17 Q Are you familiar with the EFCO 3015  
18 Series sliding glass door?

19 A Somewhat, yes.

20 Q Have you specified it on projects?

21 A I'm sorry. Say that again.

22 Q Have you specified it on projects that  
23 you have designed?

24 A I believe that is the model number. I  
25 don't have it in front of me. But I have spec'd

1 EFCO sliding glass doors on projects very  
2 successfully, yes.

3 Q And over the last, say, ten years, can  
4 you name the projects you can remember where you've  
5 spec'd that product?

6 A I put it on the Windemere condominiums,  
7 North Myrtle Beach. I believe I put it on the  
8 Harbor Inn condos down in Wrightsville Beach. I'm  
9 sure there may be others, but those two come to  
10 mind.

11 Q Was Windemere new construction or repair  
12 work?

13 A It was a remediation project.

14 Q What was scope of that remediation  
15 project?

16 A Very similar to this particular scope:  
17 Replacement of the cladding, replacement of the  
18 windows and doors, coatings.

19 Q All cladding and all windows and doors?

20 A Yes.

21 Q What about the Harbor Inn condos?

22 A That was -- I think they had kind of a  
23 combination sliding glass door with fixed panes on  
24 the sides that got replaced, coatings, concrete  
25 balcony waffle slab repairs, maybe some handrails.

1 Q How long ago was that project done?

2 A Harbor Inn, I think, was in '06.

3 Q When you removed the sliding glass doors  
4 in the Harbor Inn condos, was the glass removed from  
5 every opening, or was some of the glass left in  
6 place?

7 A No. The entire unit got removed and new  
8 units put in.

9 Q And that was in every condo unit?

10 A At Harbor Inn, I think there were only 12  
11 or 16 units, but yes.

12 Q Have you ever provided a design that  
13 involved the installation of new EFCO sliding glass  
14 doors where not all sliding glass doors or all  
15 windows within a regime were being removed and  
16 replaced?

17 A Let me think. Yeah, I think that's  
18 happened some. I just don't recall what or where.

19 Q How would I figure out what or where  
20 those projects were?

21 A I would have to go back through a list of  
22 our projects and figure out -- refresh my memory on  
23 projects as I look through the database that would  
24 involve windows and doors, and then either remember  
25 directly from the name of the project or actually

1 try to find the electronic file and go through the  
2 scope of work that was performed.

3 Q Do you keep a list of such projects that  
4 you've worked on?

5 A We've got a database of all of our  
6 projects since about 1998. I don't know that we  
7 have the files for those, but we have a database.  
8 Some of those I'll be able to remember once I read  
9 through the database.

10 Q I'm just curious if in advance I can get  
11 a printed copy of whatever those projects are so  
12 that I know how extensive they are, if there's 40 or  
13 50 or 100 or whatever the number. I'm not asking  
14 you to give me a copy today. I'm just wondering if  
15 that's a possibility of something that can be done.

16 A No, not today. Are you looking for  
17 projects for SKA or projects that Jeff Miller was  
18 involved with?

19 Q Projects that you were involved with.  
20 So, for example, on my computer software at our law  
21 firm I can search by matters I'm assigned to, and I  
22 can look back at, say, a ten-year period and see all  
23 of the cases. I'm just curious if you have  
24 something similar where you can print a list of the  
25 projects that you were involved in over the last ten

1 in the future regarding this case, I'm going to  
2 reserve my right to ask you questions about those  
3 opinions. As of now, I believe I've asked all the  
4 questions I can ask of you today.

# EXAMINATION

6 BY MS. FERGUSON:

7 Q Mr. Miller, my name is Katherine  
8 Ferguson, and I represent Glasstec. I have been  
9 here all day listening to your answers, so I'm fully  
10 aware that you haven't had time to fully review your  
11 files before today's deposition. So some of my  
12 questions to you might seem redundant. I can  
13 promise you, I'm not trying to be difficult. I just  
14 want to ask you some questions as they pertain to my  
15 client. Is that okay?

16 A Sure.

17 Q Are you familiar with Glasstec?

18 A I am.

19 Q Do you know the scope of work that  
20 Glasstec performed at the Shipwatch project?

21 A I do not.

22 Q Is that because sitting here today you  
23 haven't had time to review your file, or you just  
24 have no information with regard to Glasstec?

25 A Well, I believe they put in the majority

1 years that would allow you to more easily look and  
2 determine if one of those met the criteria that  
3 we've been talking about.

4 A Yeah, our database. I should be able to  
5 go through the search engine somehow to narrow down  
6 remediation projects if they were coded correctly  
7 into the system. And then depending upon what they  
8 are, that may tell me -- refresh my memory as to  
9 what we did on each of those projects.

10 Q I would like to do that. I can make a  
11 formal request if necessary. I can follow up with a  
12 letter or e-mail, whatever is most convenient.

13 Does Mike Parker still work at  
14 Sutton-Kennerly & Associates?

15 A He does.

16 Q Have you had any contact with Mike about  
17 the Shipwatch project?

18 A I have not.

19 Q Have you had any contact with Mike about  
20 conversations he had with Linda Jernigan before you  
21 became involved in the Shipwatch project?

22 A I don't know what Mike and Linda may have  
23 conversed on.

24 MR. KELLY: Mr. Miller,  
25 understanding that you may have opinions you reach

1 of the glass on the project from '02 to 2010. But I  
2 also believe there may have been some other glass  
3 folks that put other pieces in. But I believe they  
4 put in the majority of the glass.

5 Q I'll represent to you that the last time  
6 they performed work at Shipwatch was in 2002.

7 A Okay.

8 Q So is it fair to say that sitting here  
9 today you don't really know the scope of the work  
10 performed by Glasstec at the Shipwatch project?

11 A I would say that's true.

12 Q And then sitting here today, do you have  
13 any opinion as to the work performed by Glasstec?

14 A Since I don't know specifically what they  
15 did, obviously I have no opinion.

16 Q Do you believe that you might have a  
17 future opinion as to Glasstec?

18 A I would assume if there are documents  
19 available that explain what they did during 2002, I  
20 can then form an opinion whether they failed to meet  
21 the standard of care in their performance. But I  
22 would have to review documents to be able to  
23 determine that.

24 Q Have you been able to determine if any  
25 damage or any alleged damage in the Shipwatch

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">Page 608</p> <p>1 work that the roofing contractor may have performed,<br/> 2 could the repairs related to the roof be made<br/> 3 without the unit owners moving out?<br/> 4 A Yes.<br/> 5 Q And that goes for every component of the<br/> 6 roof work?<br/> 7 A I would think so.<br/> 8 MS. NETTLES: Then I'll pass you on.<br/> 9 Thank you so much.<br/> 10 EXAMINATION<br/> 11 BY MS. SMITH:<br/> 12 Q I have one follow-up question. We were<br/> 13 just talking about change order Nos. 1, 2, 3 and 4.<br/> 14 When we spoke this morning, you started with No. 2.<br/> 15 I just want to clarify. Is there a No. 1?<br/> 16 A Yeah, maybe I didn't -- Change order<br/> 17 No. 1 is an official document that has been<br/> 18 processed. It's an accumulative \$29,000 deduct.<br/> 19 And that should be in the file of documents that<br/> 20 you-all were given.<br/> 21 Change order No. 2 accomplishes something<br/> 22 like requests 20 through 40. I'm just guessing.<br/> 23 And of that there was an agreed-upon settlement of<br/> 24 225. And just needs to be written up by me in the<br/> 25 official change order document. But that is a</p> | <p style="text-align: right;">Page 610</p> <p>1 buildings, is the fact that those windows and doors<br/> 2 are non-impact causing any damage to the building?<br/> 3 A In and of itself, I would say no.<br/> 4 Q Same question. Prior to the time the<br/> 5 windows and doors were removed from buildings C and<br/> 6 D, it's my understanding you believe that the<br/> 7 windows and doors had non-impact glass. Correct?<br/> 8 A That's correct.<br/> 9 Q Did the presence of non-impact glass in<br/> 10 those windows and doors lead to any damage to<br/> 11 buildings C and D?<br/> 12 A No damage, fortunately, because we had no<br/> 13 hurricane blow through there. But no.<br/> 14 Q I think you indirectly answered this, so<br/> 15 I want to ask you directly. Do you agree with me<br/> 16 that the EFCO window and door products supplied to<br/> 17 the Shipwatch project are not defective in design or<br/> 18 fabrication?<br/> 19 A I think I would make the statement that<br/> 20 there was no evidence that those units exhibited<br/> 21 leakage during our water testing. I did not see<br/> 22 shop drawings of those doors and windows from a<br/> 23 design or install standpoint.<br/> 24 Obviously, from an install standpoint, if<br/> 25 there are no fasteners in the jambs and you've got</p> |
| <p style="text-align: right;">Page 609</p> <p>1 document that summarizes 20 or so different<br/> 2 requests.<br/> 3 And then change order No. 3 is something<br/> 4 like 43 through 65, and it totals \$57,000 after<br/> 5 sitting down with the contractor and working that<br/> 6 out. That needs to be an official document. But<br/> 7 the dollars and the scope and all the items have<br/> 8 been gone through and vetted.<br/> 9 Change order No. 4, I'm waiting to get a<br/> 10 handful of items that the contractor says is his<br/> 11 last request.<br/> 12 Q So that change order No. 1 has always<br/> 13 been the same?<br/> 14 A Yes.<br/> 15 MS. SMITH: That's it. Thank you.<br/> 16 EXAMINATION<br/> 17 BY MR. KELLY:<br/> 18 Q I have two questions and then I'll be<br/> 19 done. Before we wrapped up, I wanted to ask a<br/> 20 question.<br/> 21 A Yes, sir. Go ahead.<br/> 22 Q Mr. Miller, just for clarity purposes, I<br/> 23 want to make sure I understand a couple of things.<br/> 24 The fact that buildings A and B have<br/> 25 non-impact windows and doors installed in the</p>                                                                                  | <p style="text-align: right;">Page 611</p> <p>1 fasteners in the sill to a member that's not<br/> 2 connected to the structural slab mechanically, but<br/> 3 the units themselves exhibited no evidence of water<br/> 4 intrusion.<br/> 5 Q Do the units themselves exhibit any<br/> 6 evidence of a defect?<br/> 7 A None that I recall.<br/> 8 MR. KELLY: Those are all the<br/> 9 questions I have. Thank you, sir.<br/> 10 MR. ROOT: This is David Root,<br/> 11 counsel for BASF, noting on the record that<br/> 12 Mr. Miller's deposition was noticed for today,<br/> 13 Wednesday, the 27th, and Friday, the 29th, and that<br/> 14 defense counsel have agreed to withdraw the notice<br/> 15 for the 29th on the basis that Mr. Miller's<br/> 16 testimony today has indicated he's not been able to<br/> 17 get to a point to render final opinions on a number<br/> 18 of issues and won't be able to get to that point<br/> 19 tomorrow. So that notice is withdrawn and Friday is<br/> 20 open.<br/> 21 (End of deposition.)<br/> 22<br/> 23<br/> 24<br/> 25</p>                                                                                                                                                                                                                                                        |

39 (Pages 608 to 611)

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STATE OF SOUTH CAROLINA ) THE COURT OF COMMON PLEAS  
                                  )  
COUNTY OF CHARLESTON     ) CASE NO. 2012-CP-10-3857  
  
SHIPWATCH CONDOMINIUM     )  
ASSOCIATION, INC.,        )  
                                  )  
          Plaintiff,        )  
                                  )  
vs.                            )  
                                  )  
CAROLINA CONCRETE         )  
SYSTEMS, INC., et al.,    )  
                                  )  
          Defendants.         )

STATE OF SOUTH CAROLINA ) THE COURT OF COMMON PLEAS  
                                  )  
COUNTY OF CHARLESTON     ) CASE NO. 2012-CP-10-3858  
  
OSCAR MENDIONDO, et al., )  
                                  )  
          Plaintiffs,        )  
                                  )  
vs.                            )  
                                  )  
CAROLINA CONCRETE         )  
SYSTEMS, INC., et al.,    )  
                                  )  
          Defendants.         )

\* \* \* \* \*

VOLUME I DEPOSITION

OF: PETER SHERRATT

DATE TAKEN: Thursday, November 6, 2014

TIME: 9:50 a.m.

