

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

Alexander S. Macaulay, Presiding Judge Seventh Judicial Circuit

Case No. 2015-000392

Stoneledge at Lake Keowee Owners' Association, Inc.; C. Dan Carson; Jeffrey J. Dauler; Joan W. Davenport; Michael Furnari; Donna Furnari; Jessy B. Grasso; Nancy E. Grasso; Robert P. Hayes; Lucy H. Hayes; Ty Hix; Jennifer D. Hix; Paul W. Hund, III; Ruth E. Isaac; Michael D. Plourde; Mary Lou Plourde; Carol C. Pope; Steven B. Taylor; Bette J. Taylor; and Robert White, Individually and on Behalf of all others similarly situated, Respondents,

v.

IMK Development Co., LLC; Keowee Townhouses, LLC; Ludwig Corporation, LLC; SDI Funding, LLC; Medallion at Keowee, LLC; Integrys Keowee Development, LLC; Marick Home Builders, LLC; Bostic Brothers Construction, Inc.; Miller/Player & Associates; Bradford D. Seckinger; John Ludwig; William Cox; Larry D. Lollis; Rick Thoennes; M Group Construction and Development, LLC; Mel Morris; Joe Bostic; Jeff Bostic; Clear View Construction, LLC; Michael Franz; MHC Contractors; Miguel Porras Choncoas; Builders First Source-Southeast Group; Mike Green; Southern Concrete Specialties; Carl Compton d/b/a Compton Enterprise a/k/a Compton Enterprises; Gunter Heating & Air; All Pro Heating, A/C & Refrigeration, LLC; Coleman Waterproofing; Heyward Electrical Services, Inc.; Tinsley Electrical, LLC; Hutch N Son Construction, Inc.; Upstate Utilities, Inc.' Southern Basements; Carl Catoe Construction, Inc; T.G. Construction, LLC; Delfino Construction; Francisco Javier Zarate d/b/a Zarate Construction; Alejandro Avalos Cruz; Herberto Acros Hernandez; Martin Hernandez-Aviles; Francisco Villalobos Lopez; Ambrosio Martinez-Ramirez; Ester Moran Mentado; Socorro Castillo Montel; MJG Construction and Homebuilders, Inc. d/b/a MJG Construction; KMAC of the Carolinas, Inc.; Eufacio Garcia; Everado Jarmamillio; Garcia Parra Insulation, Inc.; J&J Construction; Jose Nino; Jose Manuel Garcia; Eason Construction, Inc.; Vincent Morales d/b/a Morales Masonry and Miller/Player & Associates, Defendants

Of Defendants, Marick Home Builders, LLC and Rick Thoennes Appellants,

RECORD ON APPEAL
Volume I of VII

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009-CP-37-00652

Stoneledge at Lake Keowee Owners Association

IMK Development Co, LLC, et al

Inc, et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	\$N/A
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Alexander S. Macaulay
Circuit Court Judge

2063
Judge Code

08/28/2013
Date

For Clerk of Court Office Use Only

This judgment was entered on the 28th day of August, 2013 and a copy mailed first class or placed in the appropriate attorney's box on this 29th day of August, 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Robert T. Lyles, Jr.

Michael B. T. Wilkes

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beverly H. Whitfield

CLERK OF COURT

Court Reporter:

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON
PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

STONELEDGE AT LAKE KEOWEE OWNERS'
ASSOCIATION, INC., C. DAN CARSON, JEFFREY
J. DAULER, JOAN W. DAVENPORT, MICHAEL
FURNARI, DONNA FURNARI, JESSY B. GRASSO,
NANCY E. GRASSO, ROBERT P. HAYES, LUCY
H. HAYES, TY HIX, JENNIFER D. HIX, PAUL W.
HUND, III, RUTH E. ISAAC, MICHAEL D.
PLOURDE, MARY LOU PLOURDE, CAROL C.
POPE, STEVEN B. TAYLOR, BETTE J. TAYLOR,
AND ROBERT WHITE, INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS SIMILARLY SITUATED

Plaintiffs,

vs.

