THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM DILLON COUNTY
Alison Renee Lee, Circuit Court Judge

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Case Nos. 2008-CP-17-0376
2008-CP-17-0377

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S.C. SUPREME COURT

Claude W. Graham, ..... Respondent-Appellant,

v.

Town of Latta, South Carolina, ..... Appellant-Respondent.

AND

Vickie B. Graham, ..... Respondent-Appellant,

v.

Town of Latta, South Carolina, ..... Appellant-Respondent.

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**RECORD ON APPEAL - VOLUME I**

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STATE OF SOUTH CAROLINA )
) IN THE COURT OF COMMON PLEAS
COUNTY OF DILLON )

Claude W. Graham, )
) Civil Action Number:08-CP-17-376
Plaintiff, )
)
v. )
)
Town of Latta, South Carolina, )
)
Defendant. )

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STATE OF SOUTH CAROLINA )
) IN THE COURT OF COMMON PLEAS
COUNTY OF DILLON )

Vickie B. Graham, )
) Civil Action Number:08-CP-17-377
Plaintiff, )
)
v. ) CONSENT ORDER
)
Town of Latta, South Carolina, )
)
Defendant. )

With the consent of the parties, the above-referenced actions are hereby consolidated under C/A No. 08-CP-17-376.

Additionally, the parties have agreed to the following schedule for the duration of this matter:

(1) Discovery shall be completed by April 10, 2010;

(2) All dispositive motions shall be filed by May 31, 2010; and

(3) This matter shall be subject to trial as of July 1, 2010.

IT IS SO ORDERED.

The Honorable Paul M. Burch
Chief Administrative Judge
Fourth Judicial Circuit

I CONSENT:

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ATTORNEY FOR DEFENDANT

| | |
|---|---|
| **STATE OF SOUTH CAROLINA**<br><br>**COUNTY OF DILLON**<br><br>Claude W. Graham,<br><br>Plaintiff,<br><br>Vs.<br><br>Town of Latta, South Carolina,<br><br>Defendant,<br><br>AND<br><br>Vickie B. Graham,<br><br>Plaintiff,<br><br>vs.<br><br>Town of Latta, South Carolina,<br><br>Defendant. | **IN THE COURT OF COMMON PLEAS**<br>**FOURTH JUDICIAL CIRCUIT**<br>**C/A # 2008-CP-17-376**<br><br>**CONSENT ORDER**<br>**(Substituting Counsel)** |

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This matter is presently before the court upon the requests of James C. Rushton, III by and through William P. Hatfield and Reynolds Williams, as is evidenced by their consents affixed hereto, that this court issue an Order allowing the Plaintiffs to substitute Reynolds Williams of Willcox, Buyck & Williams, P.A., for their present counsel, James C. Rushton, III, in the above entitled action on the grounds that they have dismissed their former counsel and now wish to retain new counsel to represent them in the case at bar.

ACCORDINGLY, IT IS THEREFORE ORDERED that Reynolds Williams is hereby substituted as counsel of record for the Plaintiffs, Mr. Claude W. Graham and Mrs. Vickie B. Graham.

AND IT IS SO ORDERED.

CHIEF ADMINISTRATIVE JUDGE
FOR THE FOURTH JUDICIAL CIRCUIT

Date: 12/15/2010

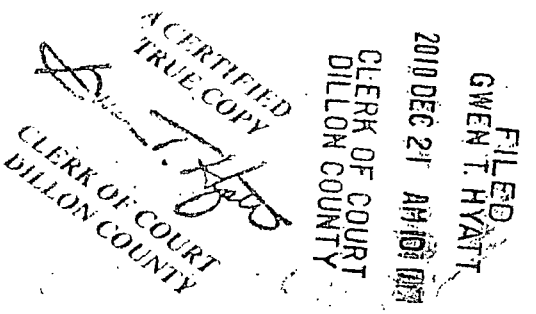
Charleston, SC

WE CONSENT:

JAMES C. RUSHTON, III BY AND THROUGH
WILLIAM P. HATFIELD

REYNOLDS WILLIAMS

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY OF DILLON | ) | IN THE COURT OF COMMON PLEAS<br>FOURTH JUDICIAL CIRCUIT<br>C/A # 2008-CP-17-376 & 2008-CP-17-377 |
| Claude W. Graham,<br><br>Plaintiff,<br><br>vs.<br><br>Town of Latta, South Carolina,<br><br>Defendant,<br><br>AND<br><br>Vickie B. Graham,<br><br>Plaintiff,<br><br>vs.<br><br>Town of Latta, South Carolina,<br><br>Defendant. | ) | **NOTICE OF REPRESENTATION** |




PLEASE TAKE NOTICE that we are represented by Reynolds Williams and the firm of Willcox, Buyck & Williams, P.A. in connection with the prosecution of the above cases against the Town of Latta.

Reynolds Williams

Claude W. Graham

Vickie B. Graham

December 21, 2010

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS
COUNTY OF DILLON ) FOURTH JUDICIAL CIRCUIT

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DILLON COUNTY

Claude W. Graham,

Plaintiff,

v.

Town of Latta, South Carolina,

Defendant.

Civil Action Number: 08-CP-17-376

**ORDER**

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DILLON COUNTY

AND

Vickie B. Graham,

Plaintiff,

v.

Town of Latta, South Carolina,

Defendant.

Civil Action Number: 08-CP-17-377

THIS MATTER CAME BEFORE THE COURT pursuant to a motion for directed verdict on behalf of the Defendant, Town of Latta, during a trial held in Dillon, South Carolina, the week of October 8, 2012. The Plaintiffs were represented by Reynolds Williams, Esquire, and the Defendant was represented by Michael B. Wren, Esquire, and Daniel C. Plyler, Esquire. Arguments were presented by counsel for both the Plaintiffs and the Defendant.

The Court enters this Order with regards to the cause of action for inverse condemnation asserted by Plaintiff Vickie B. Graham in her Second Amended Complaint. This Order contains the Court's findings of fact and conclusions of law pursuant to Rule 52, SCRCP. After hearing the evidence in this matter, considering the arguments by counsel, and thoroughly reviewing the applicable law, the Court finds as follows:

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Plaintiff Vickie B. Graham has pled a cause of action for inverse condemnation against the Defendant relative to her residence and real property located at 220 East Rice Street in the Town of Latta, South Carolina. The Defendant operates a municipal wastewater system, which includes a sewer line located upon the subject property. The Plaintiffs assert that the sewer line on the subject property leaked or overflowed on September 5 and 6, 2008, and on subsequent dates, thereby causing damage to the subject property, and constituting a taking of the subject property. The Defendant has denied this claim.

Plaintiff Vickie B. Graham purchased the subject property in either 1989 or 1990. Subsequently, Plaintiff Claude W. Graham discovered, at some time prior to the events on September 5 and 6, 2008, that there was a sewer line located upon the subject property. The sewer line in question has existed on the subject property since approximately 1924. However, the parties have stipulated that the Defendant has been unable to produce a written instrument conveying an easement for the portion of the sewer system that crosses the subject property.

The storm event on September 5 and 6, 2008 resulted from Tropical Storm Hanna passing through Dillon County, South Carolina, which, by various accounts, produced a significant amount of rainfall causing flooding in the vicinity of the subject property. The Plaintiffs' engineering expert witness, Roger Davis, opined during their case in chief, that infiltration was an issue with the Town of Latta's wastewater system, which may have resulted from improper maintenance of that system. However, no evidence was presented that the Defendant undertook any affirmative act that resulted in any of the damages asserted by the Plaintiffs. There was also testimony that infiltration is a common issue in municipal wastewater and/or sewer systems. Furthermore, the sum of the testimony by the Plaintiffs and their witnesses was that the Defendant did not take any action relative to the subject sewer line on the Plaintiffs' property during the relevant time periods in question.

Based upon the facts and evidence presented at trial, the Court makes the following conclusions of law:

An inverse condemnation occurs when a government agency commits a taking of private property without exercising its formal powers of eminent domain. To establish an inverse condemnation, a plaintiff must show: (1) an affirmative, positive, aggressive act on the part of the governmental agency; (2) a taking; (3) the taking is for a public use; and (4) the taking has some degree of permanence. *Hawkins v. City of Greenville*, 358 S.C. 280, 290, 594 S.E.2d 557, 562 (Ct. App. 2004). Allegations of mere failure to act are insufficient. *Id.* at 291, 594 S.E.2d at 563.

Whether the plaintiff has established a claim for inverse condemnation is a matter for the court to determine. *WRB Limited Partnership v. County of Lexington*, 369 S.C. 30, 32, 630 S.E.2d 479, 481 (2006)(*citing Cobb v. South Carolina Dep't of Transp.*, 365 S.C. 360, 618 S.E.2d 299 (2005)). To prevail in such an action, a plaintiff must prove "an affirmative, aggressive, and positive act" by the government entity that caused the alleged damage to the plaintiff's property. *Id. See also, Rolandi v. City of Spartanburg*, 294 S.C. 161, 363 S.E.2d 385 (Ct. App. 1987).

The Plaintiffs have set forth no evidence that the Defendant Town of Latta, or any agent or representative thereof, undertook any affirmative, aggressive or positive act, which resulted in the damages alleged by the Plaintiffs. At most, the Plaintiffs have asserted that the Defendant failed to act with regard to the subject sewer line located on the Plaintiffs' property. As is stated above, mere failures to act are an insufficient basis upon which to maintain a claim for inverse condemnation. Therefore, based upon the applicable case law cited herein, the Court finds that the Plaintiffs have failed to establish a claim for inverse condemnation, and, as such, the Defendant is entitled to directed verdict and this claim is dismissed as a matter of law.

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**AND IT IS SO ORDERED.**

The Honorable Alison Renee Lee
Presiding Judge

Columbia, South Carolina

February 27, 2013

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DILLON COUNTY

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS
COUNTY OF DILLON ) FOR THE FOURTH JUDICIAL CIRCUIT

Claude W. Graham and Vickie B. Graham, ) Civil Action No.: 2008-CP-17-0376
2008-CP-17-0377

Plaintiff,

v. **ORDER**

Town of Latta, South Carolina,

Defendant.

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DILLON COUNTY

This matter comes before the Court by way of Defendant Town of Latta's Motion for Judgment Notwithstanding Verdict (JNOV) pursuant to Rule 50(b), SCRCP, or in the alternative, for New Trial Absolute pursuant to Rule 59, SCRCP. Plaintiffs, Claude W. Graham ("Mr. Graham") and Vickie B. Graham ("Mrs. Graham"), are represented by Reynolds Williams, Esquire, and Defendant is represented by Michael Wren, Esquire, and Daniel Plyler, Esquire.

Plaintiffs filed separate Complaints against Defendant on November 19, 2008. Mr. Graham's Complaint contained a cause action for negligence, and Mrs. Graham's Complaint alleged negligence, inverse condemnation, and trespass. A jury trial was held the week of October 8, 2012. Before the matter was submitted to the jury, this Court granted Defendant's Motion for Directed Verdict as to the trespass and inverse condemnation claims. The jury returned with a verdict of $100,000 for Mr. Graham and $225,000 for Mrs. Graham on their negligence claims. Defendant filed post-trial motions on October 26, 2012. Plaintiffs and Defendant submitted memoranda on the post-trial motions.

1. **JUDGMENT NOTWITHSTANDING THE VERDICT (JNOV)**

Defendant contends that the evidence adduced at trial does not justify the jury's verdict and that the Court should grant Defendant's motion for JNOV. "A party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict." Rule 50(b), SCRCP. In ruling on JNOV motions, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom, in the light most favorable to the non-moving party. *See Curcio v. Caterpillar, Inc.*, 355 S.C. 316, 320, 585 S.E.2d 272, 274 (2003). "The trial judge cannot disturb the factual findings when ruling on a motion for judgment notwithstanding

the verdict unless a review of the record discloses no evidence that reasonably supports them." *Burns v. Universal Health Services, Inc.*, 361 S.C. 221, 231-32, 603 S.E.2d 605, 611 (Ct. App. 2004). "The trial court must deny the motions when evidence yields more than one inference or its inference is in doubt." *Sabb v. South Carolina State Univ.*, 350 S.C. 416, 427, 567 S.E.2d 231, 236 (2002).

**A. Tort Claims Act**

Defendant moved for a Directed Verdict at the conclusion of Plaintiffs' case and renewed its arguments as to Plaintiffs' negligence claims at the conclusion of the evidence. Defendant contends that it is entitled to JNOV because it is immune from Plaintiffs' negligence claim for failure to properly maintain the sanitary sewer and drainage system based upon exceptions to the waiver of sovereign immunity under the South Carolina Tort Claims Act, specifically S.C. Code Ann. Sections 15-78-60(1), (2), and (5) (1976). "The governmental entity asserting the Act as an affirmative defense bears the burden of establishing a limitation upon liability or an exception to the waiver of immunity." *Hawkins v. City of Greenville*, 358 S.C. 280, 292, 594 S.E.2d 557, 563 (Ct. App. 2004). "The Plaintiff must present evidence of the governmental entity's duty to act in order to recover under the Act." *Id.* at 293, 594 S.E.2d at 564.

Section 15-78-60(1) provides that a "governmental entity is not liable for a loss resulting from . . . .legislative, judicial, or quasi-judicial action or inaction," and Section 15-78-60(2) provides immunity for "administrative action or inaction of a legislative, judicial, or quasi-judicial nature." There is no evidence of any legislative, judicial, or quasi-judicial action or inaction or any administrative action or inaction. Plaintiff presented testimony that Defendant had a duty to operate and maintain the sewer system and that the Mayor of the Town of Latta was aware of a problem on Plaintiffs' property after the September 5 - 6, 2008 flooding events. The evidence presented at trial was that the Defendant's governing body did nothing consciously or unconsciously regarding the sanitary sewer and drainage matter on Plaintiffs' property. There was no testimony that any ordinance was enacted in relation to Plaintiff's property or the flooding or that there was any action or inaction of a legislative, judicial, or quasi-judicial nature by the Town of Latta's governing body. In addition, there was no evidence presented that any administrative action or inaction took place. Accordingly, Sections 15-78-60(1) and (2) do not apply.

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Section 15-78-60(5) provides a governmental entity immunity for "the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee." "A finding of immunity under the Act 'is contingent on proof that the governmental entity, faced with alternatives, actually weighed competing considerations and made a conscious choice using accepted professional standards.'" *Sabb*, 350 S.C. at 428, 567 S.E.2d at 237 (quoting *Wooten ex rel. Wooten v. South Carolina Dep't of Transp.*, 333 S.C. 464, 468, 511 S.E.2d 355, 357 (1999)). The South Carolina Court of Appeals has held that a city exercises discretion in "the measured policy judgments required to build and maintain an adequate municipal sewer and drainage system," and therefore, "is immune from liability for negligence claims arising out of the design and maintenance of the drainage system." *Hawkins*, 358 S.C. at 294, 594 S.E.2d at 564.

The burden was on Defendant to show that it not only actually weighed competing considerations and alternatives regarding the action or inaction taken to remedy the problems with its sanitary sewer and drainage system on Plaintiffs' property, but that, in doing so, it utilized accepted professional standards appropriate to resolve the issue. The standard to prove discretionary immunity is inherently factual. *See Pike v. South Carolina Dept. of Transp.*, 343 S.C. 224, 232, 540 S.E.2d 87, 91 (2000). A government entity "should not be entitled to discretionary immunity as a matter of law by creating an issue of fact." *Id.* "It is not enough to say the defect was noted and a decision was made not to repair it." *Id.* Defendant claims that the testimony of Mike Hanna established that Defendant considered and weighed competing alternatives, and then used accepted professional standards in deciding that there was nothing needed to be done regarding the portion of its sanitary sewer and drainage system at issue. Testimony was given at trial that Defendant was presented with several choices to remedy the drainage problem: move the pipe on Plaintiffs' residence, add a sleeve to insulate the pipe, fix any crack or leak with concrete or glue, or do nothing. Testimony was also presented that Defendant conducted smoke tests to determine whether there was a defect, and attempted to snake a camera through the line, then made a decision not to repair the pipe. Roger Davis, Plaintiffs' expert in mechanical engineering and environmental engineering in the field of waste disposal, testified that DHEC reports indicated that the Defendant was warned to take action or investigate an inflow problem in the Town's water system. Mr. Davis further testified that this

#3

type of problem may get worse if not remedied. Thus, testimony was presented that Defendant was on notice of defects in the Town's water system and also at Plaintiff's residence in particular, yet made a decision not to repair the defects.

Furthermore, a duty arose on Defendant's part once Defendant was placed on notice of the problem at Plaintiffs' residence after the flooding events on September 5 - 6, 2008. *See Sabb*, 350 S.C. at 429, 567 S.E.2d at 237. Danielle Watson of the South Carolina Department of Health & Environmental Control (DHEC) testified that Defendant had a duty to operate and maintain the sewer system. Roger Davis provided testimony that there was a breach in the system and that Defendant failed to properly maintain the system. Whether Defendant breached its duty to maintain its drainage system by failing to exercise one of the options available to fix the flooding at Plaintiffs' residence was a question for the jury. *See Steinke v. South Carolina Dept. of Labor, Licensing and Regulation*, 336 S.C. 373, 520 S.E.2d 142 (1999). The jury considered the evidence of whether Defendant's inaction constituted maintenance and rejected the discretionary immunity provision of the Tort Claims Act. Because there is evidence to support the jury's verdict, Defendant's Motion for JNOV on the grounds that Plaintiffs' negligence claim is barred by application of the South Carolina Tort Claims Act is **DENIED.**

**B. Standard of Care and Proximate Cause**

Defendant maintains that Plaintiffs failed to produce evidence at trial regarding the applicable standard of care for proper maintenance of the portion of Defendant's sanitary sewer and drainage system at issue. Defendant also asserts that the matters at issue were not within common knowledge, and that design, operation, and maintenance of a municipal drainage system requires specialized training and knowledge.

There was evidence presented at trial relating to duty and Defendant's breach of that duty. Testimony was presented by Danielle Watson that Defendant had a duty to operate and maintain the sewer system. Roger Davis provided testimony that there was a breach in the system and that Defendant failed to properly maintain the system. If the duty to maintain a municipal drainage system is outside the realm of common knowledge, Plaintiff provided expert witness testimony on that duty.

Defendant also claims that Plaintiffs failed to present evidence establishing that their damages were proximately caused by Defendant's acts or omissions. Taking the evidence in the light most favorable to Plaintiffs, there was evidence to establish that there was a problem with

Defendant's sewer line on Plaintiffs' property. There was also evidence that Defendant took no steps to correct the problem to stop the damage to Plaintiffs after it became aware of the problem. Davis' testimony was that Defendant's sewer and drainage system maintenance records showed infiltration and/or inflow problems. Evidence was also presented as to the location of Defendant's sewer line in relation to Plaintiffs' house. Mr. Graham testified that he discovered the location of Defendant's sewer line, which he identified as running directly running under his house, when he hired a plumber and the line was revealed. From these facts, competing inferences might be reasonably drawn as to Defendant's failure to exercise due care in the maintenance of its sewer and drainage system on the Graham's property and the issue of proximate cause. *See Snow v. City of Columbia*, 305 S.C. 544, 409 S.E.2d 797 (Ct. App. 1991). The jury weighed the evidence and concluded that the Defendant was liable. Defendant's Motion for JNOV on these grounds is **DENIED**.

**C. Damages**

Defendant argues that Plaintiffs failed to present any evidence establishing that their damages were proximately caused by events subsequent to September 5 - 6, 2008. Defendant claims that Plaintiffs only pled damages caused by two events, one occurring on September 5 - 6, 2008, and the other occurring September 13, 2008. This Court determined, as a matter of law, that Defendant is not responsible for damages stemming from the September 5 - 6 event. Specifically, Defendant claims that Plaintiff Claude Graham failed to present any evidence that his alleged damages relating to personal property were caused by an event subsequent to September 5 - 6.

Evidence was presented at trial that Mr. Graham's claim for damages to personal property may be related to the flooding event on September 13, 2008. The personal property included hand tools, golf equipment, two lawn mowers, and other equipment stored in a shed on the Plaintiff's property. The shed containing the personal property was not evaluated for damage until after the September 13, 2008 flooding event and subsequent flooding events. Therefore, there is evidence to support that the damage to personal property may not be solely related to the September 5 - 6 flooding events.

Additionally, Defendant argues that Plaintiffs failed to present evidence establishing diminution in fair market value to the property at issue. Generally, "[t]he measure of damages for permanent injury to real property by pollution, whether by nuisance, trespass, negligence, or

inverse condemnation is the diminution in market value of the property," or the difference between value of the land before injury and value after injury. *Ravan v. Greenville County*, 315 S.C. 447, 465, 434 S.E.2d 296, 307 (Ct. App. 1993). In this case, Plaintiffs pled damages for the cost to rebuild their house, not the value of the land itself. "[T]he cost of repair or restoration is a valid measure of damages for injury to a building." *Roland v. Palmetto Hills*, 308 S.C. 283, 286, 417 S.E.2d 626, 628 (Ct. App. 1992). Plaintiffs presented evidence through John Benton of the cost to repair or rebuild the Plaintiff's house. Mr. Benton provided an itemization of the costs of the materials needed to rebuild Plaintiff's house, including electrical wiring, plumbing, appliances, and painting. Thus, Plaintiffs presented evidence to support their damages as the cost to rebuild or repair the house. Defendant's Motion for JNOV on these grounds is **DENIED.**

**2. NEW TRIAL ABSOLUTE**

Defendant also contends that it is entitled to a new trial absolute. The trial court's decision to grant or deny a motion for a new trial absolute is within its discretion. *See Cock-N-Bull Steak House, Inc. v. Generali Ins. Co.*, 321 S.C. 1, 466 S.E.2d 727 (1996). A trial court may grant a new trial pursuant to Rule 59(a) when there is prejudicial error in the admission of evidence or if the "the verdict is excessive or inadequate." *Rush v. Blanchard*, 310 S.C. 375, 379, 426 S.E.2d 802, 805 (1993). For a trial court to order a new trial based on erroneous admission of testimony, "the record must show not only error but also prejudice." *Watts v. Bell Oil Co. of Ocean Drive, Inc.*, 266 S.C. 61, 63, 221 S.E.2d 529, 530 (1976). When deciding a motion to grant a new trial, "this Court must consider the testimony and reasonable inferences therefrom in the light most favorable to the nonmoving party." *Welch v. Epstein*, 342 S.C. 279, 302, 536 S.E.2d 408, 420 (Ct. App. 2000).

**A. The Witnesses**

Defendant moves for a new trial absolute on the grounds that the Court erred in allowing the testimony of Plaintiffs' expert witness, John Benton. Defendant claims that during voir dire it was elicited from Mr. Benton that he only performed an estimate of what it would cost to completely rebuild the house owned by Plaintiffs, and that Plaintiffs failed to produce evidence that the house needed to be completely rebuilt.

"A competent estimate of the cost of repair to a building creates a factual issue regarding damages." *Scott v. Fort Roofing and Sheet Metal Works, Inc.*, 299 S.C. 449, 385 S.E.2d 826 (1989). Mr. Benton testified as to an estimate to rebuild the house as it was prior to the damage

sustained. Mr. Benton's estimate did not include the land upon which the house is built, Plaintiffs' swimming pool, carport, or driveway. While Mr. Benton did not testify as to the nature and extent of the damages or whether the house needed to be completely rebuilt or partially repaired, there was sufficient evidence for the jury to infer that the Plaintiffs' house had become a total loss. Ms. Graham testified that she was unable to enter the house due to health concerns. Thomas Manning Robertson presented evidence that testing inside the Plaintiffs' house indicated that a quantity of mold was present. Dr. David Culpepper presented evidence that Plaintiffs had respiratory problems that may have been related to the presence of mold in their house after the flooding events. Therefore, there was evidence for the jury to infer that the house needed to be rebuilt, and because Plaintiffs only asked for damages in the form of the building itself, the correct measure of damages was used. Because the admission of Mr. Benton's testimony was not an error, Defendant is not entitled to a new trial absolute on this basis.

Defendant also claims that the court erred in allowing Plaintiffs' witness, William Benton Henry, to review, in front of the jury, photographs that had been excluded by the court during the pre-trial conference. Defendant further claims that the photographs were not needed to "refresh" Mr. Henry's memory, as it was not established through proper questioning whether his memory needed to be refreshed. The photographs were not introduced into evidence or given to the jury. This Court allowed the photographs to refresh Mr. Henry's recollection as to the dates of the events at issue. Defendant made no objection to the foundational questions used to establish that Mr. Henry needed to refresh his recollection as using the photographs. Mr. Henry testified that he witnessed several significant flooding events at Plaintiffs' house, and had taken pictures of these events on various occasions. Thus, Defendant is not afforded a new trial absolute on these grounds.

In addition, Defendant argues it is entitled to a new trial absolute because the court erred in failing to exclude Plaintiffs' Exhibit 1 after the Court granted a directed verdict as to Plaintiffs' claims associated with the September 5 - 6 events. Plaintiffs' Exhibit 1 consisted of photographs taken on September 6, 2008 by Plaintiffs. These photographs purported to show resulting debris that collected on Plaintiffs' property following the September 5 - 6 flooding events. This Court determined at trial that the photos were allowed to go to the jury not to support Plaintiffs' claim for damages, but to show conditions that led to Defendant having notice

of the alleged sewer flooding. The Court is accorded broad discretion in ruling on the admissibility of testimony and exhibits. *See State v. Quattlebaum*, 338 S.C. 441, 527 S.E.2d 105 (2000); *State v. Von Dohlem*, 322 S.C. 234, 471 S.E.2d 689 (1996). Because Defendant has not shown prejudice, Defendant is not afforded a new trial on this basis.

Furthermore, Defendant claims that the Court failed to instruct the jury that Defendant was not responsible for claims associated with the alleged damages stemming from the September 5 - 6 events and that Defendant was not liable for the mere presence of a portion of its sanitary sewer and drainage system on Plaintiffs' real property. The Court provided an instruction to the jury on the September 5 – 6 events as it deemed appropriate. Defendant did not request that the Court charge the jury as to Defendant's liability for the mere presence of the sanitary sewer and drainage system on Plaintiff's property. Thus, Defendant is not afforded a new trial on this basis.

Defendant also claims that the Court erred in allowing the rebuttal testimony of Claude Graham and Danielle Watson, as they did not provide testimony that rebutted any of the testimony or evidence presented by Defendant. The admission of reply testimony is within the sound discretion of the court and should only result in a new trial if the admission of such testimony is prejudicial. *See State v. Farrow*, 332 S.C. 190, 194, 504 S.E.2d 131, 133 (Ct. App. 1998). The two witnesses called in reply, Claude Graham and Danielle Watson, placed in issue two additional facts: (1) the location of the sewer line; and (2) the nature of the testing done by Defendant to determine the location and integrity of the line. Mr. Graham's testimony contradicted Defendant's witness, Will Brown, who also testified about the location of the sewer line. Ms. Watson testified, contrary to Mr. Brown and Plaintiffs' witness Mike Hanna, that Defendant attempted to run a camera through the line on Plaintiffs' property, but was unable to do so because of an obstruction. Thus, the admission of rebuttal testimony was proper and Defendant was not prejudiced.

Defendant further argues that the Court erred in allowing Danielle Watson to testify as to information told to her by James Bailey, the Water/Sewer Department Supervisor of the Town of Latta, which Mr. Bailey obtained from a third party. This testimony dealt specifically with an alleged effort to snake a camera through a portion of Defendant's sewer system. Defendant contends that this testimony was hearsay within hearsay and should have been excluded. Plaintiffs argue that the statement was not hearsay within hearsay pursuant to Rule 801(d)(2) of

the South Carolina Rules of Evidence, because it was "a statement made by the party's agent or servant concerning a matter within the scope of the agency or employment during the existence of the relationship." Unless the error by the court in admitting the testimony affected the substantial rights of Defendant, a motion for new trial absolute must be denied. *See* Rule 61, SCRCP. Danielle Watson's statement did not affect the substantial rights of Defendant and thus Defendant's Motion for New Trial Absolute on these grounds is **DENIED**.

**B. Charges to the Jury**

Defendant claims that the Court erred in failing to charge S.C. Code Ann. Sections 15-78-60(1), (2), (4), (9), and (13). Defendant also contends that the Court failed to charge language that Defendant requested regarding Plaintiffs' burden to establish proximate cause, and therefore Defendant was prejudiced.

This Court determined at the Directed Verdict stage that Sections 15-78-60(1), (2) do not apply in this case. Section 15-78-60(4) does not apply because there is no claim that there is a violation of a specific regulation or ordinance. Section 15-78-60(9) simply had no applicability relating to the sole surviving cause of action for negligence. Section 15-78-60(13) does not apply because DHEC was exercising its authority and performing inspections in conjunction with DHEC authority, rather than the Town of Latta exercising its authority over businesses and other entities.

In regard to Defendant's proximate cause charge, the Court charged an equivalent proximate cause charge and the Court's charge was neither erroneous nor prejudicial, both of which are required for post-verdict reversal. Thus, Defendant's Motion for New Trial on these grounds is **DENIED.**

**C. Inappropriate Verdict**

Defendant moves for a new trial absolute based upon the Thirteenth Juror Doctrine. Defendant also claims that the verdict returned by the jury was grossly excessive in light of the evidence presented at trial regarding alleged damages suffered.

Based on a thorough review of the record, the jury's verdict was not grossly excessive in light of evidence presented at trial. Mr. Graham presented evidence that he had been damaged by several hundred dollars in medical bills, $7,500 in equipment, and by $70,000.00 in rent paid or due for substitute housing from November 2008 to April 15, 2012. Ms. Graham testified and evidence was presented that that she sustained several hundred dollars in medical bills, the loss

of a house that would cost at least $457,000.00 to replace, and pain and suffering. A verdict of $100,000 for Mr. Graham and $225,000 for Mrs. Graham is well within the range reasonably inferred by the evidence.

In regard to the Thirteenth Juror Doctrine, this Court finds that there was sufficient evidence in the record to support the jury's verdict and the verdict should not be overturned or disregarded. "The thirteenth juror doctrine is a vehicle by which the trial court may grant a new trial absolute when [it] finds that the evidence does not justify the verdict." *Folkens v. Hunt*, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (1990). "This ruling has also been termed granting a new trial upon the facts." *Id.* "A trial judge may also set aside a verdict and grant a new trial based solely on the judge's view of the evidence." *Pinckney v. Winn-Dixie Stores, Inc.*, 311 S.C. 1, 5, 426 S.E.2d 327, 329 (Ct. App. 1992). Because the evidence justifies the jury's verdict, the verdict should not be overturned.

**ORDER**

For the reasons stated above, Defendant Town of Latta's Motion for Judgment Notwithstanding Verdict, or in the alternative, for New Trial Absolute is **DENIED.**

**AND IT IS SO ORDERED.**

ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
February 28, 2013

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# FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Dillon
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO. 2008 -CP-17- 376

Claude Graham
Tom of Latta

PLAINTIFF(S)

DEFENDANT(S)

*CHECK ONE:*

☒ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

FILED
GWEN T. HYATT
2012 OCT 11 PM 6:15
CLERK OF COURT
DILLON COUNTY

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

Jury verdict for $100,000 for Plaintiff. Post trial motion to be supplemented within 10 days.

Dated at Dillon, South Carolina, this 11th day of October, 2012.

A. Shea Lee
PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 20____, and a copy mailed first class this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

A CERTIFIED TRUE COPY
T. Hyatt
CLERK OF COURT
DILLON COUNTY

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

SCCA SCRCP Form 4 Revised 06/2008

JR# 2008-CP-17-00376

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF DILLON | ) | IN THE COURT OF COMMON PLEAS<br>FOURTH JUDICIAL CIRCUIT |
| Claude W. Graham,<br><br>Plaintiff,<br><br>v.<br><br>Town of Latta, South Carolina,<br><br>Defendant. | ) | Civil Action No.: 2008-CP-17-00376<br><br>**VERDICT** |

**WE, THE JURY, UNANIMOUSLY FIND FOR:**

[ ✓ ] The **PLAINTIFF**,

One hundred thousand dollars ($ 100,000.00 )
Actual damages

[ ] The **DEFENDANT**.

FILED
GWEN T. HYATT
2012 OCT 11 PM 6:15
CLERK OF COURT
DILLON COUNTY

Latonya Plowden
Foreperson

Date: 10/11/12

A CERTIFIED TRUE COPY
Gwen T. Hyatt
CLERK OF COURT
DILLON COUNTY

JR# 2008-CP-17-00376

# FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Dillon
IN THE COURT OF COMMON PLEAS

Verbie Graham

PLAINTIFF(S)

JUDGMENT IN A CIVIL CASE

CASE NO. 2008 -CP- 17 - 377

Town of Latta

DEFENDANT(S)

*CHECK ONE:*

☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

FILED
GWEN T. HYATT
CLERK OF COURT
DILLON COUNTY
2012 OCT 11 PM 6:15

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

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

Jury Verdict for $225,000 for Plaintiff. Post trial motions to be supplemented within 10 days.

Dated at Dillon, South Carolina, this 11th day of October, 2012.

Al Gene Lee
PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 20____, and a copy mailed first class this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

CERTIFIED TRUE COPY
CLERK OF COURT
DILLON COUNTY

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

SCCA SCRCP Form 4 Revised 06/2008

TR# 2008-CP-17-00377

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF DILLON | ) | IN THE COURT OF COMMON PLEAS<br>FOURTH JUDICIAL CIRCUIT |
| Vickie B. Graham | ) | Civil Action No.: 2008-CP-17-00377 |
| Plaintiff, | ) | **VERDICT** |
| v. | ) | |
| Town of Latta, South Carolina, | ) | |
| Defendant. | ) | |

**WE, THE JURY, UNANIMOUSLY FIND FOR:**

[✓] The **PLAINTIFF**,

Two hundred twenty five thousand dollars ($ 225,000.00)
Actual damages

[ ] The **DEFENDANT**.

FILED
GWEN T. HYATT
2012 OCT 11 PM 6:15
CLERK OF COURT
DILLON COUNTY

Foreperson

Date: 10/11/12

A CERTIFIED TRUE COPY
CLERK OF COURT
DILLON COUNTY

FILED 2008-CP-17-00377

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|---|---|
| **STATE OF SOUTH CAROLINA**<br>**COUNTY OF DILLON**<br>Claude W. Graham,<br>Plaintiff,<br>Vs.<br>Town of Latta, South Carolina,<br>Defendant. | **IN THE COURT OF COMMON PLEAS**<br>**FOURTH JUDICIAL CIRCUIT**<br>**C/A # 2008-CP-17-[illegible]**<br>**COMPLAINT**<br>**(Jury Trial Requested)** |

FILED
GWEN T. HYATT
2008 NOV 19 AM 9:54
CLERK OF COURT
DILLON COUNTY

The Plaintiff, complaining of the Defendant herein, alleges as follows:

1. The Plaintiff is a resident and citizen of the County of Dillon, State of South Carolina.

2. The Defendant is a municipal corporation organized and existing in Dillon County under the laws of the State of South Carolina.

3. The Plaintiff resides with his wife at 220 East Rice Street within the municipal limits of the Town of Latta, South Carolina. The Plaintiff is the owner of two (2) motor vehicles which operate out of the residence at 220 East Rice Street, Latta, South Carolina.

4. The Town of Latta operates a municipal wastewater/sewer system. A portion of the sewer system runs along the right-of-way of East Rice Street. After the incidents described below, the Plaintiff learned that a portion of the municipal wastewater/sewer system is actually located on the property owned by the Plaintiff and his wife and runs beneath the house which is constructed on the property.

5. On the night of September 5, 2008 and the morning of September 6, 2008, the municipal wastewater/sewer system operated by the City backed up, overflowed, and flooded the

residence of the Plaintiff and his wife, flooding the two (2) vehicles and effectively destroying them or seriously damaging them to the point that they have no residual value.

6. The Plaintiff has attempted to repair the vehicles and continues to experience trouble with the vehicles, both with odor emanating from the vehicles and with mechanical and electrical problems.

7. The Plaintiff and his wife pumped water from under the residence and had repairs done when once again on September 13, 2008 the municipal wastewater/sewer system backed up and overflowed again, once again flooding the Plaintiff's property and further damaging the residence located on the property.

8. Subsequent to these occurrences, the Plaintiff has learned that the Defendant was cited in the past by the South Carolina Department of Health and Environmental Control for failure to properly maintain its municipal wastewater/sewer facilities and equipment.

9. Prior to the flooding on September 5, 2008 and September 6, 2008 and subsequent flooding on September 13, 2008, the officials of the Town of Latta, South Carolina were aware of problems with its municipal wastewater/sewer system. The Defendant failed to adequately fund, maintain, and properly operate its municipal wastewater/sewer system.

10. As a result of the flooding activities described above, the Plaintiff has been injured and damaged as more particularly set forth herein.

11. That the injuries and damages sustained by the Plaintiff were caused and occasioned by the willful, wanton, reckless, careless, negligent, and unlawful conduct on the part of the Defendant in one or more of the following particulars, to wit:

a) In failing to properly maintain and operate its municipal wastewater/sewer system;

b) In failing to take corrective action after previous citations by the South Carolina Department of Health and Environmental Control;

c) In failing to appropriate adequate funds for the proper maintenance and operation of its municipal wastewater/sewer system, especially after having previous notice of problems with the operation of that system;

d) In failing to take proper precautions for the safety and health of the citizens and residents of Latta, South Carolina with particular regard to the Plaintiff;

e) In failing to notify the Plaintiff of the existence of a leaking water line running from the right-of-way of East Rice Street across the Plaintiff's property and under the residence in which he and his family reside;

f) In failing to warn the Plaintiff of the existence of the leaking wastewater/sewer line under her house; and

g) In failing to follow the laws of the State of South Carolina and the appropriate regulations with regard to proper operation of a municipal wastewater/sewer system.

All of the above being in violation of laws of the State of South Carolina.

12. As a direct and proximate cause of said negligence, wantonness, recklessness and unlawfulness on the part of the Defendant, the Plaintiff has been greatly damaged in that his property has been flooded by untreated waste water which has substantially prevented him from the use of enjoyment of his vehicles and it has destroyed their value.

13. In addition, since the flooding has occurred, the Plaintiff has been made physically ill as a result of the wastewater contamination and has suffered damages in that regard in the following particulars:

a) That he has suffered severe and painful symptoms as a result of the contamination;

b) The Plaintiff has required medical treatment and will in the future be required to undergo medical expense and treatment for his symptoms;

c) The Plaintiff's previous good health has been permanently impaired;

d) The Plaintiff has suffered a loss of enjoyment of life; and

e) The Plaintiff has been put into a great inconvenience in having to reside on the second floor of his residence and, most likely, will have to relocate at great expense.

14. The Plaintiff is entitled to judgment against the Defendant for actual damages in an amount to be determined by a jury.

**WHEREFORE**, the Plaintiff prays as follows:

a) That the Court inquire into the matters and things set forth herein;

b) That the Plaintiff be granted judgment against the Defendant for an amount of actual damages to be determined by a jury; and

c) For such other and further relief as may be just and proper.

Florence, SC

November 14, 2008

**JAMES C. RUSHTON, III,**
Attorney for Plaintiff

**THE HYMAN LAW FIRM, LLP**
170 Courthouse Square
Post Office Box 1770
Florence, SC 29503-1770
(843) 662-5000

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | |
| | ) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF DILLON | ) | |
| Claude W. Graham, | ) | |
| | ) | Civil Action Number: 08-CP-17-376 |
| Plaintiff, | ) | |
| | ) | ANSWER |
| v. | ) | (Jury Trial Demanded) |
| | ) | |
| Town of Latta, South Carolina, | ) | |
| | ) | |
| Defendant. | ) | |

FILED
GWEN T. HYATT
2008 DEC 22 AM 10:49
CLERK OF COURT
DILLON COUNTY

CLERK OF COURT
DILLON COUNTY

NOW COMES the Defendant Town of Latta and answers the Complaint of the Plaintiff as follows:

**FOR A FIRST DEFENSE**

1. The Complaint fails to state facts sufficient to state a cause of action against this Defendant.

**FOR A SECOND DEFENSE**

2. The Defendant denies each and every allegation of the Plaintiff's Complaint not hereinafter specifically admitted, qualified, or explained.

3. As to Paragraphs 1 and 2 of the Complaint, the Defendant admits the allegations contained therein.

4. As to Paragraph 3 of the Complaint, the Defendant admits upon information and belief that he resides with his wife at 220 East Rice Street within the Town of Latta. As to the remainder of Paragraph 3, the Defendant lacks sufficient information as to form

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a belief as to the truth and veracity of the same and therefore denies the same and demands strict proof thereof.

5. As to Paragraph 4 of the Complaint, the Defendant admits only that it operates a municipal wastewater and sewer system within the Town of Latta which includes East Rice Street and includes pipes running beneath the Plaintiff's residence. As to the remainder of Paragraph 4, the Defendant denies the same and demands strict proof thereof.

6. As to Paragraph 5 of the Complaint, the Defendant admits only that on September 5 - 6, 2008, the sewer system around East Rice Street overflowed. As to the remainder of Paragraph 5, the Defendant denies the same and demands strict proof thereof.

7. As to Paragraph 6 of the Complaint, the Defendant lacks sufficient information as to form a belief as to the truth and veracity of the same and therefore denies the same and demands strict proof thereof.

8. As to Paragraph 7 of the Complaint, the Defendant admits only that on September 13, 2008, the sewer system around East Rice Street overflowed. As to the remainder of Paragraph 7, the Defendant denies the same and demands strict proof thereof.

9. As to Paragraph 8 of the Complaint, the Defendant lacks sufficient information as to form a belief as to the truth and veracity of the same and therefore denies the same and demands strict proof thereof.

KAR
#2

10. As to Paragraph 9 of the Complaint, the Defendant denies the same and demands strict proof thereof.

11. As to Paragraph 10 of the Complaint, the Defendant lacks sufficient information as to form a belief as to the truth and veracity of the same and therefore denies the same and demands strict proof thereof.

12. As to Paragraphs 11, 12, 13 and 14, the Defendant denies the same and demands strict proof thereof.

**FOR A THIRD DEFENSE**

13. The Defendant would allege that such claims brought by the Plaintiff are governed by the terms and conditions (including immunities and statutory limitations) applicable to claims against governmental entities and therefore would plead the South Carolina Tort Claims Act, Section 15-78-10 et seq. of the Code of Laws, as a bar to this action.

**FOR A FOURTH DEFENSE**

14. This Defendant is immune from suit pursuant to the South Carolina Tort Claims Act, South Carolina Code Ann. Section 15-78-10 et seq., specifically, Section 15-78-60(1), (2), (4), (5), (7), (8) and (13).

**FOR A FIFTH DEFENSE**

15. This Defendant is entitled to sovereign immunity.

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#3

**FOR A SIXTH DEFENSE**

16. This Defendant is entitled to legislative immunity.

**FOR A SEVENTH DEFENSE**

17. The Plaintiff has failed to properly mitigate his damages, if any, and/or properly maintain the property at issue and, therefore, one or more of his claims are barred in whole or in part by such failure.

**FOR AN EIGHTH DEFENSE**

18. The Defendant would allege, upon information and belief, that any injuries or damages sustained by the Plaintiff were due to and caused by an act of God which bars the Plaintiff's claims against the Defendant.

**FOR A NINTH DEFENSE**

19. The Plaintiff's claims are barred by application of the Common Enemy Rule.

KAR #4

WHEREFORE, having fully answered the Complaint of the Plaintiff, the Defendant prays that the Complaint be dismissed with prejudice, for the costs of this action, and for such other and further relief as the Court deems just and proper.

DAVIDSON & LINDEMANN, P.A.

BY: _____

WILLIAM H. DAVIDSON, II, ESQUIRE
KATE A. RICE, ESQUIRE
1611 Devonshire Drive, Second Floor
Post Office Box 8568
Columbia, South Carolina 29202
T: 803-806-8222
F: 803-806-8855
wdavidson@dml-law.com
krice@dml-law.com

ATTORNEYS FOR DEFENDANT TOWN OF LATTA

Columbia, South Carolina

December 19, 2008

| | |
|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF DILLON<br>Vickie B. Graham,<br>Plaintiff,<br>Vs.<br>Town of Latta, South Carolina,<br>Defendant. | IN THE COURT OF COMMON PLEAS<br>FOURTH JUDICIAL CIRCUIT<br>C/A # 2008-CP-17-377<br><br>AMENDED COMPLAINT<br>(Jury Trial Requested) |

FILED
GWEN T. HYATT
2009 FEB -4 AM 9:38
CLERK OF COURT
DILLON COUNTY

The Plaintiff, complaining of the Defendant herein, alleges as follows:

1. The Plaintiff is a resident and citizen of the County of Dillon, State of South Carolina.

2. The Defendant is a municipal corporation organized and existing in Dillon County under the laws of the State of South Carolina.

3. The Plaintiff is the owner of real property and improvements located at 220 East Rice Street within the municipal limits of the Town of Latta, South Carolina. This property is the residence where the Plaintiff and her husband have lived and raised their family.

4. The Town of Latta operates a municipal wastewater/sewer system. A portion of the sewer system runs along the right-of-way of East Rice Street. After the incidents described below, the Plaintiff learned that a portion of the municipal wastewater/sewer system is actually located on the property owned by the Plaintiff and runs beneath the house which is constructed on the property.

5. On the night of September 5, 2008 and the morning of September 6, 2008, the municipal wastewater/sewer system operated by the City backed up, overflowed, and flooded the

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CLERK OF COURT
DILLON COUNTY

property owned by the Plaintiff and seriously, and effectively, destroyed the residence constructed on the property and owned by the Plaintiff.