PLACE: Turner Padgett Graham & Laney  
40 Calhoun Street, Suite 200  
Charleston, South Carolina

REPORTED BY: EVE WILBANKS  
Registered Professional  
Reporter, Certified LiveNote  
Reporter and Notary Public

\* \* \* \* \*

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| Page 2                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Page 4                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
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| <p>1 REPRESENTING GARY FREEMAN ARCHITECT, INC., and</p> <p>2 GARY FREEMAN, INDIVIDUALLY:</p> <p>3 K. MICHAEL BARFIELD, ESQUIRE</p> <p>4 Barnwell Whaley Patterson &amp; Helms</p> <p>5 288 Meeting Street, Suite 200</p> <p>6 Charleston, South Carolina 29401</p> <p>7 Mbarfield@barnwell-whaley.com</p> <p>8 REPRESENTING EFCO CORP., INC. and W.C. JOHNSON</p> <p>9 ARCHITECTURAL SALES, INC.:</p> <p>10 R. BRITTON KELLY, ESQUIRE</p> <p>11 Rosen, Rosen &amp; Hagood, LLC</p> <p>12 151 Meeting Street, Suite 400</p> <p>13 Charleston, South Carolina 29401</p> <p>14 Bkelly@rrhlawfirm.com</p> <p>15 REPRESENTING GLASSTEC, INC. (VIA TELEPHONE):</p> <p>16 STACEY P. CANADAY, ESQUIRE</p> <p>17 Tupper, Grimsley &amp; Dean</p> <p>18 P.O. Box 2055</p> <p>19 611 Bay Street</p> <p>20 Beaufort, South Carolina 29901</p> <p>21 Staceycanaday@ugdpa.com</p> <p>22 REPRESENTING BASF:</p> <p>23 DAVID A. ROOT, ESQUIRE</p> <p>24 Kemodle Root &amp; Coleman</p> <p>25 P.O. Box 13897</p> <p>Charleston, South Carolina 29422</p> <p>Droot@kemodlelaw.com</p> <p>REPRESENTING CHARLESTON GLASS COMPANY, INC. (VIA</p> <p>TELEPHONE):</p> <p>AMANDA R. MAYBANK, ESQUIRE</p> <p>Maybank Law Firm</p> <p>P.O. Box 12579</p> <p>Charleston, South Carolina 29422</p> <p>Amanda@maybanklaw.com</p> <p>REPRESENTING ACROCRETE:</p> <p>ADRIANE BELTON, ESQUIRE</p> <p>Womble Carlyle Sandridge &amp; Rice</p> <p>P.O. Box 999</p> <p>Charleston, South Carolina 29901</p> | <p>1 STIPULATIONS</p> <p>2 It is hereby stipulated and agreed by and</p> <p>3 between the parties hereto, through their</p> <p>4 respective counsel, that the reading and signing</p> <p>5 of the transcript is reserved by the Deponent.</p> <p>6 PETER SHERRATT, SWORN.</p> <p>7 EXAMINATION</p> <p>8 BY MR. COBB:</p> <p>9 Q. Good morning.</p> <p>10 A. Good morning.</p> <p>11 Q. When did you first get contacted about</p> <p>12 Shipwatch?</p> <p>13 A. Sometime prior to May of 2012.</p> <p>14 Q. Would it have been calendar year 2012?</p> <p>15 A. I believe so.</p> <p>16 Q. And who contacted you?</p> <p>17 A. That, I don't recall</p> <p>18 Q. Was it someone associated with Shipwatch</p> <p>19 or was it a lawyer?</p> <p>20 A. That's what I don't recall, whether it</p> <p>21 was Linda from Shipwatch or whether it was from</p> <p>22 Pat's office.</p> <p>23 Q. Had you ever dealt with Linda Jernigan</p> <p>24 before 2012?</p> <p>25 A. I don't believe so.</p> |

1 photographs are taken looking up adjacent to the  
2 flue pipe.

3 Q. And have you done any determination to  
4 conclude what -- the source of where the water was  
5 getting into the shaft?

6 A. No. SKA has done that.

7 Q. What is your understanding is their  
8 conclusion?

9 A. That, I don't know. I would have to go  
10 back and look at their report.

11 Q. And you would rely on whatever they  
12 concluded as being the issue?

13 A. Yes.

14 THE WITNESS: We're getting close to  
15 lunch.

16 MR. COBB: Do you want to eat lunch?

17 THE WITNESS: Yes.

18 MR. COBB: Let's break for lunch.

19 (The deposition went off the record.)

20 BY MR. COBB:

21 Q. I want to finish up and button up a  
22 couple of issues and then I'm going pass you. I  
23 think by agreement we're going to stop somewhere  
24 around 3 or 3:30 today, because we won't finish.

25 When you mentioned earlier about the

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1 Q. Are you aware of any damage, either to  
2 the windows themselves or to any components of the  
3 windows or the framing?

4 A. No. We would have to go back and look  
5 at the SKA photos. I am aware of damage below the  
6 bay windows at C and D.

7 Q. Are those the new bay windows or the old  
8 bay windows?

9 A. "New" meaning what?

10 Q. "Old" meaning original to the building;  
11 "new" meaning replaced at some point in the decade  
12 of the 2000's.

13 A. They appear to be at least reflashed in  
14 something -- post-original construction.

15 Q. And you've not done any type of water  
16 testing?

17 A. No.

18 Q. Do you have any intentions or plans to  
19 do any water testing?

20 A. No.

21 Q. What criticisms do you have with regards  
22 to the design of the repairs by Sisnroy?

23 A. I don't know if there was a design of  
24 the repairs. It seems to me there should have  
25 been drawings showing how to install the doors,

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|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">Page 90</p> <p>1 Wiggins?</p> <p>2 A. No.</p> <p>3 Q. Do you have any opinions about Carolina</p> <p>4 Concrete Systems?</p> <p>5 A. No.</p> <p>6 Q. Have you had any conversations with</p> <p>7 anybody who said they worked with Carolina</p> <p>8 Concrete Systems?</p> <p>9 A. Not that I recall. I don't believe so.</p> <p>10 Q. Have you had any conversations with any</p> <p>11 of the subcontractors about Shipwatch?</p> <p>12 A. I've had conversations, but I don't</p> <p>13 think any of it pertained to Shipwatch.</p> <p>14 Q. Have you had any conversations with any</p> <p>15 of the experts identified by any of the Defendants</p> <p>16 about Shipwatch?</p> <p>17 A. I've had conversations with the folks</p> <p>18 from SKA.</p> <p>19 Q. Other than that? Any of the defense</p> <p>20 experts?</p> <p>21 A. No. I mean, other than just some casual</p> <p>22 conversation when we happened to be on-site at the</p> <p>23 same time.</p> <p>24 Q. Have you read any of the depositions</p> <p>25 that have been taken in this case so far?</p>                                                                                                                                                                                                     | <p style="text-align: right;">Page 92</p> <p>1 mentioned, the window was made larger. I wasn't</p> <p>2 in that loop as to why it was. So there's</p> <p>3 definitely something different there. And I</p> <p>4 believe whatever is happening with the roof, that</p> <p>5 was a separate contract, meaning with Glasgow (ph)</p> <p>6 and the homeowners.</p> <p>7 Q. What is actually being done with the</p> <p>8 roof? Is the roof being replaced?</p> <p>9 A. I believe so. But that needs to be</p> <p>10 confirmed. I've not been involved in that portion</p> <p>11 of the work.</p> <p>12 Q. With regards to the length of time for</p> <p>13 the repairs, have you done any type of analysis to</p> <p>14 figure out whether or not it's been staffed</p> <p>15 correctly or sequenced in a way that's optimal?</p> <p>16 A. No.</p> <p>17 Q. What are you going to do with regards to</p> <p>18 the Shipwatch litigation moving forward?</p> <p>19 MR. FLYNN: Object to the form.</p> <p>20 A. I'm going to probably go to the site,</p> <p>21 take more pictures, meaning of A and B, while that</p> <p>22 work is going on, and I'll review whatever data is</p> <p>23 provided to me. And I'm sure there will be other</p> <p>24 things, but I don't have a list right now.</p> <p>25 MR. COBB: That's all the questions I</p> |
| <p style="text-align: right;">Page 91</p> <p>1 A. No.</p> <p>2 Q. With regards to the repairs that were</p> <p>3 done in 2013 and the repairs that are being done</p> <p>4 now, did you have any role in either coming up</p> <p>5 with the scope, coming up with the repair</p> <p>6 methodologies, any role in that?</p> <p>7 A. No.</p> <p>8 Q. Based on what you know, would you</p> <p>9 concede that some of the repairs that are being</p> <p>10 done to the buildings are outside of the</p> <p>11 responsibility of any of these Defendants?</p> <p>12 MR. FLYNN: Object to the form.</p> <p>13 A. I'm not aware of the full extent of the</p> <p>14 work that's in the SKA contract. I know there's</p> <p>15 been some minor changes, such as the bay windows,</p> <p>16 meaning the size of the glass panels. And there</p> <p>17 was some work done with regard to the storefront</p> <p>18 systems at the elevators, and that may be outside</p> <p>19 the scope of what Carolina Concrete was asked to</p> <p>20 do. But I don't know the details of those things.</p> <p>21 Q. Would you concede that there are</p> <p>22 betterments and upgrades being done on the</p> <p>23 repairs?</p> <p>24 A. Not on the exterior wall envelope</p> <p>25 repairs. On some of the others, as I just</p> | <p style="text-align: right;">Page 93</p> <p>1 have for you right now. I'll pass you down</p> <p>2 the road.</p> <p>3 THE WITNESS: Thank you.</p> <p>4 EXAMINATION</p> <p>5 BY MR. KELLY:</p> <p>6 Q. Mr. Sherratt, my name is Britt Kelly.</p> <p>7 I'm going to ask you a number of questions today</p> <p>8 related to your investigation and your</p> <p>9 observations at Shipwatch. Most of them will not</p> <p>10 have been asked or answered yet, but if I ask you</p> <p>11 a question you've already been asked, I apologize</p> <p>12 in advance. Have you done any personal</p> <p>13 investigation as to the performance of the EFCO</p> <p>14 doors at Shipwatch?</p> <p>15 A. I have read some historic data, and</p> <p>16 there were some questions raised as to whether the</p> <p>17 products from EFCO met the current building code</p> <p>18 that was appropriate at the time of installation</p> <p>19 and also whether the units met the DP rating. I</p> <p>20 think there were actually two products. There</p> <p>21 were doors and there were fixed glass.</p> <p>22 Q. What is your understanding -- I didn't</p> <p>23 mean to cut you off. If you're not finished,</p> <p>24 please continue.</p> <p>25 A. Go ahead.</p>                                                                                     |

24 (Pages 90 to 93)

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| <p style="text-align: right;">Page 94</p> <p>1 <b>Q. What is your understanding as to when</b><br/> 2 <b>the EFCO door products were installed at</b><br/> 3 <b>Shipwatch?</b><br/> 4 A. Sometime after June of 2001.<br/> 5 <b>Q. Do you have any more specific</b><br/> 6 <b>recollection as to when the doors and how many</b><br/> 7 <b>doors were replaced with EFCO products at</b><br/> 8 <b>Shipwatch?</b><br/> 9 A. I think earlier today we looked at a<br/> 10 document, and I believe it said 72 or 75 at that<br/> 11 time.<br/> 12 <b>Q. How many sliding glass doors are at the</b><br/> 13 <b>Shipwatch buildings?</b><br/> 14 A. I don't have that count.<br/> 15 <b>Q. Do you agree with me that it's more than</b><br/> 16 <b>72?</b><br/> 17 A. Yes.<br/> 18 <b>Q. Other than the 72 that were replaced at</b><br/> 19 <b>some point in the early 2000's, do you know</b><br/> 20 <b>whether any other EFCO doors were installed at the</b><br/> 21 <b>Shipwatch buildings?</b><br/> 22 A. I don't know that.<br/> 23 <b>Q. Have you done any investigation on your</b><br/> 24 <b>own as to the performance of those EFCO doors as</b><br/> 25 <b>it relates to water intrusion through or around</b></p>                                                                     | <p style="text-align: right;">Page 96</p> <p>1 A. The windows that are somewhat adjacent<br/> 2 to the sliding glass doors of the Carolina room or<br/> 3 the master bedroom.<br/> 4 <b>Q. So it's fixed glass?</b><br/> 5 A. Yes, sir.<br/> 6 <b>Q. Do you know when -- do you know how many</b><br/> 7 <b>units received EFCO fixed glass windows on the</b><br/> 8 <b>ocean side?</b><br/> 9 A. No. I have limited information on the<br/> 10 EFCO product. What would be good to look at is<br/> 11 the installation instructions from EFCO.<br/> 12 <b>Q. But you haven't looked at those?</b><br/> 13 A. I haven't located them. If you happen<br/> 14 to have them, I would be happy to look at them.<br/> 15 <b>Q. Besides any water intrusion analysis,</b><br/> 16 <b>have you performed any investigation as to whether</b><br/> 17 <b>there are any performance problems with those EFCO</b><br/> 18 <b>doors -- excuse me -- EFCO fixed windows that we</b><br/> 19 <b>were just talking about?</b><br/> 20 A. I don't know about the fixed windows.<br/> 21 There was some correspondence from Mr. Freeman<br/> 22 that the doors, in his opinion, didn't meet the<br/> 23 applicable building code. And in reading that<br/> 24 information, it seemed to be that he tried to<br/> 25 obtain that information from either the</p> |
| <p style="text-align: right;">Page 95</p> <p>1 <b>the doors?</b><br/> 2 A. I have found damage to the wall system<br/> 3 around the doors. I cannot tell you anything<br/> 4 about whether the door itself has been damaged.<br/> 5 <b>Q. Do you hold any opinions as to whether</b><br/> 6 <b>the EFCO doors that were installed at some point</b><br/> 7 <b>in the early 2000's leak as a product itself?</b><br/> 8 A. No. I did not do water testing. That<br/> 9 was done by SKA, so it's a better question for<br/> 10 Jeff Miller.<br/> 11 <b>Q. Any questions I have about whether or</b><br/> 12 <b>not EFCO doors leak can be directed better to SKA?</b><br/> 13 A. Yes. With regard to the product.<br/> 14 <b>Q. Yes, sir. Thank you. A similar line of</b><br/> 15 <b>questions, have you done any independent</b><br/> 16 <b>investigation as to whether any of the EFCO</b><br/> 17 <b>windows installed at the Shipwatch project leak as</b><br/> 18 <b>a product itself?</b><br/> 19 A. No.<br/> 20 <b>Q. Do you know whether any EFCO windows are</b><br/> 21 <b>installed at Shipwatch?</b><br/> 22 A. Only from what I can read in the<br/> 23 historic data.<br/> 24 <b>Q. What do you understand to be EFCO</b><br/> 25 <b>windows that are installed at Shipwatch?</b></p> | <p style="text-align: right;">Page 97</p> <p>1 distributor or the factory. And some of the<br/> 2 information is that there was a response about --<br/> 3 that -- whichever the product was only had a<br/> 4 rating, I think, of 30, when the code was a<br/> 5 substantially higher number. But I would have to<br/> 6 go back and read that information.<br/> 7 <b>Q. Can you try to find that, please?</b><br/> 8 A. There were two documents, from Gary<br/> 9 Freeman to Bob Wiggins on one, and to Linda on the<br/> 10 other one. The one to Mr. Wiggins was November 3,<br/> 11 2010, and to Linda it was November 12, 2010. And<br/> 12 they're discussing the design of the product, and<br/> 13 they're also referencing the fixed glass. I'll<br/> 14 let you look at them.<br/> 15 <b>Q. Thank you. I have those in front of me.</b><br/> 16 MR. ANDERSON: Have those been marked?<br/> 17 MR. KELLY: The November 3rd e-mail is<br/> 18 Exhibit 129, and the November 12th e-mail is<br/> 19 Exhibit 133.<br/> 20 <b>Q. And I understood your last answer to</b><br/> 21 <b>tell me that someone from EFCO said that their</b><br/> 22 <b>product only had a 30 PSF rating -- or a 30 DP</b><br/> 23 <b>rating?</b><br/> 24 A. Right. The letter says 30 PSF, yes.<br/> 25 <b>Q. Do you see anyone from EFCO or W.C.</b></p>     |

25 (Pages 94 to 97)

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| <p style="text-align: right;">Page 98</p> <p>1 Johnson who are listed anywhere on Exhibit 129 or</p> <p>2 Exhibit 133?</p> <p>3 A. I just see the name Mr. Broadway.</p> <p>4 Q. Do you know who Mr. Broadway is?</p> <p>5 A. No.</p> <p>6 Q. Do you know if he's an engineer that was</p> <p>7 retained by either Randy Morgan of Charleston</p> <p>8 Glass or Lynn Jernigan to do the analysis of those</p> <p>9 EFCO products?</p> <p>10 MR. FLYNN: Object to the form.</p> <p>11 A. What I can read here, that Mr. Broadway</p> <p>12 did some analysis based on information that a</p> <p>13 Randy gave him. I don't know who the Randy is.</p> <p>14 And they were talking about DP ratings or the PSF,</p> <p>15 and there seemed to be a conflict of whether the</p> <p>16 appropriate information was given to Broadway from</p> <p>17 Randy.</p> <p>18 Q. But you don't know who Randy is, right?</p> <p>19 A. Not right now, no.</p> <p>20 Q. And you don't know who Mr. Broadway is?</p> <p>21 A. Not in detail. Apparently, he did some</p> <p>22 analysis, but that's the extent of it.</p> <p>23 Q. Do you have any document to show me that</p> <p>24 someone from EFCO or W.C. Johnson said, Our</p> <p>25 product only has a DP rating of 30?</p> | <p style="text-align: right;">Page 100</p> <p>1 A. Well, I was called from the property</p> <p>2 manager.</p> <p>3 Q. Is it in litigation?</p> <p>4 A. No.</p> <p>5 Q. Do you remember the name of the property</p> <p>6 manager?</p> <p>7 A. It was Kuester Management, Phil McLeod.</p> <p>8 Q. What was the issue you were asked to</p> <p>9 look at by Phil McLeod?</p> <p>10 A. There were leaks in and around the</p> <p>11 windows. And the windows -- a sample window or</p> <p>12 two were removed to see how the installation was</p> <p>13 as it related to the wall cladding system that was</p> <p>14 also installed by Baldwin Construction.</p> <p>15 Q. What did you find?</p> <p>16 A. The findings were that the leak was not</p> <p>17 caused by the product. There was an installation</p> <p>18 problem at the termination of the wall cladding</p> <p>19 system and the roofing system.</p> <p>20 Q. Do you know what type of EFCO product</p> <p>21 that was that you were looking at?</p> <p>22 A. I don't have the model number, no.</p> <p>23 Q. Was it a window or a door?</p> <p>24 A. It was a window.</p> <p>25 Q. Fixed or operable?</p>                                                                                                          |
| <p style="text-align: right;">Page 99</p> <p>1 A. I don't know who at EFCO that Mr.</p> <p>2 Freeman tried to contact.</p> <p>3 Q. So you don't have any information to</p> <p>4 share with me that someone from EFCO told any of</p> <p>5 the folks involved in these e-mails that their</p> <p>6 product had a DP rating of 30; is that correct?</p> <p>7 A. That would be correct.</p> <p>8 Q. Do you know who W.C. Johnson</p> <p>9 Architectural Sales is?</p> <p>10 A. No.</p> <p>11 Q. Do you know who EFCO is?</p> <p>12 A. I know the name is a window</p> <p>13 manufacturer, yes.</p> <p>14 Q. Have you ever specified EFCO products on</p> <p>15 any job that you've designed?</p> <p>16 A. No. I looked at an EFCO window project</p> <p>17 in Myrtle Beach within the past year or so. But</p> <p>18 that's my extent of it.</p> <p>19 Q. What job is that?</p> <p>20 A. As soon as I think of it, I'll give it</p> <p>21 to you.</p> <p>22 Q. Who were you engaged by?</p> <p>23 A. By the homeowners.</p> <p>24 Q. Who is the lawyer working for the</p> <p>25 homeowners?</p>                                                                                                                                                                      | <p style="text-align: right;">Page 101</p> <p>1 A. Operable.</p> <p>2 Q. Did you make any recommendations in</p> <p>3 relationship to the use or reuse of that</p> <p>4 particular window?</p> <p>5 A. No. The source of the water was</p> <p>6 identified. The source of the water intrusion was</p> <p>7 identified, and I made recommendations of what</p> <p>8 needed to be done to fix it and left that with the</p> <p>9 property manager and the owners association.</p> <p>10 Q. What were your recommendations, in</p> <p>11 general terms?</p> <p>12 A. The roof-to-wall intersection had to be</p> <p>13 reflushed, because there were three planes that</p> <p>14 came together. There was a sloped roof, a</p> <p>15 vertical wall above and below the drip line and</p> <p>16 flanking the drip line. So there was work that</p> <p>17 had to be involved in the roofing and its related</p> <p>18 flashing and how it was counter-flashed over the</p> <p>19 wall system.</p> <p>20 Q. Did your recommendation call for the</p> <p>21 reuse of the EFCO operable window?</p> <p>22 A. They were reused.</p> <p>23 Q. Do you know when those EFCO windows were</p> <p>24 originally installed at that project?</p> <p>25 A. Well, it was a repair. I would say</p> |

26 (Pages 98 to 101)