6. The Plaintiff and her husband pumped water from under the residence and had repairs done when once again on September 13, 2008 the municipal wastewater/sewer system backed up and overflowed again, once again flooding the Plaintiff's property and further damaging the residence located on the property.

7. Subsequent to these occurrences, the Plaintiff has learned that the Defendant was cited in the past by the South Carolina Department of Health and Environmental Control for failure to properly maintain its municipal wastewater/sewer facilities and equipment.

8. Prior to the flooding on September 5, 2008 and September 6, 2008 and subsequent flooding on September 13, 2008, the officials of the Town of Latta, South Carolina were aware of problems with its municipal wastewater/sewer system. The Defendant failed to adequately fund, maintain, and properly operate its municipal wastewater/sewer system.

**FOR A FIRST CAUSE OF ACTION**
**(Negligence)**

9. The allegations set forth above are re-alleged as if fully set forth hereafter.

10. As a result of the flooding activities described above, the Plaintiff has been injured and damaged as more particularly set forth herein.

11. That the injuries and damages sustained by the Plaintiff were caused and occasioned by the willful, wanton, reckless, careless, negligent, and unlawful conduct on the part of the Defendant in one or more of the following particulars, to wit:

a) In failing to properly maintain and operate its municipal wastewater/sewer system;

b) In failing to take corrective action after previous citations by the South Carolina Department of Health and Environmental Control;

c) In failing to appropriate adequate funds for the proper maintenance and operation of its municipal wastewater/sewer system, especially after having previous notice of problems with the operation of that system;

d) In failing to take proper precautions for the safety and health of the citizens and residents of Latta, South Carolina with particular regard to the Plaintiff;

e) In failing to notify the Plaintiff of the existence of a leaking water line running from the right-of-way of East Rice Street across the Plaintiff's property and under the residence in which she and her family reside;

f) In failing to warn the Plaintiff of the existence of the leaking wastewater/sewer line under her house; and

g) In failing to follow the laws of the State of South Carolina and the appropriate regulations with regard to proper operation of a municipal wastewater/sewer system.

All of the above being in violation of laws of the State of South Carolina.

12. As a direct and proximate cause of said negligence, wantonness, recklessness and unlawfulness on the part of the Defendant, the Plaintiff has been greatly damaged in that her property and improvements to the property have been flooded by untreated waste water which has substantially prevented her from the use of her residence and which has greatly depreciated the improvements in value, to the point where they have no value.

13. As a direct and proximate result of the negligence, wantonness, recklessness and unlawfulness on the part of the Defendant:

a) The Plaintiff and her husband have been required to live in the second floor of the residence and will likely have to vacate the residence due to health concerns;

b) The household pet owned by the Plaintiff has developed severe respiratory problems and has required veterinarian treatment as a direct result of the actions on the part of the Defendant;

c) The Plaintiff will incur substantial damages in the repair of her house and it will be depreciated in value even if such repairs are possible;

d) The Plaintiff and her husband will be forced to undergo relocation expense.

14. In addition, since the flooding has occurred the Plaintiff has been made physically ill as a result of the wastewater contamination and suffered damages in that regard in the following particulars:

a) That she has suffered severe and painful symptoms as a result of the contamination;

b) The Plaintiff has required medical treatment and will in the future be required to undergo medical expense and treatment for her symptoms;

c) The Plaintiff's previous good health has been permanently impaired;

d) The Plaintiff has suffered a loss of enjoyment of life; and

e) The Plaintiff has been put into a great inconvenience in having to reside on the second floor of her residence and, most likely, will have to relocate at great expense.

15. The Plaintiff is entitled to judgment against the Defendant for actual damages in an amount to be determined by a jury.

**FOR A SECOND CAUSE OF ACTION**
**(Inverse Condemnation)**

16. The allegations set forth above are re-alleged as if fully set forth hereafter.

17. The Plaintiff is the owner of the property of the aforementioned address which the Plaintiff uses as her personal residence and that of her family and which is more particularly described as follows:

> All that certain piece, parcel, or tract of land, situate in Latta, Dillon County, South Carolina, having the following measurements and boundaries: Commencing in a ditch on the North side of Rice Street where said lot adjoins property owned now or formerly by M.H. Cox, Jr. and running thence along Rice Street North 55 degrees 20 minutes West 125 feet to an iron pipe; thence North 34 degrees 40 minutes East 180.8 feet to the Town Canal (an iron stake and 4 inch gum tree being on the ditch bank marking the line); thence along said Town Canal South 54 degrees 20 minutes East 26 feet and South 44 degrees 05 minutes East 129.5 feet to a junction of canals; thence along unnamed canal South 39 degrees 35 minutes West 112 feet and South 59 degrees 50 minutes West 48 feet to the beginning point; said lot being bounded, now or formerly, to-wit: On the North by Town Canal; on the East by unnamed canal and property of M.H. Cox, Jr.; on the South by Rice Street ; and on the West by property of Margaret K. Finklea.

18. The Defendant is a municipal corporation authorized to operate a municipal wastewater/sewer system and said operation is for a public purpose. The Defendant is vested with the powers of eminent domain under the statutory laws of the State of South Carolina.

19. On the evening of September 5, 2008 and the subsequent day of September 6, 2008 and on subsequent dates, the Defendant's municipal wastewater/sewer system backed up and overflowed causing severe, permanent, and irreparable damage to the Plaintiff's property and residence. The Defendant had prior notice of problems with the operation and maintenance of its municipal wastewater/sewer system.

20. The failure of the Defendant to properly construct, operate, and maintain its municipal wastewater/sewer system has resulted in a *de facto* taking of the property of the Plaintiff.

21. The Plaintiff is entitled to an award of damages from the Defendant for the taking of her property as described above and is further entitled to an award of attorney's fees.

**WHEREFORE,** the Plaintiff prays that the Court grant judgment against the Defendant as follows:

a) On the First Cause of Action in an amount of actual damages to be determined by a jury;

b) On the Second Cause of Action in an amount of damages to be determined by a jury;

c) For an award of attorney's fees; and

d) For such other and further relief as may be just and proper.

Florence, SC

February 2, 2009

**JAMES C. RUSHTON, III,**
Attorney for Plaintiff

**THE HYMAN LAW FIRM, LLP**
170 Courthouse Square
Post Office Box 1770
Florence, SC 29503-1770
(843) 662-5000

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | FOURTH JUDICIAL CIRCUIT |
| COUNTY OF DILLON | ) | C/A # 2008-CP-17-376 & 2008-CP-17-377 |
| Claude W. Graham, | ) | |
| Plaintiff, | ) | |
| vs. | ) | |
| Town of Latta, South Carolina, | ) | |
| Defendant, | ) | **NOTICE OF APPEARANCE** |
| AND | ) | |
| Vickie B. Graham, | ) | |
| Plaintiff, | ) | |
| vs. | ) | |
| Town of Latta, South Carolina, | ) | |
| Defendant. | ) | |

*A CERTIFIED TRUE COPY*

*CLERK OF COURT DILLON COUNTY*

FILED
GWEN T. HYATT
2010 DEC 15 AM 10:02
CLERK OF COURT
DILLON COUNTY

Please take notice that the undersigned hereby enters his appearance in this matter as attorney for the Plaintiffs. The undersigned requests that he be provided copies of all notices, orders, etc., which may be issued.

WILLCOX, BUYCK, & WILLIAMS, P.A.

By: _____

Reynolds Williams #006153
PO Box 1909
Florence, S C 29503-1909
(843) 662-3258 - Tel.
(843) 662-1342 - Fax
Email: Reynolds@WillcoxLaw.com
Attorney for Plaintiffs

December 14, 2010

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|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | FOURTH JUDICIAL CIRCUIT |
| COUNTY OF DILLON | ) | C/A # 2008-CP-17-377 |

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DILLON COUNTY

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CLERK OF COURT
DILLON COUNTY

| | | |
|---|---|---|
| Vickie B. Graham, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | SECOND AMENDED COMPLAINT |
| | ) | (Jury Trial Requested) |
| Town of Latta, South Carolina, | ) | |
| | ) | |
| Defendant. | ) | |

The Plaintiff, complaining of the Defendant herein, alleges as follows:

1. The Plaintiff is a resident and citizen of the County of Dillon, State of South Carolina.

2. The Defendant is a municipal corporation organized and existing in Dillon County under the laws of the State of South Carolina.

3. The Plaintiff is the owner of real property and improvements located at 220 East Rice Street within the municipal limits of the Town of Latta, South Carolina. This property is the residence where the Plaintiff and her husband have lived and raised their family.

4. The Town of Latta operates a municipal wastewater/sewer system. A portion of the sewer system runs along the right-of-way of East Rice Street. After the incidents described below, the Plaintiff learned that a portion of the municipal wastewater/sewer system is actually located on the property owned by the Plaintiff and runs beneath the house which is constructed on the property.

5. On the night of September 5, 2008 and the morning of September 6, 2008, the municipal wastewater/sewer system operated by the City backed up, overflowed, and flooded the

property owned by the Plaintiff and seriously, and effectively, destroyed the residence constructed on the property and owned by the Plaintiff.

6. The Plaintiff and her husband pumped water from under the residence and had repairs done when once again on September 13, 2008 the municipal wastewater/sewer system backed up and overflowed again, once again flooding the Plaintiff's property and further damaging the residence located on the property.

7. Subsequent to these occurrences, the Plaintiff has learned that the Defendant was cited in the past by the South Carolina Department of Health and Environmental Control for failure to properly maintain its municipal wastewater/sewer facilities and equipment.

8. Prior to the flooding on September 5, 2008 and September 6, 2008 and subsequent flooding on September 13, 2008, the officials of the Town of Latta, South Carolina were aware of problems with its municipal wastewater/sewer system. The Defendant failed to adequately fund, maintain, and properly operate its municipal wastewater/sewer system.

FOR A FIRST CAUSE OF ACTION
(Negligence)

9. The allegations set forth above are re-alleged as if fully set forth hereafter.

10. As a result of the flooding activities described above, the Plaintiff has been injured and damaged as more particularly set forth herein.

11. That the injuries and damages sustained by the Plaintiff were caused and occasioned by the willful, wanton, reckless, careless, negligent, and unlawful conduct on the part of the Defendant in one or more of the following particulars, to wit:

a) In failing to properly maintain and operate its municipal wastewater/sewer system;

b) In failing to take corrective action after previous citations by the South Carolina Department of Health and Environmental Control;

c) In failing to appropriate adequate funds for the proper maintenance and operation of its municipal wastewater/sewer system, especially after having previous notice of problems with the operation of that system;

d) In failing to take proper precautions for the safety and health of the citizens and residents of Latta, South Carolina with particular regard to the Plaintiff;

e) In failing to notify the Plaintiff of the existence of a leaking water line running from the right-of-way of East Rice Street across the Plaintiff's property and under the residence in which she and her family reside;

f) In failing to warn the Plaintiff of the existence of the leaking wastewater/sewer line under her house; and

g) In failing to follow the laws of the State of South Carolina and the appropriate regulations with regard to proper operation of a municipal wastewater/sewer system.

All of the above being in violation of laws of the State of South Carolina.

12. As a direct and proximate cause of said negligence, wantonness, recklessness and unlawfulness on the part of the Defendant, the Plaintiff has been greatly damaged in that her property and improvements to the property have been flooded by untreated waste water which has substantially prevented her from the use of her residence and which has greatly depreciated the improvements in value, to the point where they have no value.

13. As a direct and proximate result of the negligence, wantonness, recklessness and unlawfulness on the part of the Defendant:

a) The Plaintiff and her husband have been required to live in the second floor of the residence and will likely have to vacate the residence due to health concerns;

b) The household pet owned by the Plaintiff has developed severe respiratory problems and has required veterinarian treatment as a direct result of the actions on the part of the Defendant;

c) The Plaintiff will incur substantial damages in the repair of her house and it will be depreciated in value even if such repairs are possible;

d) The Plaintiff and her husband will be forced to undergo relocation expense.

14. In addition, since the flooding has occurred the Plaintiff has been made physically ill as a result of the wastewater contamination and suffered damages in that regard in the following particulars:

a) That she has suffered severe and painful symptoms as a result of the contamination;

b) The Plaintiff has required medical treatment and will in the future be required to undergo medical expense and treatment for her symptoms;

c) The Plaintiff's previous good health has been permanently impaired;

d) The Plaintiff has suffered a loss of enjoyment of life; and

e) The Plaintiff has been put into a great inconvenience in having to reside on the second floor of her residence and, most likely, will have to relocate at great expense.

15. The Plaintiff is entitled to judgment against the Defendant for actual damages in an amount to be determined by a jury.

FOR A SECOND CAUSE OF ACTION
(Inverse Condemnation)

16. The allegations set forth above are re-alleged as if fully set forth hereafter.

17. The Plaintiff is the owner of the property of the aforementioned address which the Plaintiff uses as her personal residence and that of her family and which is more particularly described as follows:

> All that certain piece, parcel, or tract of land, situate in Latta, Dillon County, South Carolina, having the following measurements and boundaries: Commencing in a ditch on the North side of Rice Street where said lot adjoins property owned now or formerly by M.H. Cox, Jr. and running thence along Rice Street North 55 degrees 20 minutes West 125 feet to an iron pipe; thence North 34 degrees 40 minutes East 180.8 feet to the Town Canal (an iron stake and 4 inch gum tree being on the ditch bank marking the line); thence along said Town Canal South 54 degrees 20 minutes East 26 feet and South 44 degrees 05 minutes East 129.5 feet to a junction of canals; thence along unnamed canal South 39 degrees 35 minutes West 112 feet and South 59 degrees 50 minutes West 48 feet to the beginning point; said lot being bounded, now or formerly, to-wit: On the North by Town Canal; on the East by unnamed canal and property of M.H. Cox, Jr.; on the South by Rice Street ; and on the West by property of Margaret K. Finklea.

18. The Defendant is a municipal corporation authorized to operate a municipal wastewater/sewer system and said operation is for a public purpose. The Defendant is vested with the powers of eminent domain under the statutory laws of the State of South Carolina.

19. On the evening of September 5, 2008 and the subsequent day of September 6, 2008 and on subsequent dates, the Defendant's municipal wastewater/sewer system backed up and overflowed causing severe, permanent, and irreparable damage to the Plaintiff's property and residence. The Defendant had prior notice of problems with the operation and maintenance of its municipal wastewater/sewer system.

20. The failure of the Defendant to properly construct, operate, and maintain its municipal wastewater/sewer system has resulted in a *de facto* taking of the property of the Plaintiff.

21. The Plaintiff is entitled to an award of damages from the Defendant for the taking of her property as described above and is further entitled to an award of attorney's fees.

FOR A THIRD CAUSE OF ACTION
(Trespass)

22. At some unknown time in the distant past the Town of Latta began to trespass upon the property now owned by the Plaintiff Vickie B. Graham. The trespass was not discovered until after the damages described in the previous Paragraphs of this Complaint manifested themselves.

23. The Defendant's trespass upon the land now owned by Vickie B. Graham continued, is intentional, and has caused damage to the Plaintiff's property.

24. The Town of Latta has no legal right to construct or operate its main sewer line on the Plaintiff's property, and has received no such permission from the Plaintiff. As a result of the Defendant's trespass, the Plaintiff's property has been damaged in an amount exceeding Three Hundred Thousand and No/100 ($300,000.00) Dollars and the Plaintiff and her family have suffered the injuries and damages described above.

25. In addition to actual and punitive damages for the Town of Latta's intentional tort, the Plaintiff is entitled to an injunction requiring the Town of Latta to cease operating its main sewer line, or indeed any sewer line, on the instant property belonging to the Plaintiff.

WHEREFORE, the Plaintiff prays that the Court grant judgment against the Defendant as follows:

a) On the First Cause of Action in an amount of actual damages to be determined by a jury;

b) On the Second Cause of Action in an amount of damages to be determined by a jury;

c) On the Third Cause of Action in an amount of damages to be determined by a jury;

d) For an award of attorney's fees;

e) For a permanent injunction barring the Town of Latta from operating its main sewer line, or any sewer line, on her property at 220 East Rice Street, Latta, South Carolina; and

f) For such other and further relief as may be just and proper.

WILLCOX, BUYCK, & WILLIAMS, P.A.

By: _____

Reynolds Williams #006153
PO Box 1909
Florence, S C 29503-1909
(843) 662-3258 - Tel.
(843) 662-1342 - Fax
Email: Reynolds@WillcoxLaw.com
Attorney for Plaintiff

January 25, 2011

STATE OF SOUTH CAROLINA )
) IN THE COURT OF COMMON PLEAS
COUNTY OF DILLON )

Civil Action Number:08-CP-17-377

Vickie B. Graham,

Plaintiff,

v.

Town of Latta, South Carolina,

Defendant.

**ANSWER TO SECOND AMENDED COMPLAINT**

**(Jury Trial Demanded)**

CLERK OF COURT
DILLON COUNTY

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2011 FEB -7 AM 10: 22
CLERK OF COURT
DILLON COUNTY

The Defendant, Town of Latta, hereby answers the Second Amended Complaint of the Plaintiff as follows:

**FOR A FIRST DEFENSE**

1. The Second Amended Complaint fails to state facts sufficient to state a cause of action against the Defendant.

**FOR A SECOND DEFENSE**

2. The Defendant denies each and every allegation of the Plaintiff's Second Amended Complaint not hereinafter specifically admitted, qualified, or explained.

3. As to the allegations set forth in Paragraph 1 of the Second Amended Complaint, the Defendant admits same upon information and belief.

4. As to the allegations set forth in Paragraph 2 of the Second Amended Complaint, the Defendant admits that the Town of Latta is a political subdivision and/or municipality organized under the laws of the State of South Carolina.

5. As to the allegations set forth in Paragraph 3 of the Second Amended Complaint, the Defendant admits the same upon information and belief.

Def
(1)

6. As to the allegations set forth in Paragraph 4 of the Second Amended Complaint, the Defendant admits only that it operates a municipal wastewater and sewer system within the Town of Latta which includes East Rice Street and includes pipes running beneath the Plaintiff's residence. As to the remainder of Paragraph 4, the Defendant denies the same and demands strict proof thereof.

7. As to the allegations set forth in Paragraph 5 of the Second Amended Complaint, the Defendant admits only that on September 5 – 6, 2008, due to flooding in the Town of Latta associated with a Tropical Storm, the wastewater and/or sewer system around East Rice Street overflowed. As to the remainder of Paragraph 5, the Defendant denies the same and demands strict proof thereof.

8. As to the allegations set forth in Paragraph 6 of the Second Amended Complaint, the Defendant admits only that on September 13, 2008, the wastewater and/or sewer system around East Rice Street overflowed. As to the remainder of Paragraph 6, the Defendant denies the same and demands strict proof thereof.

9. As to the allegations set forth in Paragraph 7 of the Second Amended Complaint, the Defendant lacks sufficient information as to form a belief as to the truth and veracity of the same and therefore denies the same and demands strict proof thereof.

10. As to the allegations set forth in Paragraph 8 of the Second Amended Complaint, the Defendant denies the same and demands strict proof thereof.

11. As to the allegations set forth in Paragraph 9 of the Second Amended Complaint, the Defendant reiterates each of the preceding paragraphs as if set forth verbatim herein.

12. As to the allegations set forth in Paragraphs 10, 11, 12, 13, 14, and 15 of the Second Amended Complaint, the Defendant denies the same and demands strict proof thereof.

13. As to Paragraph 16, the Defendant reiterates each of the preceding paragraphs as if set forth verbatim herein.

14. As to the allegations set forth in Paragraph 17 of the Second Amended Complaint, the Defendant admits the same upon information and belief.

15. As to the allegations set forth in Paragraph 18 of the Second Amended Complaint, the Defendant asserts that said allegations attempt to establish a legal conclusion, and therefore the Defendant would crave reference thereto.

16. As to the allegations set forth in Paragraph 19 of the Second Amended Complaint, the Defendant admits only that the wastewater and/or sewer system overflowed on September 5 – 6, 2008. As to the remainder of Paragraph 19, the Defendant denies the same and demands strict proof thereof.

17. As to the allegations set forth in Paragraphs 20 and 21 of the Second Amended Complaint, the Defendant denies the same and demands strict proof thereof.

18. As to the allegations set forth in Paragraphs 22, 23, 24 and 25, the Defendant denies the same and demands strict proof thereof.

**FOR A THIRD DEFENSE**

19. The Defendant would allege that such claims brought by the Plaintiff are governed by the terms and conditions (including immunities and statutory limitations) applicable to claims against governmental entities and therefore would plead the South Carolina Tort Claims Act, Section 15-78-10 *et seq.* of the Code of Laws, as a bar to this action.

Def (3)

**FOR A FOURTH DEFENSE**

20. The Defendant is immune from suit pursuant to the South Carolina Tort Claims Act, South Carolina Code Ann. Section 15-78-10 *et seq.*, specifically, Section 15-78-60(1), (2), (4), (5), (7), (8), (9) and (13).

**FOR A FIFTH DEFENSE**

20. The Defendant is entitled to sovereign immunity.

**FOR A SIXTH DEFENSE**

21. The Defendant is entitled to legislative immunity.

**FOR A SEVENTH DEFENSE**

22. The Plaintiff has failed to properly mitigate her damages, if any, and/or properly maintain the property at issue and, therefore, one or more of her claims are barred in whole or in part by such failure.

**FOR AN EIGHTH DEFENSE**

23. The Defendant would allege, upon information and belief, that any injuries or damages sustained by the Plaintiff were due to and caused by an act of God which bars the Plaintiff's claims against the Defendant.

**FOR A NINTH DEFENSE**

24. The Plaintiff's claims are barred by application of the Common Enemy Rule.

**FOR A TENTH DEFENSE**

25. Plaintiff's Petition for Attorney's Fees is improper in this action and must be dismissed, pursuant to the South Carolina Tort Claims Act and South Carolina common law.

④

**FOR AN ELEVENTH DEFENSE**

26. Any and all claims for punitive damages are barred by the South Carolina Tort Claims Act § 15-78-10 *et seq.* of the Code of Laws of the State of South Carolina, 1976 as amended and the common law of the State of South Carolina.

**FOR A TWELFTH DEFENSE**

27. The Defendant asserts that the Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations.

WHEREFORE, having fully answered the Second Amended Complaint of the Plaintiff, the Defendant prays that the Second Amended Complaint be dismissed with prejudice, for the costs of this action, and for such other and further relief as the Court deems just and proper.

DAVIDSON & LINDEMANN, P.A.

BY: _____

WILLIAM H. DAVIDSON, II, ESQUIRE
DANIEL C. PLYLER, ESQUIRE
1611 Devonshire Drive, Second Floor
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Columbia, South Carolina 29202
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dplyler@dml-law.com

*Counsel for the Defendant*

Columbia, South Carolina

February 3, 2011

STATE OF SOUTH CAROLINA )
) IN THE COURT OF COMMON PLEAS
COUNTY OF DILLON )

Claude W. Graham, )
) Civil Action Number: 08-CP-17-376
Plaintiff, )
)
v. )
)
Town of Latta, South Carolina, )
)
Defendant. )
)
AND )
) Civil Action Number: 08-CP-17-377
Vickie B. Graham, )
)
Plaintiff, )
)
v. )
)
Town of Latta, South Carolina, )
)
Defendant. )

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DILLON COUNTY

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2012 OCT 26 AM 11:23
CLERK OF COURT
DILLON COUNTY

**NOTICE OF MOTION AND MOTION FOR JUDGMENT NOTWITHSTANDING VERDICT, OR ALTERNATIVELY, MOTION FOR NEW TRIAL ABSOLUTE**

TO: THE HONORABLE ALISON RENEE LEE.

REYNOLDS WILLIAMS, ESQUIRE, COUNSEL FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Defendant Town of Latta, South Carolina will move before the Honorable Alison Renee Lee at such time and place as may be set by the Court, for an Order pursuant to Rule 50(b), SCRCP, and Rule 59,

SCRCP, granting a judgment notwithstanding the verdict, or alternatively, a new trial absolute, after the above referenced matter was tried the week of October 8, 2012.

The Defendant asserts that the only claim that was supposed to be presented to the jury was the alleged failure on the part of the Defendant Town of Latta to properly maintain the portion of the Defendant's sanitary sewer system, which runs across the real property owned by Plaintiff Vickie Graham at 220 East Rice Street in Latta, South Carolina. All other claims asserted by the Plaintiffs in this matter were properly dismissed by this Court at the directed verdict stage of the trial. However, the Defendant expressly reserves, and craves reference to, all of the arguments for directed verdict set forth by the Defendant at the trial of this matter.

The Defendant Town of Latta's motion is based on the following grounds:

1. The Defendant is entitled to a judgment notwithstanding the verdict because the Plaintiffs' remaining claim of negligence was completely barred by application of South Carolina Tort Claims Act, specifically S.C. Code Ann. § 15-78-60(5), which is commonly referred to as discretionary immunity.

In this court's ruling on the Defendant's motion for directed verdict, this court correctly ruled that the evidence in the record showed that the Defendant, Town of Latta, exercised its discretion in deciding not to perform any work on the pipe in question, because the objective testing performed on said pipe showed that no work was necessary. The evidence at trial clearly showed that the Defendant Town of Latta was faced with multiple choices, but decided, in its discretion, not to act. That exercise of discretion was based upon accepted professional standards, as was testified to by the Defendant Town of Latta's consulting Engineer, Mike Hanna.

As has been recognized by our Supreme Court, "the exercise of such discretion includes the right to be wrong." *See, Giannini v. S.C. Dep't of Transportation*, 378 S.C. 573, 664 S.E.2d 450. The discretionary immunity defense does not require a showing that discretion was exercised without error, or that a correct decision was made. If that were what is required, there would obviously be no need for an immunity defense. *See, Denene, Inc. v. City of Charleston*, 352 S.C. 208, 574 S.E.2d 196, 198 (2002) ("[t]he Court must presume the legislature did not intend a futile act, but rather intended its statutes to accomplish something"). The governmental entity does not need immunity where it acted reasonably or made a correct decision. In those instances, there would be no liability irregardless of immunity. Instead, a governmental entity is entitled to discretionary immunity particularly in those instances where it is alleged that errors were made in the exercise of discretion, or where it is alleged that an incorrect decision was made.

This important distinction was recognized by our Supreme Court in the seminal case of *McCall v. Batson, supra*. In abolishing the common law defense of sovereign immunity, our Supreme Court nonetheless recognized the importance of maintaining discretionary immunity, holding:

> [T]he abrogation of the rule will not extend to legislative, judicial and executive acts by individuals acting in their official capacity. These discretionary activities cannot be controlled by threat of tort liability by members of the public who take issue with the decisions made by public officials. We expressly decline to allow tort liability for these discretionary acts. *The exercise of discretion includes the right to be wrong.*

329 S.E.2d at 742. (Emphasis added). *See also, Jensen v. Anderson County Dept. of Social Services*, 304 S.C. 195, 403 S.E.2d 615, 619 (1991) ("[g]enerally, a government official may not be held liable for the negligent performance of a discretionary duty").

As the court correctly observed during its ruling on the Defendant's motion for directed verdict, the evidence at trial clearly showed that the Defendant exercised its discretion in this matter. As the testimony of Mike Hanna established, the Defendant Town of Latta actually considered and weighed competing alternatives, and then used accepted professional standards in deciding that there was nothing that needed to be done regarding the portion of their sanitary sewer system at issue. Therefore, the Plaintiffs' only remaining claim should not have been submitted to the jury, as it was completely barred by discretionary immunity as set forth at S.C. Code Ann. § 15-78-60(5).

2. The Defendant is entitled to a judgment notwithstanding the verdict due to an exception to the waiver of sovereign immunity, pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-60(1) and (2). Specifically, our Court of Appeals has found that the design and maintenance of a sewage and/or drainage system is considered a quasi-judicial and discretionary function of a governmental entity. *See, Proctor v. Dep't of Health and Environmental Control*, 368 S.C. 279, 628 S.E.2d 496 (Ct. App. 2006); *Hawkins v. City of Greenville*, 358 S.C. 280, 594 S.E.2d 557 (Ct. App. 2004). The evidence at trial clearly showed that the Plaintiffs' only remaining claim was the alleged failure on the part of the Defendant Town of Latta to properly maintain the portion of its sanitary sewer system that crosses the property owned by Plaintiff Vickie Graham at 220 East Rice Street in Latta, South Carolina. The Defendant Town of Latta is clearly immune from such claims.

3. The Defendant is entitled to judgment notwithstanding the verdict because the Plaintiffs failed to present any evidence at the trial of this matter regarding what the applicable standard of care would be regarding the proper maintenance of the portion of the Defendant Town of Latta's sanitary sewer system at issue. The Defendant asserts that the matters at issue

were not within the common knowledge, and that the design, operation, and maintenance of a municipal sewer system requires specialized training and knowledge. Therefore, since the Plaintiffs failed to present evidence at trial establishing the applicable standard of care, the Defendant Town of Latta is entitled to judgment notwithstanding the verdict.

4. The Defendant is entitled to judgment notwithstanding the verdict because the Plaintiffs failed to present evidence establishing that the damages claimed by the Plaintiffs were proximately caused by any alleged act or failure to act on the part of the Defendant Town of Latta. It is the burden of the Plaintiffs in a claim of negligence to establish the existence of a duty, the existence of a breach of said duty, and that the alleged breach of said duty proximately caused damages. The Plaintiffs failed to present any evidence that the damages claimed in this matter were proximately caused by any act or failure to act on the part of the Defendant Town of Latta.

5. The Defendant is entitled to judgment notwithstanding the verdict because the Plaintiffs failed to present any evidence establishing that the damages claimed by the Plaintiffs were proximately caused by any subsequent events and/or overflows, as set forth at trial. The Defendant Town of Latta asserts that the Plaintiffs only pled that their damages were caused by two events, one occurring on September 5th and 6th of 2008, and the other occurring on September 13th of 2008. This Court correctly determined, as a matter of law, that the Defendant Town of Latta is not responsible for any alleged damages stemming from the alleged September 5th and 6th event. However, the Plaintiffs failed to present any evidence establishing that any of their alleged damages were proximately caused by the subsequent event, or any other subsequent event, as opposed to being solely caused by the September 5th and 6th event. This is especially true for any and all claims of damages asserted by Plaintiff Claude Graham, as his Complaint is

solely for personal property, which he pled, and testified to at the trial, was damaged in the September 5th and 6th event.

6. The Defendant is entitled to judgment notwithstanding the verdict because the Plaintiffs failed to present any evidence establishing the diminution in fair market value to the property at issue. The correct measure of damages in the matter at issue is for diminution in fair market value of the real property in question. The Plaintiffs failed to present any evidence establishing diminution in fair market value. As such, the Plaintiffs failed to meet their burden, and failed to establish their claims.

7. The Defendant moves for a new trial absolute because the court made an error in allowing the testimony of Plaintiffs' expert witness, John Benton. During voir dire it was elicited from Mr. Benton that he only performed an estimate for what it would cost him to completely rebuild the house owned by Plaintiff Vickie Graham. However, Mr. Benton further admitted that he had no evidence, information, or knowledge that the house in question needed to be completely rebuilt. Furthermore, the Plaintiffs failed to present any evidence that the house in question needed to be completely rebuilt. As such, Mr. Benton's testimony was completely irrelevant to the matters at issue, and most likely caused juror confusion. Additionally, the correct measure of damages in the matter at issue is for diminution in fair market value of the real property in question, which Mr. Benton's testimony failed to address, and the Plaintiffs failed to present any evidence establishing any diminution in the fair market value of any of the property at issue.

8. The Defendant moves for a new trial absolute because the court made an error in allowing Plaintiffs' witness, Benton Henry, to review, in front of the jury, photographs that had been excluded by the court during the pre-trial conference. The review of those photographs was

improper, as those photographs had specifically been excluded. Furthermore, the use of those photographs to allegedly "refresh" Mr. Henry's memory was inappropriate, as it was never established, through proper questioning whether or not Mr. Henry's memory needed to be refreshed. Allowing Mr. Henry to testify while reviewing the excluded photographs further compounded the prejudice to the Defendant that had already been found to exist by the court during the pre-trial conference.

9. The Defendant moves for a new trial absolute because the court made an error in not excluding Plaintiffs' exhibit 1 after the court directed verdict for any of the Plaintiffs' claims associated with the September 5th and 6th events. It was clear from the testimony at trial that the photographs which comprise Plaintiffs' exhibit 1 were taken on September 6, 2008 by either Vickie or Claude Graham, and were purportedly showing the resulting debris that collected on the property at issue following the September 5th and 6th event. Once any claims associated with the September 5th and 6th event were dismissed by the court, the photographs which comprise Plaintiffs' exhibit 1 were completely irrelevant to any matter at issue, and should have been excluded. Allowing this exhibit to go with the jury during their deliberations most likely resulted in juror confusion.

10. The Defendant moves for a new trial absolute because the court made an error in not fully explaining to the jury the court's directed verdict rulings. The court considered, and treated as such during the trial, the Plaintiffs' claim of negligence as two separate and distinct claims, one being negligence by the Defendant in failing to properly maintain its sanitary sewer system prior to the September 5th and 6th event, and the other being negligence on by the Defendant in failing to properly maintain and/or repair its sanitary sewer system after the September 5th and 6th event. The court correctly determined, as a matter of law, that the

Defendant Town of Latta was not responsible for any claims associated with any alleged damages stemming from the September 5th and 6th event, but failed to adequately instruct the Jury as to that ruling, which most likely resulted in juror confusion.

11. The Defendant moves for a new trial absolute because the court made an error in not fully explaining to the jury that they could not consider the mere presence of the portion of the Defendant Town of Latta's sanitary sewer system on the real property owned by Plaintiff Vickie Graham as a basis for awarding damages to the Plaintiffs. As the court correctly ruled at the directed verdict stage, the Defendant was not liable to the Plaintiff for the mere presence of the portion of its sanitary sewer system on the real property at issue. However, the failure to adequately instruct the Jury as to that ruling, most likely resulted in juror confusion.

12. The Defendant moves for a new trial absolute because the court made an error in allowing rebuttal testimony from Claude Graham and Danielle Watson, both of whom had already testified during the Plaintiffs' case in chief. Neither of the two rebuttal witnesses provided any testimony that rebutted any of the testimony or evidence presented by the Defendant, and therefore it was error on the part of the court to allow said witnesses to testify in rebuttal.

13. The Defendant moves for a new trial absolute because the court made an error in allowing Danielle Watson to testify as to information told to her by James Bailey, that resulted from information obtained by James Bailey from a third-party. This testimony dealt specifically with an alleged effort to snake a camera through the portion of the Defendant's sanitary sewer system at issue in this case. Such testimony constituted hearsay within hearsay, and should have been excluded. Furthermore, that testimony was offered in rebuttal, but failed to rebut any testimony or evidence submitted by the Defendant.

14. The Defendant moves for a new trial absolute because the court failed to charge S.C. Code Ann. §15-78-60(1), (2), (4), (9), and (13), even though said statutory provisions clearly applied to the matters at issue and the evidence presented at trial.

15. The Defendant moves for a new trial absolute because the court failed to charge language requested to be charged by the Defendant regarding the Plaintiffs' burden in establishing proximate cause. Specifically, the Defendant requested that the court charge the jury with the following:

> I charge you that "the general principle applies that where the cause of the plaintiff's injury may be as reasonably attributed to an act for which defendant is not liable as to one for which he is liable, plaintiff has failed to carry the burden of establishing that his injuries were the proximate result of defendant's] negligence."
>
> *Messier v. Adicks*, 251 S.C. 268, 271, 161 S.E.2d 845, 846 (1968).

The Defendant asserts that the court refused to charge this language, or its equivalent, and thereby the Defendant was prejudiced.

16. The Defendant moves for a new trial absolute because the verdict returned by the jury was grossly excessive in light of the evidence presented at trial regarding alleged damages suffered.

17. The Defendant moves for a new trial absolute based upon the Thirteenth Juror doctrine. "Under the 'thirteenth juror' doctrine, a trial judge may grant a new trial absolute when he finds the evidence does not justify the verdict. This ruling has also been termed a granting of a new trial upon the facts." *Vinson v. Hartley*, 324 S.C. 389, 477 S.E.2d 715, 722 (Ct. App. 1996). "[T]he trial judge is the thirteenth juror, possessing the veto power to the Nth degree." *Id.* "The trial judge, sitting as the thirteenth juror charged with the duty of seeing that justice is done, has the authority to grant new trials when he is convinced that a new trial is necessitated on

the basis of the facts in the case." *Id.* As discussed, the evidence presented in this case does not support the jury's verdict. Therefore, a new trial absolute should be granted.

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Columbia, South Carolina

October 22, 2012

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | FOURTH JUDICIAL CIRCUIT |
| COUNTY OF DILLON | ) | C/A # 2008-CP-17-376 |
| Claude W. Graham, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | |
| | ) | |
| Town of Latta, South Carolina, | ) | **PLAINTIFFS' OPPOSITION TO** |
| | ) | **MOTION FOR JUDGMENT** |
| Defendant, | ) | **NOTWITHSTANDING VERDICT** |
| | ) | **AND/OR FOR A NEW TRIAL** |
| AND | ) | |
| | ) | |
| Vickie B. Graham, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | |
| | ) | |
| Town of Latta, South Carolina, | ) | |
| | ) | |
| Defendant. | ) | |
| | ) | |

The Plaintiffs respond to the Defendant's post-trial motions as follows:

**DISCRETION**

The Town of Latta argues that it is not liable for and is, in fact, immune from suit for losses covered by 15-78-60(1), (2), and (5): Legislative, judicial, or quasi-judicial actions or inactions, administrative actions of the foregoing nature, and the exercise of discretion or judgment by the Town or its employees.

The operation and maintenance of a sewer system is not a legislative act, a judicial act, or a quasi-judicial act. Nor is it administrative activity performing the same functions as a legislature or judiciary. It is axiomatic that legislators enact laws by established procedures and that judges

determine cases and controversies arising under the law. The burden of establishing a limitation upon liability or an exception to the waiver of immunity under the Tort Claims Act is upon the governmental entity asserting it as an affirmative defense. Latta offered no evidence that it was performing a legislative, quasi-legislative, judicial, or quasi-judicial function. Proctor v. DHEC, 368 S.C. 279, 292, 628 S.E.2d 496, 503 (Ct. App. 2006), Strange v. South Carolina Dep't Of Hwys., 314 S.C. 427, 430, 445 S.E.2d 439, 440 (1994).

Latta has mis-stated the law in its Motion (on page 4, section 2). The South Carolina Court of Appeals has not ever held that the design and maintenance of a sewage and/or drainage system is considered a quasi-judicial and discretionary function of a governmental entity. Proctor, *supra*, did not relate to a water or a sewer system in any way. Proctor was contesting a fine imposed upon him by DHEC for the way it conducted its business of disposing of and/or recycling tires. Hawkins v. City of Greenville, 358 S.C. 280, 594 S.E.2d 557 (Ct. App. 2004) arose from Hawkins's claim that the city had flooded its property as a result of negligence in the design of its storm water drainage system because a record amount of rain fell in and around Greenville in a short period of time, overwhelming the capacity of a creek. The court found, after considering the question of whether the acts of the city were discretionary rather than ministerial, that "in the present case" it had exercised "the measured policy judgments required to build and maintain an adequate municipal sewer and drainage system in Greenville" and was thus immune. The Hawkins Court in no way considered whether that conduct was a quasi-judicial function or whether a municipality is absolutely immune from any conduct relating to the building and maintenance of such a system.

Latta also had the burden of proving that it exercised "discretion or judgment" when it allowed its sewer system to overflow, leak, or discharge on the Plaintiffs' property. Strange, *Ibid.*

In ruling on this Motion for Judgment Notwithstanding Verdict, this court is required to view the evidence and the inferences that reasonably can be drawn therefrom, in the light most favorable to the Plaintiffs. Strange, 445 S.E.2d at 440. The evidence offered by the Town's witnesses related to the conduct of a smoke test, the location of a sewer line, and the Town's conclusion that it need do nothing. The Town's position relating to the exercise of discretion is mere conjecture about what it might have considered, not real evidence of an exercise of discretion. In order to carry its burden of proof, the Town was required to show that its employees were "faced with alternatives, actually weighed competing considerations, and made a conscious choice; furthermore, the Town must have shown that in weighing the competing considerations and alternatives, it utilized accepted professional standards appropriate to resolve the issue before them." Clark v. South Carolina Dept. Of Public Safety, 353 S.C. 291, 578 S.E.2d 16 (S.C. App. 2002). Mere room for discretion on the part of the Town is not sufficient to invoke the discretionary immunity provision of the Tort Claims Act. That immunity is contingent on the Town carrying the burden of proof that it actually weighed competing considerations and made a conscious choice using accepted professional standards. Sabb v. South Carolina State, 350 S.C. 416, 567 S.E.2d 231 (2002).

The duties of public officials are generally classified as either ministerial or discretionary for these purposes; a duty is ministerial when it is absolute, certain, and imperative, involving merely execution of a specific duty arising from fixed and designated facts, while a duty is discretionary if the Town carries its burden of proving the three step review process recited above. Faile v. South Carolina Dep't of Juvenile Justice, 350 S.C. 315, 566 S.E. 2d 536 (2002). Latta's evidence, viewed in the light most favorable to the Plaintiffs, is that it received a credible notice of the need for maintenance to its sewer system but nonetheless took no more than a cursory look at the

neighborhood with a cursory glance at the Graham property. See, Steinke v. South Carolina Dep't of LLR, 336 S.C. 373, 527 S.E.2d 142 (1999).

**STANDARD OF CARE AND PROXIMATE CAUSE**

To prove a cause of action for negligence, the Plaintiffs must prove facts which demonstrate the concurrence of three (3) elements: (1) a duty of care owed by the Defendant, (2) a breach of that duty by a negligent act or omission, and (3) damage proximately caused by the breach. Bishop v. South Carolina Dep't of Mental Health, 331 S.C. 79, 88, 502 S.E.2d 78, 82 (1998).

The duty of care to be exercised here, as in almost all negligence suits, is "that standard of conduct the law requires of an actor in order to protect others against the risk of harm from his actions." It embodies the principle that the plaintiff should not be called to suffer a harm to his property which is "foreseeable and which can be avoided by the defendant's exercise of reasonable care." Snow v. City of Columbia, 305 S.C. 544, 555, 409 S.E.2d 797 (S.C. 1991), citations omitted.

Snow, *supra*, involved an allegation that the city's failure to exercise due care in the installation and maintenance of its water main proximately caused damages to the plaintiff. The standard of care was stated by the Appellate Court as a matter of law, and it is South Carolina law quoted in my preceding paragraph which establishes the standard of care with respect to the Town of Latta. Establishing the standard of care in cases such as this is *not* one of the essential elements which a plaintiff must prove.

The Defendant Town argues that there is *no evidence* from which the jury could have concluded that the injuries and damages to the Plaintiffs were proximately caused by the Town's actions or failure to act. Taking the evidence in the light most favorable to the Plaintiffs, they have established that the Town had the duty to maintain the sewer line under their house appropriately,

that the line was cracked and leaking, and that the Town took no steps whatsoever among the various alternatives to stop the pattern of damage to the Plaintiffs even after the Town became aware of the clear and present danger to them. The events on the night of September 5th/6th gave notice to the Town of the existence of its duty and that its sewer line was compromised. September 8th and September 13th led an Internal Medicine Specialist to recommend to the Plaintiffs that they no longer live in their home, the Plaintiffs' necessity to find new lodging and to pay rent for same, the Plaintiffs' medical expenses, and the attendant anxiety, pain and suffering, the loss of various items of personal property, and the necessity for the Plaintiffs to find suitable alternative permanent living arrangements. The half dozen or so subsequent sewage events validated their resulting decision to move.

**DAMAGES**

The cost of repair or restoration is a valid measure of damages for injury to a building. However, compensation may be limited to the value of the building before the damage was inflicted. It is proper for a jury to consider a competent estimate of the cost of repair to a building. The owner of a building has the right to consider whether the building is repairable from a practical standpoint, as well as economically feasible, whether to reconstruct and the issue of whether there is a total loss or a partial loss of the building is dependent upon the factual presentation. See, Scott v. Fort Roofing & Sheet Metal Works, Inc., 229 S.C. 449, 385 S.E.2d 826 (1989); Division of General Services v. Ulmer, 256 S.C. 523, 183 S.E.2d 315 (1971); Rowland v. Palmetto Hills, 308 S.C. 283, 417 S.E.2d 626 (Ct. App. 1992); 22 Am. Jur. Second Damages §273. Here, the jury could infer from the evidence that the Graham house situated on the Graham property has become totally worthless, a total loss. For the Grahams to return to the position they were in before the Defendant was negligent,

that house could be reconstructed on a different lot. Testimony as to the cost of that construction could have been helpful to the jury's consideration of the facts in dispute and John Benton's testimony was competent and helpful to that end. Benton testified that the cost of replacement for the house alone is Four Hundred Fifty-Seven Thousand and No/100 ($457,000.00) Dollars; the jury awarded Two Hundred Twenty-Five Thousand and No/100 ($225,000.00) Dollars in damages to the owner of the house. It is clear that the jury considered the cost of replacement as but one of its measures, and applied common sense and experience to determine that a lesser sum than the full replacement cost might be warranted in view of the age of the house and the other circumstances presented to it.

**THE WITNESSES**

The Defendant objects, now, to Benton Henry using the photographs he took to refresh his recollection. No objection to the foundation questions was made when the refreshment occurred, but Henry did state he had witnessed several significant sewage events at the Graham house, directly across the street from his mother's and had taken pictures of them on various occasions. He used the photographs simply to refresh his recollection *of the dates*. Those particular pictures were not admitted into evidence.