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| <p style="text-align: right;">Page 102</p> <p>1 within the last two years or so.</p> <p>2 Q. So I understand it correctly, so the</p> <p>3 buildings underwent a repair in which the EFCO</p> <p>4 product was installed?</p> <p>5 A. Correct.</p> <p>6 Q. And you were called out within the last</p> <p>7 year, which was about roughly a year after the</p> <p>8 installation of the EFCO product, to look at the</p> <p>9 product to determine what was causing the leak?</p> <p>10 A. Yes. The time frame may adjust a little</p> <p>11 bit but somewhere in there.</p> <p>12 Q. So do you know whether or not you've</p> <p>13 ever specified, other than that project, perhaps,</p> <p>14 the use of an EFCO product on any project?</p> <p>15 A. I don't recall. It could have been in</p> <p>16 the past. I know it was not within the past three</p> <p>17 or four years.</p> <p>18 Q. The 72 doors we were talking about that</p> <p>19 were installed in early 2000, is it your</p> <p>20 understanding that those doors were installed in</p> <p>21 the master bedroom opening for each unit on floors</p> <p>22 1 through 3 of all four buildings?</p> <p>23 A. I don't know if it was the master</p> <p>24 bedroom and/or the Carolina room.</p> <p>25 Q. Just so we're clear, what are you</p> | <p style="text-align: right;">Page 104</p> <p>1 installed only at the master bedroom doors of</p> <p>2 floors 1 through 3 or whether they were installed</p> <p>3 at the living room area?</p> <p>4 A. No. I don't know when the other doors</p> <p>5 were installed. But if you go in the field, there</p> <p>6 are doors to the living room that are not vintage</p> <p>7 1985.</p> <p>8 Q. Did you find any doors in the living</p> <p>9 rooms on floors 1 through 3 of buildings A, B, C</p> <p>10 or D that were EFCO product?</p> <p>11 A. I didn't look for the product</p> <p>12 identification. So that part I can't tell you. I</p> <p>13 can tell you that they were newer doors.</p> <p>14 Q. Would you agree with me that in a number</p> <p>15 of the units, when those EFCO doors were replaced,</p> <p>16 wherever they were on the unit, in the early</p> <p>17 2000s, that the rest of the glass on the</p> <p>18 oceanfront remained original or prior to the 2004</p> <p>19 installation?</p> <p>20 A. That part I don't know. I don't know</p> <p>21 when the -- we'll call them sidelights. They're</p> <p>22 not true sidelights, but the fixed glass, when</p> <p>23 that went in. And there are areas where there are</p> <p>24 doors -- new doors, meaning new after 1985, if we</p> <p>25 just use that as original construction, give or</p> |
| <p style="text-align: right;">Page 103</p> <p>1 referring to as the "Carolina room"?</p> <p>2 A. Call it the living room.</p> <p>3 Q. Well, if you need to take time to look</p> <p>4 at any documents, that's fine. But from looking</p> <p>5 at it -- at the building, would you agree with me</p> <p>6 that there are 72 openings that are associated</p> <p>7 with the master bedroom on floors 1 through 3 of</p> <p>8 the four buildings?</p> <p>9 A. It's whatever the math is. I mean, I'm</p> <p>10 not disputing the number.</p> <p>11 Q. Well, it's important for my next</p> <p>12 question, so I'm going to need -- you've got some</p> <p>13 plans sitting around here, I think.</p> <p>14 MR. FLYNN: It's kind of small.</p> <p>15 MR. KELLY: Off the record.</p> <p>16 (The deposition went off the record.)</p> <p>17 THE WITNESS:</p> <p>18 A. It looks like there's six per floor. So</p> <p>19 that math would get you 72.</p> <p>20 Q. Six per floor, three floors per</p> <p>21 building, four buildings, comes to 72, right?</p> <p>22 A. Yes.</p> <p>23 Q. You're telling me you don't know from</p> <p>24 your review of the documentation supplied to you</p> <p>25 by Mr. Flynn or Ms. Jernigan whether those 72 were</p>                                                           | <p style="text-align: right;">Page 105</p> <p>1 take a couple of years, that are in the living</p> <p>2 room areas.</p> <p>3 Q. Do you agree with me that there's at</p> <p>4 least one unit on each building that when the EFCO</p> <p>5 doors were installed in 2003 or 2004, whenever it</p> <p>6 was, still had glass from prior to 1995 installed</p> <p>7 in either the door or the fixed glass on the</p> <p>8 oceanfront side?</p> <p>9 A. That part I don't have information to</p> <p>10 give you an answer on.</p> <p>11 Q. Based on your investigation, your</p> <p>12 observations, you can't tell me whether any of</p> <p>13 those units had glass in them that predated 1995?</p> <p>14 A. 1995?</p> <p>15 Q. Yes, sir.</p> <p>16 A. There were some original doors. If</p> <p>17 we're talking -- I use the terminology the 1985</p> <p>18 doors.</p> <p>19 Q. That's fine.</p> <p>20 A. But we're talking about the same</p> <p>21 vintage; is that correct?</p> <p>22 Q. The reason I used 1995 is because I</p> <p>23 don't want to discount the possibility that after</p> <p>24 Hugo, perhaps one door or one window was replaced</p> <p>25 with some other piece of glass. So that's why I</p>                                                                                                                                                    |

27 (Pages 102 to 105)

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| <p style="text-align: right;">Page 106</p> <p>1 use the 1995 versus 1985.</p> <p>2 A. There are some doors that are an older</p> <p>3 vintage than what was installed in the 2000 era.</p> <p>4 Q. Okay. And were those doors -- did they</p> <p>5 contain impact glass?</p> <p>6 A. No.</p> <p>7 Q. Do you see other fixed windows that were</p> <p>8 installed at Shipwatch prior to the 2000s that did</p> <p>9 not contain impact glass?</p> <p>10 A. I did not survey that.</p> <p>11 Q. But you don't recall, just from looking</p> <p>12 at the product, whether or not there was impact</p> <p>13 glass or not impact glass?</p> <p>14 A. I know there were some windows on the</p> <p>15 walkway side that were not impact. But as far as</p> <p>16 the fixed glass sections, I didn't survey that. I</p> <p>17 can go out in the field and look.</p> <p>18 Q. What is the purpose of impact glass?</p> <p>19 A. It's a requirement similar to a shutter,</p> <p>20 to keep projectiles from going through it and then</p> <p>21 allowing the force of the wind to the interior of</p> <p>22 the building.</p> <p>23 Q. Why is the force of the wind to the</p> <p>24 interior of the building important?</p> <p>25 A. It creates a better structure for</p>                                                                                                                  | <p style="text-align: right;">Page 108</p> <p>1 nonimpact glazing?</p> <p>2 A. The building code.</p> <p>3 Q. What about the building code?</p> <p>4 A. The building code, as Mr. Freeman read</p> <p>5 it, that was applicable at the time, required</p> <p>6 either shutters or impact glass.</p> <p>7 Q. Well, Mr. Freeman was reading a code</p> <p>8 that was in effect in 2010, correct? You can have</p> <p>9 my copy.</p> <p>10 A. Can I see the other one?</p> <p>11 Q. Yes.</p> <p>12 A. The date of his memo, yes, is 2010. He</p> <p>13 was talking about buildings A and B of the current</p> <p>14 building code.</p> <p>15 Q. Unfortunately, we don't have any e-mails</p> <p>16 from him or any other architects or engineers from</p> <p>17 the 2003 or 2004 time period like this, right?</p> <p>18 A. You may. I don't.</p> <p>19 Q. If I did, I promise you I would show</p> <p>20 them to you. So the building code Mr. Freeman was</p> <p>21 talking about in 2010 very well could be a</p> <p>22 different building code than you're saying the</p> <p>23 contractors had to adhere to in 2003 or 2004,</p> <p>24 correct?</p> <p>25 A. I don't believe so.</p>                                                                                                                                                                             |
| <p style="text-align: right;">Page 107</p> <p>1 resistance to the hurricane winds. If you allow</p> <p>2 the force of the wind in, the wind is going to be</p> <p>3 looking for a place to get out, and then it's</p> <p>4 going to basically explode the opposite wall.</p> <p>5 Q. So in the early 2000 time frame, when</p> <p>6 some of this new EFCO product was being installed,</p> <p>7 the 72 doors we talked about, there would have</p> <p>8 been a number of openings at Shipwatch that would</p> <p>9 have contained glazing that was not</p> <p>10 impact-resistant, correct?</p> <p>11 A. There would have been some, yes.</p> <p>12 Q. That nonimpact-resistant glazing, that</p> <p>13 was either original to the building or at least</p> <p>14 predated the 2000 work, could be blown out by</p> <p>15 wind-blown debris, correct?</p> <p>16 A. Yes, it could.</p> <p>17 Q. And when that product got blown out, the</p> <p>18 forces that you're talking about that would be</p> <p>19 imposed on the building would be imposed because</p> <p>20 that product was blown out, correct?</p> <p>21 A. That's correct so far.</p> <p>22 Q. So what difference does it make if the</p> <p>23 product that was installed in the early 2000's,</p> <p>24 the EFCO product, was impact or nonimpact if the</p> <p>25 -- a number of other windows and doors contained</p> | <p style="text-align: right;">Page 109</p> <p>1 Q. Why not?</p> <p>2 A. Just from my experience. Once it</p> <p>3 changed to the IBC, there were drastic changes</p> <p>4 from the '97 version and the adoption of the 2000</p> <p>5 code we talked about earlier this morning. There</p> <p>6 have been some minor changes, but I don't believe</p> <p>7 the changes applied to the missile test.</p> <p>8 Q. So you think the 2000, the 2003 and the</p> <p>9 2006 International Building Codes would be the</p> <p>10 same as it relates to impact-resistant glass?</p> <p>11 A. Or very similar.</p> <p>12 Q. Do you know -- or have you seen any</p> <p>13 documents to show you what Carolina Concrete or</p> <p>14 the window installer ordered in terms of window</p> <p>15 and door products?</p> <p>16 A. There was some reference to that in the</p> <p>17 two documents you just had.</p> <p>18 Q. Okay. Do you want to see those again?</p> <p>19 A. Yes. Thank you. In the letter of</p> <p>20 Freeman to Jernigan of November 12, 2010, in the</p> <p>21 first paragraph, there's reference to two</p> <p>22 different EFCO systems as it pertains to the size</p> <p>23 of the structure, meaning the frame of the unit.</p> <p>24 And in just reading the words, according to EFCO,</p> <p>25 the system that they manufactured that has been</p> |

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| <p style="text-align: right;">Page 110</p> <p>1 tested to meet the impact requirements is the</p> <p>2 system S526 system. The size of the S526 frame</p> <p>3 member is five-by-two-and-a-half. The size of the</p> <p>4 frames that are being used at Shipwatch are</p> <p>5 four-and-a-half-by-two in size.</p> <p>6 That's the extent of where apparently</p> <p>7 there's a difference in the product that was made</p> <p>8 for impact glass versus nonimpact.</p> <p>9 <b>Q. Are you inferring something from that as</b></p> <p>10 <b>to what was actually ordered from EFCO?</b></p> <p>11 A. The ordering part, I don't think I have</p> <p>12 information on it. I don't recall seeing an order</p> <p>13 sheet.</p> <p>14 <b>Q. In fairness, you have not been produced</b></p> <p>15 <b>documents from EFCO, correct? You have not been</b></p> <p>16 <b>provided documents --</b></p> <p>17 A. No. That's what I would like to see,</p> <p>18 because I also would like to see the attachment</p> <p>19 requirements.</p> <p>20 <b>Q. You have not been provided documents</b></p> <p>21 <b>produced by W.C. Johnson Architectural Sales in</b></p> <p>22 <b>this case?</b></p> <p>23 A. I have not.</p> <p>24 <b>Q. Have you been produced documents or</b></p> <p>25 <b>provided documents produced by Charleston Glass</b></p>                    | <p style="text-align: right;">Page 112</p> <p>1 <b>buildings?</b></p> <p>2 A. It only references 4, but those are the</p> <p>3 townhouse configuration, and the guest bedroom is</p> <p>4 on the -- call it the back side or the walkway</p> <p>5 side of the building.</p> <p>6 <b>Q. Okay.</b></p> <p>7 A. So that seems to substantiate GBR</p> <p>8 meaning guest bedroom.</p> <p>9 <b>Q. Does that help you understand anything</b></p> <p>10 <b>about what was actually ordered from W.C. Johnson?</b></p> <p>11 A. Not ordered. But we've been talking</p> <p>12 about 72 of them. It seemed that there was more</p> <p>13 ultimately done at the project.</p> <p>14 <b>Q. That's a good segue. Exhibit 132 is a</b></p> <p>15 <b>document that we marked previously in Ms.</b></p> <p>16 <b>Jernigan's deposition.</b></p> <p>17 A. Okay.</p> <p>18 <b>Q. Have you seen that document before?</b></p> <p>19 A. That, I don't know. I've seen reference</p> <p>20 to this vista wall before there.</p> <p>21 <b>Q. In reviewing that document, do you gain</b></p> <p>22 <b>the impression that Randy Morgan and Charleston</b></p> <p>23 <b>Glass knew they were purchasing a nonimpact</b></p> <p>24 <b>product for use at the Shipwatch project?</b></p> <p>25 A. Yes.</p>     |
| <p style="text-align: right;">Page 111</p> <p>1 <b>Company?</b></p> <p>2 A. No.</p> <p>3 <b>Q. So you haven't seen the order forms from</b></p> <p>4 <b>Charleston Glass to W.C. Johnson?</b></p> <p>5 A. I have seen some documentation, but I</p> <p>6 don't recall seeing the order form.</p> <p>7 <b>Q. I'm going to hand you what we've marked</b></p> <p>8 <b>as -- unless you need to keep looking; that's</b></p> <p>9 <b>fine.</b></p> <p>10 A. I'm looking at a chart that was provided</p> <p>11 to me as to a sliding glass -- sliding doors</p> <p>12 replaced at Shipwatch, and it goes through</p> <p>13 buildings A, B, C and D. And it looks like all of</p> <p>14 the master bedroom sliders were replaced between</p> <p>15 '08 and 2011. But there were living room sliders,</p> <p>16 or the Carolina room, whatever we want to call it,</p> <p>17 that were replaced in buildings A, B and D. And</p> <p>18 they have a reference, GBR -- whether that means</p> <p>19 guest bedroom -- and that part I don't know what</p> <p>20 -- but that might be a reasonable guess. And it</p> <p>21 shows replacement in years '08 through '11. So</p> <p>22 that would be more than the 72 that we talked</p> <p>23 about.</p> <p>24 <b>Q. It would have been. And those are</b></p> <p>25 <b>limited to floors 4 and 5, right, on the five</b></p> | <p style="text-align: right;">Page 113</p> <p>1 <b>Q. Do you have any information to share</b></p> <p>2 <b>with me otherwise, that the people purchasing the</b></p> <p>3 <b>product from EFCO or W.C. Johnson did not</b></p> <p>4 <b>understand they were purchasing nonimpact glazing</b></p> <p>5 <b>products?</b></p> <p>6 A. No. Based on that document, they were</p> <p>7 purchasing it. But they were also referencing the</p> <p>8 '97 code in 2010, if I'm not mistaken. Is that</p> <p>9 the date on the letter?</p> <p>10 <b>Q. I believe that's right.</b></p> <p>11 A. Yes, sir. November 11, 2010.</p> <p>12 <b>Q. In 2010, is it your understanding of the</b></p> <p>13 <b>building code that you could still use a</b></p> <p>14 <b>nonimpact-rated product as long as you had</b></p> <p>15 <b>shutters?</b></p> <p>16 A. You could have appropriate storm</p> <p>17 shutters, yes.</p> <p>18 <b>Q. Are you critical of EFCO or W.C. Johnson</b></p> <p>19 <b>Architectural Sales for selling their customer</b></p> <p>20 <b>nonimpact-rated glazing products?</b></p> <p>21 A. If they're basing it on the '97 code,</p> <p>22 yes.</p> <p>23 <b>Q. If who is basing it on the 1997 code?</b></p> <p>24 A. The author of that document we just</p> <p>25 read.</p> |

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| <p style="text-align: right;">Page 114</p> <p>1 Q. Do you have any information to share<br/>2 with me that W.C. Johnson Architectural Sales or<br/>3 EFCO had any idea as to what building code<br/>4 applied?<br/>5 A. Clearly, the local distributor should<br/>6 know what building code was applicable.<br/>7 Q. Do you know where W.C. Johnson<br/>8 Architectural Sales is located?<br/>9 A. No.<br/>10 Q. Why do you say, clearly a local<br/>11 distributor should know that?<br/>12 A. Because he knows exactly where the<br/>13 product is going. There could be an argument from<br/>14 a manufacturer that says, we make windows for all<br/>15 over the U.S., just as an example, and we don't<br/>16 know where it ends up. And there may be some<br/>17 argument there that local codes are different in<br/>18 other areas of the country.<br/>19 Q. You told us today that you don't know<br/>20 what the 2000 building code says without looking<br/>21 at it, right?<br/>22 A. No. I need to refer back to it.<br/>23 Q. You don't know what the 2003 building<br/>24 code says without looking at it?<br/>25 A. Same thing.</p> | <p style="text-align: right;">Page 116</p> <p>1 A. I don't think you put the caveat of<br/>2 construction litigation. I would agree that there<br/>3 are architects in other areas of the country that<br/>4 may not be familiar with the requirements of the<br/>5 International Building Code because they may<br/>6 operate under some other code or they don't even<br/>7 have a code in that municipality.<br/>8 Q. A building department official can give<br/>9 a variance for a code or applicability of certain<br/>10 sections of the code, correct?<br/>11 A. Yes.<br/>12 Q. How would a distributor of product know<br/>13 whether a building department official has given a<br/>14 variance to a contractor or not?<br/>15 MR. FLYNN: Object to the form.<br/>16 A. The distributor may not know, but you<br/>17 had asked the question as to what the requirements<br/>18 are from the person placing the order, which, in<br/>19 this case, it looks like it's the general<br/>20 contractor.<br/>21 Q. Have you ever worked for a window or<br/>22 door distributor?<br/>23 A. No.<br/>24 Q. Have you ever worked for a product<br/>25 distributor?</p> |
| <p style="text-align: right;">Page 115</p> <p>1 Q. The same with 2006?<br/>2 A. Yes.<br/>3 Q. You're a licensed architect?<br/>4 A. Yes.<br/>5 Q. And there are Registered Professional<br/>6 Engineers out there that can't tell you what the<br/>7 code says without looking at it, right?<br/>8 A. You said, are there?<br/>9 Q. Yes.<br/>10 A. Yes. I would think everybody would want<br/>11 to go back and look at the particular section.<br/>12 Q. In fact, there are engineers and<br/>13 architects out there who can look at it and not<br/>14 tell you what it actually says, in relationship to<br/>15 impact-resistant glass or DP ratings, correct?<br/>16 MR. FLYNN: Object to the form.<br/>17 A. And not tell you?<br/>18 Q. Right.<br/>19 A. I don't understand the question.<br/>20 Q. There are architects and engineers who<br/>21 aren't as familiar with what the DP rating<br/>22 requirements are and the impact-resistant glass<br/>23 requirements as perhaps those who are commonly<br/>24 involved in construction litigation; would you<br/>25 agree with that.</p>                                                  | <p style="text-align: right;">Page 117</p> <p>1 A. No.<br/>2 Q. Have you ever owned a company that is in<br/>3 the business of distributing products?<br/>4 A. No.<br/>5 Q. Are you going to be able to quote me a<br/>6 source that says a duty exists for a distributor<br/>7 of a product to know what building code is in<br/>8 effect for a certain time period and a certain<br/>9 installation method?<br/>10 MR. FLYNN: Object to the form.<br/>11 A. It's my opinion they should know.<br/>12 Q. Why do you hold that opinion?<br/>13 A. If that's not valid, how would they<br/>14 order the correct product when there are different<br/>15 product lines?<br/>16 Q. Do you hold that opinion because you've<br/>17 read that in some peer-reviewed publication?<br/>18 A. No.<br/>19 Q. Do you hold that opinion because someone<br/>20 in the industry has indicated to you that's the<br/>21 way it's done?<br/>22 A. I don't hold that, but that circumstance<br/>23 has taken place, yes.<br/>24 Q. So is there some source that you believe<br/>25 I can reference to tell me that a duty exists for</p>                                                |

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| <p style="text-align: right;">Page 118</p> <p>1 a product manufacturer or distributor to know what<br/>2 building code is in effect for a certain time<br/>3 period for a certain application method?<br/>4 A. I don't know if there's a written<br/>5 document. What I can tell you, there are other<br/>6 window distributors that do that research before<br/>7 the order is placed in the coastal environment.<br/>8 Q. In 2010, Linda Jernigan was the property<br/>9 manager for Shipwatch, right?<br/>10 A. I believe so.<br/>11 Q. And she was told that the product she<br/>12 was getting for installation in 2010 contained<br/>13 nonimpact glass, right?<br/>14 MR. FLYNN: Object to the form.<br/>15 A. That's what the document says. If<br/>16 that's the same one we just referenced.<br/>17 Q. Yes, sir. Look at it if you need to.<br/>18 It's Exhibit 133. That's something you looked at;<br/>19 it's in your file, right, Exhibit 133?<br/>20 A. Not with the stamp on it. But I believe<br/>21 the document is.<br/>22 Q. The e-mail is in your file? You<br/>23 referenced it earlier, right?<br/>24 A. Yes.<br/>25 Q. That's something you considered in</p>             | <p style="text-align: right;">Page 120</p> <p>1 MR. FLYNN: Object to the form.<br/>2 A. I don't understand the question. It<br/>3 seems there's two questions there.<br/>4 Q. We'll try it again. Do you agree with<br/>5 me that a customer has the right to determine<br/>6 whether to purchase impact- or nonimpact-rated<br/>7 glazing?<br/>8 MR. FLYNN: Object to the form.<br/>9 A. No. No. Because the customer could be<br/>10 a layperson and not involved in these type things.<br/>11 They need to rely on some professional to tell<br/>12 them or the distributor that's providing the<br/>13 product to the area.<br/>14 Q. Is a contractor a sophisticated --<br/>15 excuse me -- is a window installation contractor a<br/>16 sophisticated business entity?<br/>17 A. It should be.<br/>18 Q. That would be familiar with what<br/>19 building codes may apply to the installation of<br/>20 glazing and window products?<br/>21 A. They should be.<br/>22 Q. Would you agree with me that the EFCO<br/>23 products applied at the project are not defective?<br/>24 A. No. Because, in my opinion, they should<br/>25 have impact glass.</p>                                                           |
| <p style="text-align: right;">Page 119</p> <p>1 forming your opinions in this case, right?<br/>2 A. I don't disagree with you of what's in<br/>3 paragraph No. 1, with the content of the e-mail.<br/>4 Q. It says, "The aluminum storefront<br/>5 glazing system that has been installed at<br/>6 oceanfront window openings of the first three<br/>7 floors of buildings A and B does not meet the<br/>8 current building code requirements for<br/>9 impact-resistant systems"?<br/>10 A. That's correct.<br/>11 Q. And Shipwatch and Ms. Jernigan did not<br/>12 reject these windows that were installed at<br/>13 Shipwatch in 2010?<br/>14 MR. FLYNN: Object to the form.<br/>15 A. I don't know about that. I don't know<br/>16 what discussion has happened after that letter.<br/>17 Q. You know those windows are still in<br/>18 place out there, right?<br/>19 A. Right. But I don't know any other<br/>20 discussion about it.<br/>21 Q. Well, in 2010, Ms. Jernigan is told that<br/>22 the product is nonimpact. Do you agree with me<br/>23 that a customer has a right to make its own<br/>24 decision as to whether to purchase nonimpact or<br/>25 impact-rated products?</p> | <p style="text-align: right;">Page 121</p> <p>1 Q. Is there anything wrong with the product<br/>2 itself, if the building code that's in effect is<br/>3 the 1997 Standard Building Code?<br/>4 A. If we set aside the glass to answer your<br/>5 question?<br/>6 MR. FLYNN: Object to the form.<br/>7 Q. No. If the 1997 Standard Building Code<br/>8 was in effect at the time all the EFCO product was<br/>9 installed, is there anything defective about the<br/>10 EFCO product that was installed at the Shipwatch<br/>11 project?<br/>12 MR. FLYNN: Same.<br/>13 Q. You understand --<br/>14 A. I can't answer that until I go back and<br/>15 confirm with the '97 code.<br/>16 Q. I'm not asking you to agree or disagree<br/>17 which code is in effect. I'm asking you to assume<br/>18 that the 1997 Standard Building Code was in effect<br/>19 at the time the EFCO products were installed at<br/>20 Shipwatch; assuming that -- realizing you can<br/>21 disagree with that assertion later -- assuming<br/>22 that to be the case, is there anything defective<br/>23 with the EFCO products that were installed at<br/>24 Shipwatch in the 2000s?<br/>25 A. That, again, I can't answer it until I</p> |