The Plaintiffs' Exhibit 1 is a group of photographs depicting the events of September 5th and 6th, the very events which gave the Defendant notice of its duty to perform maintenance and repair. The jury was instructed that the events of September 5th and 6th did not give rise to recoverable damages, the Plaintiffs did not argue to the jury for any damages arising from the events of September 5th and 6th, and the testimony from each of the Plaintiffs was to the effect that "the same thing happened again" on multiple occasions.

This Court is accorded broad discretion in ruling on the admissibility of testimony and exhibits. The admission into evidence and subsequent use by the jury of Plaintiffs' Exhibit 1 is well within the discretion of the trial court. See, State v. Quattlebaum, 338 S.C. 441, 527 S.E.2d 105 (2000); State v. Von Dohlem, 322 S.C. 234, 471 S.E.2d 689 (1996). Likewise, the admission of reply testimony is within the sound discretion of this Court and should only result in a new trial or judgment notwithstanding the verdict if the admission of such testimony is prejudicial. State v. Farrow, 332 S.C. 190, 194, 504 S.E.2d 131, 133 (Ct. App. 1998). Prejudice that is unfair is distinguished from the legitimate impact all evidence has on the outcome of a case. "Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest a decision on an improper basis." State v. Gilchrist, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct. App. 1998). Such decisions must be based on the entire record of a case and the trial court's decision will generally turn on the facts of each particular case. State v. Wilson, 345 S.C. 1, 7, 545 S.E.2d 827, 830 (2001).

Claude Graham and Danelle Watson were the two witnesses called in reply and the Defendant preserved no objection to their being called. Each had testified during the Plaintiffs' case in chief, but the defense witnesses placed in issue two additional facts: (1) the location of the sewer line with the implication that it did not run under the Plaintiffs' house, rather between the swimming pool and within inches of the house and (2) the nature of the testing done by the Town to determine the location and integrity of the sewer line. Claude Graham specifically contradicted Town Employee Will Brown's testimony about the location of the line through the words of the Town's Supervisor of its sewer system, formerly the superior to Brown, Melvin Jackson. Danelle Watson testified that, contrary to Hannah and Brown, the Town had attempted to camera the line on the

Graham property and been unable to do so because of a lack of integrity to the line - roots or other debris inside the line.

The Watson testimony, argues the Defendant, should have been excluded because it is "hearsay within hearsay." One never gets to the second hearsay in the town's argument because the testimony is, by definition, "not hearsay". Rule 801(d)(2) South Carolina Rules of Evidence: "A statement is **not hearsay** if (it is) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment made during the existence of the relationship ... ." (Emph. Supp.) Danelle Watson testified about a statement made to her by the Town's Supervisor of its sewer system. It was not hearsay.

**THE CHARGES TO THE JURY**

The Defendant argues for a new trial because the Court "made an error in not fully explaining to the jury the court's directed verdict rulings." The Court owes no explanation to the jury of its direct verdict rulings, the Defendant made no request that a particular explanation be given, and the Defendant did not object when the Court went farther than it needed to with the jury. The Plaintiffs never argued that the mere presence of the line on their property was an act of negligence or led to any particular damage. The Court need not have charged §60(1) and (2) for the reasons set forth above in my **Discretion** section. Subsections (4), (9), and (13) had no applicability to the facts presented to the jury which could be considered by it in connection with the sole surviving cause of action for negligence; the adoption, enforcement or compliance with the law, and the conduct of a regulatory inspection were simply not issues presented in this case.

The Defendant urges the Court to grant a new trial because of a failure to charge its unnumbered charge (now set forth in Paragraph 15 on page 9 of its Motion) relating to proximate

cause.. The Court did charge the equivalent and the Court's charge, taken as a whole, is neither erroneous nor prejudicial, both of which are required for a post-verdict reversal. State v. Gaines 380 S.C. 23, 31, 667 S.E.2d 728, 732 (2008); State v. Sims, 304 S.C. 409, 422, 405 S.E.2d 377, 384 (1991).

**INAPPROPRIATE VERDICT**

The verdict returned by the jury was not grossly excessive in light of the evidence presented at trial. Mr. Graham presented evidence that he had been damaged by several hundred dollars in medical bills, by several thousand dollars to his equipment, by $70,000.00 in rent paid or due for substitute housing from November 2008 to April 15, 2012. Ms. Graham testified and evidence was presented to the effect she had been damaged by several hundred dollars in medical bills, the loss of a house that it would cost at least $457,000.00 to replace, and the attendant anxiety, pain, and suffering. A verdict of $100,000.00 for Mr. Graham and $225,000.00 for Mrs. Graham is well within the range reasonably inferred from the evidence.

As to the Thirteenth Juror doctrine, for this Court to grant such a motion it must be "convinced that a new trial is necessitated on the basis of the facts in the case." The Court has heard and considered the facts in the case and considered them carefully at the close of the Plaintiffs' evidence and again at the close of the Defendant's evidence and the Plaintiffs' reply. This jury was presented with factual disputes and the jury resolved those disputes within the tolerance range of reasonable inferences from the evidence. This case is not suitable for the application of the Thirteenth Juror doctrine because the evidence does justify the verdict.

*[Signature page to follow]*

Respectfully submitted,

WILLCOX, BUYCK, & WILLIAMS, P.A.

By: _____

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October 29, 2012

to the stand.

CLAUDE GRAHAM, after being duly sworn, testified as follows:

CLERK OF COURT: Be seated. State your full name for the Court and spell your last for us, please, sir.

THE WITNESS: Claude Wilson Graham the Third.

THE COURT: Spell your last name, please, sir.

THE WITNESS: G-R-A-H-A-M.

DIRECT EXAMINATION

BY MR. WILLIAMS:

Q. Claude, tell the jury a little bit about your background. Where did you grow up? Where did you go to school?

A. I grew up here in Dillon County. Well, I grew up in the Town of Latta. Went to school in Latta, and my after education in Latta I went on to Purson College where I played basketball.

Q. What kind of degree did you get?

A. Business Administration degree.

Q. Okay. And now tell the jury about your work career.

A. Well, various different positions, but primarily in County administration. I worked with the schools as a high school guidance counselor for several years. But primarily as a County Administrator which started in

Dillon County. And when I left from Dillon County I went to Marion County and from Marion County I went to Florence County and I retired from Florence County.

Q. When were you the County Administrator in Dillon County?

A. 1976, and I'm not sure when I left to go to Marion, but it was in the 80's, late 80's.

Q. Okay. And you retired from County Administration out of Florence County?

A. Yes, sir.

Q. And when was that?

A. Mid to late 90's.

Q. Okay. Were you roughly ten years in each County?

A. Longer in Dillon County than in others, but short period of time in Florence County when I decided to retire, but longer in Marion and longest in Dillon.

Q. Okay. And say again what year you retired?

A. Late 90's. Mid to late 90's. I'm not that sure.

Q. And have you been doing any work since you retired?

A. Yes, sir. I had a consulting company where I consulted with counties and municipalities regard solid waste management, land fills. The disposal of municipal solid waste.

Q. Tell the jury what a county administrator does, particularly, like when you were in Dillon County. What

was -- what did Dillon County Administrator do?
A. County Administrator is charged with -- he's the chief administrative officer for the County. Responsible for all of its day to day activities, whatever those might be. Pretty much like a general manager in a plant or superintendent of schools. Pretty much responsible for the day to day operations of the County.
Q. Okay. Is there any significant difference between those duties at Dillon County or Marion County or Florence County?
A. Just more people.
Q. Okay. Tell me about 222 Rice Street in Latta?
A. I think it's 220, but I couldn't tell you.
Q. You might be right. The house you were living in?
A. Yes. 220 East Rice Street is a home that whenever Vickie and I after we got married we were trying to decide where we were going to live. Initially, lived over in Dillon. She taught school here. And so we initially lived over here in Dillon. But as we are riding around one of the homes that she saw was 220 East Rice Street and she told me at that particular point in time if that house ever became available then that's the house she would like to own.
Q. And did it become available?
A. Yes, sir.

Q. When was that?
A. Late 80's. '88 or '89. Somewhere in that neighborhood.
Q. All right. At that time how did it become available? Why?
A. That house was on owned by the Toalers, and Miss Toaler had died, and they had one daughter and -- who I was in school with. And came back to Latta. I don't know exactly where it was she was living prior to coming back to Latta. But she came back to Latta. Her father was still alive.

I don't know exactly what all happened, but it ended up that the -- I think the house was taken by the Department of Social Services or the Department of Social Services got involved in it somehow or another. And we actually purchased it, the financing and all that part. One of the checks went I now to the Department of Social Services. But it was a situation where they -- Mr. Toaler, I think he went to live in a nursing home or something somewhere.

And I think they used that money to assist in his living expenses.
Q. Okay. Before you and Vickie decided to buy the house did you look it over?
A. Yes, sir.

Q. Describe to the jury how -- what you did to make your decision?

A. The house was in pretty bad shape. I know for a period of time no one lived in the house. I guess whenever they were trying to decide just exactly what was going to happen with Mr. Toaler. And the house was in pretty bad shape. So we recognized that it was going to take a right good bit of work for us to bring it to the point where it would be liveable.

They had cats in the house. Either one of two of the cats had died. The cats had used the inside of the house as a restroom. So it was -- it needed a lot of work on the inside. So we basically pretty much -- totally remodeled the inside of the house. The outside was fine, but the inside was.

Q. How about the structural part of the house?

A. Structurally very sound. Very sound.

Q. When you say we remodeled completely the inside of the house who are you talking about?

A. Vickie and I.

Q. Who did the actual work?

A. Me.

Q. You didn't have contractors?

A. No, sir.

Q. Day laborers to do all that?

A. No, sir.
Q. So you know that house?
A. Yes, sir.
Q. Okay. And when did y'all move in?
A. I believe it was somewhere around 1989.
Q. Okay. The deed is dated 1989. How long after that did you move in?
A. It took me about a -- almost a year, I guess. So somewhere in that neighborhood. '89, '90, somewhere in that neighborhood.
Q. Okay. So I'm going to say 1990, okay?
A. Yes, sir.
Q. Would that be fair?
A. Yes, sir.
Q. Give or take eight years. Okay. What was the condition of the house once you moved in?
A. Once we moved in it?
Q. Uh huh.
A. Pristine. It was nice. It was a nice, nice -- it was a nice, nice home Miss Toaler had built. An extremely nice home. Miss Toaler, I had some kind of relationship with Tilmar Lumber Company, and I was told.
MR. PLYLER: Objection, Your Honor.
THE COURT: I sustain it. Don't hearsay.
BY MR. WILLIAMS:

Q. Don't said what you were told?
A. Oh, okay. I'm sorry. I can't hear.
Q. She had a relationship with Tilmar Lumber Company?
A. Yes, ma'am -- yes, sir. And the lumber in the house that was used to construct the house was what's commonly called full cut lumber.
Q. Full cut?
A. Yes, sir.
Q. What does that mean?
A. Full cut lumber is lumber, as an example a two by four. Now a days, if you buy a two by four it's actually not a two by four. I think it's like one and three quarters by two and a half or -- it's not a full cut lumber. The lumber in this house if it was a two by four it's a true two by four. It's what is called full cut lumber.
Q. More lumber than now?
A. Oh, yes, sir.
Q. Okay. When you bought the house did you look at the land -- the lot?
A. Yes, sir.
Q. Okay. You look at the -- did it have a swimming pool in it?
A. Yes, sir.
Q. Did you look at the pool?

A. Yes, sir.
Q. Did you look at the backyard?
A. Yes, sir.
Q. Did you inspect the property to see that it was suitable?
A. We felt like we had. Yes, sir.
Q. Did you have anything to do with building the house and go to that house there?
A. No, sir.
Q. It was already built when you bought it?
A. Yes, sir.
Q. Okay. Did you know then that the Town's sewer lines ran through you property?
A. Not at that point. No, sir.
Q. Did you have the title searched to that house when y'all bought it?
A. Yes, sir.
Q. Who searched it?
A. Mr. Charles Curry.
Q. Did your title search reveal any sewer lines running underneath your house? On your property or underneath your house?
A. No, sir.
Q. Did you later come to learn that there was in fact a sewer line running through your property?

A. Yes, sir.
Q. And I'm saying 'your property'. At that time this was Vickie's property, correct?
A. Correct. Yes, sir.
Q. The deed was in her name?
A. Yes, sir.
Q. Whose name is the deed in now?
A. Both.
Q. Okay. I'm going to call it your property because when I talk to her I'll indicate your property, too. How did you come to learn that there was a sewer line running through your property?
A. We started having problems -- excuse me. We started having problems with one of the toilets in the house or several of the toilets in the house. And I contacted the plumber to -- thinking that my toilets were malfunctioning. And I contacted him and had him come around.

And as he got to looking he couldn't really find the problem. So he started tracing the line, the drain line that comes out of the house and goes to the sewer system and discovered that there was a line. It went out the back of the house and tied into a line out on the property.
Q. When you say 'out on the property' what ---

A. In the backyard.
Q. In the backyard?
A. Yes, sir.
Q. Okay. Is that the extent you learned when this plumber was looking ago at?
A. Well, whenever u discovered that I got in touch with Mr. Jackson, Mr. Melvin Jackson.
Q. Melvin Jackson?
A. Yes, sir.
Q. Who is Melvin Jackson?
A. He worked for the Town.
Q. What was his job with the Town of Latta?
A. Water and sewer. I mean he was like a public works director, I guess.
Q. Is he the number one water and sewer guy for Latta?
MR. PLYLER: Objection, Your Honor.
THE COURT: If he knows he can testify.
BY MR. WILLIAMS:
Q. If you know state whether he was the top guy or?
A. He's the only person I ever talked to about water and sewer. Yes, sir.
Q. Okay. So did you tell him -- what did you tell him?
A. I told him that the plumber had found that the lines tied into a big line coming across the property there and that line was stopped up. And he said, "yes." He said,

"There is a main line that runs through here."
Q. What was your reaction to that?
A. Shock.
Q. Did you express your shock to him?
A. Yes, sir.
Q. And what did he say?
A. Well, he said that that line came across our property and went diagonally across under the house and tied into another main line out on Rice Street, out there. And that the flow -- the waste water was coming from the property back behind our house in that community back behind our house and when across our property and tied into the Town's main line out on Rice Street.
Q. Before Melvin Jackson told you that did you have any idea that that was the case with your sewer line?
A. No, sir.
Q. Did you have any reason to suspect that that was the case with the sewer line?
A. No, sir. Now, at the same time we were having problems with a smell, and Mr. Jackson took me back there and showed me the line that came across that ditch and it was leaking.
Q. Tell the jury about the line that came across?
THE COURT: Before we do that I'm going to ask the jurors if they want to stand up for a second and stretch.

I know after lunch everyone gets a little sleepy. So if everybody wants to stand up and stretch for a second.

MR. WILLIAMS: Thank you, Your Honor. That was a good idea.

THE COURT: It always happens after lunch. We all do it. I'm guilty of it, too.

BY MR. WILLIAMS:

Q. I think that you were just talking about he showed you a line that went back behind the house?

A. Yes, sir.

Q. Tell the jury what you're talking about.

A. There is a big line that comes across the ditch. There is a huge ditch back behind the house, and there is a big line that comes across the ditch. And it runs right across our property. And it in fact was leaking and that's where the smell was coming from.

Q. Okay. Whose ditch is that? Is it your ditch?

A. No, sir.

Q. Okay?

A. It's a drainage ditch. I don't know whether it's owned by the Town or the State. I guess everybody would argue that.

Q. All right. Now, the line that came across the ditch how much could you see? How long is it?

A. Where it comes across the ditch there, six to eight

feet, I guess.
Q. Is the ditch width running parallel to the ditch or perpendicular?
A. Perpendicular to it.
Q. So it cross the ditch?
A. Yes, sir.
Q. So it runs from one side of the ditch?
A. Yes, sir.
Q. Okay. And then does it go underground, maybe?
A. Yes, sir.
Q. Okay. Had you ever seen that pipe before?
A. No. I'm not going to say I hadn't seen it, but if I saw it before it was whenever I was a young fellow. Youngster. Because we played in the ditches all the time around Latta.
Q. When did you learn that that line contained sewage.
A. Whenever Mr. Edwards -- Mr. Jackson told me that that was a main sewer line coming from that community back in there.
Q. That Melvin Jackson told you ---
A. Yes, sir.
Q. That it was the main sewer line?
A. Melvin Jackson, right.
Q. Okay. And did it get repaired?
A. Yes, sir, he fixed it. He put a repair strap around

it.
Q. All right. Now, in September -- on or about September 5th 2008 did something out of the ordinary happen?
A. Yes, sir.
Q. Tell the jury about that?
A. On September the 6th I -- I wake up early. Real early, and at approximately 5:15 or so I woke up on September the 6th. And we had a little puppy, a little Maltese puppy. And, of course, whenever I get up she wants to get up. And I go out she wants to go out. So I was in the process of getting ready to take her outside whenever I stepped out on the back porch. I stepped into water and really couldn't figure out what was going on.

It was dark. Pitch back dark, and I couldn't figure out what was going on. So I put the dob back in the house, and I went out the front door and ---
Q. Let met stop there at the back door for just one second. How deep did you step into the water?
A. Upon the stoop there it was lacked about 3 inches of coming in the back door. So in excess of 3 feet.
Q. Okay. All right. So you left the back door, and I think I interrupted you. You said you were head to the front?
A. Yes, sir. Went to the front door and opened up the

front door. And, of course, there are some lights out on Rice Street out there. And I noticed I remember that the front yard was completely covered in water.

Q. Could you see better in the front yard?

A. Yes, sir.

Q. Okay.

A. Than I could in the back. And stepped into it, and several steps that go down to the sidewalk. And stepped off of those onto the sidewalk there and it was over -- it was over my knees.

Q. Okay. Was it pure, clean, clear water?

A. Well, that particular time I could tell cause it was pitch black dark. I mean I had a flashlight, but I still couldn't tell. But, not, it wasn't clear. I mean I could tell it wasn't clear.

Q. So what did you do? Did you go back inside or did you explore?

A. Well, I got out and walked to the driveway to try and figure out what in the world was going on, and eventually I realized as close as it would get to the front door that if any traffic had came down that road then the waves were going to put it into the inside of the house. And so I went and got in my truck -- in my truck and went hunting for someone where I could get a barricade hopefully and barricade that road.

Q. And were you successful?
A. No, sir.
Q. Why not?
A. I found two police officers out at the convenience store up on Main Street and 301, but they told me they didn't have any more barricades; that they had put them all out. They didn't have any more.
Q. Did you go back home?
A. Yes, sir.
Q. And it started getting light by then?
A. It started lighting up by then. Yes, sir.
Q. Could you tell what was going on at your house and the neighborhood?
A. Well, by that time I could see what was in the yard, and there was fecal material, toilet paper, female hygiene products which you normally see in a sewer system. It was floating around in my yard.
Q. You talking about one or two?
A. Oh, no. The whole yard was covered with it. Not completely covered, but it was all in the water.
Q. Okay. Were you able to determine what was going on, where it was coming from or what had caused it?
A. Well, it appeared to be coming from one of the areas where there's a manhole cover.
Q. And what could you see in the manhole?

A. Well, as it went down a little bit I could see it bubbling up.
Q. Let's talk about before it went down. What could you see?
A. A lot of toilet paper and stuff.
Q. Did you see any pooling of the water or anything like that before the water level ---
A. I'm sorry.
Q. Did you see any rolling of the water ---
A. Yes, sir.
Q. --- before it was ---
A. It was -- you could tell it was coming from this particular area. I couldn't tell exactly where it was coming from, but you could tell it was coming from that area.
Q. As the water receded you were able ---
A. It became more prominent.
Q. Okay. Have you ever seen any videotape or taken any videotape of what was happening that morning?
A. I have not taken any videotapes of it. No, sir.
Q. Have you ever seen any videotapes?
A. I'm trying to think. I think I did. I think we -- I think I did look at one.
Q. Okay. Did ---
A. Someone else had taken them and brought them to the

house.
Q. Do you remember the name of that person?
A. Mr. Burden.
Q. Mr. Burden?
A. Burden, yes, sir.
Q. What did you spend the rest of September 6th doing?
A. I was trying to clean up. Trying to clean up the yard, and I got ahold of my heating and air conditioning man because I had taken the crawl space covers off. And it was all up under the house and everywhere else.
And I had gotten ahold of my heating and air conditioning man, and he, you know, obviously told me wasn't anything he could do until the water level went down. And as it started down I started trying to pump the water out from under the house.
Q. So you looked up under the house?
A. Yes, sir.
Q. What was up under the house?
A. The same thing that was in the yard.
Q. Same stuff?
A. Yes, sir.
Q. Okay. How did you go about -- when you say, 'crawl space' that's where you take off the aluminum or metal thing and lift up?
A. Right. So you can crawl up under the house.

Q. How did you go about trying to clean up under the house?
A. About only thing I could do was to try to pump the water out from under there.
Q. Okay. Did you have a pump?
A. Yes, sir. Well, I bought two.
Q. You bought two?
A. Yes, sir.
Q. That day?
A. I bought one of them that day I know.
Q. Okay. How long did it take you to pump out from under the house?
A. About two days, three days.
Q. Okay.
A. Whenever my heating and air conditioning man came by, and he came by on a Sunday, you know, to look at it. And he brought a bigger pump so that helped considerably.
Q. So now you had three pumps?
A. Yes, sir.
Q. Two of them yours?
A. Right.
Q. Okay. After he brought that bigger pump around how long did it take you to pump it out?
A. Not long. It was huge.
Q. And where did you pump this to?

A. There is a side of a fence over there which leads off into that big ditch that is behind the house.
Q. And this ditch that you've already talked about?
A. Yes, sir.
Q. Okay. How long did it take the water level in your yard to recede?
A. Later on that day.
Q. Okay. So when you cleaned the yard were you raking it and that kind of thing? Was there water still there?
A. Well, you know, it's a combination of raking and then I had a lawnmower that has a suction system on it. And when it got to where it was dry enough to run that mower across it I used the mower to suck it up into the collection system.
Q. Okay. Now, that Monday did you talk with any water and sewer people from the Town of Latta?
A. Yes. I did.
Q. Who did you talk to?
A. I want to say his name was Mike, but I'm not exactly sure. But he came by the house and told me that he had ---

MR. PLYLER: Objection, Your Honor.

THE COURT: Sustained. Hearsay.

MR. PLYLER: Your Honor, I would say that this would be a statement by a party opponent. He's identified him

as an official of the Town of Latta Water and Sewer System.

MR. WILLIAMS: Your Honor, I'm sorry. Our response would be he doesn't even know who this person is. So that's complete speculation at this point.

THE COURT: I'll sustain it.

BY MR. WILLIAMS:

Q. Mr. Graham, do you know how come Mike happen to come to your house?

A. To advise me that he's been in touch with D.H.E.C.

Q. How did he -- how did he git to your house? Did you call for somebody or did they just appear?

A. I had advised the Town that I was having a problem.

Q. Did he have on any kind of Town uniform or any identifying insignia?

A. Town truck. He was in a Town truck.

Q. And how did he identify himself to you?

A. That he was handling the water and sewer system for the Town of Latta.

Q. Okay.

MR. WILLIAMS: Your Honor, I think I've laid a foundation. I'd like to reask that same question, but I don't want to do it if ...

THE COURT: You can ask the question. We'll see what happens.

MR. WILLIAMS: Okay.
BY MR. WILLIAMS:
Q. Did he -- did Mike explain to you what the Town believed or he believed was going on with your sewer system -- with your sewer line?
MR. PLYLER: Objection. Objection, Your Honor. Not only is that hearsay but also would be speculation. We have no idea who this Mike is.
THE COURT: I'll also sustain the objection.
MR. WILLIAMS: I'm sorry. I didn't hear you, Your Honor.
THE COURT: I will still sustain the objection.
MR. WILLIAMS: Thank you, Your Honor.
BY MR. WILLIAMS:
Q. Other than Mike with the Town who else did you consult with about the sewer problem at your house?
A. The Mayor.
Q. Okay. And when was that?
A. It was that weekend or that Monday. I believe it was that weekend.
Q. And what did the Mayor tell you?
A. She was trying to be very cooperative and trying to help, you know, with the situation.
Q. And what did she say, though?
A. She said, "We've got a mess."

Q. Did she say whose fault the mess was?
MR. PLYLER: Objection, Your Honor.
THE COURT: Overruled.
BY MR. WILLIAMS:
Q. Did she say whose fault the mess was?
A. She said she had talked with D.H.E.C. and that D.H.E.C. had explained to them that with the mixture of the water in the sewer system that it was contaminated and that that was the Town's responsibility.
Q. And did she say what she was going to do to ---
A. She was trying to get ahold to -- I believe she had been advised of a group out of North Carolina that, you know, did the pumping and all that kind of stuff. And I think she was trying to get ahold of them to get them possible to come down to the house and pump the stuff out from under the house. And I advised her at that time that I was already doing that.
Q. Please, state whether you did or did not talk with her about any concerns you had with health issues.
A. Yes, sir.
Q. What you say?
A. I told her what I -- that I was very concerned with the fact, you know, with the fact that the sewage was coming up out of that manhole cover and mixing with that water. And it was all up under my house and in my yard.

Everywhere, and I mean, it even gotten into two of my vehicles.

Q. Two of your vehicles?

A. Yes, sir.

Q. And what did the Mayor say when you told her that?

A. That she was very concerned about the situation; that we needed to do something, you know, to try and get the situation resolved.

Q. Did you and she discuss the subject of whether the Town would pay for it?

MR. PLYLER: Objection, Your Honor.

THE COURT: Counsel want to approach?

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

BY MR. WILLIAMS:

Q. Did you and the Mayor discuss whether the Town had any responsibility?

A. She told me that she had talked with D.H.E.C. and that D.H.E.C. had advised her that, you know, that it was the Town's responsibility, and that's why she was trying to get hold of the people out of North Carolina to pump, you know, the water out from under the house.

Q. Did something happen on September the 13th relating to your sewage?

A. On the 13th?
Q. Let me ask it this way. Did a second occasion occur?
A. Yes, sir.
Q. Where something happened with your sewage?
A. Yes, sir.
Q. Roughly, when was that?
A. It was about a week later.
Q. Tell the jury what happened then?
MR. PLYLER: Your Honor, I'm sorry. I just noticed he's referring to some notes or something here. Obviously, I need a right to see those or whatever he's reading from.
MR. WILLIAMS: Counsel, of course, has a right to see those, Your Honor. Only is this the right time for him to have that right?
MR. PLYLER: This is the first I've seen he had notes up there with him.
THE COURT: You can take a look at them, counsel.
MR. PLYLER: Thank you.
BY MR. WILLIAMS:
Q. Continue telling us what you were talking about. Did something happen about a week later or a week after the 6th?
A. Well, you know, it happened again, and there was additional sewage up under the house again.

Q. So when you said, 'it happened again' do you mean it rained again?
A. Well, there was some rain, you know. It wasn't so much in the yard, but it was all up under -- it was 10, 12 inches up under the house.
Q. And how much in the yard?
A. Very little in the yards. It wasn't cluttered or anything, but it was.
Q. It had been a particularly heavy rain?
A. Not anything like the first one, but it was a normal rain is what I would have called it.
Q. Did you, as a result of that, did you have any further discussion with any Town officials?
A. Yes. I went down to the Water Department down there. There was only one employee down there. And I advised him that I needed to talk with somebody to handle the situation.
Q. And who did you talk to?
A. Gary.
Q. And who is Gary?
A. He works for the Town.
Q. Okay. And did the Town do anything that day to help out with the situation?
A. No, sir.
Q. Okay. Did you talk with the Mayor?

A. Yes, sir.
Q. When?
A. Well, I talked with her, you know, right after it happened. Well, when I know could ahold to her to let her know, you know, what had happened. And she said she was just very concerned about the situation. You know, and what had occurred and how we were going to resolve the problem.
Q. Now, I'm asking now about the second time you talked to the Mayor. Is that what you just asked her?
A. Yes, sir.
Q. Okay. So essentially the same thing as the first time?
A. Yes, sir. Pretty much. Because during that period of time Miss Watson had called me to tell me ---
Q. Wait a minute. Don't tell me what Miss Watson told you?
A. Okay.
Q. But you can identify who is Miss Watson?
A. Mrs. Danielle Watson, she works for the Department of Health and Environmental Control.
Q. Okay. She had some discussions with Mrs. Watson ---
A. She had and I had. I mean she ---
Q. --- Mrs. Watson ---
A. --- I mean Miss Watson.

Q. Who do you mean?
A. Miss Brigman had had some discussions with -- she indicated she had had discussions with Mrs. Watson.
Q. Miss Brigman told you that?
A. Yes, sir.
Q. The Mayor?
A. And that Mrs. Watson called me. I think Miss Brigman had Miss Watson to call me or somebody had Miss Watson to call me.
Q. Did the Mayor tell my anything about what she thought the Town would have to do as a result?
A. Well, I think that she was very concerned that, you know, the cost factor that was going to be involved as to what were we going to be able to do.
Q. Tell me what she said as best as you can recall.
A. Well, she said you know that -- she said she had talked with the D.H.E.C. and that D.H.E.C. had told her that the Town was responsible for the contamination.
MR. PLYLER: Objection, Your Honor. He's reading from those papers. He doesn't know the answer to the question. He's reading from this paper that hasn't been identified. It's hearsay.
BY MR. WILLIAMS:
Q. Mr. Graham ---
THE COURT: I'll allow you to lay a foundation.

You've got to lay a foundation.
BY MR. WILLIAMS:
Q. Does it assist you to refresh your recollection to look at your notes?
A. Yes, sir. This thing happened four years ago.
Q. Who wrote those notes?
A. I did.
Q. Why did you write them?
A. I figured y'all were going to be asking me about it today. So it was the only way I could -- well, you can tell I'm even getting mixed up now. But it's the only way I can half way keep it straight was to write these notes out.
Q. Would it help you to refresh your recollection if you can refer to your notes?
A. Yes, sir.
Q. All right. What I'm going to ask you to do is look at your note. Don't read from it. Refresh your recollection and then answer the question?
A. Yes, sir.
MR. PLYLER: Your Honor, the only problem I have, while the foundation has been perfectly laid, because we don't know when these notes were written.
THE COURT: You can him that question.
BY MR. WILLIAMS:

Q. When were the notes written?
A. Last night.
Q. Based upon what?
A. The fact that we were going to be in here this morning.
Q. What did you refer to to come up with those notes?
A. An outline that I had prepared earlier.
Q. When did you prepare the earlier outline?
A. Right after the first incident.
Q. So right after September 6th 2008?
A. Yes, sir. 2008, yeah.
Q. When you prepared your outline from which you did these notes were all the events fresh? Just happened?
A. Oh, yes, sir.
Q. Okay. Let me ask you this question again. Would it assist you to testify today if you could look at your note?
A. Yes, sir.
Q. Okay. I'm talking about September the 13th 2008 now. And you were describing a conversation you had with the Mayor of the Town. And I think you were interrupted when you said she told you that she had a conversation with D.H.E.C. Look at your notes if you need to. If you don't need to you don't have to. Tell the jury what Ms. Brigman told you about the Town's responsibility?

A. Ms. Brigman told me that she had had a conversation with Ms. Watson with the Department of Health and Environment Control.

MR. PLYLER: Your Honor, I hate to object, but that's double hearsay. That's, apparently, Ms. Brigman telling him what D.H.E.C. told her, and that would be double hearsay without any exception.

MR. WILLIAMS: Your Honor, that's not double hearsay. It's what Ms. Brigman said. That's a statement by a party opponent. It's not hearsay in any way, shape or form. Ms. Brigman is the Mayor of the Town of Latta and defendant in this case.

THE COURT: I understand that. One moment.

MR. WILLIAMS: I'm looking at Rule 801.

THE COURT: (d)2.

MR. WILLIAMS: (d)2, yes, Your Honor.

THE COURT: I'll overrule the objection.

MR. PLYLER: Your Honor, can I just state that Rule 805, hearsay within hearsay, requires both parties of the hearsay in this particular instance, to be provided with an exception. The only way an exception for what Ms. Brigman is speaking. The problem is she's repeating what's been told to her by the D.H.E.C. lady or the lady at D.H.E.C, Danielle Watson. That statement does not have an exception under the hearsay rule would be our position.

THE COURT: I'm looking at it as 801(b)2, B, and that's why I'm allowing it. It's a statement in which the parties adopted. Manifest an adoption, belief in its truth.

MR. PLYLER: Thank you, Your Honor.

BY MR. WILLIAMS:

Q. Let me reask my question, Mr. Graham. You can answer it. And if you need to look at your notes to refresh your memory you can. My question is that on September the 13th when you talked to Mayor Brigman what did she tell you about the Town's responsibility for what they were going to do?

A. Well, I met with Miss Brigman on the 15th because of the 13 incident.

Q. All right. Where was that?

A. It was in her office.

Q. All right.

A. And she told me then that she had discussed the situation with Miss Danielle Watson, Department of Health and Enviromental Control employee, and that Ms. Watson had said that the sewer had contaminated the water and it was the responsibility of the Town. Ms. Brigman said that she appreciated what we had done in trying to pump it out and save the Town that money because that would have been over a weekend and that would have been time and a half. And

that she was most concerned, you know, if there was additional cost, she was most concerned as to how the Town would be able to cover those costs to clean up.

Q. Okay. Did you discuss with her the condition of your property as a result of the have September 13th incident? By that I mean the manhole situation and sewage under your house, that type of thing?

A. We discussed it in general. Yes, sir.

Q. What did you tell her?

A. Well, that it was a real health concern to us; that it looked dangerous to us.

Q. And what was her reaction to that?

A. She was just as concerned as I was.

Q. What did she say?

A. She said that she didn't know how the Town would pay, you know, for the clean up of the contamination.

Q. All right. Let's move forward. Was there a later occasion in September when the same or similar problem manifested itself?

A. Yes, sir.

Q. When was that?

A. That was September the 25th. Well, the night of the 25th, morning of the 26th.

Q. All right? Tell the jury what happened?

A. It overflowed again.

Q. Refresh your memory and put it down and just tell us what happened next. What you remember about what happened then?
A. The sewer system out in the road overflowed again, and whenever I looked up under the house there was in excess of 12 inches of sewage up under house.
Q. Was there any sewage in the yard?
A. No, sir.
Q. Was there any sewage in the street?
A. Bubbling up out of the manhole cover.
Q. Okay. But how about under the house, was there sewage?
A. Yes, sir.
Q. How deep?
A. In excess of 12 inches.
Q. Okay. But there were -- there was none under -- none in the yard?
A. No, sir.
Q. It was in the street at the manhole cover and under your house?
A. Yes, sir.
Q. How about behind your house? In the yard behind your house?
A. No, sir.
Q. Okay. Were there any other occasions in September or

October when there was sewage under the house?
A. Can I refresh memory?
Q. Yes. You can just refresh your memory. Let me ask it another way. You don't need to refresh your memory. After these occasions that we just talked about were there ever again any occasions where there was sewage up under your house?
A. Yes, sir.
Q. When?
A. Several times. Several times.
Q. Describe several times?
A. I'm aware of four or five times, but you know, we were no longer staying at the house.
Q. Okay.
A. We had been advised not to stay there.
Q. Okay. I'm going to come back to whether you were staying at the house or not. But you remember four or five times over what period of time? Over the last two years? Four years?
A. In the last four years for sure, yeah.
Q. Okay. But did you go there and see the sewage under the house?
A. Yes, sir.
Q. On four or five occasions?
A. Yes, sir.

Q. All right. On any of those occasions was there sewage under the house and in the yard or just under the house?
A. Both.
Q. Okay. How many both and how many one or not the other?
A. I didn't really keep a number, but you know, generally speaking if it was in the yard it was up under the house. But there were occasions when it was up under the house and it was not in the yard.
Q. But there was never any in the yard and not up under the house?
A. No, sir.
Q. Okay. All right. You just told the jury that you hadn't been in the house for a long time. Tell the jury when you and your wife moved out of the house?
A. November of 2008.
Q. About two months after this -- the first sewage incident?
A. Yes, sir.
Q. Why did you move out of the house?
A. Our doctor ---
MR. PLYLER: Objection, Your Honor.
THE COURT: I'll sustain the objection.
BY MR. WILLIAMS:

Q. Between -- after this incident you just described, the latest of which was September 25th or 26th, did you go to a doctor?
A. Yes, sir.
Q. Did Vickie go to a doctor?
A. Yes, sir.
Q. Why did y'all go to a doctor?
A. I went because of respiratory problems, and I'm not exactly sure, you know, about her situation. But I had to go because the respiratory problems.
Q. As a result of going to the doctor what did you and Vickie decide to do?
A. We decided to move out the house.
Q. Why did you decide to move out the house?
MR. PLYLER: Objection, Your Honor.
THE COURT: I'll sustain the objection. You can rephrase the question.
BY MR. WILLIAMS:
Q. What was your reason for wanting to get out of the house?
A. Well, I was worried about the health situation and it stunk.
Q. Okay. We haven't talked about the odor. Tell me -- obviously, when the sewage was up under the house when you looked up under there and you could smell it then?

A. Yes, sir.
Q. What about other times when the sewage had subsided?
A. You can smell it all out in the yard.
Q. Okay. What what about inside of the house? Was it having an affect on you?
A. Oh, yes.
Q. What affect was it having on you?
A. I was having problems with the cough and sore throats and just sick.
Q. Were you able to observe any affects that it had on Vickie?
A. Yes, sir, she was.
Q. What was Vickie doing?
A. Respiratory problems.
Q. Did they appear to be similar to your respiratory problems?
A. Maybe a little more severe.
Q. Okay. But of the same type?
A. Yes, sir.
Q. Okay. When you all were away from the house were you having the same respiratory problems?
A. No, sir.
Q. And is that what prompted you to go to the doctor?
A. Yes, sir.
Q. When you and Vickie moved out of the house in

November of 2008 where did you go?
A. Her brother had a house at the beach, and he suggested that we move into his house.
Q. And is that when you -- you moved in in November of 2008?
A. Yes, sir.
Q. How long did you live in that house?
A. Three years.
Q. Until roughly when?
A. About a year ago. Maybe a little more than a year ago now.
Q. So from 2008 until roughly April of 2011?
A. Yes, sir. Somewhere in there. Yes.
Q. Did you have any arrangements with him about owing him rent?
A. Yes, sir.
Q. How much rent you owe him?
A. Well, it's not actual written, you know, agreement, but it was right at $2,000 a month.
Q. And in April of 2011 where did you move?
A. We leased -- he moved back to the beach, and so we leased the house down there.
Q. And how much did that rent cost you?
A. $1,000 a month.
Q. And how long were you at that place?

A. A year.
Q. Then where did you go?
A. Moved back to Latta to my mother's house.
Q. Okay. And why were you able to move back to Latta to your mother's house?
A. Because my mother had passed away summer before.
Q. And you owe any rent to your mother's estate?
A. I'm repairing the house. My brother, sister, and myself own the house. I am repairing the house and fixing the house back up. I didn't work none, and that took a long time. So I agreed to repair and do the work necessary around the house to get it ready for resale.
Q. Why have you and Vickie abandoned your house in Latta?
A. I don't know a nice way to so that. Well, one, the doctor told me not to.
MR. PLYLER: Objection, Your Honor.
THE COURT: Sustain your objection.
BY MR. WILLIAMS:
Q. Other than what the doctor may or may not have told you what have you found in your house?
A. It smells bad. It smells real bad. And we worry that, you know, that -- it made Vickie so sick one time that we had to put her in the hospital.
Q. Have you spent one night in that house since you

moved out in November of 2008?
A. If I have it hadn't been much.
Q. Do you remember spending a night in that house since November 2008?
A. It's possible that I did. Vickie has not, no.
Q. Okay. Have you all had a meal in that house since November ---
A. No, sir.
Q. Have you used it in any way shape or form as your living there?
A. No, sir.
Q. Are the conditions today such that you can live in? Use it for your living?
MR. PLYLER: Objection, Your Honor. He's not qualified to make that statement. He's speculating.
THE COURT: Rephrase the question.
BY MR. WILLIAMS:
Q. When is the last time you saw that house?
A. Been to the house?
Q. When is the last time that you've been to that house?
A. Friday I mowed the yard.
Q. Okay. Have you been mowing the yard consistently since November 2008?
A. Yes, sir.
Q. What else have you been doing around that house?

A. That's about it.
Q. Okay. Could you move into that house today?
MR. PLYLER: Same objection, Your Honor.
THE COURT: Rephrase the question.
BY MR. WILLIAMS:
Q. Is that house in a suitable condition for you and Vickie to move into it today?
MR. PLYLER: Same objection, Your Honor.
BY MR. WILLIAMS:
Q. Has anything been done to that house since November 2008 that would make it more suitable for a living place?
A. No, sir.
Q. Has the Town fixed the sewer line?
A. No, sir.
Q. Does it still run under your house?
A. Yes, sir.
Q. When it runs under the house and it gets full of sewage does it still come up under your house?
MR. PLYLER: Objection, Your Honor. Leading.
BY MR. WILLIAMS:
Q. Please state whether or not ---
MR. WILLIAMS: I'm sorry.
THE COURT: Go ahead.
BY MR. WILLIAMS:

Q. Please state whether or not the sewage still comes up under the house when the pipes get full?
A. Yes, sir, it does.
Q. Why don't you just move back in?
A. I don't want to live in the house wit that up underneath me.
Q. During the course of your early problems did you and Vickie try to determine how -- what you could do to the house to fix it up, make it better, in the light of the problems you had with the sewage?
A. We had the duct work replaced up under the house. The heating and air conditioning, the duct, cause it was all under water. Sewage.
Q. Okay?
A. So we had all of that replaced in an attempt that perhaps we could. Less than a week after that was done it happened all over again. The heating and air conditioning man said he can put it back in there ---
MR. PLYLER: Objection, Your Honor. Hearsay again.
BY MR. WILLIAMS:
Q. Don't say what he said, but when you say a week after -- less than a week after you had it done. So this would be sometime between September the 13th and September 25th?
A. Yes, sir.

Q. The sewage happened again; is that correct?
A. There had been additional over accumulations of sewer and water up under the house to the extent that is messed up the duct work again. And I saw no need to continuously spend money of replacement of duct work.
Q. What about the air conditioning system itself?
A. We've done nothing with a air conditioning system. Again, I don't see any need to spend any money on it if it's going to continue to do that.
Q. Did you get a quote for doing something? For fixing up the air conditioning?
A. Not for fixing the air conditioner. No, sir.
Q. Did you ask for a quote for rehabilitating the house from the infection of the fecal materials?
A. I'm sorry.
Q. Did you ask somebody about how do you clean up a house that has fecal material?
A. Yes, sir.
Q. Okay. Did you receive a price for that?
A. We received a -- not for cleaning it up. We received a figure as to what it would take to stay at the house.
Q. Okay. Did you and Vickie ultimately decide to do any of those clean up repair, refurbish things to deal with the sewage problem?
A. No, sir.

Q. Why not?
A. It keeps happening. It just keeps happening all the time. I mean, I'm just throwing away my money to do that.
Q. Okay. The four or five occasions that you described since you move out when there was a sewage buildup under the house, are those you know of your own personal knowledge?
A. Yes, sir.
Q. You witnessed with your own eyes?
A. Yes, sir.
Q. Okay. What money -- withdraw that question. At the time of September of 2008 when you first had the problem, first had the sewage problem, what was your intention with respect to living in the house on Rice Street in Latta?
A. It was our intention to live there until we die.
Q. Okay. Did you have any desire to move to your brother's house at the beach or move to the beach or anything?
A. Absolutely not.
Q. You described to the jury the work, your personal labor that you put into that house when you first moved that. Have you continued to do that kind of work on the house?
A. Not me personally as much as I had before, but I had a considerable amount of work done to the house that I

paid for.
Q. Okay. When y'all suffered the sewage damage at the house did you lose any items of personal property?
A. Yes, sir.
Q. Tell the jury what type of things? What happened and why that you loss the items of personal property?
A. Well, loss two vehicles, and ---
Q. What happened to the two vehicles?
A. Well, they were filled up with sewage and water.
Q. Okay?
A. Not filled up to the top, but I mean there was 8 to 10 inches inside.
Q. Inside the vehicle?
A. Yes, sir.
Q. Okay. And what two vehicles were those?
A. Ford Taurus and a Toyota Avalon.
Q. All right. Let's talk about the Ford Taurus first. What year was it?
A. It was old.
Q. How old?
A. It was old. It was old. I'm not -- I truthfully am not sure what age that car was.
Q. Okay. Did you repair or ---
A. No, sir. Didn't attempt to do any repairs to it at all.

Q. What did you do with it?
A. Sold it.
Q. For salvage?
A. Yes, sir.
Q. How much you get for it?
A. $1,000.
Q. How much was it worth before the sewerage problem -- sewage damage?

MR. PLYLER: Objection, Your Honor. My objection he is he can't remember what year the car is. I don't know how he can possibly give an accurate value for what it was worth.

THE COURT: Well, he's entitled to express his opinion as to its value. So you can cross examine him on it.

MR. PLYLER: Thank you, Your Honor.

BY MR. WILLIAMS:

Q. What did you think the car was worth before the sewage problem?
A. Before the sewage problem?
Q. Right.
A. We weren't having any problems with it, and we were using it all the time. But the truth it was not worth much more than that.
Q. Okay. How about the other car?