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| <p style="text-align: right;">Page 122</p> <p>1 go back and reread the requirements in the '97.</p> <p>2 <b>Q. I follow you. So you're not sure</b></p> <p>3 <b>whether the 1997 Standard Building Code permitted</b></p> <p>4 <b>the use of nonimpact glass?</b></p> <p>5 A. I believe the '97 did, but before I can</p> <p>6 answer your question, I want to go back and read</p> <p>7 the appropriate sections.</p> <p>8 <b>Q. Which sections? What in general?</b></p> <p>9 A. As to the requirement for shutters or</p> <p>10 impact glass.</p> <p>11 <b>Q. Do you have any information to share</b></p> <p>12 <b>with me that W.C. Johnson Architectural Sales or</b></p> <p>13 <b>EFCO told the contractors or the owner that they</b></p> <p>14 <b>can't use shutters at Shipwatch?</b></p> <p>15 A. I have no information on that. From a</p> <p>16 code standpoint, you could use an appropriate</p> <p>17 shutter.</p> <p>18 <b>Q. The fact that the EFCO product was</b></p> <p>19 <b>nonimpact-rated doesn't make it defective if you</b></p> <p>20 <b>use shutters, right?</b></p> <p>21 A. That part would be correct.</p> <p>22 <b>Q. So you could take the EFCO products that</b></p> <p>23 <b>were installed at Shipwatch and use shutters, and</b></p> <p>24 <b>your opinion would be that the EFCO products are</b></p> <p>25 <b>not defective?</b></p> | <p style="text-align: right;">Page 124</p> <p>1 -- to come to a conclusion as to what their duty</p> <p>2 <b>was or was not?</b></p> <p>3 A. One would hope that if they're selling a</p> <p>4 widget -- we'll do this hypothetically -- that if</p> <p>5 a distributor is selling a widget, that he is</p> <p>6 instructed by the manufacturer how the widget</p> <p>7 should be installed so that can be passed on to</p> <p>8 the distributor's client. And the pros and cons</p> <p>9 of the product, meaning what can it perform? So</p> <p>10 there is some education. I don't think there's --</p> <p>11 that that education goes down to possibly the</p> <p>12 mechanic in the field or the warehouse personnel.</p> <p>13 But somewhere in that organization, that</p> <p>14 information has to come from the manufacturer to</p> <p>15 the person who is wholesaling it so it can be</p> <p>16 passed on to the retail customer.</p> <p>17 <b>Q. Do you have any information to share as</b></p> <p>18 <b>to whether W.C. Johnson Architectural Sales or</b></p> <p>19 <b>EFCO recommended or suggested the use of the</b></p> <p>20 <b>products that are incorporated at Shipwatch?</b></p> <p>21 A. I don't know who recommended the</p> <p>22 product. From my information, the product,</p> <p>23 though, that was shipped to the job, in my</p> <p>24 opinion, did not comply and does not comply with</p> <p>25 the applicable code at the time.</p> |
| <p style="text-align: right;">Page 123</p> <p>1 A. Based on the information that I have on</p> <p>2 the product, that part would be correct.</p> <p>3 <b>Q. So your opinion is really that the</b></p> <p>4 <b>application of the product was an error and not</b></p> <p>5 <b>the product itself?</b></p> <p>6 MR. FLYNN: Object to the form.</p> <p>7 A. The product, as installed, is defective.</p> <p>8 If you talk about the application, then clearly</p> <p>9 the distributor should have known where the</p> <p>10 product was going.</p> <p>11 <b>Q. What is your basis for that statement?</b></p> <p>12 A. Just using your question.</p> <p>13 <b>Q. I'm not sure I follow that.</b></p> <p>14 THE WITNESS: Read the question back.</p> <p>15 THE COURT REPORTER: "So your opinion is</p> <p>16 really that the application of the product was</p> <p>17 an error and not the product itself?"</p> <p>18 A. And that's where I'm saying the</p> <p>19 distributor should have known what the application</p> <p>20 was, where it was going.</p> <p>21 <b>Q. Do you know anything about the</b></p> <p>22 <b>education, training or experience of the employees</b></p> <p>23 <b>of W.C. Johnson Architectural Sales?</b></p> <p>24 A. I do not.</p> <p>25 <b>Q. Don't you think that's relevant upon a</b></p>                                                  | <p style="text-align: right;">Page 125</p> <p>1 <b>Q. And you agree with me that if Charleston</b></p> <p>2 <b>Glass and Carolina Concrete knew they were</b></p> <p>3 <b>purchasing nonimpact-rated product, then EFCO has</b></p> <p>4 <b>no responsibility to provide them anything other</b></p> <p>5 <b>than what was ordered?</b></p> <p>6 MR. FLYNN: Object to the form.</p> <p>7 A. I think you left out the distributor,</p> <p>8 though, right?</p> <p>9 <b>Q. Yes, sir, intentionally. I understand</b></p> <p>10 <b>your opinion on that. I was trying to move on.</b></p> <p>11 A. I think the information trail goes right</p> <p>12 down the line, just as I was trying to explain to</p> <p>13 you in the hypothetical situation. It's got to</p> <p>14 come from the entity that produces the widget all</p> <p>15 the way down to the retail customer, which, in</p> <p>16 this case, would be whoever is installing the</p> <p>17 product.</p> <p>18 <b>Q. I thought a minute ago you told me that</b></p> <p>19 <b>you thought the case could be made for a</b></p> <p>20 <b>manufacturer had no responsibility to know what</b></p> <p>21 <b>code was in effect at the time his product was</b></p> <p>22 <b>installed in the field.</b></p> <p>23 A. No. We're now talking about the product</p> <p>24 itself, what it can do. That's the way I read</p> <p>25 your question.</p>                                                               |

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|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">Page 126</p> <p>1 Q. Okay.</p> <p>2 A. Meaning if you make a window product,</p> <p>3 just hypothetically, and you only make nonimpact</p> <p>4 product, you ought to know that in a coastal</p> <p>5 environment the impact product is required. I've</p> <p>6 run across that with other manufacturers that come</p> <p>7 into continuing ed programs and, you know, they</p> <p>8 have a great product but it's not code-compliant.</p> <p>9 They ought to know that before they go to sell it</p> <p>10 into a product or some of the products you see</p> <p>11 marketed from Window World. They ought to know</p> <p>12 that their product is not code-compliant.</p> <p>13 Q. Well, specifically looking at this case,</p> <p>14 EFCO made impact-rated products. Right?</p> <p>15 A. That's what it appears to be, yes.</p> <p>16 Q. A customer could have purchased</p> <p>17 impact-rated products or nonimpact-rated products?</p> <p>18 A. The customer being the distributor?</p> <p>19 Q. The customer being the window installer.</p> <p>20 A. Yes.</p> <p>21 Q. And you agreed with me a minute ago that</p> <p>22 the window installer knew it was purchasing</p> <p>23 nonimpact-rated products?</p> <p>24 A. Yes.</p> <p>25 Q. Is it your opinion that EFCO did nothing</p>                                                                   | <p style="text-align: right;">Page 128</p> <p>1 A. That's not what this is referring to, I</p> <p>2 don't believe.</p> <p>3 Q. Right.</p> <p>4 A. This is talking about the design</p> <p>5 pressure and if there's stiffener components that</p> <p>6 are required. My point being, there was some</p> <p>7 discussion going on, at least at 12/29/08, about</p> <p>8 what are the requirements of the EFCO product?</p> <p>9 What requirements do they need to meet?</p> <p>10 Q. Well, there's a question about the</p> <p>11 design pressure, right?</p> <p>12 A. That's a question.</p> <p>13 Q. That's the only question?</p> <p>14 MR. FLYNN: Object to the form.</p> <p>15 Q. Is there something on there that talks</p> <p>16 about impact glass or nonimpact glass?</p> <p>17 A. No.</p> <p>18 Q. Is there anything on there that talks</p> <p>19 about what building code is in effect?</p> <p>20 A. No. My point being that there was a</p> <p>21 dialogue going on between the manufacturer and the</p> <p>22 sales company, and this was back in '08.</p> <p>23 Q. About how to assemble the product?</p> <p>24 A. More how the manufacturer needed to</p> <p>25 design and construct the product.</p>                           |
| <p style="text-align: right;">Page 127</p> <p>1 wrong in supplying nonimpact-rated products if its</p> <p>2 customer intentionally purchased nonimpact-rated</p> <p>3 products?</p> <p>4 MR. FLYNN: Object to the form.</p> <p>5 A. No, I don't. If you look at the</p> <p>6 document from Shannon Andrews, who is a project</p> <p>7 manager at EFCO, which is a Pella company, and it</p> <p>8 appears that it went to james@wcjsales.com, and</p> <p>9 Pella or EFCO is saying Shipwatch, and she goes on</p> <p>10 to say, "I need to know the design pressure on</p> <p>11 this to determine the length of the stiffener and</p> <p>12 if steel is required. We have priced it that way</p> <p>13 based off of the made-up design pressure used on</p> <p>14 the quote" -- or it reads "quote takeoff," I'm</p> <p>15 sorry. "Now we're actually going to build</p> <p>16 something. I'm going to need a real number." So</p> <p>17 there was some discussion from the manufacturer,</p> <p>18 at least down to James at WCJ Sales.</p> <p>19 Q. As to design pressure?</p> <p>20 A. Well, as to the design pressure, but,</p> <p>21 more importantly, how the window was to be built.</p> <p>22 Q. There's no discussion as to whether --</p> <p>23 what code is in effect because we need to know</p> <p>24 whether to build those as nonimpact or impact</p> <p>25 glazing, right?</p> | <p style="text-align: right;">Page 129</p> <p>1 Q. For design pressure requirements?</p> <p>2 A. That's what this says, yes.</p> <p>3 Q. Are you critical in any way of whether</p> <p>4 the product does or does not meet the design</p> <p>5 pressure requirements required by the building</p> <p>6 code?</p> <p>7 A. The DP rating should have been more than</p> <p>8 30. That doesn't give you numbers that I can</p> <p>9 respond to.</p> <p>10 Q. Do you know what the design pressure</p> <p>11 rating requirements -- excuse me -- start again.</p> <p>12 Do you know what the design pressure ratings are</p> <p>13 for the EFCO products that were supplied in 2004?</p> <p>14 A. Only from reading correspondence that --</p> <p>15 from Mr. Freeman.</p> <p>16 Q. Okay.</p> <p>17 A. I think the discussion there was that it</p> <p>18 was, give or take, a 30, and there was some</p> <p>19 inquiry to another entity that talked about that</p> <p>20 it should have been at least a 45.</p> <p>21 Q. I saw you and Mr. Flynn looking earlier</p> <p>22 at some blue pieces of paper that contained some</p> <p>23 EFCO literature. Do you have that?</p> <p>24 A. These?</p> <p>25 Q. No. They were blue pages. The copy</p> |

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| <p style="text-align: right;">Page 130</p> <p>1 itself was blue.</p> <p>2 A. This pile?</p> <p>3 Q. I don't know.</p> <p>4 MR. FLYNN: I've got an extra copy.</p> <p>5 BY MR. KELLY:</p> <p>6 Q. This is what I was talking about. Have</p> <p>7 you seen a document that looks like that?</p> <p>8 A. I don't recall seeing this document.</p> <p>9 Q. What about the one we just put in front</p> <p>10 of Mr. Flynn, the blue pages I was talking about?</p> <p>11 A. These came about because I had asked if</p> <p>12 he had any information on the installation</p> <p>13 requirements, particularly as it applied to</p> <p>14 attachment at the jambs. In my visit of the past</p> <p>15 two times into the field, what has been observed</p> <p>16 is, if you take a 5-in-1 tool and run it down the</p> <p>17 jamb between the window unit, meaning that</p> <p>18 product, and the buck that's forming the rough</p> <p>19 opening, it doesn't get interrupted by a fastener.</p> <p>20 And that's where this all came about, because I</p> <p>21 didn't have any installation instructions. You</p> <p>22 and I talked about that earlier.</p> <p>23 Q. Gotcha.</p> <p>24 A. So that's how that came about. Now, I</p> <p>25 scanned this. I didn't see an answer to my</p> | <p style="text-align: right;">Page 132</p> <p>1 Q. I'm going to hand you this document we</p> <p>2 were referring to a moment ago, which is the EFCO</p> <p>3 Series 3015 Sliding Glass Door Report created by</p> <p>4 Construction Consulting Laboratory International,</p> <p>5 and there's a Bates stamp, Charleston Glass 87, in</p> <p>6 the bottom right-hand corner. That's the page I</p> <p>7 want to reference. You can look at however much</p> <p>8 of it you would like.</p> <p>9 A. And your question is?</p> <p>10 Q. I think my question was, is there a</p> <p>11 correlation between 90 PSF and a DP rating?</p> <p>12 A. Yes.</p> <p>13 Q. What is the correlation?</p> <p>14 A. I can't give you the engineering aspect</p> <p>15 of it.</p> <p>16 Q. Are you qualified to testify about what</p> <p>17 the design pressure rating should be on the</p> <p>18 project?</p> <p>19 MR. FLYNN: Object to the form.</p> <p>20 A. With regard to if it's in compliance</p> <p>21 with the applicable building code, yes.</p> <p>22 Q. Okay. Are you qualified to give an</p> <p>23 opinion as to what the DP ratings of the EFCO</p> <p>24 products installed at Shipwatch are?</p> <p>25 A. I don't see that listed here.</p>            |
| <p style="text-align: right;">Page 131</p> <p>1 question.</p> <p>2 Q. Can I see that white --</p> <p>3 A. Yes, sir.</p> <p>4 Q. Just for the record, this is an EFCO</p> <p>5 Series 3015 Sliding Glass Door Report produced by</p> <p>6 Construction Consulting Laboratory International.</p> <p>7 Your testimony was you had not seen this document</p> <p>8 before?</p> <p>9 A. I don't believe I've seen that, sir.</p> <p>10 Q. Do you know what design pressure rating</p> <p>11 was required for the installation of the EFCO</p> <p>12 sliding glass doors in 2010?</p> <p>13 A. Somewheres in the 45 to 50 range.</p> <p>14 Q. Do you know what design pressure rating</p> <p>15 was required for the installation of those fixed</p> <p>16 window units on the ocean side of the buildings in</p> <p>17 the 2010 time period?</p> <p>18 A. It should have been the same.</p> <p>19 Q. What does 90 PSF mean?</p> <p>20 A. I would need to look at the document.</p> <p>21 Q. Was there a general correlation between</p> <p>22 numbers -- a number with the PSF and DP ratings?</p> <p>23 A. There is, but you have to look at the</p> <p>24 negative and the positive. And you have to look</p> <p>25 at the size of the unit.</p>                                           | <p style="text-align: right;">Page 133</p> <p>1 Q. My question was, are you qualified to</p> <p>2 give that opinion?</p> <p>3 MR. FLYNN: Same objection.</p> <p>4 A. I can get the opinion.</p> <p>5 Q. How do you get the opinion?</p> <p>6 A. If I was designing it, I would go to the</p> <p>7 structural engineer.</p> <p>8 Q. To get the opinion of what the door or</p> <p>9 window product's DP rating is?</p> <p>10 A. Yes. But, more importantly, if the</p> <p>11 rough opening is framed, to take the rating of the</p> <p>12 door or the window.</p> <p>13 Q. Well, that doesn't have anything to do</p> <p>14 with the door or window product itself, does it?</p> <p>15 A. Well, it does for the end product. If</p> <p>16 the rough opening was not framed such that it was</p> <p>17 compliant with the requirements of the door or</p> <p>18 window unit and the applicable building code, then</p> <p>19 you could put a door in the hole and it would</p> <p>20 still not work. You have to look at all of those</p> <p>21 aspects.</p> <p>22 Q. Well, a window manufacturer or</p> <p>23 distributor has no responsibility for framing the</p> <p>24 rough opening that's going to receive a door or a</p> <p>25 window, does it?</p> |

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| <p style="text-align: right;">Page 134</p> <p>1 MR. FLYNN: Object.</p> <p>2 A. The window manufacturer?</p> <p>3 Q. Right.</p> <p>4 A. No. Not as far as the actual framing.</p> <p>5 But the window manufacturer would normally give</p> <p>6 deflection limits, meaning you could not put a</p> <p>7 stiffer product in a hole where the rough opening</p> <p>8 is going to flex. The window manufacturer,</p> <p>9 through its attachment requirements, would also</p> <p>10 tell you the performance of what the frame needs</p> <p>11 to be. It wouldn't typically tell you it has to</p> <p>12 be metal stud or wood stud, just as an example.</p> <p>13 It would tell you the requirements that that</p> <p>14 opening has to comply with in the performance of</p> <p>15 the opening.</p> <p>16 Q. Are windows and doors typically shipped</p> <p>17 with information about their DP rating?</p> <p>18 A. They should be.</p> <p>19 Q. And aren't those ratings typically taken</p> <p>20 from the test report like you're looking at?</p> <p>21 A. From the information here, yes.</p> <p>22 Q. So the information to determine what the</p> <p>23 DP ratings of the EFCO doors are should be right</p> <p>24 there in your hands?</p> <p>25 A. No. The DP rating, typically, at least</p> | <p style="text-align: right;">Page 136</p> <p>1 A. No.</p> <p>2 Q. Sir, are you offering any opinions that</p> <p>3 there are any issues with the DP ratings of the</p> <p>4 EFCO doors or windows at Shipwatch?</p> <p>5 A. If the information shows that it didn't</p> <p>6 comply with the applicable building code, then,</p> <p>7 yes, I will.</p> <p>8 Q. As we sit here today, do you have any</p> <p>9 information to share that the product supplied did</p> <p>10 not meet the DP ratings in the building codes that</p> <p>11 were in effect at the time the Shipwatch projects</p> <p>12 were constructed?</p> <p>13 A. No. I relay to the Gary Freeman</p> <p>14 documents, and I'm trying to find the documents</p> <p>15 from the manufacturer that we already talked</p> <p>16 about.</p> <p>17 Q. And that test report I just showed you</p> <p>18 for the 3015 Series doors you don't think helped</p> <p>19 you at all in determining whether or not the DP</p> <p>20 ratings for the doors installed at Shipwatch are</p> <p>21 appropriate?</p> <p>22 A. I didn't see it spelled out on that</p> <p>23 document.</p> <p>24 MR. FLYNN: Did we mark that?</p> <p>25 MR. KELLY: I did not mark it. I think</p> |
| <p style="text-align: right;">Page 135</p> <p>1 nowadays -- and I can't tell you what EFCO did</p> <p>2 back in '04, but there's a sticker on the window</p> <p>3 unit.</p> <p>4 Q. Where do you think the number for that</p> <p>5 sticker comes from?</p> <p>6 A. From the manufacturer.</p> <p>7 Q. Where does the manufacturer get the</p> <p>8 number?</p> <p>9 A. They design the product.</p> <p>10 Q. Right. Well, how do they determine the</p> <p>11 number through their design of the product?</p> <p>12 MR. FLYNN: Object to the form.</p> <p>13 A. That's from their engineer.</p> <p>14 Q. You don't know, is the answer, right?</p> <p>15 A. No. The answer is -- to the question is</p> <p>16 from the engineering and the design of the</p> <p>17 product.</p> <p>18 Q. Have you ever designed a window?</p> <p>19 A. No. You asked me that.</p> <p>20 Q. I think I asked you if you ever worked</p> <p>21 for a distributor. Have you ever designed a door?</p> <p>22 A. No.</p> <p>23 Q. Have you ever fabricated a door?</p> <p>24 A. No.</p> <p>25 Q. Have you ever fabricated a window?</p>                                                                                                                                                                                  | <p style="text-align: right;">Page 137</p> <p>1 I referenced the Bates label.</p> <p>2 MR. FLYNN: You did. So I don't need</p> <p>3 it. It's the Charleston Glass doc.</p> <p>4 BY MR. KELLY:</p> <p>5 Q. Can an owner pull a building permit?</p> <p>6 A. In some cases, yes.</p> <p>7 Q. And they do in some cases, right?</p> <p>8 A. In some cases.</p> <p>9 Q. Do you have any knowledge as to Ms.</p> <p>10 Jernigan's familiarity with the building</p> <p>11 department at Isle of Palms?</p> <p>12 A. No.</p> <p>13 Q. Do you have any knowledge as to Ms.</p> <p>14 Jernigan's familiarity with the building permit</p> <p>15 process at Isle of Palms?</p> <p>16 A. No.</p> <p>17 Q. Do you know whether any of the units at</p> <p>18 Shipwatch have hurricane shutters?</p> <p>19 A. I do not know. There's one unit that</p> <p>20 has some type of a track at the sill but nothing</p> <p>21 at the head. But to answer your question, I don't</p> <p>22 know.</p> <p>23 Q. What about before the repairs were done</p> <p>24 at building C and D; do you know whether any of</p> <p>25 those units had hurricane shutters on them?</p>                                                                           |