A. That was a Toyota Avalon.
Q. What kind of car was it? What year?
A. 2007 or 2008. Somewhere in that neighborhood.
Q. I was going to rephrase the question to how was the car when these things happened?
A. About two years old.
Q. And about how many miles did it have on it?
A. Probably about 80,000.
Q. Okay. What was the nature of the damage to the Avalon? Was it just like you've already described?
A. It was 8 to 10 inches of raw sewage inside it.
Q. What did you do with it? Did you fix it up or did you sell it?
A. We tried to have it fixed up. We replaced all the carpet in it. Everything we could do to the inside of the vehicle short of just stripping it totally and replacing everything inside trying to eliminate the odor.
Q. Were you able to eliminate the odor?
A. No, sir.
Q. So what you do as a result?
A. Traded it.
Q. How much trade in value did you get for it?
A. The Toyota people said it was worth $19,000.
Q. And what was it worth in your opinion? What was the value of it before it had the sewage in it?

A. I'd be prejudiced about that. It's worth more than that to me because it was in perfect condition.
Q. How much more? The jury is going to have to come up -- one of the things that they're going to have to think about is how many you were damaged. So how much do you think the value of your Toyota Avalon was affected by the sewage in it?
A. Probably if you look it up $24,000. Somewhere in that neighborhood.
Q. Okay.
A. I mean it had a lot of miles on it, so, but it was in great shape.
Q. Did you lose any other items of personal property. By that I mean not real estate as a result of this sewage?
A. Hand tools, equipment, the whole storage room down there along with some golf equipment.
Q. And tell the jury what is wrong with those thing. Why do you consider those lost?
A. Well, some of them electrical, and you know, whenever you get electricity and water don't mix real good together. But before I realized what had happened out there it had rusted. Most of it had rusted. Some of the pliers you couldn't even open and close it.
Q. When you say 'before you realized it' what do you mean before you realized it?

A. Well, I was so busy trying to get everything else cleaned up that I didn't even think about it was something messed up inside the little storage room there.
Q. And what did you find as the condition of the storage room when you first went in there?
A. Well, it had been filled. I mean it had that same amount of water and sewage inside it as was outside in the yard.
Q. Okay. So there as sewage inside the storage room?
A. Yes, sir. And in the refrig -- we had a refrigerator out there. It was inside the refrigerator. Fortunately, did not get inside the freezer, but it was inside the refrigerator.
Q. Any other items that -- any other items around your house or in the storage room other than what you've already described that were lost by the sewage contamination?
A. Two lawn mowers.
Q. Okay. Anything else?
A. I made a list, but I don't remember what was on it now.
Q. Okay. Would it help you to look at that list? Help you refresh your recollection?
A. Yes, sir.
Q. Okay. I'm going to show you what's been marked as

Plaintiff's Exhibit Number Three. This is a copy of it. Take a look at that. Is that in your handwriting? Did you make that?

A. Yes, sir.

Q. Okay.

A. Yes, sir. That's that equipment and all that was out in the storage room.

Q. Okay. And how did you go about making that inventory of what was out there?

A. I just, best I could remember, I listed it down and then I went to various hardware stores and all and got prices. Walk the isles and got the prices.

Q. Okay. So it was a list based on your memory, and the prices based on your observations?

A. Yes, sir.

Q. Okay. The last page of Exhibit Three what is that?

A. The last page is the home improvements that Vickie and I made just prior -- well, within a year of this incident occurring to the house.

Q. Okay. What were home improvements you all had done in the year prior to the incident occurring in the house?

A. We installed a vinyl fence to go around the backyard. 6 foot tall vinyl fence. We had completed reworked the kitchen and the utility room in the house completely with floor and everything. We bought appliances. New stove,

dish washer, refrigerator. We replaced the windows with the double windows and put in the irrigation system. Put in a new pool liner and bought a pool cover to go over the swimming pool. New hot water heater. Put on a new roof. And we replaced the shrubbery.

Q. And so, roughly, how much money did you put in that house immediately before the September 5th sewage overflow?

A. In excess of $40,000.

Q. The tools and other items of personal property that you listed on the first two pages, what's been marked as Exhibit Three, do you know what that added up to? The dollar value of the tools and other personal items that you lost?

A. No, sir. I didn't add it up.

Q. Have you ever seen an adding tape that had it added up?

A. Sure. Probably did, but I don't see it.

Q. Do you have any memory of what it added up to?

A. No, sir. I really couldn't. Not accurately I couldn't tell you.

MR. WILLIAMS: Excuse me a minute, Your Honor.

THE COURT: Tell you what, Mr. Williams, let's go ahead and take an afternoon break. Ladies and gentlemen, I'm going to remind you the instructions I've given to you

and that is to not to begin to discuss this matter among yourselves because you have still not heard all the evidence. Let's take afternoon break and come back and continue on?

MR. WILLIAMS: Thank you, Your Honor.

THE COURT: Have a seat right there for just a moment, please. You may step outside to the jury room.

(WHEREUPON, the jury panel was excused from the courtroom at 3:38 p.m.)

THE COURT: Mr. Graham, you may step down. I ask that you do not discuss your testimony during this break. Since you have not concluded it would not be proper for you to discuss it with anyone.

THE WITNESS: Yes, ma'am.

THE COURT: You may step down. Let's take a break. We'll come back.

(WHEREUPON, Court was in recess at 3:39 p.m. and reconvened at 3:58 p.m.)

THE COURT: Is there anything we need to take up before we bring the jury in?

MR. WILLIAMS: Nothing from the Plaintiff, Your Honor.

MR. PLYLER: Nothing from the Defense, Your Honor.

THE COURT: You may ask the jury to come in, please.

(WHEREUPON, the jury panel enters the courtroom at

3:59 p.m.)

THE COURT: Yes, sir. You may continue.

MR. WILLIAMS: Thank you, Your Honor. May it please the Court?

BY MR. WILLIAMS:

Q. Mr. Graham, would it help you to remember or testify about the value of the tools and gardening equipment, etc; that golf equipment that we just talked about, if you could look at a document that you and I worked on earlier?

A. I don't think I have anything in there about that.

Q. Let me show you this. Does that refresh your recollection?

A. Yes.

MR. PLYLER: Your Honor, can we at least know what he's looking at.

BY MR. WILLIAMS:

Q. Mr. Graham, do you recall roughly what your estimate of the value of your golf equipment was?

A. The golf and the tools and stuff?

Q. I'm going to go one by one or would you rather me ask all at once?

A. Yes, sir.

Q. Okay. The golfing equipment, your tool and your gardening supplies?

A. I think it was in excess of about $7,500, $8,000.

Somewhere in that neighborhood. I believe it was somewhere in that neighborhood.

Q. Okay. Let me hand you Plaintiff's Exhibit Number One. Now, before I hand it to you let me ask you this. Did you take any photographs of the events that you've described to the jury?

A. Yes, sir.

Q. What day did you take photographs?

A. I mean several. I mean various days but I don't remember specifically. I mean I ---

Q. Let me show you these photographs.

A. Yes, sir.

Q. Go through them. Referring now specifically to the photographs that are marked in Plaintiff Exhibit Number One. Do you know who took those photographs?

A. More than likely I did.

Q. Okay. And why do you say more than likely?

A. Well, my wife took some pictures also.

Q. Did y'all use the same camera or two different ones?

A. Two different ones.

Q. Okay. What camera is your camera?

A. It's on my telephone. Yeah, telephone.

Q. And what camera is her camera? Is hers a telephone camera or a regular?

A. Generally, a telephone camera. Yes, sir.

Q. Okay. It's two different phones?
A. Yes.
Q. Okay. Do you recognize all the scenes depicted in the documents marked as Plaintiff's Exhibit Number One?
A. Yes, sir.
Q. Okay. Are there any in there that were not taken by you or by your wife?
A. I don't think so.
Q. Okay.
MR. WILLIAMS: I offer these in evidence as Plaintiff's Exhibit Number One.
MR. PLYLER: Your Honor, the only objection I have is I didn't hear as to where they were taken and if they're accurate depiction of what was seen at that time. So subject to that missing piece of the foundation I would have no objection.
MR. WILLIAMS: I believe I did half of that, but let me go through it again.
THE COURT: All right.
BY MR. WILLIAMS:
Q. Now, that you've looked at them do you know when these were taken?
A. I would say that it's right at the time that the first event occurred.
Q. September 6th 2008?

A. Yes, sir.
Q. Any possibility it could be more than a day or two apart from that?
A. Not likely. Not with those particular ones.
Q. And do these photographs that you have in your hand do they fairly and accurately depict what you saw at the time these events were going on?
A. Yes, sir.
Q. Okay.
MR. WILLIAMS: Your Honor, now I would offer these in evidence as Plaintiff's Exhibit One.
THE COURT: Any objection?
MR. PLYLER: The only objection is what we mentioned in chambers. I'll take that up at the next break, but at this point no objection.
THE COURT: Then they will be admitted.
(WHEREUPON, Plaintiff's Exhibit No. 1 was admitted into evidence.)
MR. WILLIAMS: Your Honor, may I ask the witness to step down from the witness stand and help me show these things to the jury so that it might ...
THE COURT: Yes, sir. As long as -- if you're talking about the pictures I ask that you keep your voice up so that the court reporter can hear you and record what you say as well. But you can step down.

MR. WILLIAMS: Your Honor, I have a duplicate set of the same pictures. Claude, why don't you stand at that end, kind of second juror in, and I'll stand at this end. I'll try to stay on the same page you're on. Tell us what the first sheet of Plaintiff's Exhibit One depicts?

A. That's a picture looking east on Rice Street. That's the a manhole cover there where it's bubbling up.

Q. Are any of the houses depicted here your house?

A. No, sir.

Q. Okay. That two story house with the white fence on the second floor, is that at the end of the street?

A. That's at the end of the street.

Q. Of Rice Street?

A. Yes, sir.

Q. Looking towards your house or away from your house?

A. Looking east towards -- away from my house.

Q. And where the bubbling up is occurring where is that?

A. That's the manhole cover where the man ---

Q. Is that in somebody's yard?

A. No, that's out in the middle of Rice Street?

Q. All right. Let's go to the second sheet. What does that depict?

A. I think that's my house. No. That's Marion -- that's the house next door to me.

Q. Okay. If you're looking at your house is that a

house to the right of yours or to the left of yours?
A. To the right.
Q. Okay. And that's the house next door to you?
A. Yes, sir.
Q. And what does it depict?
A. That's water and all up in my neighbor's yard.
Q. Okay. Is it partly in your yard?
A. Mine would be back to the left, I believe.
Q. Okay. To the left of that picture?
A. Yes, sir.
Q. And where does it look to you like if you or Vickie were standing when that picture was taken?
A. In the road.
Q. In the road part of your house?
A. Yes, sir.
Q. Okay. Go to the next page. What does that depict?
A. That's looking at my house.
Q. So.
A. This is my house here.
Q. And what's that white gate looking thing?
A. The white gate goes -- the swimming pool back behind that, and that's the gate that gets into the backyard.
Q. Okay. And the green grass is your yard?
A. Yes, sir.
Q. And the water is where?

A. All in my front yard.
Q. Okay. Is any of portion -- any of that in the street? Is any of that in the street?
A. In the street, no, sir.
Q. Okay. Well ---
A. Yes, it does look like there is a portion right here at the very bottom of the picture that does look like its pavement right there.
Q. Okay. And do you know where either you or Vickie were standing when this photo was taken?
A. In the street.
Q. In the street. Okay. Let's go to the next page. All right. Now, what does that depict?
A. Look like a lot of grass and some other things.
Q. What is that?
A. That's the grass and toilet paper and I think that's a -- it looks like a ---
MR. PLYLER: Objection, Your Honor.
THE COURT: Overruled.
BY MR. WILLIAMS:
Q. You were reluctant to use a particular word, is that what I ---
A. Yes, sir.
Q. Okay.
A. I think that is a female hygiene product.

Q. Okay. What else is depicted in that photograph?
A. Toilet paper.
Q. Okay. Any fecal material in this particular picture?
A. I don't see any.
Q. Okay. Let's look at the next page which I believe would be Page Five of Plaintiff's Exhibit One. What is that depict?
A. Same stuff. Toilet paper and female products.
Q. Okay. Now, these two that we just looked at. The one that was close up of the grass. You know where that was? What part of the Town it was?
A. I think it's probably looking at my house maybe the right front up there. Right by the road?
Q. At your house?
A. Yes, sir.
Q. Okay. Now, let's go to the next page. You have to show me how to hold this one, and I'm going to hold it the same way you're holding it, I hope. Yeah, okay. I'm just trying to hold it.
A. That's the proper way.
Q. So this is the proper way?
A. Yes, sir.
Q. Okay. Tell me what that depicts?
A. That's the line of the -- that's hooked to the pump, the sump pump, trying to pump the material out from under

my house. And that's fecal material.
Q. You could see the fecal material?
A. Yes, sir.
Q. Share with the jury where you can see it?
A. Right there?
Q. Right there. Okay. Now, that line has it always been there or is that something -- this like here.
A. This line?
Q. Um hum.
A. That's the line from the sump pumps hooked on the other end. That up under -- that's under my house here.
Q. Okay.
A. There is a pump down in submerged in that stuff there. And that's pumping it out from under my house.
Q. I guess my question is is that a pump that was always there or is that a pump you put there?
A. That's a pump I put there.
Q. To clean out?
A. To get it out from under my house.
Q. Okay. All right. Let's go to the next picture. What is that?
A. Pretty much the same thing, but it's just moved. The material is moved.
Q. Okay. Next. Looks like we're back near a grate of some kind?

A. Yes, sir. That's out by the -- that's the drain. The road is out here and that's the drain off of the road and that's toilet paper?
Q. Again, and that drain is located on whose property?
A. That would be -- technically, I believe that belongs to the either the Town or the State.
Q. My question is ---
A. It's right in my front yard. It's just east of my front yard.
Q. Okay. Right by the highway?
A. Right by the road.
Q. Okay. And the sewage reached here?
A. Yes, sir. This is toilet paper. Remnants of toilet paper.
Q. Okay. Let's go to the next one. What is this right here?
A. I think that's a portion of a female hygiene product.
Q. And where was that?
A. Looks like it was out beside the road.
Q. On your property?
A. I mow it, bit it might belong to the State or the Town.
Q. All right. Let's go to the next one. This one is not in full focus. What is this?
A. Looks like toilet paper.

Q. And where was that?
A. Right in my front yard.
Q. Okay. Let's go to the next one. What is that?
A. Remnants of toilet paper.
Q. Anything else?
A. Well, looks like this is fecal material in various places, but again, it's not that good a camera so.
Q. And, again, is this to your front yard?
A. Right there in my front yard. Right.
Q. Okay. Let's go to the last one. What is that depict?
A. That's up under my carport. That's where it goes out into my backyard.
Q. And what is -- again, what does that show?
A. It shows the level of -- for this particular incident. See a line going across the bottom of the door here. That's the height of the substance in my backyard and under the carport there.
Q. Under the carport?
A. Yes, sir.
Q. Okay. That's all. Thank you. You may take your seat.
MR. WILLIAMS: Your Honor, may I pass this material on to the jury, this exhibit?
THE COURT: Yes, sir.

BY MR. WILLIAMS:

Q. Claude, let me hand you what's been marked for identification as Plaintiff's Exhibit Number Two. Can you tell the jury what that is?

A. It's a ---

Q. Don't read any portion of it?

A. Yes, sir.

Q. Just tell me what it is?

A. It appears to be a bill from Palmetto Internal Medicine. It says for me. All of them for me.

Q. And for what doctor would that be?

A. I believe that would be Dr. Culpepper.

Q. Okay.

MR. WILLIAMS: Your Honor, I'd like this marked just for identification at this point. I'll tie it up later. Offer it in evidence.

COURT REPORTER: It's already marked.

MR. WILLIAMS: That's fine.

BY MR. WILLIAMS:

Q. Claude, if I can waive a magic wand and have the underneath of your house right now cleaned. No debris under there. No sanitary napkins. No toilet paper. No anything. And have your duct work put up and have your whole house sanitized with the best sanitation products in the history of the world. Have it crystal clear,

pristine, beautiful, wonderful would that house be suitable for living?

A. Not in the present condition. No, sir.

Q. Why not?

A. Because the sewer line is still there.

Q. Okay. Thank you.

THE COURT: Any cross?

MR. PLYLER: Yes, Your Honor.

CROSS-EXAMINATION

BY MR. PLYLER:

Q. Mr. Graham, I think we've already established, but just to make sure we're clear. You grew up in Latta?

A. Yes, sir.

Q. And you actually grew up -- I think you spent a good portion of your time over on Bamburg Street; is that right? Isn't that where your mother's house is?

A. No, sir.

Q. What house is your mother street on? What street is your mother's house on?

A. Highland Drive.

Q. Highland Drive?

A. Yes, sir.

Q. Okay. You ever lived on Bamburg Street?

A. No.

Q. Were you familiar with the house that we've been

talking about today before you bought it?
A. Yes, sir.
Q. Okay. How did you know about it? Growing up?
A. Yes, sir.
Q. And there is a ditch, a rather large ditch, that runs behind that house; is that correct?
A. Yes, sir.
Q. In fact I think you mentioned a minute ago the pipe spanning it that's 6 or -- 6 to 8 feet of pipe that you can see going across that ditch; is that right?
A. That's my estimate, yes, sir.
Q. And that ditch is directly behind the house that you bought, correct?
A. Correct.
Q. And you and your wife, Vickie, bought that house in 1989 for $60,000; is that correct?
A. That sounds correct. Yes, sir.
Q. And, of course, before you bought that house you had it inspected, didn't you?
A. Had it inspected?
Q. Yes. Professionally inspected. Home inspector, somebody to go in and look at it and tell you it was okay?
A. No, sir.
Q. You had it surveyed, didn't you?
A. No, sir.

Q. All right. Well, you at least walked around and checked out that ditch behind the house, didn't you?
A. No, sir.
Q. Well, you knew the ditch was there?
A. Yes, sir.
Q. And there was nothing preventing you from looking in that ditch, was there?
A. No, sir.
Q. In fact I think you said a minute ago that you installed a vinyl fence in 2007; is that correct?
A. I did not, but I had one installed.
Q. Well, you paid for it to be installed?
A. Yes, sir.
Q. At your direction it was installed, wasn't it?
A. Yes, sir.
Q. Okay. And before that ditch was installed -- I mean that fence was installed you could see into the ditch, couldn't you? There was nothing preventing you from your backyard into the ditch; is that correct?
A. Shrubbery all across the back there.
Q. Okay. Shrubbery. But you didn't see this pipe that spans that ditch, 6 to 8 feet of pipe, before you bought this house? Is that what you're telling us?
A. I didn't know, sir. No, sir.
Q. Okay. Now, let's talk about September 5th and 6th of

2008 when Tropical Storm Hanna came through and dumped a whole bunch of rain on Latta and Dillon County. Now, you would agree with me that you were amazed at the amount of rain, the amount of water that was present when you woke up that morning.

A. I was amazed at the fact that the water was in my yard filled with sewage. Yes, sir.

Q. You were amazed at the amount of water there, weren't you?

A. It was a lot.

Q. In fact it got all the way to just below the front door of your house; isn't that right?

A. Yes, sir.

Q. Now, leading up to your front door how many steps are there going to the front door?

A. I really don't ---

Q. You don't know how many steps are to your front door?

A. No, sir.

Q. You've lived there from 1989 to way 2008; is that correct?

A. Yes, sir.

Q. All right. But none of that water got inside the living area of your house, did it?

A. No, sir.

Q. Okay. Now these appliances that you told us about

earlier that you had bought those appliances are in fact inside the living area of your house; are they not?
A. That's correct.
Q. Okay. Well, you're not claiming that this water has ruined those appliances, are you?
A. No, sir.
Q. Okay. So those appliances, you could clean them and move them and use them wherever you want, isn't that correct?
A. There's a great deal of questions about that.
Q. Now, in fact I think you mentioned this as well. The Town offered to have somebody professional come down from North Carolina and pump the water out from underneath your house; is that right?
A. Yes, sir.
Q. Okay. And that company was not just going to pump the water, was it? That company was recommended to them by D.H.E.C. as being qualified to deal with this sort of situation; isn't that correct?
A. I don't know.
Q. Okay. But you declined that offer, isn't that right?
A. I was already doing it.
Q. So you declined the offer, isn't that right?
A. Yes, sir. I was already doing that.
Q. Okay?

A. Didn't see any need for the Town to pay for what I was already doing.
Q. Now, Mr. Graham, you would agree with me that you believed that there is a sewer pipe running underneath your house; isn't that right?
A. Yes, sir.
Q. And it runs underneath your house and it starts in that ditch out behind your house and it connects with the manhole out on East Rice Street; is that right?
A. No, sir.
Q. You don't agree with that?
A. No, sir.
Q. Okay. So what pipe is running underneath your house?
A. It didn't start there at that ditch.
Q. Oh, I'm sorry. For your property, coming across your property and then going under your house?
A. Yes, sir.
Q. You can see the pipe in the ditch?
A. That's correct.
Q. And you can see the manhole out in front on Rice Street; isn't that right?
A. No, sir, not there .
Q. You can't see the manhole?
A. Not where that line goes. No, sir.
Q. Are you sure about that?

A. Yes, sir.
Q. Okay. Have you mapped that particular pipe?
A. I'm sorry.
Q. Have you mapped that pipe? Have you done anything to try to map that pipe?
A. Map it?
Q. Yes, map it?
A. No, sir.
Q. Put a GPS sensor on it. Try to get GIS technology. Hire somebody to come out and map this pipe. Have you done any of that?
A. No, sir.
Q. Have you had an engineer come out and try to figure out exactly where this pipe runs?
A. No, sir.
Q. All right. The plumber that you had that you said told you this pipe ran underneath your house that was before this September 5th 2008 storm event, wasn't it?
A. Wasn't him that told me there was a line running up under my house.
Q. Okay. Well, maybe I misunderstood your testimony a while ago. I though you testified that a plumber came out when you were having problems with your toilet and pointed out the pipe to you. And told you it was running underneath your house. Is that not what he said?

A. No. He said there was a line there that mine fed into that line. Mr. Jackson is the one that told me it ran up under the house.

MR. PLYLER: Court's indulgence.

BY MR. PLYLER:

Q. Do you remember giving a deposition before we came to trial? You know what a deposition is, correct? Deposition? You remember giving a deposition, correct?

A. Yes, sir.

Q. All right. And know its been a while ago. I think it's been about two years a little more since you took that deposition; is that correct?

A. I'm not exactly sure, but if -- yeah, I would say that's probably about correct.

Q. Well, how does September 24th 2010, does that sound about right?

A. I guess.

Q. All right. You would agree with me that two years ago your memory on these issues might have been a little better than it is today; is that right?

A. Was it better?

Q. Would you agree with me that two years ago, two years closer to all the events we're talking about, your memory on this issues would be better than it is here today?

A. Well, you would think it would be.

Q. Okay. Why don't you -- you've got those notes with you still? Does it say when that plumber came look at your house?
A. I don't have what you're talking about.
Q. Didn't you have a -- some notes that you've been looking at this entire testimony?
A. No. There is nothing about the plumber on there.
Q. You want to check and make sure.
A. Nothing about the plumber in these papers.
Q. Okay. Well, you were asked about that plumber and that incident during your deposition, do you recall?
A. No, sir, I don't really recall.
Q. I'm going to show you your deposition?
MR. PLYLER: Your Honor, may I open the original deposition of Mr. Graham?
THE COURT: Yes, sir.
MR. PLYLER: Taped it up pretty good. I'm going to do the best I can, okay.
BY MR. WREN:
Q. Mr. Graham, I'm going to hand you -- and you understood when we took your deposition, our office took your deposition, that it was being recorded by a court reporter, and she was going to put together a transcript?
A. Yes, sir.
Q. Okay. And you were under oath at that time?

A. Yes, sir.

Q. What I'm going to do is I'm going to hand you this. We're going to start with Page 16. I'll tell you the line number in just a second. All right. I'm going to start with Page 16. I'm going to read it. You tell me if I get it right. Start at Line 13.

Says, "Well, we called the plumber because we thought, maybe, it was something with our system." Says, "Okay. So was it in the," and you interrupt and said, "And." And then it says, "House."

Question, "He came and started -- yes. It was -- the toilets and all were not working properly." The next question was, "All of them?" Your answer was, "All of them."

Question, "Okay. And what -- excuse me. What plumber did you call if you remember?" Answer, "I don't remember his name."

Line 25, question, "Don't know? That's okay. All right what did the plumber do or --" Answer, "Well," and the question continues. "What did he tell you?" Answer, "he investigated the situation and discovered that in fact it was that our sewer -- our lines actually feed into that line that goes up under the house and -- uh huh. Answer, "He found that that line was completely stopped up." Did I read that correctly?

A. Yes, sir.
Q. Okay. So in your deposition you said he told you that your service line runs into the line that runs up -- that goes up under the house?
A. He didn't say that. That's not what that says.
Q. Okay. Well then, you read it to me cause ---
A. --- says he ---
Q. --- like it says. Hold on. Let me finish the question. "Our lines actually feed into that line that goes up under the house," and this is you answering what the plumber told you, correct?
A. That's me answering the question.
Q. Of what the plumber told you, correct? That was the question. Look at the first line on that page, on Page 17. What did the plumber do or what did he tell you, and your answer was?
A. "He investigated the situation and discovered that in fact it was that our sewer, our lines actually feed into that line."
Q. Go ahead. Finish it.
A. "And that goes up under." This is me saying it.
Q. Go ahead.
A. Not him.
Q. Read it.
A. This is me saying it.

Q. Just read it, sir.
A. Me saying it.
Q. Just read it.
A. Me saying it. "Actually feed into that line that goes under the house."
Q. Okay. So now you're saying that's not what the plumber told you; is that right?
A. No. I said that's what I said. That's what I said.
Q. Read the answer then.
A. That's what I said.
Q. And answer ---
A. By this point in time Mr. Jackson had already told me it went under the house.
Q. Okay. So when did Mr. Jackson tell you that? When did Mr. Jackson tell you that pipe went up under your house?
A. I don't recall the actual date.
Q. But it was before this September 5th 2008 storm event ---
A. Yes, sir.
Q. --- wasn't it?
A. Yes, sir.
Q. I think -- did you hire another plumber to come back out after this storm event and try to figure out if that pipe that runs up under your house was leaking?

A. No, sir.
Q. Did you do any investigation to try the figure out if this pipe that you believe goes under your house was in fact leaking?
A. No, sir.
Q. In fact after November 2008 you just left your house and moved to the beach; isn't that correct?
A. I moved to the beach, yes, sir.
Q. Well, you're not living in that house anymore, are you? The house?
A. Yes, sir.
Q. Your house on East Rice Street?
A. I moved to the beach, yes, sir.
Q. I think earlier you said that this in fact happened again around the 25th of September of 2008; is that right?
A. Yes, sir.
Q. Okay. You're aware of what a complaint is?
A. A complaint?
Q. Yes. In this lawsuit, you know, you filed a complaint that starts the lawsuit.
A. Yes, sir.
Q. Okay. That is your complaint; is it not? You might want to take a minute and look at it.
A. I'd have to ask my attorney if this is the one that we filed.

Q. Let's just look at the caption for a minute. Claude W. Graham; that's you, correct?
A. Yes.
Q. Versus Town of Latta. That's this case, correct?
A. Yes, sir.
Q. All right. See where it says, 'filed'? Over there there is a little stamp on the right hand side, filed?
A. Yes, sir.
Q. Gwen T. Hyatt.
A. Right.
Q. 2008, November 19. Move to the last page. See where it's dated November 14th 2008?
A. Yes, sir.
Q. Okay. And you see it was signed by your attorney?
A. Signed by Jim Rushton.
Q. Who was your attorney, correct?
A. At that time.
Q. Correct. When you filed this lawsuit that was your attorney?
A. Yes, sir. At this time he was my attorney.
Q. All right. Well, flip through that complaint and tell me where you allege anything that occurred on September 25th 2008?
A. No, sir.
Q. In fact the last date you allege in here is

September 13th 2008; isn't that correct?
A. According to this document, yes, sir.
Q. Okay. Well, do you believe that there's been an amended complaint filed on behalf of you?
A. I would have to ask my attorney.
Q. I'm just asking you what you know, sir.
A. I would have to ask m attorney.
Q. So you don't know the answer to that question?
A. No, sir.
MR. PLYLER: Court's indulgence. I may almost be finished.
BY MR. PLYLER:
Q. All right, sir. I want to show you a few photographs. Well, first off, you've shown us some photographs, correct, that we talked about a minute ago?
A. Yes, sir.
Q. Plaintiff's exhibits -- the jury has them. And those are photographs you took on or about September 6th 2008; is that correct?
A. Yes, sir.
Q. And did you take any additional photographs after September 5th 2008 to show any of these other alleged overflows or flooding situations?
A. Excuse me. Yes, sir.
Q. Where are they?

A. I'm not sure where they aer right now.
Q. All right. I'm going to show you a series of photographs which have been marked for identification purposes as Defendant's Five through 12.
MR. PLYLER: I'm going to go ahead and give this deposition back to our court reporter.
(WHEREUPON, Court's Exhibit No. 1 was marked for identification and received into evidence.)
BY MR. PLYLER:
Q. Do you recognize what these photographs show?
A. Underneath my house.
Q. All right. And what's been marked as Defendant's Exhibit Five, is that the pipe that you're alleging in this case?
A. No, sir.
Q. Okay. What's that pipe?
A. That appears to be one coming out from under my sewer system for the house.
Q. Your drain line?
A. Yes, sir.
Q. It connects to what would be called a service line; is that correct?
A. I'm not really sure, but it's coming out from up under my house. Yes, sir.
Q. Mr. Graham, you were the County Administrator in

three different counties in South Carolina over the course of almost 30 years; is that correct?
A. Yes, sir.
Q. That was your career?
A. Yes, sir.
Q. And, of course, a county administrator deals with as you said the day to day operations of the County; is that right?
A. Correct.
Q. Are you saying you never had the opportunity to work with a sewer system or waste water system?
A. No, sir.
Q. Never had the opportunity?
A. No, sir.
Q. Okay. Defendant's Exhibit Six, do you recognize what that is?
A. I'm assuming this is coming out from under my house.
Q. I don't want you to assume. I just want you to tell me if you recognize it?
A. No, sir.
Q. But have you been under your house before?
A. Yes, sir.
Q. Did you go under your house before the September the 5th 2008 incident?
A. Yes, sir

Q. Did you go under the house before you bought it?
A. Yes, sir.
Q. Did you notice the pipe? The service pipe?
A. Did I notice a service pipe under there?
Q. Yes, sir.
A. I did, but I can't recognize it from that photo.
Q. I'm just asking if you did? So you agree with me ---
A. Did I go up under there? Yeah, I went up under there.
Q. You agree with me there is a service pipe running from underneath your house, correct?
A. Yes, sir.
Q. And it exits from under your house at some point; is that correct?
A. Yes, sir.
Q. All right. Do you recognize Defendant's Exhibit Seven?
A. Not from that photo, but I'm assuming it up under our house.
Q. Okay. I don't need -- if you don't know that's fine. Defendant's Exhibit Eight, do you recognize that photograph?
A. Again, I have to assume it's up under my house.
Q. Defendant's Exhibit Nine?
A. Same response.

Q. Defendant's Exhibit Ten, you recognize that photograph?
A. Yes, sir.
Q. What is this photograph show?
A. That is where it comes out from under my house.
Q. Did the take that photograph?
A. No, sir.
Q. How about Defendant's Exhibit 11? If you don't know what it is that's fine.
A. I'm not exactly sure what that is. Looks like a sewer line.
Q. Defendant's Exhibit 12, you recognize that photograph?
A. Yes, sir.
Q. What's that?
A. Sewer line.
Q. Is that the sewer line that runs behind your house through that ditch that we already talked about?
A. I am assuming that it is based on the fact that that looks like a piece of lumber from the old fence.
Q. Piece of the lumber from the old fence?
A. Yes right there.
Q. On the left hand side ---
A. Yes, sir.
Q. --- of that photograph?

A. Yes, sir.
Q. Do you recall during the course of this litigation hiring a man named Wilbur Pole to do an investigation at your home?
A. Did I hire him?
Q. Well, or was he hired on your behalf? Either way? Did he do an investigation on your home? Do you remember that?
A. Mr. Rushton hired him.
Q. So you do recall him being hired to do an investigation of your home?
A. An investigation? No, sir.
Q. All right. Then what was he hired to do?
A. To look at the house.
Q. And what was the purpose of him going to look at your house?
A. See if he could clean it up.
Q. What aspects?
A. I'm sorry?
Q. From what aspect? I mean was he a maid service? What what he going to do?
A. I don't know whether he had a maid service or not. He was looking at my house for contamination.
Q. All right.
A. I mean I assume that's what he was looking for.

Q. So you're saying that you didn't know that he was a mold remediator? A mold remediator?
A. Not at the time, no, sir, I did not.
Q. With a company called Air Quality Control out of Florence?
A. Could have been.
Q. And didn't he in fact produce two reports that he turned over in this particular litigation?
A. He could have.
Q. Did you review any of those reports?
A. No, sir.
Q. Were you aware that he produced photograph that he took from your property -- of your property in September or October of 2010?
A. No, sir.
Q. So you didn't review any of those photographs?
A. No, sir. I don't think I did.
MR. PLYLER: Court's indulgence.
BY MR. PLYLER:
Q. Mr. Graham, did I understand you correctly that when you first went to look at the house on East Rice Street after you learned that it had become available for sale that you found that there were a bunch of cats living inside of it?
A. We were told that there were cats that had been

living inside the house. Yes, sir.
Q. And in fact two of them had died?
A. One of them had died.
Q. I thought you said two earlier. You're saying it was one?
A. We were told I think it was that one died.
Q. All right. And you said that they had been using it as a restroom?
A. Yes, sir.
Q. So there was cat fecal material everywhere?
A. No, sir.
Q. Well, how were they using it as a restroom?
A. Wee weeing all over it.
Q. So it had cat urine everywhere?
A. Yes, sir.
Q. But no cat feces?
A. No, sir.
Q. And the fact that the inside of that house was clean -- that inside of that house was cleaned before you moved in it, wasn't it?
A. No, sir.
Q. So you moved in it with all the cat urine and feces and stuff?
A. No, sir. I tore all the floors out.
Q. That would be a way to clean it, wouldn't it? Would

that not be a way to clean it? To remove all that?
A. Well, that's what I was trying to do.
Q. Okay. You made sure that it was removed before you moved in; is that right?
A. Correct.
Q. And then you lived in the house from 1989 until 2008, correct?
A. That is correct.
Q. No further questions. Thank you for your time.
MR. WILLIAMS: Redirect, Your Honor? May it please the Court.
THE COURT: Yes, sir.

REDIRECT EXAMINATION

BY MR. WILLIAMS:
Q. After you removed all those boards did you invite a bunch of cats to come back in the house and move in with you?
A. No, sir.
Q. Okay. You and Mr. Plyler used a term. I know I don't under it. Maybe the jury doesn't understand it either. What is a service line?
A. When you have a toilet and you flush the toilet you have got to get it out to the main system. And my terminology with that is that's the service line. It takes it out to a main line.

Q. So the service line is the line that runs from the commode to the main sewer line?
A. Yes, sir.
Q. Okay?
A. That's my definition of it.
Q. Okay. And when you were answering his questions that's the way you were answering?
A. Yes, sir.
Q. And when he was asking the question did you assume that's what he meant?
A. Yes, sir.
Q. Okay. Are the houses with indoor plumbing that do not have service lines?
A. I wouldn't think so.
Q. So it's nothing unusual about seeing a service line somewhere, is there?
A. No, sir.
Q. Okay. Now, let me ask you about the ditch. That's Defendant's Exhibit Number 12. I think its been marked for identification. I think you said that's a line that passes across the ditch or through the ditch behind your house, correct?
A. Well, I'm assuming, because this looks like an old piece of lumber that was from the original fence that was back there behind the house.

Q. So you recognize a piece of lumber?
A. Yes, sir.
Q. And you don't disagree?
A. No, sir.
Q. That that's Mr. Plyler's assertion that that's behind your house?
A. No, sir.
Q. I think you testified earlier that that ditch has been there since you were a little child; is that right?
A. Long as I can remember its been in there.
Q. Is that a sewage ditch?
A. No, sir.
Q. What kind of water goes through that ditch?
A. It's a drainage ditch.
Q. Okay. And when you say drainage what does it drain?
A. Surface water.
Q. Does that mean like rain water?
A. Yes, sir.
Q. Snow water, dew, that kind?
A. Whatever.
Q. Just normal water?
A. Normal drainage water. Yes, sir.
Q. And does it have fish in that ditch?
A. Could. Unlikely but it could.
Q. Frogs?

A. Yes, sir.
Q. Crawfish?
A. Yes, sir. We have caught crawfish out of the ditches. I'm not saying this one but some of them around there.
Q. Is that ditch any different from every other ditch you are familiar with in Dillon County? Marion County? Florence County?
A. No, sir.
Q. Okay. Does the presence of the ditch give any indication that there is going to be sewage running through it?
A. No, sir.
Q. In the absence of negligence of some sort?
MR. WREN: Objection, Your Honor.
THE COURT: You may rephrase the question.
BY MR. WILLIAMS:
Q. Just cause a ditch is there what conclusion do you draw when you see a ditch?
MR. PLYLER: Objection, Your Honor. Calls for lay opinion.
THE COURT: I think you need to be more specific.
BY MR. WILLIAMS:
Q. When you, as a human being or as a County Administrator, when you see a ditch do you draw any

conclusion from the presence of the ditch? Just answer yes or no.

A. Yes, sir.

Q. What conclusion do you draw when you see a ditch?

MR. PLYLER: Objection, Your Honor. Same thing. It calls for speculation. A lay witness.

BY MR. WILLIAMS:

Q. Based on your personal observation what conclusion do you draw?

MR. PLYLER: Your Honor, he can phrase it however he wants but its still calling for an opinion.

THE COURT: Overruled.

THE WITNESS: It's a drainage ditch. Draining surface water ---

BY MR. WILLIAMS:

Q. I'm sorry. Excuse me.

A. It's a drainage ditch draining surface water.

Q. Does it cause any antenna to go off in your head that, my goodness, that might be some sewage in there?

A. No, sir. It shouldn't.

Q. Thank you.

THE COURT: Anything further?

MR. PLYLER: No, Your Honor.

THE COURT: You may step down. Thank you. Yes, you can just leave all the exhibits there. You may take those

with you. You may call your next witness.

MR. WILLIAMS: I call Johnny Burden.

JOHNNY BURDEN, after being duly sworn, testified as follows:

CLERK OF COURT: Have a seat in the witness box. State your full name for the Court spelling your last.

THE WITNESS: John Burden. B-U-R-D-E-N.

DIRECT EXAMINATION

BY MR. WILLIAMS:

Q. Mr. Burden, you've been patiently waiting all afternoon. I'll try to do this as quickly as I can. Tell the jury where you live and what you do for a living. Just tell them who you are?

A. I live in the Town of Latta. I work in Florence at U.P.S. Freight. And I've been in Latta for years and years.

Q. Are you any relation to Claude or Vickie Graham?

A. No.

Q. You have any relation to any of their children or any of their family?

A. No.

Q. Are you friends with Claude and Vickie Graham?

A. No.

Q. You have anything that would -- to tell us that should help the jury evaluate whether you have any bias or

prejudice in this case?
A. I mean I just know him. I've known him all my life. We went to the some high school. We played basketball, but I haven't any personal relationship with him.
Q. Okay, you heard him testify about September the 5th and 6th 2008, correct?
A. Correct.
Q. Did you have any interaction with Claude at or about that time or afterwards?
A. Well, we just had this big storm come through Latta, and we had a lot of water, surface water. A lot of rain water, and I happen to be out the next morning. Took some pictures all around town. Not just in front of his house, but all around town. I happen down his street and the manhole cover in the front of his house was jumping up and down like a geyser.

And I filmed it, motion picture film. And took some still pictures of the area, and I think he kind of like -- he was talking to my wife when they -- where she works at Flying J. They were talking about the problems she was having. And I just decided to ask them do they want the pictures. And he said he did so I gave him what I had.
Q. And how long was that after the events?
A. I really can't recall. I'm sure it was a good many months.

Q. That's close enough. I just didn't know if it was hours or days?
A. Oh, no. It was many days after.
Q. Okay. And what form did you give it to him in?
A. I printed them on a C.D. ROM, and put it in a cover and gave it to him.
Q. Okay. Now, you were at his house when you took the pictures?
A. In front of his house.
Q. In front of his house?
A. In the street.
Q. In the street?
A. Yes, sir.
Q. In the street in front of his house?
A. That is correct.
Q. And how long -- you'd been all over town that day; is that correct?
A. I did, yes.
Q. Okay. You took a lot of film?
A. I did.
Q. Okay. Do you recall anything different or unusual about his house?
A. Just there was a lot of water all over his yard up to his front door steps near about, and all that sewer was coming up out of that manhole cover. I mean that all ever

seen.
Q. That's what I'm asking you. Could you see that it was sewer material that was coming up?
A. I cannot say that I saw any signs of anything other than just water coming out of that manhole cover. And I see water coming out of the manhole cover I certainly is telling me that it was sewer.
Q. Okay. Cause that manhole cover covers the sewer line, right?
A. Yes, sir. It does.
Q. Okay. I'm going to -- if I might see Plaintiff's Exhibit Number Two that was in this folder. Yeah. Plaintiff's Exhibit Number Six, I'm sorry.
MR. WILLIAMS: Your Honor, I'm offering Plaintiff's Exhibit Number Six into evidence. This is a copy of Mr. Burden's videotape. I'm going to play it for him. It only lasts 7 seconds. I'm going to play it for him and let him actually look at it and identify it unless opposing counsel wants to stipulate it's the same one.
MR. PLYLER: I still would like ---
MR. WILLIAMS: I'm going to play it for him ---
MR. PLYLER: --- to see it because I may have questions about the video, but at this point I have no reason to doubt that that's the video.
THE COURT: All right. So there is no objection to

admitting it?

MR. PLYLER: No, Your Honor. I have no reason to believe this isn't the video he took.

MR. WILLIAMS: Let me make sure I know what to do.

(WHEREUPON, Plaintiff's Exhibit No. 6 was admitted into evidence.)

MR. PLYLER: Your Honor, may I approach just to watch the video?

THE COURT: Yes, sir.

MR. WILLIAMS: Please.

(WHEREUPON, Plaintiff's Exhibit Number Six was played in open Court.)

BY MR. WILLIAMS:

Q. Is that the video that you took?

A. Yes, sir, it is.

Q. Now, how long was the video you took of the front of Claude Graham's house?

A. Minutewise?

Q. Yes, sir?

A. Not -- very little. I mean I wasn't taping very long.

Q. Does it look to you like I've set it up on here so that it will just keep repeating the same 7 or 8 seconds?

A. Yes, sir.

Q. Okay. And it starts when you see the whole street

and then you zoom in; is that correct?

A. That's exactly what I did. Yes, sir.

MR. WILLIAMS: Your Honor, I offer this into evidence Your Honor, and then ask permission to display it to the jury.

MR. PLYLER: No objection, Your Honor.

THE COURT: Without objection it's admitted. You may publish it.

MR. WILLIAMS: Thank you, Your Honor.

MR. PLYLER: It think he's made it clear that this is like a 7 second loop being replayed over and over again.

THE COURT: That is correct.

MR. WILLIAMS: They call loop as I under it. It is going to be the same thing over and over again. It zooms in to the manhole cover. And, Your Honor, I believe you saw it from the bench?

THE COURT: Yes, sir, I did.

MR. WILLIAMS: That's all the questions I have of Mr. Burden. I often the disk into evidence at this time.

THE COURT: It was admitted.

MR. WILLIAMS: Okay. And that's all I have for Mr. Burden.

THE COURT: Any cross?

MR. PLYLER: Very briefly, Your Honor.

CROSS-EXAMINATION

BY MR. PLYLER:
Q. Mr. Burden, I want to make sure I understood you correctly. It rained a lot that time period, didn't it?
A. Yes, sir. It was a tropical -- it was the morning after a tropical storm.
Q. Tropical Storm Hanna?
A. I don't remember the name, but it was a tropical storm. Yes, sir.
Q. In fact it flooded all over Latta, didn't it? Not just I front of the Graham's residence?
A. Not all over Latta, but in areas of it. Numerous areas, yes.
Q. Right. But it doesn't just flood in front of the Graham's residence, correct?
A. That's correct.
Q. And you didn't do anything to test the water out in front of the Graham's residence, did you?
A. No, sir.
Q. That's all the questions I have for you. Thank you.
THE COURT: Any redirect?
MR. WILLIAMS: No, Your Honor.
THE COURT: You may step down. Thank you.

COLLOQUY

MR. WILLIAMS: Your Honor, my next witness is going to be sort of lengthy, and I would ask the Court's

come in through ---

MR. WILLIAMS: Seven, Eight, 10 and 12 are the one you didn't get?

THE COURT: That's what they told me.

MR. WREN: That is correct.

MR. WILLIAMS: You did get the June 23rd?

THE COURT: They got Numbers Nine and 11.

MR. WREN: Correct.

MR. WILLIAMS: I've got them. Thank you.

MR. WREN: And I'm going to leave these up here, Judge, if it's okay, Those are the four that we just pulled. They're still here. And just by way of example we still have the easement up here that we just talked about that had been identified. But I'm fine leaving everything here until we them moved into evidence.

MR. WILLIAMS: I'm fine with that. I'm fine if you leave them up here. We can set them to the side. Is that suitable? Is that fine, Judge.

THE COURT: That's fine.

MR. WILLIAMS: Okay.

THE COURT: Now, let's talk about the second issue.

MR. WILLIAMS: Yes, Your Honor. You ready?

THE COURT: Yes.

MR. WREN: Judge, the other problem, and perhaps, frankly, more important issue that we have is -- and

because I sense a little bit of this in some of the testimony yesterday, but we anticipate or perhaps assume with Mr. Henry or perhaps any other witness for that matter, might as well address it now, is this introduction or of course any kind of opining about subsequent events or flooding or sewer for that matter at the Grahams property. And perhaps more importantly at other locations in the Town of Latta.

Your Honor, we in South Carolina, of course, as I've already indicated we have been doing discovery in this case for a significant period of time. Ms. Graham has in fact amended her complaint twice. They've included their claims in this case. But these flooding events that occurred in September of 2008, and it's the intention through questioning to try to elicit subsequent events and problems.

Your Honor, I think that is incredibly prejudicial. It's not what we've spent three years doing discovery on in these matters. And I don't think any of that information or testimony or evidence should be admissible.

MR. WILLIAMS: Please the Court.

THE COURT: Yes, sir.

MR. WILLIAMS: The relevance of that testimony goes to the heart of the case, goes to the heart of the damages. The damages -- the Plaintiff's theory of damages

includes the proposition that these problems have not been addressed. They haven't been much less fixed; that the problem still exists and that the house is unlivable and will be unlivable until the problems are fixed.

Now, the recurrence of the problems in that neighborhood, at this house and in this closely surrounding neighborhood I think it's important for the jury to be able to consider as they assess damages.

THE COURT: I can tell you now that I'm not going to let them talk about the neighborhood. I don't necessarily have a problem with them talking about their particular property and the fact that, you know, what I heard from Mr. Graham yesterday was that it hadn't been fixed. The sewer line hadn't been fixed. Whatever the problem is, if there is a problem with the sewer line, whatever it is, hasn't been fixed. And in his view there was no reason to spend any money to repair his home and to correct the problems with the home until the sewer line was fixed.

And I've accepted that. I think that would be appropriate, but I'm not going to let anyone talk about the neighborhood or what's happening next door or other places. I think it is relevant that if there is a problem with the sewer, the sewer line that runs across their property, and it is creating -- it has not been fixed or has not been addressed or whatever way you want to couch

it. And there is still an issue. There's been no remediation, and then, you know, I think that's certainly relevant in terms of the damages and being able to return to the home and to live in the home.

MR. WILLIAMS: Thank you, Your Honor.

MR. WREN: And, Your Honor, if I may add. I understand completely, and I, in and of itself, Judge, any testimony from either party in regards to the fact that whatever the problem is, the fact that has done a remedial measure. I don't -- we don't -- well, I hate to say we. I don't want to go there, but I don't have a problem with the fact that it is what it is and the testimony in that regard.

The one thing I would just point out, Judge, on this point, and I understand your ruling, but I do want to clarify that in the trespass cause of action, which again would rest solely with Ms. Graham as pled as the property owner, it states, "At some unknown time in the distant past the Town of Latta began to trespass upon the property know by the Plaintiff, Vickie Graham."

Their claim for trespass here, Judge, I think it's important to note is not for this issue of this continuing problem with water or sewage or anything else. The claim for trespass is pled clearly as to do with the location operation of this sewer line on their property. And so I

just wanted to distinguish that, Judge. That's part of our hesitation with regards to these issues coming in. How this has been pled.

MR. WILLIAMS: May it please the Court. I believe that covers the continuing trespass, but if it doesn't I would move to amend the complaint to conform to the evidence; that the trespass is a continuing one, and continues to this very day.

THE COURT: I guess maybe I need to ask a question. What are you claiming as the trespass? Is the trespass the very existence of the sewer line across the property or is the trespass events that have occurred because the sewer line has not been maintained or there has been some other breach or some other problem with the sewer line?

MR. WILLIAMS: The trespass is the existence of the sewer line across their property with the -- on top of the fluid that comes from the sewer line. Existence of the sewer line is the trespass and each episode of the discharge is a trespass.

MR. WREN: Your Honor, may we briefly be heard on that? That not how it's pled, Judge.

THE COURT: Yes, Mr. Wren. Your argument.

MR. WILLIAMS: Oh, I thought you said Mr. Wren.

THE COURT: I did.

MR. WREN: Okay.

THE COURT: You said you wanted to respond to the arguments that were made because you said that's not the way it was pled.

MR. WREN: Well, Your Honor, yes. Under the Plaintiff's second amended complaint Ms. Graham addressed this claim. The language I read that, "now and again the trespass upon the property ---

THE COURT: Look at Paragraph 24.

MR. WREN: I see that, Your Honor. "To operate a sewer line."

THE COURT: So it says that, "The Town of Latta has no legal right to construct or operate it's main sewer line on the Plaintiff's property. Received no such permission from the Plaintiff."

MR. WREN: Agree, Your Honor. I understood that, of course, to be the presence of the line on their property. Not the emission of the fluid or some other activity and could potentially constitute a trespass.

THE COURT: Okay. I see what you're saying. You're saying that his cause of action only goes to the existence of the sewer line not, basically, the negligence claim covers the failure to maintain the line or whatever and, therefore, the resulting problems?

MR. WREN: We're taught not to assume, Judge, but, obviously, that assume that's where the negligence claim

comes in.

MR. WILLIAMS: If I might respond when you finish. Your Honor, my point is, of course, looking at Paragraph 23, I do say that the trespass is continued and is continuing. My point would be at least possible for the jury to find that there has been no negligence by the Town, but there is a trespass. In which case the damages for the trespass are not just a mere existence of a line, but what the existence of the line has caused. Negligence, the damages, Your Honor.

It's at least theoretically possible that a jury could find not negligence but surely a trespass and then they have to determine what the damages in the trespass. Now the damages, obviously, would be the same. Wouldn't be two different types of damages. The fluid makes damages from the trespass and the damages.

THE COURT: I'll allow the testimony on that. I think it's broad enough, and I think it's -- I don't think it's a surprise, and I don't think it's something that the Town is not discovered or anticipated. And so I'll allow evidence that would support the issues relating to the trespass. Not only being the line itself, but also the continuing trespass based upon the release of the sewage on the property. Anything else we need to take up?

MR. WREN: Thank you, Your Honor.

MR. WILLIAMS: Nothing from the Plaintiff.

THE COURT: Then we can ask the jury to come in.

(WHEREUPON, the jury panel enters the courtroom at 10:11 a.m.)

THE COURT: Good morning, ladies and gentlemen. I'm sorry for the delay in getting started. We had a couple of issues that we had to take up this morning. Hopefully that will make things run a little smoother. You may call your next witness.

MR. WILLIAMS: Thank you, Your Honor. May it please the Court. Call Benton Henry.

THE COURT: You step forward, sir, and be sworn.

BENTON HENRY, after being duly sworn, testified as follows:

CLERK OF COURT: Be seated. State your full name for the Court spelling your last, please.

THE WITNESS: William Benton Henry. H-E-N-R-Y.

THE COURT: Yes, sir.

DIRECT EXAMINATION

BY MR. WILLIAMS:

Q. Mr. Henry, where do you live?

A. I live in Latta.

Q. How long have you lived in Latta?

A. All my life.

Q. What do you do for a living?

A. I'm a commercial photograph.
Q. And what's that mean?
A. Photograph for advertising agencies and companies. I provide them pictures for their use.
Q. And they pay you for what you do?
A. Yes.
Q. Okay. And how long have you been doing that?
A. Professionally, about 20 years.
Q. Okay. where exactly do you live in Latta?
A. I live on -- 224 East Bamburg Street.
Q. And do you have family in Latta?
A. Yes, sir.
Q. Who?
A. My mother.
Q. Where does your mother live?
A. She lives on Rice Street.
Q. What's her address?
A. 225 East Rice Street.
Q. Where is that in relation to 200 East Rice Street?
A. It's ---
Q. The Graham house?
A. Diagonally across. It's one house up on the opposite side of the street.
Q. Across the street one house down?
A. Yes, sir.

Q. If you're standing on your momma's front porch which direction would you look to see the Graham house?
A. The left.
Q. Okay. So catty corner? Half way?
A. Yes.
Q. Okay. And is that the house you grew up in or did your momma move into there?
A. I grew up there.
Q. So you're familiar with that neighborhood?
A. Yes, sir.
Q. Okay. Do you know the Grahams?
A. Yes, sir.
Q. How long have you known them?
A. All my life.
Q. You have any special relationship with them other than being neighbors or having been neighbors?
A. We're in the same church.
Q. How far is your house on Bamburg Street from your Momma's and the Graham house on Rice Street?
A. My property butts up with my mother's. My backyard and her backyard join.
Q. So you can see your house from the Graham house if your mother's house wasn't in the way?
A. Yes.
Q. Okay. Do you remember the events of September 5th

and 6th 2008?
A. Not really.
Q. Okay.
A. Not specifically.
Q. Do you remember any occasions where there had been sewage overflows out of the manhole on Rice Street?
A. Yes.
Q. Okay. What's the earliest one your remember?
A. It's early 2000s. Somewhere -- I don't ...
Q. Okay. Have you taken any such photographs of any such sewage overflows?
A. Yes, sir.
Q. On how many different occasions?
A. I know of twice, but I know there are more than that.
Q. Okay. When you became aware of a sewage overflow what did you do?
A. First time I knew there was a problem I contacted the Town.
Q. Okay. What did you to do -- did you do anything to observe the actual overflow?
MR. PLYLER: Your Honor, objection. And we may need to have a side bar.
THE COURT: Yes, sir.
(WHEREUPON, a bench conference was held off the record in the presence of the jury, but out of the

hearing of the jury.)
BY MR. WILLIAMS:
Q. The first time you became aware of a sewage overflow from the manhole on Rice Street what did you do to observe conditions if anything?
A. I mean there was -- I took pictures at times when it.
Q. And when you took pictures did you go over there and look around?
A. Just in my -- as far as my mother's yard. I did, yeah.
Q. When we were looking at your mother's yard could you also see the Graham's yard?
A. Yes.
Q. Okay. Do you recall what the earliest of those occasions was?
A. Not exactly. I want to say 2003, but I'm not positive.
Q. Do you recall the earliest occasion on which you took pictures?
A. I take a lot of pictures.
Q. When you took pictures of the neighborhood, the Graham house or Rice Street?
A. Probably that same time period would have been the first time.
Q. Let me question you to look at something and see if

this refreshes your recollection. I'm going to show you what's been marked for identification as Plaintiff's Exhibit Number Seven.

MR. PLYLER: Objection, Your Honor. Your Honor, this is your rule -- your earlier ruling. This is the problem we're stepping into here.

MR. WILLIAMS: Your Honor, I'm not offering these into evidence. I'm asking if that refreshes his recollection.

THE COURT: I'll allow you to talk -- to utilize those photos for purposes of his testimony, but I think I previously ruled that those exhibits are not admissible into evidence.

MR. WILLIAMS: Correct. Thank you, Your Honor.

BY MR. WILLIAMS:

Q. Mr. Henry, look at those photographs. Does that refresh your recollection about them?

A. It mean I took these.

Q. Okay. Do you now remember taking them?

A. Yes, sir.

Q. All right. So what was the condition of Rice Street at your mother's house, in front of your mother's house, and at the Graham house and on Rice Street on or about April 14th 2009?

A. The water was covering the street from pretty much

her drive all the way across the street to -- there was a house to the right straight across from her, and the water went up to the front of their house and up to about halfway of Claude and Vickie's house. And then the house that is to the left of my mother's was about halfway up into their yard.

Q. And when you say 'water' was it water? Was it just water?

A. Well, I know that the manhole there was sewage coming out of that or material coming out of it.

Q. Okay. So it was sewage all over Rice Street, right? At your mother's house and across the street and at the Grahams?

A. Yes, sir.

Q. Okay. Did you observe anything related to the sewage on May 28th 2011?

A. We had the same flooding problems. It's very similar situation.

Q. Let me show you an exhibit that's been marked for identification as Plaintiff's Exhibit Number Eight. Take a look at those and see if that refreshes your recollection?

A. Yes, sir.

Q. Okay. Now that your recollection has been refreshed what was the condition of Rice Street and the Graham

property on May 28th 2011?
A. It was the same type flooding. Water covers the entire street, and the house across from my mother's and it goes up -- well up into their yard, the Graham yard and then the house to the left of my mother's. It's up into their yard.
Q. And you saw that?
A. Yes, sir.
Q. And I know you are reluctant to say. You keep saying -- you say 'water'. Was it more than water? Was it sludge?
A. Well, it was material coming out of the manhole.
Q. Sewage?
A. Sewage, yes, sir.
Q. Okay. Now, let me show you what's been marked for identification as Plaintiff's Exhibit Number Nine. Can your identify those photographs in Plaintiff's Exhibit Nine?
A. Yes, sir.
Q. What is that?
A. That's another flooding of the same area on Rice Street.
Q. And did you take those photographs?
A. Yes, sir.
Q. And are those photograph dated?

A. Yes, sir.
Q. What date?
A. 3/18/12, 2012.
Q. And what do they depict? Not in particular, just in general. What do they depict?
A. The area in front of my mother's house and Claude and Vickie's house and, yeah, the flooding and the street.
Q. I would offer these into evidence without objection, I believe, Your Honor?
THE COURT: Any objection to Exhibit Nine?
MR. PLYLER: Subject to our earlier objection.
THE COURT: Yes. It's admit.
(WHEREUPON, Plaintiff's Exhibit No. 9 was admitted into evidence.)
BY MR. WILLIAMS:
Q. And what was the date of those pictures?
A. 3/18/12, 2012.
Q. And, again, the water depicted there is it rain water or some other kind of water?
A. It's both. I mean there's sewage from the manhole.
Q. Okay. Let me show you what's been marked for identification as Plaintiff's Exhibit Number Ten. Does that refresh your recollection?
A. Yes, sir, I remember taking the picture.
Q. Of the events of April of 2012?

A. Yes, sir.
Q. And what were the conditions at your mother's house and on Rice Street on April 10th 2012?
A. The photograph is the ditch that next to my property and that's ---
MR. PLYLER: Your Honor.
THE COURT: I'll sustain that objection.
BY MR. WILLIAMS:
Q. I'm not asking what's in the photograph. What I'm asking you is does that photograph help you remember what conditions were like on Rice Street, at your mother's house and at the Graham's house?
A. Yes, sir.
Q. And what were the conditions? Don't tell me about your house what it was like. Talk about Rice Street and the street between your mother's house and the Graham's house and at the Graham's house?
A. This ditch goes downstream from my house. So the sewer -- the things that are in my ditch are -- it's the same ditch.
MR. PLYLER: Your Honor, this is the same issue.
THE COURT: I think you need to move on. I sustain that objection.
MR. WILLIAMS: Okay.
BY MR. WILLIAMS:

Q. All right. Let me ask you now to take a look at what's been marked for identification as Plaintiff's Exhibit 11. Do you have that? Here it is. Let me show you what's been marked for identification as Plaintiff's Exhibit 11. Look at that and see if it refreshes your recollection.

A. Yes, sir.

Q. And what does that depict?

A. It's another flooding situation on -- showing the flooding on Rice Street.

Q. And when was that?

A. I don't recall the date. I don't have it on here.

Q. I believe the record will reflect May 17th 2012; is that jibe with your recollection?

A. That sounds right.

Q. Okay. Did you take those pictures?

A. Yes, sir.

Q. And do those accurately depict the conditions on Rice Street on that day?

A. Yes, sir.

MR. WILLIAMS: I would offer that into evidence at this time without objection, I believe, Your Honor?

MR. PLYLER: Your Honor, subject to our earlier objection and your earlier ruling.

THE COURT: They're admissible. It's admitted.

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(WHEREUPON, Plaintiff's Exhibit No. 11 was admitted into evidence.)

BY MR. WILLIAMS:

Q. And in general, without going picture by picture through there, tell the jury what they show.

A. They show flooding on Rice Street and the street is covered and the yard and the surrounding area covered. An there is also pictures the backyard of Claude and Vickie Graham's house.

Q. Okay. Let me ask you to take a look at Plaintiff's Exhibit 12 see if that refreshes your recollection.

A. Yes, sir.

Q. With on June the 23, 2012.

MR. PLYLER: Your Honor, I mean I've got to do this objection again. This photograph has nothing to do with the Graham's property.

MR. WILLIAMS: That's not my question, Your Honor.

THE COURT: Let me hear the question first.

BY MR. WILLIAMS:

Q. My question is does that refresh your recollection as to the condition of Rice Street in front of your mother's house and at the Graham property on or about June 23 2012?

A. It's the same time. Yes, sir.

Q. Okay. And do you recall now what Rice Street was

like on or about July June 23 2012?
A. It was flooding, another flooding event.
Q. Okay. Same type you've described before?
A. Yes, sir.
Q. Was there -- was there sewage flooding or water flooding or both?
A. There would have been both. Yes, sir.
Q. All mixed together?
A. Mixed together, yes, sir.
Q. On that date did you -- please, state whether or not you did see sewage materials in the water?
A. I did from the manhole.
Q. Okay. All right. Now, let's talk about Plaintiff's Exhibits Nine and 11 which I believe are already in evidence and should be right in front of you? If you would let me?
MR. WILLIAMS: And with the Court's permission, let me get you to come down and stand in front of the jury with Plaintiff's Exhibits Nine and 11.
BY MR. WILLIAMS:
Q. And let's go through. Let's just do -- have Nine and 11 in front of you?
A. Yeah.
Q. But let's just do one at a time. Let's do Number Nine right now.

THE COURT: And I just ask that you keep your voice up so that the court reporter can hear what you're saying as well.

MR. WILLIAMS: If with the Court's permission I'll stand at one end, and you sort of stand at the other end. And come this way a little bit. About right there, and I'll come about the same amount in and we'll both show the pictures at the same time.

BY MR. WILLIAMS:

Q. What does this depict? I'm showing you Plaintiff's Exhibit Number Nine?

A. That's -- the house on the left if Claude and Vickie's house. I'm actually standing in my mother's yard, and this is Rice Street in the middle.

Q. Okay. And where, point with your finger, and show where is the manhole on Rice Street?

A. Right in this area.

Q. All right. Let me see where your finger is. Right here. Is that about right?

A. Yes.

Q. Okay. All right. Show the second page. Is that another view of the same?

A. Yes, sir. That's at little more further up. That's still the Graham house, and you can see the street now.

Q. Okay. And what is the third page?

A. The similar view. Less of the street and more up street. Little more where the house and the ditch and the manhole is.
Q. Are you able to actually see the manhole in any of the street pictures or you just know where it is?
A. No, I cannot see it.
Q. Okay. So when You were pointing to it you just know where it is?
A. Yes, sir.
Q. Okay. Now, let's look at Number 11. And let's go through the same situation. These photographs were taken on May 17 2012 as I recall; is that right?
A. I think that's right.
Q. All right. The first sheet?
A. Again, I'm standing on my mother's property, and that's the Graham house across the street.
Q. You know what that orange cone is?
A. I'm pretty sure ---
MR. PLYLER: Objection, Your Honor. Speculation.
THE COURT: If he knows what it is he can testify as to what it is.
MR. PLYLER: As far as an answer I'm pretty sure he doesn't know.
BY MR. WILLIAMS:
Q. Do you know what it is?

A. I do not know.
Q. Okay. Did you put it there?
A. No, sir.
Q. Did you see anybody else put it there?
A. No, sir.
Q. Is it near anything that you know about?
A. There's a patch in the road.
Q. And how do you know there is a patch in the road?
A. I mean you can see it out there after -- I think it -- may be the other picture shows that.
Q. I show the second page of Plaintiff's Exhibit 11.
A. This is -- the Graham house is on the left side. This is the Coxes live over here and the road in between.
Q. And you said over here on the right side?
A. On the right. Excuse me.
Q. And the road in between the Coxes and the Grahams?
A. Right. Well, between them is their property line, but Rice Street runs up to the left in the ditch.
Q. On the right hand side of the picture is that Rice Street or is that a yard?
A. That's a yard.
Q. Okay. Whose yard is that?
A. That's the Cox.
Q. Okay. On the left hand side of the picture where the sewage is covering?

A. That's the Graham house, and that's the front of their house.
Q. Okay. You can just see a little teeny bit of the front of their house?
A. Yes, sir.
Q. Okay. And the oak tree right in the middle, whose yard is that if you know?
A. That would be the Coxes.
Q. Okay. And that light pole, is that a boundary more or less?
A. The ---
Q. Between the properties?
A. The green part, that's my understanding, is the boundry line is where the ditch would be.
Q. The green hedge?
A. Hedge, yes, sir.
Q. Okay. All right. The third sheet of paper? What is that?
A. That's the entrance under Claude and Vickie's house.
Q. You took that picture?
A. I took take picture.
Q. And what does it show?
A. You can see the water underneath the house.
Q. And did you observe that with your own eyes?
A. Yes, sir.

Q. Did you see any evidence of sewage under the house on that particular day?
A. I could smell sewage.
Q. Okay. What's the next picture?
A. That's actually a picture inside up underneath their house from that same hole. I'm actually in the hole or in the ditch.
Q. And then was there still a smell?
A. Yes, sir.
Q. And the next picture?
A. That's their backyard on their back steps looking to the right hand corner of their property.
Q. Is there a swimming pool in that picture?
A. Yes, sir, that's the swimming pool.
Q. Covered up?
A. Yes, sir, covered.
Q. And when you said, 'their property' you're talking about the Grahams?
A. The Graham property, yes.
Q. And the very last page of that exhibit what's that?
A. That's the manhole on Rice Street.
Q. Okay. And that's when the sewage was coming out of it? You can see it coming out while you were taking the pictures?
A. Yes, sir.

Q. Okay. That's all on those pictures.

MR. WILLIAMS: Bear with me one moment, Your Honor. That's all the questions I have, Your Honor.

BY MR. WILLIAMS:

Q. Please answer any questions Mr. Wren may have.

THE COURT: You may cross.

MR. PLYLER: Yes, Your Honor, but I would like to ask for a short break.

THE COURT: You want to approach?

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

COLLOQUY

THE COURT: Ladies and gentlemen, I'm going to ask that we take a short break to address some issues. So I'm going to ask that you retire to the jury room and not to begin to have any discussions about the testimony as you still have not heard all the testimony that has to be presented in this case. Let's take a brief break and we will come back.

(WHEREUPON, the jury panel was excused from the courtroom at 10:39 a.m.)

THE COURT: Mr. Henry, you may step down for a moment, but I ask that you not discuss your testimony. You have not concluded it so it would be inappropriate to

discuss it at this time. Let's take a brief break.

(WHEREUPON, Court was in recess at 10:39 a.m. and reconvened at 10:45 a.m.)

MR. PLYLER: And I'm not sure that the side bar was audible to the court reporter or not, so I just wanted to address. We did have a brief side bar in which it was discussed the Defendant's position that we have been highly prejudiced by Mr. Benton Henry's testimony which we believe was in, essentially, in direct conflict with Your Honor's ruling right before he took the stand.

During his testimony he was allowed to refer to photographs which we established had not been produced in the discovery process. And even though we didn't take Mr. Henry's deposition until late September of this year, just two or three weeks ago, they had not been produced to us before his deposition.

It was our understanding that they were going to be excused based on that prejudice. The surprise and the inability to develop discovery on these photographs and questioning Mr. Henry about the photographs. However, he was allowed to refer to them in front of the jury to "refresh his recollection." The jury saw him referring to the photographs. And then he was allowed to testify about what is depicted in the photographs and/or his memory from the events when these photographs was taken.

The conundrum that I find myself in is he's referring to photographs that he says shows certain things or refreshes his recollection as to certain events that now the jury is not going to get to see because the photographs were produced so late it prejudiced us in trial. However, his testimony gets to be heard by the jury. And we don't have any affective way of contradicting that testimony without showing the jury the photographs.

Obviously, I can't consent to their admissibility because we just spent all that time dealing with the fact that these photographs were prejudicial because of the late production. But at the same time I'm prejudiced in the trial itself because he was allowed to testify about the photographs without the jury ever seeing them. So I ---

THE COURT: When you say he testified about the photographs what are you referring to cause I didn't -- what I heard was that he testified about the events on the particular day that those photographs were taken.

MR. PLYLER: And he was ---

THE COURT: But not specifically about what was in the photograph other than Rice Street and the property, either his mother's property and/or the Plaintiff's property.

MR. PLYLER: Right. But Mr. Reynolds would say, "Im going to show you what's been marked as Exhibit 7. These will refresh your recollection as to the events that occurred." And then he flipped through those photographs and he said, "Yes, it does." Well, what do you remember about that? So he's essentially telling the jury or suggesting to the jury that these photographs show what he just testified to.

THE COURT: Which was flooding in the area. So you are saying that in his deposition that he never -- he was never asked about subsequent flooding or you never testified about flooding or seeing sewage or the manhole bubbling or any of those things during his deposition?

MR. WREN: What he was asked was, "Have we talked about all the photographs that deal with the Graham property and this lawsuit," cause again, he was named as a witness having information and having photographs showing "environs and other materials in flooding events." So I asked him. I went through the photographs I had. I said, "Are these all the photographs you produced?" And he said, "Yes." So that's where the prejudice of those not being produced.

And they obviously existed. Some of them date back to April of 2009. Over three years before this deposition. He had an opportunity to say right then to

say, "Well, I have other photographs. I have other photographs showing the Graham property. I have other events that I've documented using photography." Then I could have followed up at that point.

But the prejudice becomes we were told, 'these are the two sets of photographs showing a March 2012 event and a May 2012 event. We questioned him about those photographs. We asked, "Are these all the photographs you have," and he said, "Yes."

THE COURT: You're still missing my question. My question to you is did he not testify that there were other events, other flooding events in that area in that community whether he had photographs or not.

MR. PLYLER: I don't specifically remember. I know he talked about ---

THE COURT: Well, you've got the deposition.

MR. PLYLER: I know he talked about his ditch and flooding events with his ditch that runs along his property. And as a -- before his testimony we brought that issue up claiming whatever is happening in other places in Town is irrelevant to the matters in this lawsuit.

THE COURT: Right. But my question still is did you specifically ask him or did he testify about other flooding events on Rice Street in that neighborhood on the

Graham property other than those two sets of photographs from March of 2012 and May of 2012?

MR. PLYLER: And, Your Honor, my understanding is that he did say, "I know that ditch floods sometimes, but my main concern has been my ditch, not the ditch behind their house." And I don't believe he ever said anything about sewage overflows. Now, he did with this May and May event. He did.

We questioned him specifically about those, but I had no reason to follow up with him on this when I asked so many questions like, "Do you have any other photographs that would be relevant to the Graham property" which he clearly did. You see them here now. The Exhibit Seven, Eight, 10 and 12 that we received late last week. So I'm not trying to dodge your question I really just ...

THE COURT: Well, my view is this. Number One, you know, I think you objected when the first photographs were brought up, but you didn't make a specific objection as to specifically these grounds as the basis for objecting to it. Had I understood that my ruling may have been different. In least even if you missed it with the first one it didn't come up with Exhibit Eight, Exhibit Ten, Exhibit 12.

I mean I think you did object to Exhibit 10 because it showed specifically the ditch behind his house, and I

agree with that. But the testimony is that those photographs, based upon whatever these dates are, refresh his recollection that there were flooding events on that particular street in which there was sewage.

So you can cross-examine him on that. You can cross-examine him on what he saw, and if that's what you wish to do, but the testimony is simply that subsequent to September of 2008 there were other flooding events in which the manhole was bubbling, there was sewage and water and it flooded Rice Street and it flooded the Plaintiff's property.

You don't have to discuss those photographs, and I'm perfectly willing to instruct the jury that the photographs were excluded because they hadn't been produced and they weren't discussed before today's date and that's why their not come willing into evidence. So what the pictures show and exactly what the condition was the jury won't be able to see that, but the testimony was that there were other events that flooded. And that seems to corroborate Mr. Graham's testimony yesterday that there had been subsequent floodings while he may not remember the dates.

So I'm sure that I understand what you're getting at in terms of what your objection is and what you think the remedy ought to be.

MR. PLYLER: With the Court's indulgence far just a second, Your Honor. I guess my problem is I don't think the photographs show -- don't support what some of the testimony of Mr. Henry said. So, obviously I would like the jury to see that now that he's been able to testify to it. But I don't want to waive my objection to its admissibility. So that's the catch 22 I'm put in in this particular situation. So what I would like to ask is that ---

THE COURT: Well, you can make a proffer whatever that testimony is, and once I hear it I can determine whether or not it should be admissible before the jury. But without hearing what your questions are and what you're claiming specifically doesn't match what's in the picture, doesn't match what his testimony is, I can't help you out on that one.

MR. PLYLER: And all I was going to suggest, Your Honor, is I would like to have these at this point allow the jury to see them. So I guess be admitted into evidence, but subject to our objection; that's prejudice. Because I think the only way I can avoid some of this prejudice in this situation is to not look like we're trying to hide these photographs from them. That's my main concern. So as long as the record would reflect that I'm preserving our objection as to prejudice but believe

these should be put into evidence. I should be allowed to question him on the photographs, and the jury should be allowed to see them at this point.

MR. WILLIAMS: Please the Court. I just don't think you can have your cake and eat it. I done have any objection to putting them into evidence and question the witness until doomsday. It's fine. But I just think this conditional admission into evidence is unprecedented and should not be allowed.

THE COURT: I'm not so sure that you're going to be able to maintain your objection and be able to cross-examine him and/or admit the pictures as well.

MR. PLYLER: And if I may just briefly address that. It's not a question of their admissibility. Under the rules these are photographic evidence that he took he can lay the foundation. He's already authenticated them that these are photographs he took.

So as to admissibility that's not the question. The issue is we're prejudiced because they weren't properly produced.

THE COURT: Well, you asked me to exclude them on the basis of prejudice which I did. So that you now attempt to introduce them so that you can discuss the prejudice. I'm not getting that one. I don't think that you can have them admitted and maintain any objection to them. I think

you've got to go one way or the other.

Like I said I'm more than perfectly willing to give a curative instruction to the jury about what -- about those photographs and why they weren't admitted and that they were used solely to refresh the witness' testimony about those particular days and that to the extent that there was any testimony as to what specifically was in the picture that has to be excluded and disregarded. They're simply to refresh the witness' recollection as to what occurred on that particular day.

MR. PLYLER: Just a moment, Your Honor. Okay, Your Honor. Thank you. I'm ready to proceed.

THE COURT: Mr. Williams, I addressed your wish with Miss Hyatt if you wish to talk to her more later. Basically, what she told me is that they knock -- if the door is locked they will knock on the door she will let them in. But I think she's addressing the issue about locking the doors at all. So I don't know.

MR. WILLIAMS: I request that they not be locked at all.

THE COURT: You know, I don't know whether your able to reach your witnesses and have them return.

MR. WILLIAMS: Not so far, Your Honor. We're trying. And I suspect we will be successful during lunch. If not it will have to be later today sometime. Nobody is aware

of a working phone number. That's what makes it a little bit harder.

THE COURT: Any else we need to take up before we bring the jury in?

MR. WILLIAMS: Not from the Plaintiff.

MR. PLYLER: No, Your Honor.

THE COURT: You may ask the jury to come, please.

(WHEREUPON, the jury panel enters the courtroom at 11:04 a.m.)

THE COURT: Oh, I'm sorry. Mr. Henry, if you will return to the witness stand.

MR. WILLIAMS: Plaintiff's through with this witness.

THE COURT: I'm sorry.

MR. WILLIAMS: Plaintiff is through examining this witness, Your Honor.

MR. PLYLER: Your Honor. I'm ready to proceed.

THE COURT: Yes, sir.

MR. PLYLER: May it please the Court.

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. PLYLER:

Q. Mr. Henry, we actually met not to long ago; isn't that right?

A. Yes, sir.

Q. I took your deposition on September 28th 2012; isn't

that right?
A. I believe so.
Q. Right at two weeks ago?
A. About two weeks ago, yes, sir.
Q. And you understood when you were being deposed at that time you were under oath, correct?
A. Yes, sir.
Q. And that means just like today you've sworn to tell the truth, right?
A. Yes, sir.
Q. And you understood that you were being deposed about this lawsuit, correct?
A. Yes, sir.
Q. All right. And you knew that that was the only purpose I wanted to speak with you?
A. Yes, sir.
Q. Okay. Now, make sure I got these exhibit numbers right. You still got the one you talked about a minute ago?
A. I think it's Nine and 11.
Q. All right. Show you Plaintiff's Nine here for a minute. This first photograph from Plaintiff's Nine, and these are from March of this year, correct?
A. Yes, sir.
Q. All right. These little what? Rain drops on the

water?
A. I think so.
Q. Okay. Those -- so it was actively raining while you were taking these photographs?
A. Yes, sir.
Q. All right. And that's the Graham house that we see in that picture?
A. Yes, sir.
Q. Okay. And that second photograph that shows more rain drops?
A. Yes, sir.
Q. And the Graham house again? Is that right?
A. Yes.
Q. The third, I guess, essentially the same thing; is that correct?
A. Yes, same.
Q. Okay. And then we look at Number 11. These were taken May of this year; is that right?
A. Yes, sir.
Q. Are those rain drops hitting the water surface again?
A. Yes, sir.
Q. Okay. Same thing in the second one?
A. Yes, sir.
Q. All right. And this fifth one, the last one in the stack, I believe you just testified that that's the

manhole on East Rice Street, correct?
A. Yes, sir.
Q. Near the Graham's residence?
A. Yes, sir.
Q. And you believe this is evidence of it bubbling over?
A. Yes.
Q. Okay. And you took this photograph to show that, correct?
A. Correct.
Q. And you know where that manhole is, am I right?
A. Yes.
Q. But you know where it is? You grew up right across the street from it?
A. Correct.
Q. Okay. Now, you referred to a bunch of other photographs during your testimony earlier, and referring to those to refresh your recollection, am I correct?
A. Yes.
Q. I looked through them, and I want you to go ahead and look through them again to refresh your recollection, but there is not a single photograph in that bunch, is there, that shows that manhole bubbling over? Go ahead. Take your time and look at it. You've got photograph here from May showing this manhole bubbling over, but there is not a single photograph in those pictures showing that manhole

bubbling over, is there?
A. Can't be sure, but ...
Q. Can't be sure. But if you know for a fact you tell us. You can't be sure, that's speculation?
A. Okay. I can't be sure. I mean I don't know.
Q. And, sir, you're a professional photographer; is that correct?
A. That is correct.
Q. That's what you do for a living?
A. Yes, sir.
Q. In fact you maintain a website advertising that you're a professional photographer; isn't that correct?
A. Yes, sir.
Q. And on that website you have a quote which basically states your goal in taking photographs; is that right?
A. Yes.
Q. Are you familiar enough with that quote that if I read it you will know if I'm right?
A. If you read it I'll remember it.
Q. Says, "As a photographer my purpose is to make you feel something from what you see"?
A. Yes.
Q. Is that right?
A. Yes, sir.
Q. And where is -- who is that from? Nick something. I

can't -- his first name is like a last name. Do you remember? That's fine?

A. Oh, me. You're talking about me.

Q. Yes.

A. Okay, yes. I wrote that.

Q. You wrote that. All right.

A. Yeah. I mean I put it on my website.

Q. Okay. And the fact that your goal in taking these photographs is to put somebody in the position you were when you were seeing this? You want them to see what you were seeing?

A. Yes.

Q. And want them to see what you were seeing?

A. Yes.

Q. Okay. And you testified that you saw the manhole overflowing on these dates that you talked about, correct?

A. Yes.

Q. We just looked at the photographs, and there is not a photograph of that manhole overflowing, is there?

A. You can't see it bubble out until it gets to a certain level.

Q. Okay. But you didn't -- you don't have a paragraph in that stack showing this manhole bubbling over, do you?

A. Not that you can see.

Q. Okay. You've known the Grahams all your life; is

that right? Or at least Claude Graham?
A. Yes.
Q. Now, I think you testified earlier, I think it's the May photographs that show the crawl space under the Graham house? Is that right? You want me to show them to you again?
A. No. I mean -- yeah, I know what you're talking about.
Q. I'll be happy to. It's Exhibit 11. I think there are two photographs in here showing the crawl space?
A. Yes.
Q. And that's the other one; is that right?
A. That's right.
Q. And you took those photographs?
A. I did.
Q. I think you testified earlier that you didn't do any testing of the water to see if there was actually sewage in it, did you?
A. That's right.
Q. And the only way you knew or that you believed that it was sewage in that water is from the smell; is that correct?
A. Yes.
Q. And you testified that you could smell it under the house; is that right?

A. Yes, sir.
Q. And you were out in the road taking these photographs, correct?
A. The ...
Q. I'm not talking about the ones under the house?
A. Oh.
Q. Just photographs in general?
A. Yes, sir.
Q. You were in and out in the road at some point taking these photographs?
A. Yes.
Q. And you didn't smell sewage out there, did you?
A. Yes, sir.
Q. You smelled it under the house, but you didn't smell it out in the road near that manhole, did you?
A. No.
Q. You're agreeing with me on that? That's a no agreeing with me, correct?
A. A no agreeing with you, yes. Correct.
Q. Now, you had discussions with Claude Graham about the issues he was having at his house, correct?
A. At some time, yes.
Q. I mean, some time way before today, correct?
A. Yes.
Q. Okay. And he told you, didn't he, that there was a

sewer line running across the ditch behind his property and going up under his house, isn't that right?
A. I knew that there was a sewer line up under his house. I don't know if he told me.
Q. So Claude didn't tell you that there was an issue with sewer up under his house that was caused by that sewer line that went directly up under his house?
A. No. He did tell me.
Q. He did tell you that?
A. Yes. Sewer line under his house.
Q. But you already knew there was a sewer line going across his property, didn't you?
A. I knew there was a sewer line in the ditch behind his property. Yes.
Q. In fact I think you said you've known that since you were a kid?
A. Yes.
Q. You grew up in that area, and you actually crossed this sewer line like it was a bridge; isn't that right?
A. That's true.
Q. Okay. And it points kind of directly towards their house, doesn't it?
A. It does.
Q. Okay. It's 6 feet long, something like that in that ditch?

A. Yes.
Q. Okay. I mean you can stand on it and you look and you're looking right at their house?
A. Yes.
Q. Okay. And that was open and obvious to you, wasn't it?
A. Yes.
Q. So there was nothing hiding that sewer pipe, was it?
A. No.
Q. Okay. And this is a fairly large pipe? I mean it was big enough for you to stand on it and use it as a bridge, correct?
A. Yes.
Q. And it didn't fall apart while you were standing on it, did it?
A. No.
Q. I just want to make sure. Claude told you there was sewage coming up under his house from that pipe, correct?
A. Yes. From the sewer pipe.
Q. Sewer pipe?
A. Yes.
Q. Well, the reason I said that is because in your deposition you said, 'that pipe', but you were referring to the sewer pipe, correct? Okay. Let me try this again.
A. Okay.

Q. The reason I said 'that pipe' is because in your deposition you said 'that pipe'?
A. Okay?
Q. But when you say 'that pipe' you're referring to that sewer pipe that we just discussed? The one you can see in the ditch? The one that he says goes under his house?
A. I mean you've asked me not to say what I don't know, and I mean it seems obvious that that pipe goes under his house. I know there is -- like I could smell sewer under the house. Whether it's that pipe -- I don't know if there are two pipes under there. I don't know where that sewer comes from.
Q. Well, when Mr. Graham told you that the sewer under his house is coming from that pipe that's what you believed him to be referring to; isn't that correct? The pipe that runs through the ditch and allegedly goes under his house?
A. Again, I knew it was a sewer line from Rice Street.
Q. Okay. You actually used to go to church with the Grahams; is that correct?
A. That's correct.
Q. And, your mother, is she still living?
A. Yes.
Q. She still lives right there across the street from the Grahams?

A. Yes.
Q. Now, that deposition wasn't so long ago that you don't remember it, am I right?
A. I remember it. Yes.
Q. Okay. And I think you said that you'd only been deposed one other time. So it's not like you're going to get confused as to which deposition I'm talking about?
A. Right. I think I can remember.
Q. All right. And I discussed two sets of photographs with you during that deposition, didn't I?
A. Yes.
Q. Sixteen photographs you took in March of 2012, and 21 photographs you took in May of 2012, correct?
A. Yes.
Q. And I asked you, I said, "Are these all the photographs that you've taken that are relevant to this lawsuit?" Do you remember that?
A. I don't remember that.
Q. Okay. So you don't remember telling me that these are the only photographs that you've provided in you role in this lawsuit?
A. No. I did tell you those were the only ones I provided.
Q. Okay. You didn't tell me though that you'd apparently taken other photographs; is that right?

A. Is that right.
Q. Those are all the questions I have enter you.
THE COURT: Any redirect?
MR. WILLIAMS: Just a little bit, Your Honor.

REDIRECT EXAMINATION

BY MR. WILLIAMS:
Q. So the photographs that you looked at in certain exhibits that did not show the manhole bubbling up, let me ask you a few questions about that. Here is a picture that does show the manhole cover? Yes, Plaintiff's Exhibit Number 11, right?
A. Yes, sir.
Q. Is that because you can't see the sewage bubbling up only overflowing if it's ---
MR. PLYLER: Objection, Your Honor. Leading.
BY MR. WILLIAMS:
Q. Describe if you can the relationship between the water level and the sewage level relative to the ability to see the manhole boiling up?
A. If it's too deep you can't see it. It's not a -- it's not coming up a foot high or 2 feet high. It's only a few inches that's bubbling out. Also, if the water is a foot deep you wouldn't see it coming out until it got down which is about this level.
Q. So every photograph that covers the area where the

manhole cover is that shows the sewage but not the bubbling up is because the water is too deep?

MR. PLYLER: Objection, Your Honor. This is clearly leading.

THE COURT: Rephrase the question.

BY MR. WILLIAMS:

Q. If you took pictures and you can't see the water bubbling up what was the reason?

MR. PLYLER: Objection, Your Honor. Calls for speculation. It's hypothetical. He's not qualified as an expert.

MR. WILLIAMS: I don't know how to rephrase the question, Your Honor.

THE COURT: I'll overrule that objection. I think he can answer based upon his previous testimony.

THE WITNESS: Say it again.

BY MR. WILLIAMS:

Q. If you took a picture of the area where the manhole cover is and the sewage in the picture, sewage water in the picture, but you can't see the manhole bubbling up, why is that?

A. The water is too deep as it comes down and you can't see it bubbling out.

Q. Okay. So the level of the water masks the roaring?

A. Yes, sir.

Q. What does the level of the water have to do with your ability to smell the sewage if anything?
A. Well, it dilutes it. When you have a lot more water it's more diluted. I mean you just wouldn't smell it. It wouldn't be as obvious.
Q. Thank you.
MR. WILLIAMS: That's all I have.
MR. PLYLER: Your Honor, may I have a brief recross?
THE COURT: Yes, sir.

RECROSS-EXAMINATION

BY MR. PLYLER:
Q. I think I just have one or two questions Mr. Henry. If the water is so high you can't see how the manhole bubbling how do you know it was bubbling?
A. When it goes down.
Q. You didn't go back out and take pictures of it when it went down, did you?
A. No.
Q. All right. That's all the questions I have for you.
MR. WILLIAMS: May the witness be excused, Your Honor?
THE COURT: Yes, you may step down and you may be excused. Thank you.
MR. WILLIAMS: We call Danielle Watson.
DANIELLE WATSON, after being duly sworn,

testified as follows:

CLERK OF COURT: Be seated. State your full name for the Court spelling your last.

THE WITNESS: Danielle Renee Watson. W-A-T-S-O-N. D-A-N-I-E-L-L-E.

THE COURT: Yes, sir.

DIRECT EXAMINATION

BY MR. WILLIAMS:

Q. Good morning?

A. Good morning.

Q. Tell the jury where you live and what you do for a living?

A. I live in Marion County out in Tippersville. And I work for the Department of Health and Environmental Control.

Q. And what is your position with the Department of Health and Environmental Control?

A. I'm an Environmental Health Manager Two.

Q. Okay. Everybody calls that D.H.E.C?

A. Yes, sir.

Q. Okay. And what in general is D.H.E.C. responsible for?

A. The department that I work for, we are environmental compliance.

Q. Okay. And how long have you worked for D.H.E.C?

A. Twenty-four years.
Q. And what is your educational background?
A. Biology degree, B.S. degree, and Associate's degree in human services.
Q. And tell me exactly what you do in connection with your duties, and if you will focus on the period from the 2000s forward?
A. Okay. I am a compliance officer. I do the waste water, storm water and industrial water and emergency response.
Q. Okay. Is the Town of Latta within your jurisdiction?
A. Yes, sir.
Q. Okay. How long has it been within your jurisdiction?
A. Since I've worked with D.H.E.C.
Q. The whole time?
A. Yes, sir.
Q. Okay. Are there other people that are responsible for the Town of Latta? Or is it just you or other people in your -- in D.H.E.C. that look after Latta?
A. Yes, sir. We have several people.
Q. Okay. And what kind of skills do they have?
A. That I work with?
Q. Yes, ma'am.
A. Okay. We have another person that handles the drinking water, and we have a solid waste person. And

whatever permits that Latta has we have somebody that will handle those permits.

Q. And are those people subordinates of yours or equals of yours?

A. Equals.

Q. Or in different departments?

A. Equals.

Q. Okay. And precisely what are your duties with respect to the Town of Latta's waste water system?

A. I am the facility evaluator. I evaluate the waste water facility, the collection system, their storm water permit.

Q. Okay. And tell the jury what the difference between storm water and waste water is?

A. Storm water would be what's coming out of the sky, falling on the ground and how you handle it. In certain areas waste water is, of course, sewage that you get rid of. Flushing the commodes, washing, anything that's a waste.