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| <p style="text-align: right;">Page 138</p> <p>1 A. Not that I recall.</p> <p>2 <b>Q. If any of the units had hurricane</b></p> <p>3 <b>shutters, would that address the concern or</b></p> <p>4 <b>criticism you had about the use of nonimpact</b></p> <p>5 <b>glass?</b></p> <p>6 A. It could.</p> <p>7 <b>Q. Why do you qualify that it could as</b></p> <p>8 <b>opposed to would?</b></p> <p>9 A. Because I don't know what the design of</p> <p>10 the shutter is.</p> <p>11 <b>Q. I don't know enough about shutters. So</b></p> <p>12 <b>can you explain to me why that's important?</b></p> <p>13 A. Well, someone may figure that a cosmetic</p> <p>14 shutter is suitable as the substitution. And in</p> <p>15 most cases, that is not the case. If it is a true</p> <p>16 storm shutter that resists the proper impact,</p> <p>17 meaning the missile test, then, yes, that could be</p> <p>18 a substitute for not having impact glass.</p> <p>19 <b>Q. What is a cosmetic shutter versus --</b></p> <p>20 <b>like I'm used to these roll-out, sort of</b></p> <p>21 <b>steel-looking things that come around the doors?</b></p> <p>22 A. Some little cosmetic shutter on each</p> <p>23 side of the window, whether it operates or not.</p> <p>24 <b>Q. Could the owners use plywood to protect</b></p> <p>25 <b>their glass?</b></p>                                                                                   | <p style="text-align: right;">Page 140</p> <p>1 A. They could use plywood early on.</p> <p>2 <b>Q. So the contractor could have told them,</b></p> <p>3 <b>You can use plywood in the event of a storm to</b></p> <p>4 <b>protect your glass?</b></p> <p>5 A. Then the general contractor, by the</p> <p>6 building code, had to provide the shutters and</p> <p>7 have them all numbered and put the studs in the</p> <p>8 wall such that they could be put up, and the</p> <p>9 product needs to be stored on-site someplace.</p> <p>10 <b>Q. And you think it's reasonable for a</b></p> <p>11 <b>distributor of building materials to know the</b></p> <p>12 <b>terms of the contract and the field directives</b></p> <p>13 <b>between a contractor and an owner?</b></p> <p>14 A. I think it's incumbent upon the</p> <p>15 distributor and the retailer, who may be the</p> <p>16 installer, to know that something needs to be</p> <p>17 there. Either to say, You need to put up</p> <p>18 hurricane shutters, or, This needs to be impact</p> <p>19 glass.</p> <p>20 <b>Q. Can you tell me why you believe it's</b></p> <p>21 <b>incumbent upon the distributor to do that?</b></p> <p>22 A. If the distributor knows where it's</p> <p>23 going, and he should, then I think that's part of</p> <p>24 the service.</p> <p>25 <b>Q. Have you ever sat on a board or any sort</b></p>                           |
| <p style="text-align: right;">Page 139</p> <p>1 A. At least in the beginning, I believe,</p> <p>2 yes, they could. Whether it's currently approved</p> <p>3 or not, that part, I don't know. Because that</p> <p>4 would be a decision from the building official.</p> <p>5 <b>Q. This is what I don't understand. If the</b></p> <p>6 <b>owners have the ability to protect nonimpact glass</b></p> <p>7 <b>with shutters or plywood, at least in the</b></p> <p>8 <b>beginning, why would you be critical in any way of</b></p> <p>9 <b>the distributor or the manufacturer for selling</b></p> <p>10 <b>nonimpact glass?</b></p> <p>11 MR. FLYNN: Object to the form.</p> <p>12 A. Because they sold it or distributed it</p> <p>13 to a project and they should have known where it</p> <p>14 is. And if they sold it and understood that</p> <p>15 impact glass or a shutter was there, it seems to</p> <p>16 me the obligation is, we have this product but it</p> <p>17 can only be used if you have the appropriate</p> <p>18 hurricane shutters.</p> <p>19 <b>Q. Or plywood?</b></p> <p>20 A. Well, that -- it depends on the window</p> <p>21 of time. You can't use plywood.</p> <p>22 <b>Q. I apologize. I was trying to limit my</b></p> <p>23 <b>question to the time period when plywood could be</b></p> <p>24 <b>used, which I understood to be in the early 2000s?</b></p> <p>25 MR. FLYNN: Object to the form.</p> | <p style="text-align: right;">Page 141</p> <p>1 <b>of committee that is charged with developing</b></p> <p>2 <b>standards or rules for window and door</b></p> <p>3 <b>manufacturers or distributors?</b></p> <p>4 A. No, I have not sat on a board.</p> <p>5 <b>Q. In designing projects, is it common for</b></p> <p>6 <b>you to rely upon information provided to you by</b></p> <p>7 <b>the product manufacturer?</b></p> <p>8 A. Yes.</p> <p>9 <b>Q. Is that because the product manufacturer</b></p> <p>10 <b>is the expert on its products?</b></p> <p>11 A. No. It's because the product</p> <p>12 manufacturer -- and if we use windows as an</p> <p>13 example -- may tell you that a window has a</p> <p>14 certain DP rating of the window tested being a</p> <p>15 single unit. And what I have found in the printed</p> <p>16 literature is that once you gang the windows</p> <p>17 together, there are only a couple manufacturers</p> <p>18 that then provide you a new DP rating, because the</p> <p>19 rating is for the assembled product. So you can't</p> <p>20 take a bunch of small products, gang them together</p> <p>21 and expect to get the same DP rating.</p> <p>22 <b>Q. Do you know whether any of the EFCO</b></p> <p>23 <b>products were ganged together at Shipwatch?</b></p> <p>24 A. No. I'm just giving you an example,</p> <p>25 because yours was more hypothetical, of the</p> |

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| <p style="text-align: right;">Page 142</p> <p>1 manufacturer.</p> <p>2 <b>Q. Were you aware that Sutton-Kennerly &amp;</b></p> <p>3 <b>Associates attempted to reuse the EFCO products</b></p> <p>4 <b>that are installed at Shipwatch as part of its</b></p> <p>5 <b>redesign?</b></p> <p>6 A. No.</p> <p>7 <b>Q. Is that significant to you in any way?</b></p> <p>8 A. I don't know all the details about it.</p> <p>9 I would have to know more to answer your question.</p> <p>10 MR. KELLY: All right. I'm going to let</p> <p>11 some of these other folks ask some questions.</p> <p>12 Thanks for your time.</p> <p>13 MR. FLYNN: Do you want to take a couple</p> <p>14 minutes?</p> <p>15 (The deposition went off the record.)</p> <p>16 EXAMINATION</p> <p>17 BY MR. WINTON:</p> <p>18 <b>Q. Mr. Sherratt, we've met before, but for</b></p> <p>19 <b>the benefit of the record, my name is Tyler</b></p> <p>20 <b>Winton. I work at Carlock, Copeland, and I'm here</b></p> <p>21 <b>on behalf of Sisroy Engineering and Bob Sisroy.</b></p> <p>22 <b>I know you're obviously familiar with my client,</b></p> <p>23 <b>and I listened to some of your testimony before</b></p> <p>24 <b>regarding documents that you have from Mr. Sisroy</b></p> <p>25 <b>relative to this matter and some of your opinions.</b></p> | <p style="text-align: right;">Page 144</p> <p>1 <b>Q. I think that was in a -- I wrote it</b></p> <p>2 <b>down, but it was in a June or July letter, July</b></p> <p>3 <b>10th, 2006. Could you pull that back up and could</b></p> <p>4 <b>we mark that as an exhibit? If you think it's</b></p> <p>5 <b>going to take too long to look for it, I will try</b></p> <p>6 <b>to track it down when some other folks ask you</b></p> <p>7 <b>questions.</b></p> <p>8 A. Why don't you go ahead and ask and I'll</p> <p>9 keep looking for it.</p> <p>10 <b>Q. Also, I thought I heard you talking</b></p> <p>11 <b>about the lack of design drawings in this case.</b></p> <p>12 <b>Are you blaming or criticizing Mr. Sisroy because</b></p> <p>13 <b>there's not a set of design plans for the</b></p> <p>14 <b>renovation work that was performed out at</b></p> <p>15 <b>Shipwatch?</b></p> <p>16 A. As I read the building code, there needs</p> <p>17 to be an appropriate set of plans and specs --</p> <p>18 specs could be on the plans -- for any</p> <p>19 construction work.</p> <p>20 <b>Q. That's any construction work?</b></p> <p>21 A. Well, short of doing a doghouse or</p> <p>22 something like that. But to keep it in</p> <p>23 perspective, a project like this. And if you look</p> <p>24 at what the building code says in the first</p> <p>25 chapter, it talks about specific details at</p> |
| <p style="text-align: right;">Page 143</p> <p>1 You mentioned at one point that you read</p> <p>2 something where Mr. Sisroy called for copper pan</p> <p>3 flashing to be installed at aluminum sliding</p> <p>4 doors; is that correct?</p> <p>5 A. Yes.</p> <p>6 <b>Q. And you noted that that would be an</b></p> <p>7 <b>issue if it was installed; is that correct?</b></p> <p>8 A. The two products need to be isolated.</p> <p>9 You could still use the copper. The copper should</p> <p>10 not be in contact with the concrete, nor should it</p> <p>11 be in contact with the aluminum. But there are</p> <p>12 methods to isolate at those joints, meaning the</p> <p>13 materials.</p> <p>14 <b>Q. Have you ever seen -- what are those</b></p> <p>15 <b>methods, just real quickly?</b></p> <p>16 A. Well, one, you could take the</p> <p>17 waterproofing and roll it over the top or</p> <p>18 underneath where the door is going to be. That</p> <p>19 would isolate you from the concrete. And you</p> <p>20 could use a rubberized product to isolate metal to</p> <p>21 metal.</p> <p>22 <b>Q. All right. Have you ever seen the</b></p> <p>23 <b>application of copper pan flashing and at an</b></p> <p>24 <b>aluminum window door or slider?</b></p> <p>25 A. Yes.</p>                                        | <p style="text-align: right;">Page 145</p> <p>1 dissimilar materials or intersections of different</p> <p>2 materials.</p> <p>3 <b>Q. And what building code are you referring</b></p> <p>4 <b>to?</b></p> <p>5 A. The 2000 and 2003. And then as you come</p> <p>6 forward, the same terminology is in the subsequent</p> <p>7 codes.</p> <p>8 <b>Q. The 2000 and 2003 IBCs?</b></p> <p>9 A. Yes. When I say code, I'm always</p> <p>10 referencing the IBC.</p> <p>11 <b>Q. I understand that now.</b></p> <p>12 A. This is that document you asked about.</p> <p>13 <b>Q. Do you mind if we mark this as an</b></p> <p>14 <b>exhibit to your deposition and have a copy made?</b></p> <p>15 A. Can you make a copy and give it back to</p> <p>16 me now; I mean before we --</p> <p>17 <b>Q. I bet we can. I don't have Mr. Cobb's</b></p> <p>18 <b>copying skills.</b></p> <p>19 MR. WINTON: Let's do that.</p> <p>20 (Deposition Exhibit No. 184, 7/10/06</p> <p>21 letter from Sisroy Engineering to Linda Jernigan,</p> <p>22 was marked for identification.)</p> <p>23 BY MR. WINTON:</p> <p>24 <b>Q. Is it okay if I put this sticker on it?</b></p> <p>25 A. Yeah. Just give me a copy back. I'd</p>                                                                                                                                                                                                        |

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