Q. With there been any defects in the Town of Latta's sewage collection and disposal system prior to September 2008?

A. Yes, sir.

Q. In general what were the nature of the defects?

A. They had some infiltration problem. They've had some

compliance problems before with their waste water.
Q. What's an infiltration problem?
A. That's where water that's outside of the system is getting into the system.
Q. Okay. Outside of which system getting into the system?
A. Outside of the waste -- outside of the sewer system.
Q. And so are you saying that the water outside of the sewage system gets into the sewage system or are you saying that the sewage system gets into the water outside the sewer system?
A. Well, it can go both ways.
Q. Both ways?
A. Yes, sir.
Q. Of those two which one is bad?
A. Well, neither one of them is good. We don't like to see, because when you have water getting in your system then you're having to treat water that is actually not what you want to treat because it's very costly to treat water. So any time you can keep water from getting in your system you don't want it in there. So that's not good, but then you don't want it to come out either because it's, you know, a hazard.
Q. A health hazard?
A. Sure.

Q. When D.H.E.C. discovered those D.H.E.Cs -- those defects -- when D.H.E.C. discovered the defects did your or did you not advise the Town of the Latta about that?
A. Sure we did.
Q. How did you do that?
A. We have set up meetings with the Town and talked to them about that. If it was found during an inspection it was written up in the inspection. If it was on their D-M-Rs, if they didn't pass their certain perimeter, then it was addressed in a letter to them. There are several different ways we can process that.
Q. And did D.H.E.C. or did it not make recommendations to the Town of Latta on what to do?
A. I wouldn't call them recommendations. What we call them is they have to be in compliance.
Q. Okay.
A. With their permit.
Q. Okay. So that's stronger than a recommendation, correct?
A. Yes, sir.
MR. PLYLER: Objection, Your Honor.
THE COURT: Sustained. Rephrase.
BY MR. WILLIAMS:
Q. You were reluctant to use the phrase, 'recommendation'. What word would you use instead of

recommendation?
A. Compliance.
Q. Okay. Explain what you mean by that?
A. Compliance is they have a permit that they are under. And they have to comply with that permit. They have to, in other words, do what's in that permit to meet our standards. And if they don't then they're not in compliance.
Q. Okay. How does D.H.E.C. notify the Town that it needs to get into compliance?
A. Usually by a letter.
Q. And did you all write letters to the Town of Latta prior to September of 2008?
A. Sure there have been letters.
Q. Approximately how many?
A. I have no idea of how many.
Q. More than half a dozen, correct?
A. I'm not sure. I can't answer that.
Q. Do you know what the content of those recommendations were?
A. If they were ---
Q. Those compliance efforts?
A. If they were associated with a inspection that I did then it was a notice of violation. In those letters they note what the violations are and what they have to do to

comply.
Q. And have all of those violations been completely corrected?
A. I'm not real sure what you're asking.
Q. Did some of those violations continue to this date or not?
MR. PLYLER: Your Honor, I'm really biting my tongue here, but I'm not sure how this is relevant. We're getting some irrelevant material here.
THE COURT: What's the relevance?
MR. WILLIAMS: Let me withdraw that question and move in a different angle, okay.
BY MR. WILLIAMS:
Q. Forget that question?
A. Okay.
Q. September 6th of 2008, were you summoned or asked to come to the Town of Latta?
A. If this was -- I don't remember the date, but I was called during an event, a rain event, that was causing problems in the Town, and yes, Latta did call me to come.
Q. Okay. Did you go to or meet Mr. and Mrs. Claude Graham, my clients, the Plaintiff's in this case?
A. I don't remember meeting them on certain dates, but I did go to the Town and I met with some Town people. Sometimes I meet with clients that are having problems. I

don't remember the dates.
Q. Did there come a time when you went to the Grahams house?
A. Yes, sir.
Q. Tell the jury what you remember about going to the Graham's house?
A. I went because the Town called me and said they were having a problem with the line overflowing on that street. They got down into the yard cause it's lower than the street, and it had gotten under his house and I went to look, observed it. See what was going on.
Q. How long after the rain event, for lack of a better word, was it that you were there? Was it in a matter of days or hours or weeks?
A. The day they called me.
Q. Okay. All right. And what did -- what precisely did you observe? How deep was the water?
A. It was pretty extensive. In fact, I mean the Town was inundated with water. They had a large rain event, and they were having drainage problems and the sewer line was inundated with water overflow. Storm water got in and it had caused overflows over the Town.
Q. Storm water got into the sewage system?
A. Yes, sir.
Q. Which filled up the sewage line, and then the sewage

line, it started spewing out of it? Is that basically what happens?
A. Yes, that were overflowing.
Q. Okay. So did you see -- I'm going to call it sewage material. By that I mean fecal matter, toilet paper or over cloth paper items; that sort of thing?
A. There was some debris, yes, sir, in areas.
Q. You saw that yourself?
A. Yes, sir.
Q. Including at the Graham's property?
A. Yes, sir.
Q. Okay. Did you go up under the house?
A. No. That's a confined space, we're not allowed to go. No.
Q. Okay.
A. I did look under it.
Q. Okay. When did you observe when you looked under there?
A. I mean it was water or sewer under the house. It was wet and ....
Q. Were you able to tell how deep that sewage water had been?
A. No.
Q. You couldn't see a line under, say ---
A. I don't recall seeing a line.

Q. Okay.
A. But I know it was wet.
Q. How deep was it when you were there?
A. I'm not real sure. I don't remember to tell you the truth.
Q. Okay.
A. It's been a while.
Q. If you don't remember you don't remember. Whose responsibility is it to maintain, operate, install, correct, etc. a municipal sewage system?
A. The owner of the sewer system.
Q. In the case of Latta who is the owner of the sewer system?
A. It would be the Town of Latta.
Q. Town of Latta, okay. Did you discuss with any officials of the Town of Latta its responsibilities with respect to the Grahams?
A. Yes, sir.
Q. Pardon?
A. Yes, sir.
Q. What -- who did you talk about it with?
A. The Mayor.
Q. Okay.
A. And the Operator.
Q. I'm sorry. Mayor and the Operator?

A. Yes, sir.
Q. Now, who is the Operator?
A. At that time it was a Mr. James.
Q. Mr. James?
A. Um hum.
Q. What was his first name, you know?
A. I don't remember his first name.
Q. All right. Mr. James?
A. Um hum.
Q. What did you tell them?
A. That the area had to be cleaned up, and that usually when we clean an area up we add agricultural lime which helps bring up the PH which will help kill the bacteria and also cut down on the smell. All the solids had to be taken up and then lime the areas that were having overflows.
Q. Did you discuss whose responsibility it was that that work be done?
A. Yes, sir. I told the M.E. It was their system. It was their overflow so.
Q. Okay. Did you discuss actions that could be taken to prevent such things from happening again in the future?
A. Yes, sir. We actually had asked the Town to do some studies on the system to see where they were having problems with water getting into it.

Q. And where those studies done to your knowledge?
A. I know a smoke and stuff was done. Yes.
Q. Have you the problems that were identified been corrected to your satisfaction?
A. Some of them have, but not all of them that I know of.
Q. Were you present in the courtroom and heard some testimony about sewage overflow occurring as recently as June of this year?
A. Yes, sir.
Q. Is that consistent with your understanding of the situation in Latta?
A. There was some problems and in the area that caused.
Q. That's all the questions I have. Thank you, Miss Watson.

THE COURT: Any cross?

MR. PLYLER: Yes, Your Honor. May it please the Court.

THE COURT: Yes.

CROSS-EXAMINATION

BY MR. PLYLER:

Q. Hello, Ms. Watson?
A. Hello.
Q. We met recently, didn't we?
A. Yes, sir.

Q. September 26th of this year, correct?
A. I think so.
Q. Talked about this case, right?
A. Yes, sir.
Q. Now, let's talk about September 5th/6th of 2008. I know you're a little fuzzy on the date, but the big rain event?
A. Um huh?
Q. Would you agree with me that that was a big rain event in Latta?
A. Yes, it was.
Q. And they had flooding all over the Town of Latta?
A. Yes.
Q. The had multiple places where this system overflowed, unfortunately?
A. Yes, they did.
Q. Now, I think you said a minute ago that you deal with two permits for the Town of Latta; is that right?
A. Yes, sir.
Q. You deal with the waste water permit?
A. Yes, sir.
Q. And then you said the storm water permit?
A. Which is industrial storm water.
Q. Right. It's a little more than just storm water; isn't it? It's a specific location of the Town that you

deal with the storm water permit, correct?
A. Yes, sir.
Q. Only for the waste water treatment facility; isn't that right?
A. That's correct.
Q. In fact you don't actually permit the storm water system going through Latta, do you?
A. No, sir.
Q. Okay. I just to make sure we're clear. The Town has one waste water treatment facility, correct?
A. Correct.
Q. And they're waste water system is primarily gravity driven; is that correct?
A. It has some forced movement, but mostly gravity.
Q. Okay. And just to help me and the jury understand this a little better when you say, 'gravity driven' we're saying it runs downhill?
A. Yes, sir.
Q. Okay. And it's running downhill through the Town to the waste water treatment facility, correct?
A. Yes, sir.
Q. All right. So the waste water treatment facility is the end of the line, so to speak?
A. Yes, sir.
Q. Okay. And you permit the storm water at the waste

water treatment facility?
A. Yes, sir.
Q. Okay. So you don't do a permit inspection dealing with storm water throughout the Town?
A. No, sir.
Q. I want to make sure that was clear. Now, when I deposed you in September 26th 2012 I told you that you'd been named as a witness in this case, right?
A. Yes, sir.
Q. I think you told me that you suspected that was going to happen, but you didn't actually know you had been named as a witness; is that correct?
A. That's correct.
Q. Okay. All right. Now, the problems that you kind of generally described with the Town's system the one that would have relevance to the issue that happened in September of 2008 that's the infiltration problem, correct?
A. Yes, sir.
Q. And I just want to make sure we are right on this. Infiltration is where roots and cracks and other things happen in the system and water can find it's way in?
A. Yes, sir.
Q. Exfiltration is when things are coming out?
A. Yes, sir.

Q. So infiltration is different than exfiltration; am I correct?
A. Um hum.
Q. Now, infiltration can eventually, assuming you have enough water enter the system cause an overflow; is that right?
A. Yes, sir.
Q. And you will agree with me that infiltration problems are fairly common in municipal sewer systems; aren't they?
A. Yes, sir.
Q. In fact you do the Pee Dee region?
A. Yes, sir.
Q. And I think you have a superior -- what's his name? Buck? Buck Graham?
A. Buck Graham.
Q. And he's the director for the Pee Dee region?
A. Yes, sir.
Q. And he kind of -- that's where the buck stops, so to speak?
A. Yes, sir.
Q. Okay. And you inspect, I guess, a lot of waste water permits in the Pee Dee region; is that right?
A. Yes, sir.
Q. And you would agree with me that of the municipalities you inspect it's common to find

infiltration problems in the system?

MR. WILLIAMS: Objection. Relevance, Your Honor.

THE COURT: I'll ask you to rephrase the question.

MR. PLYLER: May I be heard on the issue, Your Honor?

THE COURT: I understand what you're claiming the relevance is, but I think you can rephrase the question.

BY MR. PLYLER:

Q. Let me try it from a different angle. The infiltration problems you have either documented or observed for the Town of Latta, correct? You've seen infiltration problems?

A. Yes, sir.

Q. You've been able to discover infiltration problems?

A. Yes, sir.

Q. And you agree with me that those are common problems for municipal sewer systems, correct?

A. Yes, sir.

Q. And in your experience when you have identified a a problem, D.H.E.C. has identified a problem with the waste water system for the Town of Latta and then inform the Town of Latta of it, in your experience they have be responsive to that finding; is that correct?

A. Yes.

Q. And they have cooperated with you to try to fix that problem; is that correct?

A. Yes, sir.
Q. Now, correct me if I'm wrong, but D.H.E.C, I think you told me, adopts the E.P.A. regulations?
A. Yes, sir.
Q. Okay. And the E.P.A. regulations are passed for the public good; is that correct?
A. Yes, sir.
Q. All right. And the permit that you issued for the Town's waste water system is in the interest of enforcing the E.P.A. regulations, right?
A. Yes, sir.
Q. So those regulations and that permit are designed for the public good; is that correct?
A. Yes, sir.
Q. Now, waste water system overflows are not uncommon, are they?
A. No, sir.
Q. For any municipal waste water system; is that correct?
A. Yeah, that is correct.
Q. And this isn't the first incident where you have seen an overflow go under somebody's house?
A. No, sir.
Q. In fact you've seen quite a few of those; is that right?

A. Yes, sir.
Q. And those overflows can be cleaned, correct?
A. Yes, sir.
Q. In fact D.H.E.C. maintains a contractor's list, I think you said, won't recommend but you will suggest people to use to perform that cleanup; is that correct?
A. We usually try to get the closest contractor and give them at least three names that can do the work and then it's up to them to get the contract ---
Q. Right.
A. --- if they want to do that.
Q. But you do it from a list, I think you said hundreds of names?
A. Yes, sir.
Q. And it's not just to pump the water out from under the house, is it?
A. No, sir.
Q. Okay. This is actually sanitizing and cleaning the overflow, correct?
A. Yes, sir.
Q. And you gave some of those names, three of those names or however many, to the Town of Latta following the September 2008 event, correct?
A. Yes, sir.
Q. Now, did you do any testing of the water -- or excuse

me. You did not do any testing, did you, of the water underneath the Graham's house that you saw?
A. No, sir.
Q. Okay. And I am correct, am I not, that D.H.E.C. considers any time sewage mixes with storm water that all of it is sewage?
A. Yes, sir, all of it is sewage.
Q. And no threshold on how much sewage has to go into it, right?
A. No, sir.
Q. So you've got a million gallons of storm water and one gallon of sewage and that's sewer, isn't it?
A. Yes, sir.
Q. The dilution doesn't matter, does it?
A. No, sir.

MR. PLYLER: With the Court's indulgence. Your Honor, we do have one document that I would like to get premarked as an exhibit that we did not realize we were going to be entering. This is from her file, and obviously, it would be subject to her identifying it. But for the Court's edification.

THE COURT: You want it marked as a Defense exhibit?

MR. PLYLER: Yes, Your Honor. I believe it would be Number 14.

(WHEREUPON, Defendant's Exhibit No. 14 was marked for identification only.)

BY MR. PLYLER:

Q. Now, Ms. Watson --

MR. PLYLER: May I approach the witness, Your Honor?

THE COURT: Yes, sir.

BY MR. PLYLER:

Q. Ms. Watson, I'm going to hand you what's been marked as Defense's Exhibit 14. Tell me, without reading anything out loud yet, tell me if you recognize that document?

A. Yes, sir.

Q. What is this document?

A. It's our recommendations for sewer clean up in residential homes.

Q. And when you say 'ours' you're talking about D.H.E.C.

A. Yes, sir.

Q. Is this a standard form that D.H.E.C. keeps?

A. Yes, sir.

Q. And is this a form that you would hand out to home owners?

A. We hand it out to home owners, towns and municipalities. Whatever that need one.

Q. Okay. And this is regularly maintained in D.H.E.C. records?

A. Yes, sir.
Q. Okay. You are familiar with the document? This isn't the first time you've seen it?
A. No, sir, this is not the first time I've seen it.
Q. Okay.
MR. PLYLER: Your Honor, I'd like to offer this document into evidence at this time.
THE COURT: Any objection?
MR. WILLIAMS: No, Your Honor.
THE COURT: It's admitted.
(WHEREUPON, Defendant's Exhibit No. 14 was admitted into evidence.)
BY MR. PLYLER:
Q. Now, this document lists the recommendations that D.H.E.C. provides to, I guess, the residential home owners of what needs to be done following a sewer overflow or backup; is that correct?
A. Yes, sir.
Q. It includes all furnishings, especially rugs, should be discarded. Now, to your knowledge does that mean that the sewage actually gets into the rug?
A. Yes, sir.
Q. Okay. So if the sewer didn't get into the rug or didn't get into, let's say, the living area of a home then that would need to be discarded, wouldn't it?

A. No, sir.
Q. And all non-porous surfaces which haven't been damaged by water should be washed down with a disinfectant solution? What is that?
A. It means if it's like the floors or porcelain or something that is not porous that can absorb water can be disinfected.
Q. And that means if its been actually inundated with this sewer, correct?
A. Um hum.
Q. Is that a yes?
A. I'm sorry. Yes, sir.
Q. All right. All right. Now, Number Three says, "Prior to doing any work within crawl spaces it is suggested that the soil be treated with a disinfectant to reduce the risk of disease transmission or impairment. The nature and extent of this treatment will depend on the amount of waste water/fecal material that could have entered the crawl space through the floor above;" is that right?
A. Yes, sir.
Q. You know what that disinfectant is?
A. You can -- well, there are several. Anything that would be -- that could kill bacteria.
Q. And I skipped one there, but Number Two talks about

insulation, if its been exposed to the sewage it should be replaced; is that right?

A. Yes, sir.

Q. All right. And I don't mean to skip around too much, but that second sentence that starts with 'even' and under comments it says, "The saturated insulation materials could pose a mold/mildew problem as it is unlikely to dry out in the crawl space. Such a problem could adversely affect an individual's health," correct?

A. Yes, sir.

Q. And that's one of the reasons that D.H.E.C recommends that if that insulation has been exposed to sewer get it on out of here?

A. Right.

Q. Did you see insulation under the Graham's house when you looked under it that day? And I know I'm asking you to go back four years.

A. I don't remember.

Q. That's fine.

A. Usually there is, but to say, I don't remember.

Q. Well, let's just assume for a minute that there is. Do you know if that insulation has been discarded?

A. I do not know.

Q. And then Number Four. It deals with the H.V.A.C. system; is that correct?

A. Um hum.
Q. And the -- is that a yes?
A. Yes, sir.
Q. That's all right. I'm just afraid she'll take it down wrong. That's okay. And deals with the duct work dealing with those H.V.A.C. systems; is that right?
A. Yes, sir.
Q. And that y'all recommend those be removed and replaced instead of trying to be disinfected; is that correct?
A. Yes, sir.
Q. But it's also dependent upon the specific heating unit in the house?
A. That is correct.
Q. And I'm assuming y'all let the H.V.A.C. repairmen make that decision?
A. Yes, sir.
Q. Okay. But that's the recommendation?
A. Yes, sir.
Q. Did I miss any other recommendations on this list? Take your time.
A. I don't see any.
Q. I sure appreciate your time: Please answer any additional questions Mr. Williams has.
THE COURT: You may redirect.

MR. WILLIAMS: Just a few, Your Honor.

REDIRECT EXAMINATION

BY MR. WILLIAMS:

Q. Ms. Watson, when you used the term, 'significant rain event' when Mr. Plyler uses that term what do you take that to mean? What is a significant rain event?

A. To me anything that would cause flooding problems in the areas.

Q. Anywhere in the area?

A. Um hum. Yes, sir.

Q. Okay. You've lived in Marion County basically your entire life, correct?

A. Pretty much.

Q. Okay. And that's contiguous or touches right here at Dillon County?

A. Yes, sir.

Q. Are conditions any different in Marion County than they are in Dillon County?

MR. PLYLER: Objection, Your Honor. This is -- one, she hasn't been qualified as an expert. Seems outside of her area of expertise. She hasn't been qualified as an expert, and I think we're getting into some irrelevant material sterile here.

THE COURT: I'm going to overrule the objection. You may need to narrow it somewhat as it relates to her duties

and responsibilities.

BY MR. WILLIAMS:

Q. Have you observed whether conditions in Dillon County to be significantly different from weather conditions in Marion County?

A. Sometimes. Sometimes it's different. Sometimes it's not.

Q. I understand a particular day's weather, but I'm talking about just conditions in general?

A. Usually they're about the same.

Q. Okay. Does the significance of a rain event diminish, alter or increase a town's responsibility to maintain their sewage system?

A. Can you say that again?

Q. Does a significant rain event affect a town's responsibility to maintain and operate their sewage system in a healthy and environmentally clean way?

A. They should be able to maintain their system. Sometimes rain events or storm events causes problems in the systems that the system is not able to take care of.

Q. Okay. In this area of the State are significant rain events a predictable occurrence?

MR. PLYLER: Your Honor, objection. It's leading. Again, we're getting into opinion testimony. She hasn't been qualified as an expert.

THE COURT: Rephrase the question.
BY MR. WILLIAMS:
Q. In your experience is a significant rain event a rare thing or does that happen with some frequency even though not a predictable frequency?
MR. PLYLER: Objection, Your Honor. That's lay opinion.
THE COURT: Overruled.
BY MR. WILLIAMS:
Q. You may answer the question?
A. Ask the question again.
Q. Do you know or do you not know whether a significant rain event is going to happen periodically around here?
A. Sometimes you know, yeah. A lot of times you do know?
Q. I'm talking about looking forward ---
A. You mean like ---
Q. From now for the next, let's say three to five years out in the future, do you think we're going to have some significant rain events?
A. I don't ---
MR. PLYLER: Your Honor, this is speculation and lay opinion.
MR. WILLIAMS: Let me rephrase the question.
BY MR. WILLIAMS:

Q. Looking back in the past for the last three to five years ---
A. Um hum.
Q. --- I want to let you look back at all 24 years since you've been working with D.H.E.C.
A. Okay.
Q. Have there been almost no significant rain events? Or very, very few significant rain events? Some significant rain events? Or fairly common to have a significant rain event?
THE COURT: Overruled.
THE WITNESS: We do have a lot of rain events in this area, but it depends on the seasons when the rain events are. So we do have some significant rain events.
Q. Are you or Mr. Plyler or I in a better position to predict that there will be significant rain events than you are? Does it require any special knowledge?
A. Well, I guess if you were a meteorologist it would be easier for you to predict it, but I'm not one of those.
Q. I'm not talking about what day they will happen on. I'm just saying that they will happen.
A. Well, most of the time, yes, they will happen.
Q. And if you build a house or sewer system or waste water system or storm water system is the occurrence of significant rain events something you should plan for?

A. Most of the time when they do build sewer systems they do calculate in there for some infiltrations around it.

Q. Okay. Does the occurrence of the significant rain event absolve the owner of a sewage system from his responsibility?

MR. PLYLER: Objection, Your Honor. That's a legal conclusion and it's significantly outside the area qualified for as well. I believe I mentioned one time the Town's responsibility during my cross one time.

THE COURT: Overruled.

BY MR. WILLIAMS:

Q. You may answer the question?

A. Can your ask the question again?

Q. Yes. Does the existence of a significant rain event absolve the owner of a sewage system responsibility for its operation and maintenance of the system?

MR. PLYLER: Please note my prior objection, Your Honor.

THE WITNESS: Well, it's kind of a -- in the permits they do have verbiage in there for named storms that -- not that they shouldn't maintain the system, but if the system fails in some way that they won't get fined. But they are still responsible to maintain the system and try to keep the system where it should be. But if it does get

out that enforcement action won't be taken, but they still have to do their due diligence in taking care of what's gotten out if something gets out.

Q. Okay. Thank you. The Defendant's Exhibit 14, I think you have it in front of you, but it's -- I'll call it clean up suggestions for houses?

A. Yes, sir.

Q. That one phrase you and Mr. Plyler used was non-porous materials?

A. Yes, sir.

Q. And I understand that that would be things like plastic, silicone, refrigerators, stuff like that; is that correct?

A. Stuff that cannot absorb water.

Q. Okay. And the porous materials would be things like wood, clothe, paper, floors, wood furniture?

A. Anything that would be able to absorb water.

Q. Okay. Only water or water and vapors, for example?

A. Well, when you say 'vapors' what are you asking, vapors?

Q. Gases. Smelly gases?

A. I'm not real sure exactly what you're ...

Q. It's a porous material. Can a porous material, in addition to absorbing water, can it suck up smells?

MR. PLYLER: Objection, Your Honor.

THE COURT: She can answer if she knows.

THE WITNESS: Well, I -- if you have draperies or something like that in your home or materials it's going to absorb smells that are in your house; the sewer smells, smoke, whatever. So I would think, yes, it would absorb some smell.

Q. Okay. Let's say somebody does all these things. This is not a numbered list, but it looked to me like it's half a dozen or more things you should do to clean up your house after a sewage infiltration?

A. Yes, sir.

Q. Is that about right?

A. Yes, sir.

Q. Are they, in your experience, are they costly to do those things?

A. They can be, yes, sir. It depends on how much gets in your house, where it is and where it goes.

Q. If you lived in that house would you put that money into doing it if you knew that the next time there was a significant rain event you're going to have to do it all over again?

MR. PLYLER: Objection, Your Honor. Hypothetical, not an expert and calls for a conclusion.

THE COURT: I sustain the objection.

BY MR. WILLIAMS:

Q. Does D.H.E.C. recommend -- please state whether or not D.H.E.C. recommends that people put that kind of money into a cleanup if a predictable rain event is going to start it up all over again?

A. We do not recommend -- we can't tell people what -- how many money they spend in cleaning up. We don't -- we tell them how it should be done, and it's their choice to do it. They can do it. If they don't choose to do it then they don't choose to do it.

Q. Okay. That's all I have. Thanks.

A. Okay.

MR. WREN: Your Honor, may I just briefly cross?

THE COURT: Yes, sir.

RECROSS-EXAMINATION

BY MR. WREN:

Q. Miss Watson, when I was talking to you a few minutes ago you mentioned that you had seen other events where houses have had sewage overflows underneath them?

A. Yes, sir.

Q. Now, were those houses bulldozed?

A. No, sir.

Q. Were the people living in them after the clean up?

A. Yes, sir.

Q. Have you ever heard of Febreeze?

A. Yes, sir.

Q. What does it do?
A. Supposedly it takes away odors in fabrics and stuff.
Q. That's all the questions I have for you. Thank you.
MR. WILLIAMS: One follow-up question on that.

FURTHER REDIRECT EXAMINATION

BY MR. WILLIAMS:
Q. Have you ever seen a house as he just asked you about that had a sewage line running through the property where the house is located?
MR. PLYLER: Objection, Your Honor.
THE COURT: It's outside the scope of the question. I sustain the objection.
BY MR. WILLIAMS:
Q. The houses that you just described did any of them include a sewage line running underneath the house or through the property the house was located on?
MR. PLYLER: Same objection, Your Honor.
THE COURT: Sustained.
MR. WILLIAMS: I'm sorry.
THE COURT: I sustain the objection.
MR. WILLIAMS: Thank you, Your Honor.
THE COURT: You may step down.
MR. WILLIAMS: May Ms. Watson be excused, Your Honor?
THE COURT: You may be excused. Thank you. You may call your next witness.

MR. WILLIAMS: I call Vickie Graham.

VICKIE GRAHAM, after being duly sworn, testified as follows:

CLERK OF COURT: Have a seat in the witness box. state your full name for the Court spelling your last, please, ma'am.

THE WITNESS: Vickie Buster Graham. G-R-A-H-A-M.

DIRECT EXAMINATION

BY MR. WILLIAMS:

Q. Obviously, you're Vickie Graham as the jury knows, correct?

A. Correct.

Q. And where did you grow up, Vickie?

A. My father was in the Air Force so I'was all around Myrtle Beach, Germany, Washington D.C, Virginia. I live in a lot of different areas.

Q. Okay. Describe your educational background and your work history?

A. I graduated from Robert E. Lee High School in Springfield, Virginia. And then I went to the University of South Carolina, and I taught English for four years and then I took more courses and became a librarian in Latta.

Q. And when you say, 'librarian in Latta' is that for the Town library or a school library?

A. A school library.

Q. What school was that?
A. Latta Elementary School.
Q. And how long were you a librarian at Latta Elementary School?
A. I was a librarian at the school for 31 years.
Q. So it's a total of 35 years with the school system?
A. Yes, sir.
Q. In Latta?
A. Yes, sir.
Q. Okay. Do you have any children? Do you and Claude have any children?
A. We have one daughter.
Q. How old is she?
A. She's -- she will turn 38 soon.
Q. Okay. And when were you and Claude married?
A. We were married in 1970.
Q. Okay. During the 35 years you were teaching where did you live?
A. Well, we started out in Dillon and then we moved over to Latta. And the remainder of the time was in Latta.
Q. When you moved to Latta did you move to 220 East Rice Street or did you have another house in Latta?
A. We rented a house at the beginning and then we -- my husband, his uncle built a house and then we moved to the one on Rice Street.

Q. Describe the house on Rice Street. We know -- we've seen the pictures from the outside. Tell us about the inside of the house?
A. Well, it was two bedrooms upstairs and one bedroom and a little office downstairs which was good for him. And it had a living room, a dining room and a den. It was a nice house.
Q. How big were the rooms?
A. They were spacious.
Q. How were they trimmed out?
A. You mean like molding.
Q. Yes, ma'am.
A. Most of them had molding in them. It was there when we bought it. Nice moldings around the ceiling.
Q. And how was it decorated? What did you do with respect to t the furniture, the drapes, etc?
A. Well, I had, you know, wooden blinds in the house and I just chose furniture that I liked and that my husband liked. And that's how I decorated.
Q. How would you describe the quality of that house if you were telling somebody far away over the phone. You just wanted to just use words to describe the quality of the house. How would you describe it?
A. I would say it was a very nice house. It was a nicer house than I ever thought I'd ever live in. Just kind of

like my dream house.
Q. Okay. How does it compare in terms of comparing it to other houses in Dillon County? Not by anybody's name, but just ...
A. Right. I would say it's nice as other people -- you know, a lot of other people's houses and maybe nicer than some.
Q. Do you know of any that are nicer?
A. I do know of some that are nicer, but you know, I thought mine was very nice.
Q. Okay. When you bought the house it was put in your name, is that correct?
A. That is correct.
Q. Before you bought it did you -- describe to the jury what you did as far as walking around looking at the property, looking at the house?
A. I'm sure we walked around the yard. The yard was over run by shrubbery. I mean it was full of shrubbery. The lady who owned it perviously had a gardener, and so there was shrubbery everywhere. It was beautiful. And, you know, I'm sure I walked around the backyard a little bit and went in the house one time before we bought it.
Q. Did you, when you were considering buying it and when you bought it, did you know there was a ditch that was the back property line?

A. I'm sure I knew that there was a ditch back there. I didn't go looking in no ditch because, you know, I just don't do that, but there are ditches everywhere in Latta.
Q. Okay. Did you or did you not know whether there was a sewer line anywhere near your house?
A. I had no idea there was a sewer line. I would never have bought that house.
Q. Did you know that there was a pipe cutting across the ditch?
A. I did not know that.
Q. When did you learn that there was a sewer line at your house?
A. We had trouble with the toilets and we got a plumber to come. And then at some point in time someone told my husband that there was a sewer line.
Q. And he told you?
A. And he told me, and I was horrified.
Q. All right. Did there come a point when you learned that the Town believed it had an easement for that sewer line?
A. I believe that was brought to light.
Q. Okay. Did there come a time when you determined that the Town did not in fact have an easement?
A. Yes, sir.
MR. WREN: Objection, Your Honor. This is getting a

legal conclusion. The existence or non-existence of an easement.

THE COURT: Rephrase the question.

BY MR. WILLIAMS:

Q. Did there come a time when you were lead to believe that the Town did not have an easement?

A. Yes.

Q. When was that?

A. Well, I can't remember the exact date of that.

Q. Estimate. Give us a frame of reference instead of estimating it.

A. Oh, gosh. I mean it was ...

Q. Was it before or after I became your lawyer replacing Mr. Rushton.

A. It was while you were -- I think it -- I just can't remember it exactly.

Q. I'm not asking for exactly. I'm asking to the best of your recollection. Let me rephrase it and let's try it this way.

A. Okay.

Q. Do you remember your suit in this matter that we're litigating here today?

A. Yes, sir.

Q. You remember it was amended at one point?

A. Right.

Q. That I amended it?
A. Yes, sir.
Q. Was it before that day?
A. It was before that day. Yes, sir.
Q. Was it a long time before that day or a few weeks or a few months?
A. I just don't know how long it was before.
Q. Did Mr. Rushton -- was it Mr. Rushton or was it I that lead you to believe that the Town did not have an easement?
A. I think it was you.
Q. Okay. Let me show you -- well, let me not do that. Do you remember the events of September 5th and 6th 2008 that we're talking about here today?
A. Yes, sir.
Q. Tell the jury how you -- what happened when you woke up that morning or in the middle of the night, whenever it was?
A. Well, when I woke up and went to the back door and opened the back door to -- I don't know if I was taking the dog out of what, but there was water almost to come into the door. I thought what in the world has happened here. And then I went looking out the windows to see, you know, where the water was and it was surrounding. And I went to the front door and it was up on the steps and all.

And I think at that time my husband said he was going to try to go get some help and he needed his boots. So we had to put a chair for him to put his boots on out on the front steps because water was everywhere.

And he said, you know, for me not to go outside because there was some things out there he didn't think I wanted to be involved in. And so I stayed inside and I was getting ready to roll the rugs up because I was afraid it was going to come into the house. And he came back and said that, you know, he could not get anybody to block off the street because he couldn't find -- he found some people but they didn't have anything to do it with.

And I was just on go to start moving furniture and putting the rugs up and all because I was afraid it was going to come in the house.

Q. How close was it to coming in the house?

A. I'd say it was maybe, I mean, you know, that little lip from the porch to the door. It was covering -- it was almost maybe 2-inches or so. I don't know exactly before it came in.

Q. Is your porch a raised porch?

A. It is.

Q. Okay. How many steps, roughly?

A. Maybe three in the back. I'm speaking of the back.

Q. So it covered -- did it cover the flat part of the

porch?
A. It covered the flat part.
Q. Okay. But didn't reach up to the door?
A. No.
Q. Didn't reach other parts of the wood down there near the door frame?
A. Right under it kind of. A little bit under.
Q. Okay. And again I don't want to belabor this point, but was it just water or was it other stuff too?
A. It was other stuff too.
Q. Okay. No water -- I think Claude testified that no water actually got inside the house; is that correct?
A. No, sir. no water came into the house.
Q. Okay. What all did -- what sort of precautionary or other measures did you and he take that day and the next?
A. You mean as far as cleaning up?
Q. Yeah, cleaning up and tending to the situation?
A. Well, we had to wait until the water subsided so we could get out, actually. And so as it went down we went outside, and I think there was debris and stuff everywhere. And I think I started washing down some of the walls outside the -- under the carport and maybe breaking up some. And he had to call somebody to see about the duct work and all under the house.
Q. And when you say ''stuff' everywhere you're talking

about foul, filthy, disgusting stuff?
A. Yes, sir.
Q. Okay. After the water had subsided describe whether there were or not odors?
A. There were odors.
Q. Did y'all stay in the house after? Did you get it cleaned up any?
A. We did get it cleaned up some. We worked all that afternoon trying to clean it up.
Q. Did you stay in the house?
A. Yes, we did.
Q. Okay. When you went out on the -- after the water had subsided and wanted to got somewhere and tend to things, did you observe your cars?
A. We did.
Q. Tell me the situation with your cars?
A. It was in the cars. The carpets and all were wet inside the cars. And the Taurus and the Avalon, the two cars, and you could see from, you know, around the cars where like, I don't know, grass and whatever, you kind of see the level that it had been.
Q. Did you have to drive anywhere even though your car is in that condition?
A. I think we took the truck. I can't remember exactly, but I think we took his truck.

Q. That's a third vehicle?
A. Right. Right.
Q. Okay.
A. I mean I know we took the car over to the Toyota place, the Avalon, at some point in time because it was so bad you couldn't stand the smell. And we took it over there. We had to drive it other there to get it -- to get them to try to decontaminate it.
Q. Okay. Anyway, after you got over the immediate crisis of that weekend as I recall September 5th was a Friday, and the 6th was a Saturday; is that correct?
A. Yes.
Q. Once you got over that weekend did you continue to live in the house for a while?
A. We did. We didn't have anywhere else to go.
Q. And what if anything happened?
A. We kept getting sick. My husband and I kept getting sick and our dog got sick. And we kept going back and forth to the doctor and taking to dog to the vet and all. And you know, we were on medication and all.
Q. What doctor did you go to?
A. Doctor Culpepper.
Q. Okay. And during what period of time did you go to him?
A. Whenever we started getting sick.

Q. How long after the 5th and 6th?
A. Might have been a week, a couple weeks. I don't know the exact date.
Q. Okay. As a result -- well, let me scratch the question about Dr. Culpepper. While you were still living in the house did any similar events happen?
A. They did.
Q. Tell me -- tell the jury about that?
A. Several more times, and I don't know the exact number, but several more times we had it in your yard and under our house again.
Q. As bad as the first time?
A. Maybe not quite as bad as the first time.
Q. Okay. And what did you all have to do to deal with it each of those subsequent occasions?
A. Well, we -- I think the -- he tried to get the man to come and look at the duct work again, but he said that there is no point in doing anything about that as long as, you know, this keeps happening. And we just tried to clean up the yard as best we could. And I think lime was put out or something at some point in time.
Q. Now, let me question you. During that time did you yourself have any conversations with Mayor Brigman?
A. No.
Q. Okay. Now, let's return to your treatment by Dr.

Culpepper. For what health condition did you go see Dr. Culpepper?

A. I kept having respiratory problems. Coughing and runny nose and you know, all that that goes along with respiratory. And so I would go to him and he would give me an antibiotic and cough medicine and everything. And then finally he said, you know, one time when I had been back ---

MR. WREN: Objection, Your Honor. Hearsay comment.

THE COURT: To the extent she wants to testify as to what her doctor told her I sustain it as hearsay.

MR. WILLIAMS: Thank you, Judge.

BY MR. WILLIAMS:

Q. Don't quote or say what the doctor said?

A. Okay.

Q. Just say what treatment you ---

A. I ---

Q. What you went to him for and what treatment you received.

A. Right. And I got pneumonia, and they treated me for that.

Q. Did you advise him of the situation that had happened at your house?

A. We did.

Q. In great detail or just casually presented it?

A. You know, I think my husband spoke to him more about that than I did.
Q. Okay. Did you discuss with -- did you discuss with Dr. Culpepper your living situation?
A. I did. I'm sure I did.
Q. As a result of that discussion what did you and Claude do?
A. We moved out of the house.
Q. And have you lived in the house since then, since you moved out?
A. I have not been, no. I have not been back in the house since 2009.
Q. Okay. Do you recall when it was that you moved out the house?
A. We moved out, it was 2008 around November because my brother knew we were all sick and the dog was sick. And so he offered us a place to live. So we were able to move into his house.
Q. And you said you hadn't been back in the house since 2009. Why were you in the house in 2009?
A. I went back occasionally to get some clothes out of there. And then I had to go -- we had a copy machine upstairs and make some copies from my Sunday school class. So I went upstairs to make copies for my Sunday school class and I got so I couldn't breathe. And I couldn't get

my breath. So I went outside and I sat in the car. And at that point my sister called and I told her I said, "I can't breathe." And so my husband rushed me to the emergency room. I had a reaction to something in there, and he rushed me to the emergency room over in Marion.

Q. When you went in the house on that occasion did you take any precautions before going inside?

A. No, I didn't.

Q. Okay. Have you been back in there since that day?

A. No. I'm scared.

Q. Okay. Has Claude been back -- have you been back to the house but not gone inside?

A. I've been to the house to get my mail on the outside.

Q. Okay. Have you seen Claude go inside the house since then?

A. I haven't seen him go in.

Q. Okay. You lived in -- starting in November of 2008 you went to your -- is it your brother's house?

A. My brother.

Q. To your brother's house?

A. Right.

Q. And you lived there until when?

A. We stayed at my brother's house about two and a half years, and then he moved back into the house with his son. And so, you know, we felt like we couldn't stay there any

longer.
Q. For two and a half years, in effect, it was your and Claude's sole residence?
A. Right. Right.
Q. Then your brother and his son needed to move back into the house so you and Claude move somewhere else?
A. Right.
Q. Where did you move to?
A. We rented a house in Lynchville.
Q. Okay. How far was that from your brother's house where you had been living?
A. Probably about six miles.
Q. Okay. And then at some point after Claude's mother died y'all came back to Latta?
A. We came back to Latta. His mother had passed away, and so his brother and sister said it was okay if we stayed in that house. You know, we're fixing it up so they could sell it. You know, they want to sell the house, and so they said we could stay there until we got to house fixed up.
Q. Okay. Had it ever been part of yours and Claude's plans and goals to retire to the beach or go somewhere other than Latta to live?
A. Our plan was to stay right in our house. That summer we had just, you know, done some updating to the house

cause we were hoping to be there the rest of our lives because our family was there and our friends were there and our church was there.

Q. Let me show you or not show you. Let me ask you to take a look at Plaintiff's Exhibit 13, and I'm not offering it into evidence at this time, but I just want you to tell me if you can identify what that is?

A. This is our record of going to the doctor.

Q. Doctor Culpepper?

A. Doctor Culpepper.

Q. And does it reflect the charges? You can look at the second page?

A. Oh, okay. Yes, sir.

Q. Okay. Is that for the period of time that you told the jury about?

A. Yes, sir, but I was also in the hospital with pneumonia.

Q. The hospital and pneumonia is not part of this; is that correct?

A. That's not part of that.

Q. Okay.

MR. WILLIAMS: As I say I'm not offering that into evidence yet.

BY MR. WILLIAMS:

Q. Let me show you one page from what I believe

Defendant's Exhibit Number Four.

MR. WILLIAMS: Madam Clerk, let me look through your stack.

BY MR. WILLIAMS:

Q. Okay. Is this a copy of Defendant's Exhibit Number Four. Take a look at that. It's an aerial photograph. Do you recognize it?

A. Yes, this is Rice Street.

Q. It's Rice Street?

A. Well, it's an aerial view of Rice Street and part of Vail Street and all.

Q. Do you recognize what it depicts?

A. Well, I see my house.

Q. Okay. Are you looking at that picture can you tell, not with the accuracy of a surveyor, but can you tell what your lot lines are for your house?

A. Pretty much.

Q. Okay. Let me give you this marker, a black magic marker, and ask you if you would to outline y'all's property?

MR. WREN: Your Honor, only thing for housekeeping. Is that the original exhibit?

MR. WILLIAMS: No.

MR. WREN: Okay.

MR. WILLIAMS: It's a copy.

MR. WREN: Thank you.

(WHEREUPON, the witness draws on the exhibit.)

BY MR. WILLIAMS:

Q. Okay. I think I understand. It's a little -- make it a little bolder if you would?

MR. WREN: Your Honor, may I see the picture before the questions are asked? May I approach ---

MR. WILLIAMS: Sure.

MR. WREN: --- to see the exhibit?

MR. WILLIAMS: My question is to make it a little bit bolder. Make the lines a little bolder and easier to see.

THE WITNESS: Okay. I mean this may not be exact cause I don't really ...

MR. WILLIAMS: Let me mark this if I can. I can mark it for identification at this point as Plaintiff's next exhibit.

MR. WREN: May I see that?

MR. WILLIAMS: Okay. All right. Madam Clerk.

(WHEREUPON, Plaintiff's Exhibit No. 18 was marked for identification only.)

MR. WILLIAMS: Plaintiff's 18.

BY MR. WILLIAMS:

Q. Again, while you have a free hand, Plaintiff's 18. So that we'll know later who made what lines if you would put your initials right by -- anywhere on there right

along your property lines so we'll know those are the lines that you drew. And they're represented by black ink; is that correct?

A. Yes. Yes, sir.

Q. Okay.

MR. WILLIAMS: Your Honor, I'm not offering this into evidence at this time. I'm just marking it for identification. I'll tie it up later. And that's all the questions I have. Thank you.

MR. WREN: Your Honor, may it please the Court. And if we've got time.

THE COURT: How long to you anticipate?

MR. WREN: I will do it as quickly as I can, Judge. It may be easier to finish the witness up.

THE COURT: We'll start and see how far we get.

MR. WREN: Thank you, Judge.

CROSS-EXAMINATION

BY MR. WREN:

Q. I was getting ready to say good morning, Ms. Graham, but good afternoon. For our mutual accommodations and the jury as well I'll do this as quickly as I can, okay. Ms. Graham, you testified that your husband, Claude, or I've inferred from your testimony that Claude was the one that handled a lot of the issues and perhaps negotiations for the purpose of your house on East Rice Street in Latta; is

that correct?
A. That is correct.
Q. And that house was purchased in 1989; is that right?
A. To the best of my knowledge.
Q. And that house actually is -- was purchased in your name, correct?
A. Correct.
Q. Okay. The deed was in your name; is that right?
A. Correct.
Q. The house was purchased for $60,000 purchased by Ms. Vickie Graham, correct?
A. Correct.
Q. All right. Now, the same time you and your husband were buying this house to live in together; is that right?
A. Yes, sir.
Q. You already testified to the fact that you had the opportunity and if fact did walk around that property I understood you to say before you purchased the house, correct?
A. Correct.
Q. Okay. And at the time of purchase -- now, y'all were -- you had purchase property before; is that right?
A. We had built a home.
Q. And it was on property that you purchased, correct?
A. It was my mother in law's property.

Q. Fair enough. At the time of the construction of that house you watched and you saw what was done? You inspected it; is that right?
A. Well, I saw it being built. I was away a lot of that time. I was taking coarse at Winthrop.
Q. Okay. Well, let's say that you don't have much experience at this. So in 1989 when your purchased the how on East Rice Street you should have been very, very cautious about checking out the house and making sure things were in order and to your satisfaction before buying it, correct?
A. You know, I just wanted the house. I mean I was young. I don't know what you're referring to what I needed to check out.
Q. How about this. Did you have a survey of the property done?
A. Not that I know of. I mean my husband handled that.
Q. Yes, ma'am. And all I can do is ask you to the best of your knowledge, right?
A. To the best of my knowledge I didn't have it done.
Q. Okay. And you didn't have a home inspection done, did you?
A. No, sir, I did not have one done.
Q. Okay. And things like the -- you recall from your husband's testimony that some of the smells and things

when you first purchased the house. You at least noticed those sorts of things, didn't you?

A. Well, when we ---

Q. The cats?

A. The first time we went in it, yes, I noticed there were some cat odors.

Q. Okay, so at least enough that you knew that there were some -- did that give you a little bit of concern?

A. Well, it wasn't that much that it should, you know -- I mean we knew we were going to redo it so.

Q. And you refurbished it and cleaned it, correct?

A. Yes, sir.

Q. Before you moved in?

A. Right.

Q. Now, you con tell as part of this lawsuit, the lawsuit that's titled in your name, Mr. Williams asked you, its been amended and so forth, that you contend there is a sewer line that runs underneath your house on East Rice Street; is that correct?

A. That's right.

Q. And as we sit here today you contend that that sewer line is leaking on your property; is that right?

A. Yes, sir.

Q. Okay. Now, Ms. Graham, in all the years that you've lived on that property or since these events in September

of 2008 you've never had this sewer line or located, have you?
A. Have I personally, no.
Q. Have you haven't personally. You're not a -- you don't know how to GIS? You're not a surveyor, correct?
A. Right.
Q. Have you paid someone to be it?
A. Did I pay someone to do it?
Q. Yes, ma'am.
A. I mean are you saying when we bought the house or later or what? I don't know.
Q. At any time, ma'am?
A. Oh, no, I did not.
Q. Okay. You haven't requested that to be done, have you? To determine where that line is, have you?
A. Personally, I have not.
Q. Yes, ma'am. And you haven't requested anyone to do so, have you?
A. Are you -- I don't know who you're saying I'm supposed to request it to.
Q. Well, ma'am, if you have requested someone to do it you can tell me who that person is; is that right?
A. I mean whether my husband did or not I don't know. I have not personally.
Q. You have not?

A. Not. I have not personally.
Q. And you have not done any testing or asked anyone to do any testing on any lines on your property; is that correct?
A. I have not personally done that.
Q. Okay. To find out if there is an issue, what the issue is, you haven't done that. You don't know; is that right?
A. I have not personally done that. No, sir.
Q. Now, in September 2008 as we discussed that was a major rain event, correct?
A. Correct.
Q. All right. It's in fact entitled -- had a name. It was Tropical Storm Hanna; is that right?
A. Yes, sir.
Q. Significant rain fall, correct?
A. Yes, sir.
Q. It was flooding all in Latta, correct?
A. I assume.
Q. Well, where you ---
A. Where I was there was.
Q. And you saw flooding?
A. Where I was.
Q. All right.
A. I don't know about the rest of Latta, but where I

was.
Q. Fair enough. Now, at your residence, though, from your observation point I think I understood you to say looking in the backyard and also the front yard, the water never entered your residence, correct?
A. No, it never came in the first floor.
Q. And prior to these events that we've been taking about in September of 2008, now, you had seen some flooding around your property before; is that right?
A. At times.
Q. Okay. And that was before these events, correct?
A. Nothing like this. No.
Q. Okay. But you've seen ---
A. Rain fall.
Q. Yes, ma'am. But you've seen that before?
A. I've seen some.
Q. After a rain you'd see some standing water?
A. Some water. Some standing water in different places.
Q. Okay. The water you saw on September 2008 -- you've had your deposition taken in this matter, correct? Do you recall that?
A. I have.
Q. Okay. And I think you stated, correct me if I'm wrong, you said that it was unbelievable; is that right?
A. It was.

Q. Okay. And with all these events -- now, you testified a little bit about what your husband, Claude, did. You never contacted anyone with the Town about any of this, did you?
A. No, I didn't.
Q. And the vehicles that y'all talked about a moment ago, now, one of the vehicles was a Toyota Avalon and one of them was an older Ford Taurus; is that correct?
A. That is correct.
Q. And your husband has already testified to this, and I don't know if you knew all the details, but about them being sold or traded in afterwards; correct?
A. Correct.
Q. And after this you got another car, didn't you?
A. I did.
Q. And you got a Mercedes?
A. I did.
Q. The pool in your backyard, you never had that cleaned, did you?
A. No, sir.
Q. All right. The storage room on the side -- over by the driveway of the house, you never did anything to clean or correct that, did you? Is that a no for Madam Court Reporter?
A. Oh, no. I'm sorry. No, I did not. I was scared to

go in there.
Q. All right. But what you are sure of and what you've said here today is that you're not going back in that house; is that right?
A. I'm scared to go in the house the way it is now.
Q. Okay?
A. Because I had -- I almost died.
Q. Yes, ma'am. Well what we talked about just a moment ago you don't know what the problem is, do you?
A. It's the sewage that is leaking under my house. And I have seen that on numerous occasions.
Q. And you've not had that leak as you put it fixed, have you?
A. Well, it's the -- it's not my sewage pipe.
Q. That's your contention, isn't it?
A. Are you talking about going from my toilet?
Q. Ma'am, I'm asking you what -- this is your lawsuit. I'm asking you what you contend the problem is and why you're not going back to your house and why you believe that you've been damaged here?
A. I feel like the Town sewage is leaking under my house. I see it under my house. I have no water running in my house. We have not had our water on in three years or two years. And I don't -- I see sewer under my house.
Q. Just so we don't get confused, ma'am. water is not

running to your house cause you had it cut off, correct?
A. Right.
Q. Okay. Bottom line is you haven't done any testing to determine what the problem is, have you?
A. I personally have not.
Q. Yes, ma'am. We've ruled that out?
A. Yes.
Q. But as we sit here today you cannot tell me what the problem is; is that right?
A. Do I what?
Q. As we sit here today, based upon someone doing the investigation and testing, you can't tell me what the problem is?
A. I just said it is the sewage.
Q. That's what you contend, correct?
A. Right. And as we talked about a moment ago you saw Dr. Culpepper back in 2008; is that correct?
A. That is correct?
Q. Dr. Culpepper was your family physician; is that correct?
A. That is correct.
Q. The doctor you would go to see for various things?
A. That is correct.
Q. And you've seen other doctors, of course, throughout the years; is that right?

A. Gynecologist, a variety of different ones.
Q. Yes, ma'am.
A. Dentist.
Q. Yes, ma'am. I wasn't -- I didn't mean that to the cute or a trick question.
A. Right.
Q. I understand that, but you've seen other doctors?
A. I have.
Q. And what you saw Dr. Culpepper for was for respiratory issues; is that right?
A. Right.
Q. That is was the late 2008?
A. 2008.
Q. Okay. Now, you have seen doctors and had complaints and been treated for respiratory problems well before September 2008; is that correct?
A. I mean I don't -- I've had colds and, you know, things like that that most people have, and I've gone to doctors for it.
Q. Okay. Fair enough. You had bronchitis before September 2008, correct?
A. I've had that before.
Q. Yes, ma'am. That's a respiratory issue, isn't it?
A. Right.
Q. Okay. You've been diagnosed with pneumonia before;

isn't that correct?
A. I've had it twice since this happened.
Q. Yes, ma'am. My question to you though is before September 2008?
A. I had it maybe in 1990 something.
Q. Yes, ma'am. You've had pneumonia before, correct?
A. Um hum.
Q. And you had bronchitis well after September 2008 or since the fall of 2008; is that correct?
A. Not since I moved out of that house.
Q. Okay. Since moving out in November of 2008 you've not had bronchitis?
A. Well, I had some respiratory problem cause I kept going back in. I went back in to run my papers off and all and I had -- but since 2009 when I have not step foot in that house I have not been sick.
Q. Okay. And you've actually been down to M.U.S.C. in 2010; is that correct?
A. That is correct.
Q. Okay. Do you recall talking with doctors, nurses about relating emphasis of bronchitis once or twice every year? Does that not sound familiar?
A. No.
Q. Okay?
A. Not in several years. I don't have it every year.

Q. But you've had these problems before, and you've had them since; is that correct?
A. I have not had them since I moved out of the house. I had not been to see Dr. Culpepper in two years.
Q. And, Ms. Graham, you're familiar with your lawsuit in this case, correct?
A. Yes, sir.
Q. I think the question was posed to you earlier by your own attorney that it is in fact actually been amended since it was originally filed, correct?
A. Correct. That's what he said.
Q. Okay. Let me hand you a copy of your second amended complaint. And if you can just take a quick moment. Of course, it's several pages long. I'd ask simply that you flip through that. Verify that—that is indeed your complaint in this case. Ms. Graham, I don't want to rush you. I'm ready as soon as you are. You're still reviewing the document.
MR. PLYLER: Your Honor, may I step out to the restroom?
BY MR. WILLIAMS:
Q. And, Ms. Graham, when you're ready you just let me know.
A. What would you like to know about this?
Q. That's a good question. I see you reading the

document. You certainly read your lawsuit before?
A. Oh, yeah.
Q. Okay. You were just looking through it to confirm?
A. Right. I mean it's -- um hum. I didn't know if there is something you wanted to ask. I didn't know what you were.
Q. Yes, ma'am. No, and I have not asked the question. I wanted you to make sure you recognized it and identified the document?
A. Oh, yes, sir.
Q. That is your lawsuit in this case, correct?
A. Its got my name on it.
Q. Okay. And in fact it's signed by your attorney and dated January 25th 2011; is the correct?
A. Yes, sir.
Q. Okay. And in this lawsuit against the Town of Latta you allege that you were damaged, your property was damaged at 220 East Rice Street for events that occurred, and you can look with me if you like. In Paragraph Eight of the complaint for events that occurred on September 5th and 6th and September 13th 2008; is that correct?
A. We're looking at Number Eight?
Q. Yes, ma'am.
A. Is that what you're saying?
Q. Yes, ma'am.

A. That's what it says what you just read.
Q. Okay. And all this is true and accurate, correct?
A. Yes, sir.
Q. Okay. This is your lawsuit in this matter; is that right?
A. Yes.
Q. Not suing about something that happened in 2007, are you?
A. No. This happened in 2008.
Q. It's laid out in the lawsuit, September 5th, 6th and 13th 2008; is that correct?
A. That's what it says on this paper.
Q. Doesn't say 2009, does it?
A. No, sir.
Q. Doesn't say 2010, does it?
A. No, sir.
Q. And this was drafted and filed in 2011; is that correct?
A. That's what is says right here.
Q. Your lawsuit in this case has to do with the flooding event that happened in September of 2008; is that correct?
A. My lawsuit has to do with the continual damage that I am suffering under my house, and it continues.
Q. Yes, ma'am. That's not what you're suing about though, is it?

A. That's what I'm -- yes.
Q. And it's your contention this the is a sewer line under your house leaking causing sewage to go under your house and cause damage to your house, correct?
A. That's what it says right hear, the flooding under my house.
Q. Thank you, Ms. Graham. No further questions. I appreciate your time.
THE COURT: Any redirect?
MR. WILLIAMS: Just a few questions, Your Honor.

REDIRECT EXAMINATION

BY MR. WILLIAMS:
Q. Vickie, looking at that same lawsuit look at Paragraphs 21, 22 and 23. Does it or does it not say anything about that you're injury is continuing?
A. Yes.
Q. Did you say yes?
A. Which one are you asking me?
Q. Does the lawsuit say anything about your injury continuing and not being limited to the September 2008?
A. Which numbers were you?
Q. Look at I think it's 21, 22 and 23. Specifically look at Paragraph 23 and read that one sentence?
A. It says, 'continues' ---
Q. To yourself.

A. It says, 'continues'.
Q. Okay. All right. Let's talk about the upgrade in your car situation. Tell us about that Mercedes that Mr. Wren asked you about.
A. Whenever our car -- well, we had no cars because of the damage, and a man in our church passed away and his family was selling his car which happened to be a Mercedes. And so, you know, they asked us if we wanted to buy it cause they knew our situation. And they gave us a very good price and so we bought it. We had to have a car.
Q. It was a used Mercedes?
A. Yes, sir.
Q. And was it a satisfactory car?
A. It was.
Q. Did you keep it a long time?
A. We kept it for -- well, we gotten rid of it since.
Q. What do you drive now?
A. I have a Camry.
Q. Toyota?
A. Toyota Camry.
Q. That's all I've got. Thank you.
MR. WREN: No further questions, Judge. Thank you.
COLLOQUY
THE COURT: You may step down. Thank you. Ladies

(WHEREUPON, Court was in recess at 12:52 p.m. and reconvened at 2:16 p.m.)

THE COURT: Is there anything we need to take up this afternoon before we get started?

MR. WILLIAMS: No, Judge.

MR. WREN: I don't believe so, Judge.

THE COURT: Ask the jury to come in, please.

(WHEREUPON, the jury panel enters the courtroom at 2:17 p.m.)

THE COURT: Good afternoon, ladies and gentlemen. You play call your next witness.

MR. WILLIAMS: May it please the Court. Before I call my next witness I'd like to publish the stipulation.

THE COURT: Yes, sir.

MR. WILLIAMS: Madam Foreman, ladies and gentlemen of the jury, this is a stipulation which has been entered into between myself and the attorneys for the Town of Latta. And I read it as follows:

"The parties stipulate that the Town of Latta is unable to produce a written instrument conveying an easement for a portion of the Town's sewer system which cross the property currently owned by Claude and Vickie Graham. 220 East Rice Street in Latta, South Carolina." That concludes the stipulation, Your Honor. And I pass it up to the Court.

THE COURT: Thank you.

MR. WREN: That is correct, Your Honor.

THE COURT: Court's exhibit.

(WHEREUPON, Court's Exhibit No. 2 was marked for identification and received into evidence.)

MR. WILLIAMS: Your Honor, I now call Dr. David Culpepper.

DAVID CULPEPPER, after being duly sworn, testified as follows:

CLERK OF COURT: Be seated in the witness box. State your full name for the Court spelling your last.

THE WITNESS: David Melton Culpepper. C-U-L-P-E-P-P-E-R.

DIRECT EXAMINATION

BY MR. WILLIAMS:

Q. Good afternoon, Dr. Culpepper?

A. Good afternoon.

Q. I know you've got patients to see, etc. so I'm going to try to go through this as quickly as I can, but if you would tell the jury your educational background and training and where you practice medicine at?

A. I graduated from high school in Greenville, South Carolina. Went one year to Furman University. Transferred to the University of South Carolina School of Pharmacy. Graduated from there with a degree in pharmacy.

Went to medical school at the University of South Carolina. Residency in internal medicine at the University of South Carolina Dorm BA and practiced in Florence, South Carolina for 25 years.

Q. What type of practice in Florence, South Carolina? Private practice or?

A. Private practice, central medicine.

Q. And are you a specialist in internal medicine?

A. Internal medicine is a basic primary care specialty like family practice. So I am board certified and a fellow in the American College of Physicians.

Q. Okay. Did there come a time when you began treating Claude and/or Vickie Graham?

A. Sir?

Q. Did there come a time when you began treating Claude and Vickie Graham as a -- or Vickie Graham, either one, as a patient?

A. Yes. In the recent practice that I had with my previous partner, Dr. Jeffery Crane, I did assume their care after he -- during his time there and after he left the practice I assumed their full care.

Q. When was that? Approximately?

A. Approximately 2000 -- I don't have my notes in front of me. About 2002 when the practice opened.

Q. Okay. Did you recall an occasion in the fall I

recall, fall of 2008, when they came to see you at that practice?

A. Yes, sir. The first visit was by Mr. Graham with respiratory symptoms, and they both had repeated visits very rapidly for lower respiratory tract symptoms and upper respiratory tract symptoms.

Q. First was by Mr. Graham, you said, then they both came?

A. Yes, sir. As best I can recall it was about October.

Q. Okay. 2008?

A. Yes.

Q. And when you say 'repeated' how many does that mean, roughly?

A. Half a dozen each.

Q. Okay. What did you do in order to diagnosis and/or treat? Let's say Claude Graham first?

A. In private practice you tend to take the most common thing. And so we attempted to think they probably had either a viral or bacterial infection because of the severe symptoms. We treated with antibiotics. A short burst of steroids at times a concerted measures that we would teach them. Fluids, over the counter medications, gargles, and at some point in one patient we did a pulmonary function test to see if there was an underlying problem, but that was normal. And we also a one point did

x-ray to check a neck, chest x-ray and then a C.T. scan.
Q. Does that answer apply to both Mr. and Mrs. Graham?
A. No. That's pretty much compiled. The initial part, yes. The x-rays and C.T. scans depending on which patient we're talking about.
Q. Okay. Did you do any other testing or gather any additional information other than what you just described?
A. Mrs. Graham was referred to a specialist to check for allergies during this time period.
Q. Did you talk with the patients about their family history and background?
A. That's a regular yearly review. We already had family history, so that was not an item that we bring up each year unless there has been a change.
Q. Is happened in October whatever of 2008. Did you talk to them about their living situation at that time?
A. Initially that was not an issue, but -- with the first respiratory symptoms, but then they informed me that there had been liquid, floating liquid, in the basement by what appeared to be sewage in their basement and mold. And they were concerned that there had been some type of lead into their basement.
Q. What significance, if any, did you attach to that information?
A. I pretty much made the correlation because they were

not patients who came in frequently. They were patients who pretty much had their occasional upper respiratory tract symptoms over several years. But this was very intense. It was much more severe and very concentrated visits.

And the correlation was further evidence to me as being related to their symptoms because I insisted they leave the house. And there seemed to be a dramatic improvement in the symptoms when they were able to stay away from the house.

And then when Mr. Graham would return to the home to do business items, take care of business, even though he was upstairs, he would complaint of respiratory symptoms and seem to have a persistent cough even at that time. We had to treat with narcotics to suppress the cough.

Q. As a result of your diagnosis and treatment did you give the Grahams any advice about their living circumstances?

A. It became clear to me that the best thing for them was to stay out of the house. And I encouraged them to seek other living quarters until the matter could be corrected. If it couldn't be corrected don't go back in the house if at all possible.

Q. That's all I have. Answer any questions Mr. Wren may have?

MR. WREN: May it please the Court, Your Honor?

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. WREN:

Q. Dr. Culpepper, good afternoon.

A. Good afternoon.

Q. We were talking just a second ago with your patients who are Claude and Vickie Graham who are here with us today, told you back in 2008, correct? That's what Mr. Williams was just asking you about?

A. That is correct.

Q. You understood them to relate to you that they had a leaking sewage pipe that was leaking sewage in their basement; is that correct?

A. That is correct.

Q. Okay. Said it to you that would a continuance. If there is a lead it doesn't happen one time and just stop, right? It continues to leak?

A. The impression that they gave me is that they were not aware of it until they had some rainy weather, and apparently, the rain caused the main sewer system to overflow and, apparently, this sewage line that has been apparently forgotten began to overflow into their basement. And that may have been why this was intermittent, hadn't been noted before. And I got the

impression when it wasn't raining it wasn't as much of a problem.

Q. Okay. Well, did you -- it sounds like from what you're saying is that you also got the impression that it was something that was going -- that could be resolved, to be cleaned up and resolved; is that correct?

A. I would -- the sewage line would have to be blocked off, I would assume. And plus it would need to be removed I would think because there is sewage in the soil underneath the house now.

Q. Okay. Well, Doctor, your basis then for telling the Grahams to leave their residence would be based upon the fact that you understood that there was still a problem there, correct?

A. Yes, sir.

Q. You just don't know what that problem is though, is that right.

A. Could you restate the question?

Q. Yes, sir. You just don't know exactly what that problem is though; is that correct?

A. I had to go completely on what the patients were telling me. They were telling me that there was a broken sewer line under the house, and I assumed it was related to the mold that was visible on the walls by their account. And then also the fact that there was floating

sewage in their basement.
Q. All right. Thank you, Doctor. You didn't independently do anything to confirm or verify any of that information, correct?
A. No, sir. I've never been to their house.
Q. Okay. Didn't do any testing, anything like that, correct?
A. No, sir.
Q. All right. Dr. Culpepper, I know have you been practicing here in Florence for some period of time. You've seen Mr. and Mrs. Graham on several occasions. Just so I got the background straight to share with the jury. Did I understand you to say that your practice back in the time period of 2008 would have been while you were with Palmetto Internal Medicine, correct?
A. That is correct.
Q. And you have -- at some period of time, and I won't get us confused on the date, you worked with Dr. Crane in that practice, correct?
A. Yes. We started Palmetto Internal Medicine together.
Q. Okay. And Dr. Crane then at some point left and that's when you assumed the patient/doctor care of Mrs. and Mr. Graham, is that right?
A. That's a good question. I would -- I think there were a point where I did care for them just to cover him.

When he was busy I might have done an office visit for another -- an item. Giving them refills or something. So I had seen them intermittently in that practice. But they had apparently followed us from the previous practice we were in together.

Q. All right. And, Doctor, going to this point of the timing of all this and when you saw the Grahams. If I am correct to understand you were never told or just don't know when this alleged sewage leak or sewage in the basement occurred; is that correct?

A. That's correct. I don't think they were really sure when it started.

Q. Okay. And so going back to -- with your practice at Palmetto Internal Medicine you saw the Grahams numerous times throughout the year; is that correct?

A. That is correct.

Q. However, you haven't seen them since 2009 with the exception of Ms. Graham on more recently on a totally unrelated matter? Is that a fair representation?

A. That is correct.

Q. Okay. So any medical treatment the Grahams have done since that time or what other doctors have looked at and done you don't have that information?

A. No, sir.

Q. All right. What you do know is from before they came

to you in 2008 with these complaints, is that right?
A. Yes, sir.
Q. And you got all of your medical records from when you saw them throughout the 2000s, correct?
A. That is correct.
Q. And for purposes of your deposition in this matter and your appearance and testimony before the jury today you've reviewed those record; is that correct?
A. Yes, sir.
Q. Okay. I won't hold you to any higher level. Now, with reference from memorization or knowledge of the records ---
A. I have my computer if you need me to pull it up. I would be happy to.
Q. Well, Doctor, I'm going to let you save your time. All of our time, and I think some of this you will quickly recognize and recall. As early as May of 2000 Claude Graham had been at Palmetto Internal Medicine, your practice, all be it with Dr. Crane, with complaints of cough and having x-rays done; that is correct?
A. That is true.
Q. Okay. And in 2003 Claude again presented. This being in February with the cough, sore throat and diagnosed with acute bronchitis; is that correct?
A. That is correct.

Q. In later 2003 and November Mr. Graham also presented with a history of coughing and further patient passing out. It was again diagnosed with acute bronchitis; is that correct?
A. I would have to defer to you on that. I don't have my notes in front of me, but I did provide you a copy. I assume that's what you're reading from.
Q. It is. But I don't want to misrepresent or act like I'm trying to pull some stunt from here. I relied upon your records, but I want you, if I state something that in inaccurate or wrong I want you to certainly correct me. Is that fair?
A. If I need to look at the records to confirm a date I'll be happy to, sir.
Q. Okay.
A. I did provide you with a list of the dates that they were seen and the intermittent respiratory symptoms that they had which is very common. It was the intensity of the recurrent visits that began about this time that brought up a red flag to me.
Q. Okay. Well, again, in this time period Mr. Graham again came in 2004 talking about recurrence and persistent issues with complaints of cough. Again, diagnosed in November of 2004 with acute bronchitis. Do you recall that?

A. That would be correct.
Q. All right. And in April of 2006, different time of year, Mr. Graham presents again with cough, sore throat and he's treated for such. Do you remember that?
A. According to my notes that I gave to you, yes, sir. That's from my record.
Q. Okay. Well, how about more specifically in October of that year, 2006, Mr. Graham presenting with complaints of cough and there being diagnosed again with acute bronchitis. Does that sound familiar?
A. I would have to look at my notes to give you specifics, sir.
Q. All right. And I want you to have that opportunity if there is any question in my mind. I -- do not hesitate if you would like to look at any of your records. I actually have a copy of them here with me.
A. I have a copy also if you like you let me pull them out.
Q. Please do, Doctor. I want you to verify. I just don't want to waste your time.
A. Thank you. What was the date again, sir?
Q. The last one I referenced to you was the last one in 2006. It would have been October 10th 2006. Presents with a cough. Actually, per narrative that indicates coughing to the point of passing out and diagnosis of

acute bronchitis?
A. Yes, I have summarized that as he had five total upper respiratory tract symptoms prior to 9/21/07.
Q. And, again, you saw him on 9/21/07 with complaints of a bad cough and diagnosis of acute bronchitis; is that correct?
A. That is correct.
Q. All of those preceding the events that were related to you by the Grahams in 2008; is that correct?
A. Yes, sir.
Q. Similarly, for Miss Vickie Graham who is also your patient, correct?
A. That is correct.
Q. Dr. Crane saw her as early from records that were in your possession, 2000, 2001 where actually chest x-rays were performed for coughing symptomology; is that correct?
A. That is correct.
Q. And again in 2003, November of that year, Ms. Graham presented with onset of cough. Diagnosis be acute bronchitis.
A. That is correct.
Q. And also September 21st 2007, which my notes indicate correctly, you, please, verify otherwise, is the same date you saw Mr. Claude Graham presenting with a bad cough. This being Ms. Vickie Graham and diagnosis of acute

bronchitis?
A. I'm not sure that he was seen exactly the same date, but she had -- there was the mention of her husband was sick also. That is correct.
Q. And that would have been in September of 2007; correct?
A. That is correct.
Q. Okay. All right, Doctor. Well, I again greatly appreciate your time. And I'm sorry for any confusion. I appreciate you referring to your notes to confirm we're all on the same page. Thank you.
THE COURT: Any redirect?
MR. WILLIAMS: Just a couple questions, Your Honor.

REDIRECT EXAMINATION

BY MR. WILLIAMS:
Q. Dr. Culpepper, the conditions that you all just talked about between 2000 and 2007, were that connected in any way in your opinion to the problem and treatment that you undertook in October of 2008 through May of 2009?
A. That's a good question. I can answer either way. I can tell you that it's common for patients to come in with an occasional upper respiratory tract symptoms. We see that. Particularly, people who are prone to it.
The difference is is there a possibility there were leaks during that time period when there was rain and mold

developing that they just weren't aware of? That's a possibility. The difference is the intensity of the frequency of visits that began in 2008 with both patients experiencing symptoms.

Particularly the wife who had not been in as frequently as the husband for health related matters. Particularly more respiratory tract symptoms.

Q. Thank you.

MR. WILLIAMS: Do you have any more questions?

MR. WREN: No further questions.

MR. WILLIAMS: Your Honor, I would like to offer into evidence Exhibits Two and 13. They are two sets of bills that have been previously identified by Mrs. Graham and Mr. Graham.

MR. WREN: And, Judge, I hate to do the same objection. I don't have a problem with them, but they -- there haven't been a foundation that can be cured. But they were set forth with the Doctor, Judge.

MR. WILLIAMS: Well, Mr. and Mrs. Graham laid the foundation. I'll be glad to show them to doctor also if that -- the Court feels that's necessary.

THE COURT: Well, you need to lay whatever foundation you feel is appropriate. I understand that they were -- that there was some testimony by the Plaintiffs but ...

BY MR. WILLIAMS:

Q. While I look for it the Defendant -- Plaintiff's Exhibit 13, take a look at Plaintiff's Exhibit Two, please, Doctor.

MR. WREN: And, Your Honor as long as the doctor verifies those are his bills I have no objection to those coming in as exhibits.

MR. WILLIAMS: Thank you.

BY MR. WILLIAMS:

Q. And here is Number 13 also, Dr. Culpepper. Can you verify that those are in fact the bills -- y'all's bills from Internal Medicine?

A. To the best of my knowledge. I have never actually seen a bill. I take care of the patients and their paperwork which is processed by my employees, but it does bear our letterhead and the appropriate dates.

MR. WILLIAMS: Any further objection.

MR. WREN: Without objection, Judge.

MR. WILLIAMS: Thank you. Your Honor, may the witness be excused?

THE COURT: Witness may be excused and the exhibits are admitted.

MR. WILLIAMS: Thank you, Doctor.

THE COURT: Thank you.

(WHEREUPON, Plaintiff's Exhibit Nos. 2 and 13 were admitted into evidence.)

MR. WILLIAMS: Call Tom Robinson.

TOM ROBERTSON, after being duly sworn, testified as follows:

CLERK OF COURT: Be seated and state your full name for the Court spelling your last.

THE WITNESS: Thomas Manning Robertson.

R-O-B-E-R-T-S-O-N.

DIRECT EXAMINATION

BY MR. WILLIAMS:

Q. Mr. Robertson, speak up please, sir, so that even the last juror on the back row can hear you. You're a soft spoken man. Your name is Tom Robertson. Where do you live?

A. Florence, South Carolina.

Q. What do you do for a living?

A. I do building inspections, catch team and various type construction products and things associated with construction. Air quality, mold, radon, synthetic stucco, general building inspections, home inspections, commercial building inspections.

Q. So you're a building and home inspector?

A. Yes, sir.

Q. You have to have any licenses to do that kind of work?

A. Yes, sir.

Q. What kind of license do you have?
A. You have to have a builder's license. Either a home builder's license or a general contractor's license and also an inspector's license.
Q. You have all of that?
A. I have a general contractor's license and an inspector's license.
Q. What is your educational background?
A. I went to school in Spartenburg, South Carolina. I attended Clemson University. Majored in civil engineering. And had more classes through the years. As you can tell from my age I can remember, but at the present time I'm required to take a minimum of 20 hours a year of continuing education.
Q. Does that requirement continue to this day? The continuing education requirements?
A. I'm sorry.
Q. You still have to do that now?
A. Oh, yes, sir.
Q. Okay. Every year?
A. Yes, sir.
Q. Okay. And tell the jury what your work history has been. Not each and every employer, but just what occupations have you had over your life?
A. I worked for a general contractor firm for basically

10 years. I did specialty concrete work for about 12 years plus some building, some residential building at that time. I worked for two other general contractors, Turner International from out of New York. They bought a local company in Florence. It was the last general contracting.

After that I worked for an architectural firm from Florence. It was Moseley, Wilkins and Woods. It was later bought out by Moseley Architects. Architectural firm from Richland, Virginia who have offices up and down the east coast. And the construction part with project management. Just about any phase of the construction industry.

With the architectural firm I review drawings. I worked with young architects on buildability. I saw their plans before they went out for bid on. I also did field work as far as the inspections for the architectural firm.

I've worked with the State Board of Prisons on the buildings we did for them. Many, many school house facilities and structures throughout the State of South Carolina.

Q. Excuse me for interrupting, but let's get to the part about with respect to home inspections, when did you start that line of work?

A. 1990. Actually, in earnest then I've done it through

the years kind of for people that I knew, but about 1990 is when home inspections became a viable or popular ---

Q. Occupation?

A. --- occupation, right.

Q. Did you start doing that full time along about 1990?

A. Kind of worked into it. I'd say full time about the late '90's, '98.

Q. Did you work for yourself or for somebody else?

A. I worked for myself.

Q. And you worked for yourself since when? When did you start working for yourself rather than for somebody else?

A. Like I said the mid '90s.

Q. Okay. What's involved in home inspection?

A. Home inspection is basically you review everything that you can see without doing any intrusive ---

MR. WREN: Your Honor, I'm sorry to interrupt the witness. I'm not quite sure where we're going with this. Mr. Robertson was not identified as an expert witness or any kind of a witness for the purposes of home inspection or construction. I have his designation. He's been deposed. I'll be happy to discuss it with Your Honor outside of the jury's presence if necessary.

THE COURT: Counsel, you want to approach.

(WHEREUPON, a bench conference was held off the record in the presence of the jury, but out of the

hearing of the jury.)
BY MR. WILLIAMS:
Q. In general terms what is involved in home inspections?
A. Basically, like I say review of everything that is visible without doing any intrusive inspection. In other words damaging any materials in the home including H.V.A.C, electrical, plumbing, the foundation, structure, roof, insulation, windows, doors. Everything to do with the house that you can observe.
Q. What role, if any, do environmental molds, toxins, things like that play in the home inspection process?
A. Directly, none. In fact it's stipulated in a standard home inspection that, you know, mold is excluded from the home inspection or any type environmental items are excluded.
Q. What training and experience do you have if any in environmental molds, toxins, inspections?
A. As I mentioned earlier we are required to take a minimum of 20 hours a year in continuing education. And in the mid '90s I became aware of the mold issues. Did some studying on my own on that and became very, very interested in it and devoted everything I could in my continuing education to the subject of mold or air quality in homes.

I went to a class a taught by a professional laboratory to become certified in air quality testing and sampling of materials for contamination, mold, whatever.

Q. As a result of that have you been able to make a living in part as a tester of that nature?

A. Yes, sir.

Q. Okay. For whom do you do that kind of work?

A. We have done it for schools, public buildings, for cities, court houses such as this, a lot of health care facilities, homes, commercial office buildings, commercial work spaces of other types.

Q. I'm not going to ask you what's involved in doing testing in general because I want to focus in on Claude and Vickie Graham's house on Rice Street in Latta. Were you engaged to do some mold and environmental toxin testing on their house?

A. Yes, sir.

Q. Tell the jury what you did in order to perform that work?

A. Okay. Basically, starting a square one, we were contacted to do the testing. I ordered the testing materials from the lab. Then we made an appointment to go to the home to do the testing. First thing we do is we just a general walk through and around to make visual observations of the general conditions that we observe.

After that we take swab tests which is a process of, basically, if you see an area or an area of suspected contamination of possible mold or any kind of contaminate you swab that area. It's immediately sealed and labeled as to where the test was, the time and that sort of thing.

Then we do -- we did an air quality test. That is where we take a sample of the inside air of the home and sample of the outside air of the home. The time limit and the volume of air taken are measured precisely so they vary equally as far as in terms of air or the amount of air.

And those are, after that test is completed, they're sealed. They're immediately, within as quick as we can get to the Fed Ex Fed Ex'd overnight back to the lab for their testing.

Q. And then do you get results back from the lab?

A. I did.

Q. Okay. And you know as part of your job to read and interpret these results?

A. It's part of my job to, as far as the chain of custody goes, which is from the time test facility leave the lab there's a chain of custody kept until the test is done and back to me. The test results do come back to me. Not so much for interpretation or anything, but to verify that it is the same materials that I sent to the lab.

Then it is given to the people we did the test for.
Q. When did you do this examination of the Grahams house if you recall?
A. I've got it here. It's been a couple years ago. Early June 2010.
Q. Early June 2010?
A. Yes, sir.
Q. And did you prepare any kind of written analysis of those results?
A. I did not prepare -- the analysis was prepared by the laboratory?
Q. By the lab?
A. Yes, sir.
Q. Did you present it to the Grahams?
A. I presented it to the Hyman Law Firm.
Q. Take a look at what's been marked Plaintiff's Exhibit 17.
A. That's it.
Q. Is that the lab results?
A. Yes, sir.
Q. Okay. Are you able to read the lab results?
A. I can read, yes, sir.
Q. Okay. Read the lab results and tell the jury whether there is or isn't anything out of the normal.
MR. WREN: Objection, Your Honor. Mr. Robertson

hasn't been qualified to be an expert and asking his own witness.

THE WITNESS: Read ---

MR. WREN: I guess your witness has a question for me, Your Honor, as to reading. If his only job is to read in an exhibit then questions Mr. Williams, I don't know.

MR. WILLIAMS: Your Honor, I would offer the certificate of analysis into evidence at this time.

MR. WREN: I'd object, Your Honor. There hasn't been any foundation other than the fact that it's a chain of custody that came to Mr. Robertson.

MR. WILLIAMS: Let me ask a few more particular questions.

BY MR. WILLIAMS:

Q. Mr. Robertson, why do you send this to the lab?

A. For them to analyze it and say what's present or not present.

Q. And do they send you back a report saying what's present or not present?

A. Yes, sir.

Q. And does this report state the things that are or are not present in an particular examination?

A. Yes, sir.

MR. WILLIAMS: Your Honor, I would offer it again?

MR. WREN: And, Your Honor, I'm fine with that. It's

not for an expertise versus rendering opinions. Sounds like he's just going to publish information in the report. I don't have an objection to that.

THE COURT: So are you objecting to the introduction of the exhibit or are you objecting to him reading the exhibit.

MR. WREN: Well, neither, Judge. What I was objecting to if there is opinion or interpretation. So I will preserve it and I apologize for that. Obviously, Judge, the question asked originally was for him to let him is what I understood it to be.

BY MR. WILLIAMS:

Q. Mr. Robertson ---

MR. WILLIAMS: Am I to understand that this exhibit is in evidence, Your Honor?

THE COURT: If there is no objection to it it will be admitted.

MR. WILLIAMS: Thank you, Your Honor.

(WHEREUPON, Plaintiff's Exhibit No. 17 was admitted into evidence.)

BY MR. WILLIAMS:

Q. Mr. Robertson, so that when the jury looks at this so that they will be better able to understand it would you step down in front of the jury with me and just show me how this is set up and how they can read it?

A. Okay, well, basically, the cover sheet tells them where it was, when it was.

THE COURT: Mr. Robertson, we're going to have difficulty hearing your voice. You need to speak up to make sure the court reporter can hear you and so the rest of us can hear you as well.

THE WITNESS: Sorry.

BY MR. WILLIAMS:

Q. Speak up really loud. She's right. Sit right here, but your back is turned to her?

A. How about I move back this way. Would that be better? The cover sheet is basically just general information about the address and the time and just the number of the test and that sort of thing. The next page is the chart of the tests that were done, a part of the tests that were done.

The first two columns are for the swabs. It says where they were done and it gives the result. Both of them are unusual.

MR. WREN: Your Honor, if that's not opinion I don't know what it is. He's not been qualified or found to be an expert witness. Your Honor, it's leading ---

THE WITNESS: I'm read what's on the report.

THE COURT: I think we need to take up this issue outside the presence of the jury. Ladies and gentlemen,

I'm going to ask that you retire to the jury room and not to have any discussions about this matter. You've still not heard all the evidence. We will bring you back shortly.

(WHEREUPON, the jury panel was excused from the courtroom at 2:53 p.m.)

COLLOQUY

MR. WREN: And, Your Honor, I apologize. I'm not trying to create an undue delay here. Mr. Williams and I was just talking, and his representation to me is he was just asking Mr. Robertson to read this in. If that is truly the case I apologize. I'm trying to protect it up front. It harder to unring a bell. I don't have any problem with him publishing information contained in it. But that's -- I don't know why we need that. Anyway, as long as there is not interpretation and opinion.

MR. WILLIAMS: Your Honor, his charts and graphs, and I just wanted them to help assist the jury how to understand it.

MR. WREN: All right, Judge. We may have resolved it. I'll state it first, and if it's fine with Mr. Williams -- correct me if I'm wrong. I get the impression and understand, of course, Ms. Robertson showed this. He took the samples, took them to a laboratory, this is what he got back in return. Mr. Williams, as I did partly

understand, wants to get this in front of the jury. I don't have an objection to that, and I'm not questioning change of custody or anything there.

My concern was with interpretation and opinion. Mr. Williams advises me that, essentially, what he wants Mr. Robertson -- or my position was what Mr. Robertson would do is confirm this is what I got back from the lab. And one thing further is if Mr. Williams wanted to do is clarify what the word, 'control' ---

MR. WILLIAMS: One of the columns is headed 'control', Your Honor. And I just like for me to explain what that means, the testing and the area called, 'Control'. I'd like for him to state that.

MR. WREN: And if that's all there is then I be fine. Would not have an objection to this coming to the jury being noted as an exhibit. And I assume that means no further questions or interpretations?

MR. WILLIAMS: No. Just ask him what that means. If he gives a vague answer I would like to ask him to clarify.

MR. WREN: With that stipulation, Your Honor, we can move this along.

THE COURT: Okay.

THE WITNESS: Should I say what I'm going to say for control before they come back?

MR. WREN: Yeah.

MR. WILLIAMS: Please. Go ahead.

THE WITNESS: Controls is the outside air sample, and that's the basis of determining the difference between normal and unusual.

MR. WILLIAMS: That literally is all the questions I wanted to ask him.

MR. WREN: Your Honor, with that said one other question that I don't want to created confusion with the jury is, and I'm not trying to go back end of what we just argument, but of just having this record in with the jury that's not going to be -- create more question than it is answer.

MR. WILLIAMS: Your Honor, I think it speaks for itself or not. If I haven't given the jury persuasive enough evidence I won't persuade them.

THE COURT: Anything else we need to take up?

MR. WREN: I think that will resolve it, Judge.

THE COURT: So what I gather is that there is no objection to Exhibit Number 17. I admitted it as evidence as an exhibit in this case. And the witness is going to explain what's on the form?

MR. WILLIAMS: Just that one column, Your Honor. I'm just asking what does this column that's headed, 'Control', what does control signify? What does that

mean.

THE COURT: Okay. So he's not going to go through each and every thing on the form?

MR. WILLIAMS: No, Your Honor. I'm not going to ask him any other questions at all.

THE COURT: All right.

MR. WREN: Okay. With that, Judge, as we discussed I'm okay.

THE COURT: Okay. We ready?

MR. WILLIAMS: I'm am, Judge.

MR. WREN: Yes, Judge.

THE COURT: Everybody ready? You may ask the jury to come in, please. Thank you.

(WHEREUPON, the jury panel enters the courtroom at 3:02 p.m.)

THE COURT: Yes, sir. You may continue.

MR. WILLIAMS: May it please the Court.

CONTINUED DIRECT EXAMINATION

BY MR. WILLIAMS:

Q. Mr. Robertson, you can remain seated. I will just show the jury. I have just one more question. On Page Two of Exhibit 17 there is a set of columns. Do you see what I'm talking about?

A. Yes, sir.

Q. And the columns are headed up here in the green area.

In the extreme right hand column has headed with the word 'control'. You see that?

A. Yes, sir.

Q. Tell the jury what the word control means?

A. All right. That particular column is the results of the outside air which is what the inside air is compared to: So that is the control.

Q. Okay. Thank you.

MR. WILLIAMS: That's all the questions I have.

MR. WREN: May it please the Court, Judge.

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. WREN:

Q. Mr. Robertson, sorry for that delay there. We'll get it worked out and understand what we've got here. Because what we've got and what's going in as an exhibit to the jury is the results of some testing that was done on the Graham's residence back in June of 2010; is that correct?

A. Yes, sir.

Q. All right. And your role in all this was you went -- physically went to the property June of that year and did the swabbing -- obtained the samples if you will to send to the laboratory, correct?

A. Yes, sir.

Q. All right. And you've not been at the Graham's

residence in the past? Done any testings or any inspections or anything prior to that time period, correct?

A. Prior or since?

Q. And hadn't done anything since that time. Now, you, from your conversations either her or the Grahams themselves or from just looking at the house, you understood, of course, when you were there in June of 2010 there was nobody living in that house; is that right?

A. There was ---

Q. No one was living in that house, correct?

A. It was not being occupied. It was furnished and all, but it was not being occupied.

Q. Okay. You didn't have any -- I mean you didn't see anyone living there? You didn't have any understanding that anyone was living there, did you?

A. I was told that nobody was living there.

Q. Okay. But that would suffice. And you understood that they hadn't been living there for some period of time, correct?

A. Say again, please.

Q. You understood that they had not been living there for some period of time, correct?

A. I don't have any knowledge of how long or anything.

Q. Okay. Fair enough. Now, a property, residential,

commercial; you've been in a bunch of them to collect these samples and do this kind of work, correct?
A. Yes, sir.
Q. And things, when it comes to mold and just upkeep of property as Ms. Williams asked you about, your background with building inspections and so forth, there are certain things you have to do to maintain and upkeep a property; is that right?
A. Yes, sir.
Q. Okay. One of those, especially when it comes to mold, is moisture, correct?
A. Very much so.
Q. Okay. Whether it be using something as simple as an air conditioner, things like that, fans, dehumidifiers, those sorts of things can control mold in a residence, right?
A. They can control it?
Q. Well, I should say control moisture?
A. I don't think control is the right word. They can affect moisture either positively or negatively.
Q. Well, true. You can do the exact opposite and bump up the moisture in a residence, correct?
A. Exactly.
Q. And giving a breeding ground for mold, right?
A. The moisture is one of the three elements required

for mold to grow.
Q. That's right. You need a food source, too, don't you?
A. Food source and temperature.
Q. And temperature. And you combine those to create a fertile ground for mold growth; is that right?
A. Yes, sir.
Q. And in this case you don't know -- you do know that no one was living in the house at the time, but you don't know how long it had been that way, correct?
A. Correct?
Q. And you don't know what kind of events the precipitated your arrival in June of 2010, do you? You don't know what had taken place at that house, do you?
A. Just from hearsay.
Q. Well, okay. So you did. Did you have an understanding that there had been some period of time?
A. I have -- when you said I didn't know what took place at the house I know that there were some flooding in the area. Like I say from hearsay and knowledge of the area. Other than that ...
Q. You don't know how long it had been?
A. No, sir.
Q. And you don't know what the property owners had done or not to their residence? You don't keep up with that

sort of thing?
A. That is correct.
Q. The results that you got back from the laboratory they indicated readings, as you pointed out, of what they came up with both inside and outside; is that right? You indicated control is outside and the other is inside, correct?
A. The last two columns have to do with that. Yes, sir.
Q. Those numbers just indicate what they found; is that right?
A. That's the quantity of mold.
Q. Okay. And not surprising, you've seen other reports and so forth? Mold can be found anywhere, right?
A. Oh, yeah.
Q. Okay. And so the data that is captured her is just what they found on this day in June of 2010 from your swabs, correct?
A. The last two columns are from the air samples. The first two are from the swabs.
Q. From the swabs. Correct. Excuse me if I misstated that from your sampling?
A. Yes, sir.
Q. And that's all it is; that snapshot in time in June of 2010, correct?
A. Yes, sir.

Q. All right. Mr. Robertson, thank you again for your time. I appreciate it.

THE COURT: Any redirect?

MR. WILLIAMS: None, Your Honor. The witness can be excused, please?

THE COURT: You may step down. Thank you. You just leave the exhibit with us. Just pass it to the court reporter. Thank you.

MR. WILLIAMS: Call Roger Davis.

ROGER DAVIS, after being duly sworn, testified as follows:

CLERK OF COURT: Be seated in the witness box. State your full name for the Court spelling your last, please, sir.

THE WITNESS: My name is Roger E. Davis.

DIRECT EXAMINATION

BY MR. WILLIAMS:

Q. Where do you live, Mr. Davis?

A. I live in Columbia.

Q. And what do you do for a living?

A. I'm a consulting engineer. This firm is located in Irmo just outside of Columbia.

Q. Okay. What is the name of the firm?

A. It's the Warren Group.

Q. Okay. Where did you grow up, Mr. Davis?

A. I grew up in West Columbia.
Q. Okay. Have you live in South Carolina essentially your whole life?
A. For the most part.
Q. Tell the jury about your educational background?
A. I have a Bachelor of Science in mechanical engineering. I have a Master's in business administration.
Q. And tell the jury about your work history?
A. Well, I worked for the federal government, state government, and private industry starting with -- fresh out of school I worked for the Department of the Navy in the Nuclear Power Division of Charleston Naval Ship Yard. Following that I was in the Air National Guard briefly. Then I went to work for the Department of Health and Environmental Control. I worked there for 12 years. Following that I worked for a waste management company for 12 years. Following that I went into partnership with two other people and founded at land development company. I sold my interest in that after a few years and started working in consulting engineering, and I've been doing that for about 13 years.
Q. And in what fields have you been doing consulting engineering?
A. Well, my field is mechanical engineering. The work

that we do is what we call forensic engineering. That is we investigate accidents, incidents, injuries, deaths, things of that type to explain what happened using engineering principles.

Q. What experience and training if any have you had relative to sewer systems. Water and sewer systems?

A. Well, that would primarily be my 12 years at the Department of Health and Environmental Control or what we call and you may know it as D.H.E.C. When I started there it was actually the State Board of Health but became -- later became D.H.E.C. I worked for a few years as a field investigator in environmental engineering working on things like water and sewer systems, land fills, public swimming pools, things of that type.

Following that assignment I worked probably -- I can't remember exactly. It may be six years as the director of the Division of Domestic Waste Water. That dealt with private and public sewer systems including those like in the Town of Latta. As part of that responsibility I ran a federal grants program to provide funding for upgrading of sewer systems and municipalities throughout the State.

I guess my other relevant experience would be to some degree in the land developing work that I've done.

Q. What about your work from 1983 to 1995 and Laid Out

---

A. Lay law.

Q. Lay Law Environmental Services. Does that have anything to do with place ---

A. To some degree it had to do with waste water in that that we provided industrial services for handling industrial waste materials including things like incineration, hand fills. And with respect, perhaps relevant here, would be waste water treatment facilities.

Q. Are you -- do you have any licences that are pertinent to your qualifications?

A. I do. I'm a licensed professional engineer in -- I think in five states.

Q. Including South Carolina?

A. Yes.

Q. Are the other states all in the south?

A. Yes.

Q. Okay. Are you have any other professional affiliations?

A. Well, I have a national certification. It's call N-C double E-S. And I can't remember exactly what that all stands for, but it's a National Counsel for Engineering Examining something or other. It has something to do with licensing for any state in the country and it facilitates that process.

Q. And you're -- what's your affiliation with that group?
A. I'm a member.
Q. Okay. As a board member or examiner?
A. No. I'm one of the engineers that they regulate.
Q. Okay. Are you a member of any other professional organizations?
A. Not currently.
Q. Have you ever done any publishing or speaking to or training of other engineers?
A. I have.
Q. Okay. Any of those related do solid waste or waste management treatment?
A. Yes, I did. Speaking while I was with D.H.E.C. for those 12 years from time to time. And also in my role with Lay Law Environmental.
Q. Okay. Were you engaged to examine and render opinion with respect to the Graham house in Latta, South Carolina?
A. I was. Yes, sir.
Q. And by whom?
A. Mr. Rushton of the Hyman Law Firm.
Q. Okay. Their attorney at the time?
A. Yes, sir.
Q. Okay. In preparation for forming your opinions what did you do?

A. Well, I conducted an inspection at the Graham residence. I interviewed Mr. and Mrs. Graham. I reviewed records that were on file at D.H.E.C. for the Town of Latta sewer system. I researched some regulations and federal laws.

Q. Did you do any on site work?

A. I did an inspection at the Graham -- in and around the Graham residence. Yes, sir.

Q. All right. Describe for the jury what that inspection entailed?

A. Well, I went to the Graham residence. Mr. Graham showed me what had occurred. She me little -- water levels had risen up on his house on the date in question which I believe was June 5th and 6th of 2008. He gave me a chronological record that he had written about incidents that lead up to that event including prior complaints and what had happened since the incident.

I looked around his yard. I looked at the surrounding neighborhood. I went to some of the adjacent streets to get an idea of the layout of the sewer system. I believe that -- that's probably about it as far as the on site inspection went.

Q. In the course of that answer you said June 5th and 6th 2008. Would you check your notes and verify whether that's the correct date?

A. Maybe it's 2009. I believe it is 2009.
Q. Check your notes?
A. I will. I'm sorry. September 5th and 6th 2008.
Q. September not June?
A. Correct.
Q. Okay. When did you do your inspection and review?
A. I did that in May of -- my on site inspection was done in May of 2009.
Q. Okay. So your on site inspection was in May of 2009?
A. Yes.
Q. For events arising out of September 2008?
A. Correct.
Q. Okay. As a result of the work and analysis you described in your training, background and experience did you form any opinions with respect to the flooding and sewage discharge at the Graham's house?

MR. WREN: Objection, Your Honor. This witness is not been qualified as an expert.

MR. WILLIAMS: Your Honor, I would offer the witness up as an expert in mechanical engineering and environmental waste disposal.

MR. WREN: And, Judge, if I may just be allowed some quick voir dire.

THE COURT: Mechanical engineering and waste -- Mr. Williams?

MR. WILLIAMS: Pardon?

THE COURT: You're tendering him as an expert in mechanical engineering and what else?

MR. WILLIAMS: Waste disposal. Environmental waste disposal.

THE COURT: Environmental waste disposal?

MR. WILLIAMS: Yes, Your Honor.

THE COURT: Yes, sir, Ms. Wren. You may voir dire.

MR. WREN: Thank you, Judge.

THE COURT: That was environmental waste disposal?

MR. WILLIAMS: Yes, sir.

VOIR DIRE EXAMINATION

BY MR. WREN:

Q. Mr. Davis, how are you, sir?

A. I'm fine.

Q. Good. A moment ago Mr. Williams touched on a little bit of your background and information for the jury's benefit. Now, I understood and heard you to say you have an undergraduate degree in mechanical engineering, correct?

A. Correct.

Q. Mechanical engineering. Now, there are several different disciplines of engineering; is that right?

A. Yes, sir. At least four I guess that some lay person. Four traditional and there are other branches.

Q. Chemical and so forth, but importantly, civil engineer is another discipline, correct?
A. Correct, yes.
Q. Yours was in mechanical engineering, though; is that right?
A. Yes, sir.
Q. Civil engineers, they're the ones we typically think of that do things like road design and sewers and so forth, correct?
A. Yes, sir.
Q. Okay. Yours is mechanical engineering?
A. Yes, sir. That is correct.
Q. And to further your further studies took you off to get a Master's degree in business administration; is that right?
A. Correct.
Q. And I'm not insinuating. It has nothing to do with any knowledge or any work that you've done with regards to municipal waste water systems, right?
A. I would agree. Yes.
Q. Okay. Now, importantly, because you obviously heard what's been going on today with this situation. And when it comes to professional designing waster water systems you've not had any experience, professional or otherwise, in that realm; is that correct?

A. Correct. I didn't do the actual design, but I reviewed and approved designs prepared by professional engineers throughout the State and outside the state, actually, for municipalities, private developments and as an employee of a private business on their behalf as well.
Q. Okay. So you've seen them in some different capacities that you hadn't done yourself; is that right?
A. I have not put the pencil to the paper. That is correct.
Q. And the term I heard a moment ago, first two areas. And you heard the same thing I'm assuming I did. First of all, mechanic -- an expert realm of mechanical engineering. We've established, correct, that's not what roads and sewers? That's not the same area, correct?
A. Well, correct. But mechanical engineers commonly work in those fields as well.
Q. Okay. And then environmental waste disposing. That's not a term you typically use, is it?
A. I consider myself an environmental engineer as well as a mechanical engineer.
Q. Okay.
A. And I have experience in the field of waste disposal.
Q. All right. Well, and area -- perhaps an area of expertise would be an individual, whether they were a professional engineer or otherwise, was in the business of

designing and building and maintaining sanitary sewer systems; that would be an area of expertise, correct?

A. Yes.

Q. Okay. You don't have the background and in designing sanitary sewer systems though, do you?

A. I have the background in the design of them. I have not actually put the pen to the paper to do the physical design, but I have studied how they're designed. I've reviewed how they're designed. I approved how they're designed. And I have been the owner of facilities that -- for which facilities were designed of that type.

Q. And then you worked with D.H.E.C. back in the '70s, early '80s which was just reviewing plans?

A. And subsequent to that add Lay Law.

Q. Lay Law. All right, Mr. Davis, thank you very much.

MR. WREN: Judge, I don't have any objection at all to him being an expert in mechanical engineering. That's what his studies were in, but I hesitate, Your Honor, to see that he is an expert in this term we've designated as environmental waste disposal.

THE COURT: All right. I find him qualified as an expert in mechanical engineering and environmental -- as an environmental engineer in the field of waste disposal.

MR. WREN: Thank you, Judge.

MR. WILLIAMS: Thank you, Your Honor.

CONTINUED DIRECT EXAMINATION

BY MR. WILLIAMS:

Q. Applying your training and experience and expertise in those fields, mechanical and environmental engineering, as it relates to waste disposal have you formed any opinions about the events and the causes of those events at the Graham residence in Latta, South Carolina in September 2008?

A. Yes, sir, I have.

Q. Okay. And in forming those opinions have you applied the same type of investigation and analysis that would commonly be done by other persons with your qualification s and experience?

A. Yes.

Q. You didn't do anything new and unusual and different?

A. No, I did not.

Q. Okay. What opinions did -- have you formed that would assist the triers of fact here in determining what happened at the Graham residence in September 5th and 6th 2008 and what caused it?

A. Well, on those dates there was a tropical storm passing through the area that dumped quite a lot of rain in the area. So we had a lot of localized flooding. The flooding from the ditch adjacent to the Graham property. I think they call it the Main Town Ditch or something like

that. It's kind of the main drainage channel for that area. Flooding from that ditch flooded the yard and surrounding streets around the Graham residence on that occasion.

But they also experienced release of sewage from the sewage system or sewage collector lines which ran across their property and underneath their house releasing the contents of the sewer line into this flooded area. There was also release of sewage from manholes in the street that were bubbling up through the flooded street at that time.

But there were also some other events which occurred both before and after that which involved the release of sewer from the collection system for the sewer in the Town of Latta. There was record as a number of complaints about those releases. There are some investigations that were done by the field investigator at D.H.E.C. documenting high levels of fecal chloroform bacteria in the ditches around the -- abetting the Graham property.

And I've talked so long I forget what my question was. I'm not sure I've answered it completely.

Q. You've answered a lot, but let me go back and see if I can pick up the pieces of parts you didn't answer. How did you determine that the underground sewer collection line of the Town of Latta passes through the Graham

property and under their house?

A. Well, I never physically saw it under their house. I did -- I was able, because it's underground, and I didn't dig it up, but the sewer line is visible as it crosses the ditch behind their house. And you get an idea for the route that it's taking, and it's heading across their property towards their house.

Mr. Graham told me that he observed the pipe as it went under his house when it was dug up by a plumber that he had engaged, too, I think as a result of this incident. So he did indicate to me that it did pass under his house. I reviewed some records which lead me to believe that that was correct. Including some engineering work done by consultants on behalf of the Town of Latta to reroute that sewer line. And I believe for the purpose of removing it so it would not be under the house. Because if it's under the house, for one thing, when you have problems it affects the house. But for the other thing you really don't have good access for maintenance of that sewer line.

So for that reason it's not -- it's very unusual to find a residence built over a sewer line.

Q. Did you form an opinion or determine when that sewer line was constructed?

A. The best information I've had was most likely was built in 1924.

Q. And in part what did you base that opinion on?
A. That was based on responses to what the legal folks would call responses to interrogatories or information provided on behalf of the Town of Latta.
Q. Okay. What were sewer lines made out of back in 1924?
A. Most commonly they were terra cotta. What's called terra cotta or unfired, unblazed clay.
Q. What is the lifespan of a terra cotta pipe?
A. Well, terra cotta itself can last a long time. Clay pipe can last a long time. Typically what happens is the joints degrade and the typical life span of a sewer line of that type is 50 years.
Q. Were you able to find anything in the records of the Town of Latta that you examined to indicate that that line had ever been replaced with a more durable line or different materials?
A. No.
Q. Did you determine anything about the waste water collection system in the Town of Latta itself and especially think about it in terms of infiltration and exfiltration?
A. I did. I read the records, and confirm my suspicions that there was a significant amount of what we engineers call infiltration and inflow. That's water coming in from

the inside coming into the sewer line that's not intended. And it may be i need to explain those terms.

Q. Please do. That was my next question to you.

A. Infiltration and inflow are typically what happens to a sewer line as it ages over time. It will no longer be watertight. Particularly at things like joint. You get extraneous water coming in.

Infiltration is leaks at those joints and sewer lines that occur as a result of ground water rising up above the level of the sewer so that you've got ground water around the sewer line and it runs into the sewer line through those open joints or cracked joints or cracked pipe or things like that. So infiltration is ground water, and ground water rises and lowers with the seasons. So somewhat variable.

Inflow, however, is typically surface water or storm water that enters into the sewer line through things like a down spouts that somebody has illegally connected to the sanitary sewer through open holes in the pipe where surface water can run into it. Things of that type. So that's inflow. And, typically, inflow is very obvious if you look at the -- if you look at flow records at the Waste Water Treatment Plant that you will see on days when you've got a lot of rainfall. You will see a big spike in the flow.

Changes in flow due to infiltration are a little more gradual. So that's how we determine whether a system is subject to excessive infiltration and inflow.

Q. Did you form any opinion about the sewer; line under the Graham residence and its condition?

A. I did. It was my opinion that the problems created by that sewer line were largely in part due to excessive infiltration and inflow. And some of the evidence of that, if you look at the maintenance records provided by the Town, they frequently have to do what they call blow out the sewer lines. What that means is they take a high pressure hose and flush a clogged up sewer.

Sewers are designed so that they're self-flushing. They're on floats so that the water moves fast enough that it will carry the solids with it. But if you've got an aging sewer, like we have in Latta where you have this infiltration and inflow, when that water comes into the sewer it carries soil with it, dirt and things of that type which are very hard to keep in trained in the flow of sewage.

So that settle out and eventually blocks up the sewer and it requires that you go in frequently and flush it out with a high pressure hose. So the records indicate that they had to frequently do that in the Town of Latta which is another indication that they have problems with

infiltration inflow.

In addition to that the D.H.E.C. inspector made observations over the years that infiltration and inflow were problems that the Town needed to address. And that went back at least as far as five years before this incident.

Q. You said before this incident?

A. Yes, sir.

Q. Okay. You discussed something about some measurements of fecal count in the areas near the Graham residence?

A. Yes, sir.

Q. Tell the jury more about that, what you observed at the residence?

A. Well, these were samples collected by D.H.E.C, the D.H.E.C. Field Investigator. Samples of surface water from the streams. You can tell how clean the stream is by doing bacteriological sampling. Fecal chloroform is a particular kind of bacteria that's found only in the intestines of warm blooded animals like humans for example.

It can also be caused by live stock and things like that, but the high level of fecal chloroform bacteria in these ditches is an indication to me that -- another indication that these are leaking sewers in the Town which

you would expect from the age of these sewers. They're -- at the time of this incident they were some 85 years old when the normal life span of a sewer at about 50 years.

So that's the sort of thing you would expect from an old sewer line of that type.

Q. What problems arise out of a -- would you expect to arise out of a leaking sewer line under a residence?

A. Well, of course, if it leaks under the residence you know you have this contamination under the residence. Any contact with that contamination can lead to health problems. The wet conditions, of course, can lead to things like mold and damage to the structure itself.

Q. Are there any gases that would be associated with that sort of the thing?

A. Yes. What's call sewer gases. Principally, hydrogen sulfide. It's generated by sewage as it decays. And so you get sewer gas in the sewer line. For that reason sewer workers have to be very careful when they go into a manhole because they can become asphyxiated and die.

And I've investigated case like that where that's actually occurred. But point is sewer gases exist in sewer lines, and any time you have a break in the line those sewer gases can escape. And they're heavier than air so they tend to accumulate in low areas. And so they would tend to accumulate in a crawl space of a house, for

example.
Q. And I think you touched on this, but let he get you to elaborate on it. You indicate, I believe, that the Town of Latta was aware of the inflow infiltration, exfiltration problem?
A. Yes.
Q. How do you know they were aware?
A. Well, because the D.H.E.C. reports indicate and warn the Town that they need to investigate and take action on those issues.
Q. Based on what you observed in May of 2009 what work would need doing in order to keep the -- that type of problem from recurring in the future?
A. Well, with an old sewer line -- sewer system like this, you know, the options are you can either replace the lines that are determined to be bad or you can use a pressure grouting to inject a concrete like material in the joints of the pipe to seal it up or you can what's called slip lining the pipe. Put a -- typically, a plastic type liner material in the sewer system to seal off the leaks. So those are the options.
Q. See if I understand that last thing you said. I think it's slip line. Would that be like putting a little straw inside a big straw?
A. Yes, sir.

Q. Little straw that works inside a big straw that doesn't?
A. Right.
Q. Okay. In the absence of either replacing the pipe, pressure grouting to in effect block it out or to slip line it, would you expect the problem to recur or not?
A. It would only get worse if you don't do something about it.
Q. Would it make any sense to repair, replace, refurbish and put significant money into fixing up this house?
A. This house?
Q. Uh huh. Without any replacing of the pipe, pressure grouting or slip lining?

MR. WREN: You know, Your Honor, I believe it's beyond the expert's expertise. He's a mechanical engineer and waste water we agreed. Not construction of residences.

THE COURT: You need to rephrase the question.

BY MR. WILLIAMS:

Q. Is the problem going to go away if you don't replace the line, pressure grout it or slip line it?

MR. WREN: The same objection, Judge.

THE WITNESS: These are the method ---

THE COURT: On that question I'll overrule your objection.

MR. WREN: Thank you.

BY MR. WILLIAMS:

Q. You play answer.

A. Those are the methods available to deal with the problem.

Q. Any other method?

A. I can't think of any others.

Q. Okay. Thank you, sir. That's all I have. Answer Mr. Wren's questions.

THE COURT: Before we do that let's take an afternoon break. Ladies and gentlemen, I'm going to remind you the instructions I've given to you; that is not to begin to discuss this matter among yourselves as you have not heard all the evidence. Let's take an afternoon break, and we'll come back and we'll continue on.

(WHEREUPON, the jury panel was excused from the courtroom at 3:41 p.m.)

(WHEREUPON, Court is in recess at 3:42 p.m. and reconvenes at 3:54 p.m.)

THE COURT: Is there anything we need to take up before we bring in the jury?

MR. WILLIAMS: Nothing from the Plaintiff, Your Honor.

MR. WREN: Nothing from the Defendant, Your Honor.

THE COURT: You may ask the jury to come in, please.

(WHEREUPON, the jury panel enters the courtroom at 3:55 p.m.)

THE COURT: Yes, sir, Mr. Wren, you may proceed.

MR. WREN: Thank you, Your Honor. May it please the Court.

CROSS-EXAMINATION

BY MR. WREN:

Q. Good afternoon, Mr. Davis. How are you?

A. I'm fine.

Q. Well, good. Thank you for being here. Mr. Williams has been talking with you a little bit about some work you had done in or around looking at some things at the Graham's property. Now, your appearance in this case is on behalf of the Grahams as an expert witness; is that correct?

A. Yes. I was hired by their attorney.

Q. Okay. And your appearance here today, the work you've done in this matter, you're being compensated by them, correct? You're being paid to provide your opinions here today, correct?

A. Yes, sir. I sure hope so.

Q. By the Grahams; is that right?

A. I would assume so by the law firm.

Q. By the law firm, okay. And what you've done over the course of the last couple of years is look at some

documents. You've identified those in response to the questions earlier, gone to the property and had some -- a couple of conversations; is that correct? You looked -- you pursued, looked for some other documents, too, correct?

A. Yes, sir.

Q. D.H.E.C. and otherwise?

A. Yes.

Q. One thing I talked to you a moment ago, I know, in regards to your expertise in the areas you've been set forth for it. And honestly, you're A certified fire and explosion investigator; is that right? C.F.E.I.?

A. Correct.

Q. Okay. That has nothing to do with flooding, does it?

A. No.

Q. Okay. You've given expert opinions in that area, correct?

A. In that area?

Q. Yes, sir.

A. Actually, I have not. I've done some fire investigations, but I've never rendered an expert opinion.

Q. Perhaps I should say consulting and so forth?

A. I'm sorry.

Q. Perhaps I should have said consulting. Working with clients about those kinds of issues?

A. Yes.
Q. Okay. And in the coarse of what you've done here you've come up with some ideas and you've shared those here with myself and with the jury a moment ago. Now, one of the things that you touched upon a moment ago was it is your contention, based on things you reviewed, sewer line that we're talking about in the vicinity of the Graham's built in the 1920s; is that correct?
A. Yes, sir.
Q. All right. And you further made the statement that at that time pipes, as I understood you, and if I misphrase you or mischaracterize you correct me. I understood you to say pipes at that time were made of terra cotta; is that right?
A. Commonly made of terra cotta.
Q. Commonly made of terra cotta. And for the jury's benefit so there is no confusion or misunderstanding, terra cotta, if you've ever had a flower pot with the drain in it, pretty simple material, right?
A. Yes, sir.
Q. Clay. It's a clay type material?
A. Yes.
Q. It's, actually, you know, if it's not secured as in whether it's soil or somewhere like a clay pot you drop it it could shatter, right?

A. It will. Yes.
Q. Okay. And you've been to the Graham's property; is that right?
A. Yes, sir.
Q. You've been to that ditch behind their property; is that correct?
A. Yes.
Q. You've seen that sewer line back there, is that correct?
A. Yes.
Q. That's not terra cotta, is it?
A. Not across the creek. You don't put terra cotta pipes across creeks. You typically use cast iron, ductal iron, something more substantial than terra cotta in those situations.
Q. Agree. But it's not what you observed was not terra cotta, was it?
A. What I observed was not. I said -- nor have I said the pipe that is underneath their house terra cotta. What I said was typically pipes from that era, 1920s, were terra cotta pipes.
Q. Okay. The pipe -- the sewer line on the Graham's Property, you never stuck a shover in the ground to get down and see what it was, did you?
A. Did not. No, sir.

Q. You never laid your eyes on that pipe anywhere except for where it runs across that ditch?
A. Correct.
Q. And so when you say commonly used terra cotta at that time that's just an assumption on your part; is that right?
A. No, that's a fact.
Q. No, true. That's a fact that they did. What's down on that ground on the Graham's property you don't know because you didn't dig up and look at it, correct?
A. I did not look at it, correct.
Q. That would be a common way for someone that was inquisitive as to where a sewer line may be, what if any problems it has. A great way to determine that would be to dig down in the ground; is that right?
A. That would be one way.
Q. Okay. There's others, too, correct?
A. Yes.
Q. Okay. For location purposes you could run it -- you could do a G.I.S, correct? Use technology to determine the location of a line?
A. I don't think there are any tracer wires put on sewer lines in that era, so I wouldn't expect that you could find it that way. But other things you could do, you could run a camera through the line.

Q. You could run a camera. So you contend using G.P.S, G.I.S. technology you don't think you could determine the location of the line?
A. Using technology with tracer wires to locate sewer lines, no, I don't believe that they would have put a tracer line on a sewer line in that era.
Q. I'm not talking about the 1920s. I'm talking about today. I want to go up there today and do it. I'm not contending G.I.S. existed in the 1920s. Automobiles were fairly recent. My point is today you could do that, right?
A. You could locate the sewer line there if you chose to using current technology. Yes, sir.
Q. Yes, sir. That's my question. Regardless of how complex or difficult, and I contend it's not, but today I can answer that question where is that line; is that correct?
A. Yes.
Q. Okay. You have not done that?
A. I have not done that.
Q. You have not?
A. I have not.
Q. Okay. What make sure I understood you?
A. Okay.
Q. Furthermore, there are tests. There are

investigatory tests that you could do on a sewer line if you have concerns or questions about whether there is a problem with a given line; is that correct?

A. Sure. You can do infiltration/inflow analyses, sewer system evaluation surveys. You can run various kinds of tests to determine the condition of the line. You can use camera to investigate the internal condition of the sewer line.

Q. There are a number of options available, correct?

A. There are.

Q. Okay. You did not do any of those, did you?

A. No. But you can also look at other data which I did to make that determination.

Q. We'll talk about that in just a moment or two. But of those tests one of the important ones, one you could do would be a smoke test would be one, correct? If you want to look for infiltration and leaks you could do a smoke test?

A. You can do that.

Q. Just for the jury's benefit, and they may hopefully learn a little more about what this is. Smoke test, essentially, what you're doing is you are physically putting smoke though a line to determine whether if there is a hole or a problem or a break or leakage cause that smoke will come up, correct?

A. Correct.
Q. It will indicate to you where there is a problem?
A. Correct.
Q. You did not do that?
A. No.
Q. And other testing as you eluded to, analyses inflow, infiltration studies and so forth, those exist as well, correct?
A. Technologies?
Q. Yes, sir. The methods of investigating?
A. Certainly. All right.
Q. Okay. And, now, you did say you looked at some other things? You said you looked at some D.H.E.C. records, correct?
A. Correct.
Q. Now, you were in the courtroom just like we were a little bit earlier, I believe. And you correct me if I'm wrong, when a representative on behalf of D.H.E.C. testified; is that right?
A. No.
Q. Ms. Danielle Watson, you were not present?
A. No.
Q. You don't know what D.H.E.C. has to say in regards to the sewer line on the Graham's property then, do you?
A. I went over their records.

Q. Okay. Certainly, you would assume that a D.H.E.C. representative, a person familiar with the issue and with the property, would have privy to those same records, correct?
A. I would think so. Probably produce some of those records.
Q. Okay. And with respect to another topic you touched on. Now, this one I do know that you were present cause I had actually turned around a had seen you in the courtroom. With respect to mold, regardless, and I know that -- you tell me your thoughts on this, but if you're an expert in the environmental waste type stuff to the degree that it relates to this, all mold needs is a food source, moisture and temperature to grow, correct?
A. I'm not a mold expert, but I do know that that's true.
Q. Okay. Regardless of sewage or anything else, that's what it takes to have mold?
A. It has to have a food source, correct.
Q. And you also touched on a moment ago. Now, this one I will agree I think you're the only one that had come up with this, was that one of your opinions or thoughts on this matter is that you could have sewer gases underneath the Graham's residence; is that correct?
A. Yes, sir.

Q. All right. Now, if you have sewer gases in a controlled space you can easily determine and ascertain that they exist, correct?
A. At any point in time. Yes.
Q. Okay. And I'm no scientist. I'm no chemist. I got to assume one of those elements would be methane; is that right?
A. Yes.
Q. Easily detectible, correct?
A. Yes, sir.
Q. You can test for it, correct?
A. Yes, sir.
Q. You can conclusively determine its presence, correct?
A. Yes, sir.
Q. You did not do that here, did you?
A. No, I did not.
Q. Now, you had your deposition taken in this matter some ways back; is that right?
A. Yes, sir.
Q. And you were asked about some of these opinions that you shared with us here today; is that correct?
A. Yes.
Q. All right. Now, one of the things you had touched on a little bit earlier was the fact that the location of this sewer line, about exactly where it was. Now, as we

sit here today you're not entirely certain where that line is, are you?
A. No.
Q. Okay. And in fact when you were questioned you're not even sure, at the -- whenever the time it went in, 1920s as you related, whose responsibility it would have been to put in a recording of that line; is that correct?
A. Would you run that by me one more time?
Q. Yes, sir?
A. I'm not sure I understood that.
Q. Let me see if I can just state it a little bit better. Now, an easement, and the jury heard this a little bit ago; some language we came together trying to deal with this issue. Easement is a recorded legal instrument, is that right?
A. That's what my understanding is.
Q. Okay. And I'm not holding you out to be. You're not an expert in legal conclusions or anything?
A. Exactly.
Q. But that being what they are you would commonly deal we those residential, commericial property situations?
A. I would, yes.
Q. And have you dealt with that in your professional career?
A. I have.

Q. It's your understanding, correct, that typically the way the process works is a survey would note such an easement on the plat, correct?
A. Yes, sir.
Q. And a surveyor is a person holds a job just like anyone else, but their job though as a private employee is to go out and map and site property; tell you what the dimensions are and what's on the property; is that correct?
A. Yes, sir.
Q. Okay. And you further said that any such, once that's done and the easement locate or determined, that it would be recorded by the person selling the property; isn't that correct, is your experience?
A. Well, the owner of the property at the time the easement was award, correct?
Q. That's right. And in this situation with the Graham's property the owner of the property would have been the Toalers or the predecessor owner going way back to whenever this line was put in, correct?
A. Repeat that question for me, please.
Q. Yes, sir. In this situation the owner of that property would have been whoever it was back in the 1920s that owned that property where the Graham residence is?
A. I believe that was Mr. Bass.

Q. Correct. Okay. Going back some point in time. And as it stands, now, you've looked, correct, to try to determine exactly where this was, where -- whether there was an easement, whether there wasn't an easement, whether it was recorded, all that, correct?
A. I did.
Q. And those are real property records kept at the court house; is that right?
A. Typically, yes.
Q. Typically. And here as with every -- all 46 counties in South Carolina that would be -- locally, it would be here in the Dillon County Court House; is that right?
A. I would assume so.
Q. Okay. To the best of your knowledge, and that's separate from the Town of Latta? Town of Latta is 10, 12 miles down the way, correct?
A. Correct.
Q. Okay. From your investigation, what you looked at, you couldn't find it; is that right?
A. Well, I didn't personally look for it. I asked the attorney I was working for to determine whether such an easement existed.
Q. Okay. All right. And you did not have any other information other than what I just touched on with your understanding of how that process worked?

A. I did not have any further information on the existence of an easement or right of way until the Town provided the information through the interrogatories. They provided an old right of way document which presumably was recorded somewhere. But had not been transferred to property after it was subdivided.

Nor was it clear from the right of way document whether this line was even included. It was very general language that indicated the easement covered 3,600 feet across a 400 acre tract running parallel to the main ditch, the main drainage ditch for the Town. This line actually runs perpendicular to the ditch. So it's not clear to me whether it was even included in that easement.

But the fact is it was never transferred to subdivided property as it should have been.

Q. It was not clear. You're not sure?

A. I'm not -- I am not ---

Q. That's where we are, correct?

A. I am not.

Q. Okay. Now, you went on to say that the house, the Graham's residence, should not have been built over a sewer line; is that correct?

A. That's correct.

Q. All right. Now, to that point that would be the responsibility of the person who's digging out a

foundation and building that house, correct?
A. Well, that would be the responsibility of the owner to ascertain whether easements existed. There were none recorded. I'm not sure how he would have done that, but for whatever reason back in the day when this house was built, I think in the 1960's there was no recorded easement for this subdivided property.
And, apparently, there was no knowledge that the sewer line existed there.
Q. All right. And sewer lines don't just appear, correct?
A. No, they don't.
Q. Okay. And in fact the -- now, you contend the sewer line is underneath the Graham's house' is that right?
A. Mr. Graham indicated to me that it ran under his house. Yes.
Q. Okay. And as with any -- well, let me not say any. But most residences the -- when you flush the toilet, the commode in the house, it's connected to the sewer line; isn't it?
A. Correct.
Q. You have a service line which is the home owner's responsibility, correct?
A. It is.
Q. It goes out through and under the house to connect to

a sewer line at some point; is that right?
A. Correct.
Q. That would be the owner's responsibility, correct?
A. Yes, sir.
Q. Okay. But the thing is when yo flush it it's got to connect at some point to the sewer line, right?
A. Of course.
Q. All right. And for the property to use that Sewer line, correct? You tap into it?
A. The one that's under the house?
Q. Well ---
A. I don't know where it's connected.
Q. Okay. Fair enough. Your further opinion was that the Town's system is significantly influenced by infiltration and inflow, correct?
A. Yes, sir.
Q. I'm paraphrasing what you stated a moment ago?
A. You did it correctly.
Q. But just so we're clear I touched on all the types of testing, the mapping, location issues, all of that. You personally have not performed any of that?
A. No. Those are things the Town should have done.
Q. And you don't know if the Town's done them, do you?
A. Well, I do. Yes, I do.
Q. You do?

A. I do.
Q. Okay. If there is a leak in the sewer line at the Graham's residence, remember I asked you about smoke testing, things like that, you can easily determine that, can't you?
A. You can determine the presence of leaks through smoke testing, yes.
Q. Yes, sir. And if you can determine the location of a leak you can fix that problem; is that right?
A. Depends on what the problem is. Yeah, you can fix it. You can replace the sewer line, for example. I don't believe that it would be feasible to replace the sewer line where it exists. But instead you would have to move it to property where there is no structure.
Q. Well, that's an option, right?
A. That's on option. One in fact that was recommended by the Town's engineer.
Q. Indeed. Well, another thing is if you're actually able to identify and locate a leak is you can repair it, correct?
A. I'm sorry. Repeat that.
Q. If you identify and locate a leak you can repair it, correct?
A. A leak in what?
Q. In a pipe. It's as simple as that. A trench pipe

under someone's sink, something we can all relate to, right? If I've got a leak I can patch it?
A. If you can get to it to repair it.
Q. Well, you've got to locate it, right?
A. Correct.
Q. You haven't done that, have you?
A. I'm not repairing it.
Q. Well, yeah. Okay, then sir?
A. Why would I repair it?
Q. So you haven't done any of it?
A. No.
Q. Infiltration inflow analyses, sewer system evaluation surveys, very helpful tools. You have not reviewed them, have you, in regards to the sewer line in the vicinity of the Graham's residence?
A. No. I attempted to get those documents. Those documents were done some time back in the 1970's. I went to D.H.E.C. to get a copy. They were not there. Further inquiry indicated to me that they had been returned to, E.P.A., and thrown away under their record's retention policy. So they don't exist as far as the public entities go. They may exist in the Town records or in the records of their engineers, but I have not been provided with that information.
Q. Further, you don't have any knowledge that this sewer

line collapsed, do you?
A. Collapsed?
Q. Yes, sir.
A. No, I don't.
Q. That would be ---
A. To my knowledge it has not collapsed.
Q. All right. If it had you would be able to determine that, right? You would find the problem and be able to come up with some solution to fix it, right?
A. Not me, but somebody would.
Q. Somebody would. All right. You looked at F.E.M.A. flood maps with regards to the Graham residence, didn't you?
A. I did.
Q. Their property?
A. Yes, sir.
Q. This property is in the flood plain, isn't it?
A. At least in part. I don't know how much of their property it covers, but certainly the ditch abutting their property is in the flood plains.
Q. Now, F.E.M.A. -- I'll just quote the agencies. There are all these acronyms, of course, but Federal Emergency Whatever?
A. Management.
Q. Management, thank you. That's a commonly accepted

industry standard for determining whether or not a property is or is not in the flood plain, correct?
A. It's delineated, and what I mean by that it's a map. There is a line you can tell where the property is.
Q. Correct.
A. And establishes a federal program for insurance for those folks?
Q. And when you looked at it you at least will concede at least a part of that property is in the flood plain?
A. Yes.
Q. Something like a detailed survey with using that could determine that, too, correct?
A. I'm sorry.
Q. A detailed survey overlaying the flood plain could determine that, too, correct?
A. It could, yes.
Q. You did not do that?
A. No, I did not.
Q. All right. Don't have any opinion with regards to the Town's property rights in and of itself? Just simply what we talked about earlier without the fact that there is some non-clarity with what's recorded at the court house; is that correct?
A. The property rights with respect to the sewer line?
Q. Yes, sir. The Town's property rights.

A. Well, it was -- my information is it was put in by the City in 1924, and apparently, they've operated it since that point in time. So I assume it's there.
Q. Okay. September 2008, your research what you found out, and of course, you did identify that it was a very large storm event, correct?
A. Yes.
Q. Tropical Storm Hanna; is that right?
A. Correct.
Q. All right. Did you look at it as like a pretty significant rainfall occurred during that time period; is that correct?
A. Yes.
Q. Now, regardless of any thoughts you have with the inflow infiltration and whether there is leaks and waters getting into the sewer system, that storm, Tropical Storm Hanna, and large rain events, the Graham's property is going to flood there, isn't it?
A. I would expect so. Yes.
Q. And in fact ---
A. It did.
Q. --- it did. And if you have a flood you're going to have problems with things like moisture and water, correct?
A. Certainly.

Q. You stuck your head, at least, underneath the Graham's house, didn't you?
A. I did.
Q. The crawl space?
A. I did.
Q. Well, it's well below the grade, isn't it? Their crawl space?
A. You talking about the surrounding grade from the outside to the inside?
Q. The grade surrounding, for purposes of the jury, let me clarify. The ground around the residence, you look into that crawl space it's lower than the rest of the ground, isn't it?
A. I think it may be a little bit lower. Let me look at my photos, and I can verify that, but I believe that is the case. Slightly lower than the surrounding ground. I don't really have a good photograph, but my recollection is it is slightly below -- a few inches below the surrounding ground on the outside of the curtain wall.
Q. Very good. It is something that can be measured, correct, and determined if it is below grade in the crawl pace; isn't that right?
A. Well, you can pick grade at a certain point and measure another certain point and determine the difference surface.

Q. Well, I guess from my standpoint you don't have to be an engineer or any other occupation. You can take a tape measure and see if it's lower; is that right?
A. Sure, you can do that.
Q. Okay. Any of the things you looked at you didn't find any indication of backup or blockage with the sewer line at the Graham's property; is that correct?
A. It was not leaking at the time I was there. No?
Q. Okay. And with regards to the Town's sewer system you don't have any information, documents specific that the Town's sewer system violates any laws or applicable regulations with regards to its operation, do you?
A. Repeat that for me.
Q. With regards to the capacity for the sewer system in the Town of Latta and specific to where the Graham's residence is locate, you don't have any evidence that the Town's system violates any laws or regulations that would be applicable to sanitary sewer systems, do you?
A. Yes.
Q. Well, actually, you were questioned about that in your deposition, do you recall?
A. No.
Q. You do not recall that?
A. Maybe you can refresh my memory.
Q. Well, let's do it this way. What would your

contention be with regards to any violations or problems?
A. Well, I'm not sure what you're asking back then, but if your asking me whether the municipality operation of a municipal sewer system about -- in violation of any state or federal regulations or permits then it does. The record is -- has a lot of instance where that in fact has occurred with respect to the treatment process, the flow through the system, things of that type.
Q. Fair enough. My question now was probably far too broad because -- let's just go ahead and clarify. Things like the treatment plant has nothing to do with the Graham residence?
A. Sure. It does.
Q. Well, it does. I mean that's where the water is treated and where it goes, correct?
A. Yes, sir, it's supposed to. Most of it gets there. A lot of it leaks out before it gets there.
Q. Okay. And that goes to some of these issues with D.H.E.C's involvement and this infiltration issue and so forth, correct?
A. Correct.
Q. Okay. And that, again, witness testified. I thought you were here earlier today, but that where they have gone and they have cited the Town of Latta as with most municipalities for places where there are issues and

problems, correct? I'm not trying to act like that's not the case?

A. I would think so. Yes.

Q. Okay. And, now, you saw evidence where the Town of Latta also had responded to those problems and had them corrected; is that right?

A. Responded, I didn't -- could not verify whether their response had any positive or any action was taken to correct it, actually, but it was a report indicating this is what ought to be done. Never saw any evidence that that was in fact done.

Q. Fair enough into that point as far as the evidence of where the testing was done, where they located certain problems, specifically, what was done, that's just not information you're privy to? You just know some of that occurred, correct?

A. Yes.

Q. Fair enough. And so for this whole issue, as you concluded a little bit ago when Mr. Williams proposed fixing a problem, about relocating a line, or a new line or the pressure grinding thing we talked about, that's all because of issues which you would attribute to infiltration; is that right? Inflow and infiltration?

A. Well, the need to relocate the line is not solely because of the infiltration inflow problems, but because

the line is present under a structure where you can't get to it through proper maintenance. So.
Q. Okay.
A. So there is a need to move the line, but there is also a need to move the line because it been leaking under the house and creating those kinds of problems.
Q. Okay. So that issue about the location if it is under the house as you contend or understand that specific -- otherwise, your issues are with this infiltration thing we talked about, correct?
A. With respect to the damage that it caused, yes.
Q. Okay. And with that said that's assuming infiltration or leaking is occurring in the vicinity of the Graham residence, right?
A. No. The infiltration can be throughout the system, and in the fact probably is throughout the system. You know, every joint probably contributes somewhat to excess flows through the sewer line, excess soil getting into the sewer line, stopping it up, creating excess flows which go to the sewer treatment plant which limit its ability to properly operate. So the problem most likely occurs throughout the collection system because of the age of it.
Q. Using terms like 'most likely', you're an expert witness in this matter, for purposes of our jury, ladies and gentlemen of this jury, I want to be very clear, you

have not determined or located sources of infiltration inflow into this sewer system, have you?

A. No, I have not. I have only reviewed the records which indicate to me that it exists.

Q. Thank you, sir.

MR. WREN: I have no further questions.

MR. WILLIAMS: Please the Court.

REDIRECT EXAMINATION

BY MR. WILLIAMS:

Q. Mr. Davis, there is one known leak, and that's at a manhole out on Rice Street; isn't that right?

A. Well, I saw evidence of that. I mean that occurs in municipalities. You will from time to time get leaks, and you know, that one instance, you know, you couldn't say is indicative that the City is not properly maintaining their system.

What you can say, though, is that if you have on going problems over a period of time and the City -- and I understand that small municipalities are really strapped for cash. They can't really necessarily put a lot of money into these problems, but they are supposed to develop sewer user charges.

MR. WREN: Objection, Your Honor. This is clearly outside the witness' expertise as to operations of a municipal government.

THE WITNESS: I'd be glad to address that, if I could.

MR. WREN: My objection would be to expertise, Judge. I could explain municipalities as well.

THE COURT: I'll sustain that one unless there is a foundation laid.

MR. WREN: Thank you, Judge.

BY MR. WILLIAMS:

Q. Mr. Davis, what expertise if any do you have with respect to the operation of municipal water?

A. What I was referring to was sewer user charges.

MR. WREN: Your Honor, objection.

BY MR. WILLIAMS:

Q. My question is what expertise do you have in that area?

A. Well, when I was director of the Domestic Waste Water Division at D.H.E.C every municipality that applied for a federal grant, and most of them did, had to provide an adequate sewer user charge system adequate to operate and maintain the system and provide sufficient fundings to replace parts of the system that eventually wear out.

Q. And did your job entail reviewing, analyzing, reading that type of presentation?

A. It did.

MR. WILLIAMS: May the witness answer the question

now, Your Honor?

MR. WREN: Your Honor, the only thing, if I may briefly voir dire? He is going to be submitted as an expert in municipal -- I don't know what this area is called.

THE COURT: I think you need to specify a timeframe for when that work occurred.

MR. WILLIAMS: Let me just withdraw the question, Your Honor. It's peripheral at this point. Let me go on to something that Mr. Wren.. That is short for----

MR. WREN: It's obvious we worked together.

BY MR. WILLIAMS:

Q. --- that Mr. Wren asked you about. It's getting late in the day. With respect to an easement in whose interest is it to record an easement? The one who gets the easement or the one who gives up the easement?

A. Well, as a layman I'm not an attorney, but it seems to me that the person acquiring the easement who has the need to use the property for that specific purpose is the one who needs the document.

Q. And recording an easement does what as far as the public goes?

A. It puts everybody on notice that that property is reserved for a specific use to the exclusion of certain other uses.

Q. You didn't do a G.P.S, global positioning satellite, test to locate the Graham's sewer line, did you?
A. I did not.
Q. Or the Town of Latta's sewer line on the Graham's property?
A. No, you -- there has to be data input to access that sort of thing. I have no information as to whether that's ever been done for the Town of Latta sewer system. It may have been, but I'm not aware.
Q. You didn't do any of those things that Mr. Wren described?
A. I didn't feel I needed to.
Q. All right. And my question is why didn't you need to?
A. Well, I didn't feel I needed to because the information provided by Mr. Graham and the records that I reviewed indicated to me that, indeed, a problem existed. I knew the nature of the problem, what caused the problem. I didn't need to know exactly where the sewer line was or where exactly the leak from the sewer line was to know that the problem existed.
Q. That's all I have. Thank you.
MR. WILLIAMS: No further questions, Judge. Thank you. May the witness be excused?
THE COURT: Yes, sir. You may step down. You may be