IMK DEVELOPMENT Co., LLC, KEOWEE
TOWNHOUSES, LLC, LUDWIG CORPORATION,
LLC, SDI FUNDING, LLC, MEDALLION AT
KEOWEE, LLC, BRADFORD D. SECKINGER,
JOHN LUDWIG, LARRY D. LOLLIS, WILLIAM C.
COX, INTEGRYS KEOWEE DEVELOPMENT, LLC,
MARICK HOME BUILDERS, LLC, M GROUP
CONSTRUCTION AND DEVELOPMENT, LLC,
BOSTIC BROTHERS CONSTRUCTION, INC., RICK
THOENNES, MEL MORRIS, JOE BOSTIC, JEFF
BOSTIC, CLEAR VIEW CONSTRUCTION, LLC,
MICHAEL FRANZ, MHC CONTRACTORS,
MIGUEL PORRAS CHONCOAS, BUILDERS FIRST
SOURCE SOUTHEAST GROUP, MIKE GREEN,
SOUTHERN CONCRETE SPECIALTIES, CARL
COMPTON D/B/A COMPTON ENTERPRIZE A/K/A
COMPTON ENTERPRISES, GUNTER HEATING &
AIR, ALL PRO HEATING, A/C &
REFRIGERATION, LLC, COLEMAN
WATERPROOFING, HEYWARD ELECTRICAL
SERVICES, INC., TINSLEY ELECTRICAL, LLC,
HUTCH N SON CONSTRUCTION, INC., CARL
CATOE CONSTRUCTION, INC., T.G.
CONSTRUCTION, LLC, DELFINO
CONSTRUCTION, FRANCISCO JAVIER ZARATE
D/B/A ZARATE CONSTRUCTION, ALEJANDRO

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT
CASE NUMBER: 2009-CP-37-0652

**ORDER GRANTING DEFENDANTS
CLEAR VIEW CONSTRUCTION, LLC
AND MICHAEL FRANZ'S MOTION
FOR SEPARATE TRIALS AND
SCHEDULING ORDER**

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FILED
BEVERLY H. WHITEFIELD
CLERK OF COURT

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(hereinafter "Plaintiffs"), have brought claims against numerous parties involved in the development, design, construction, and sale of the townhomes at Stoneledge.

Phase I of Stoneledge was developed by Keowee Townhouses, LLC. Miller/Player & Associates ("MPA") prepared the architectural drawings for Phase I construction and determined that the 2000 International Residential Code applied to Phase I construction. The majority of Phase I construction was permitted by general contractor Bostic Brothers Construction ("Bostic"), and constructed utilizing Bostic's subcontractors, from August, 2002 to June, 2005. Certificates of Occupancy were issued for Phase I townhomes 5-8, 10, 18-19, 21-23, and 36-37 from August 29, 2003 to June 6, 2005.

Phase II of Stoneledge was developed by IMK Development Co. ("IMK"), a company owned in part by Marick Home Builders, LLC ("Marick"), the general contractor for Phase II. MPA also prepared architectural drawings for Phase II and determined that the 2003 International Residential Code applied to Phase II construction. Marick utilized completely different subcontractors for Phase II construction than had been used by Bostic in Phase I. Certificates of Occupancy for all Phase II townhomes were issued from December, 2006 through August, 2009.

Clear View was a limited liability company dissolved on March 10, 2009. Michael Franz was a member of Clear View prior to dissolution and termination. Clear View was one of Marick's subcontractors, providing services related to the stonework for townhomes in Phase II from July, 2006 through August, 2007. Clear View Defendants' involvement in the construction of Stoneledge, much like other subcontractor defendants, was limited to solely one phase of the project.

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Clear View Defendants moved for separate trials of the claims concerning Phase I and Phase II pursuant to Rules 18(c) and 42(b) of the South Carolina Rules of Civil Procedure. For the reasons stated below, Clear View Defendants' Motion is granted; and the parties shall abide by the Scheduling Order incorporated herein. Subject to the provisions of the included Scheduling Order, a trial of Phase I claims shall proceed on October 28, 2013.

STANDARD FOR ORDERING SEPARATE TRIALS

Trial judges are afforded broad discretion to bifurcate issues and order separate trials. *See Giles v. Parker*, 304 S.C. 69, 403 S.E.2d 130 (Ct. App. 1991). Rule 18(c) of the South Carolina Rules of Civil Procedure allows the Court to make such orders as will prevent a party from being delayed or put to unnecessary expense by the joinder of independent or disassociated claims, and may order separate trials to prevent prejudice. Similarly, Rule 42(b) of the South Carolina Rules of Civil Procedure provides that the Court "in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counter-claim or any third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues." A single trial of all issues in a case in a single proceeding is not a mode of trial to which parties are entitled as a matter of right. *Flagstar Corp., v. Royal Surplus Lines*, 341 S.C. 68, 73, 533 S.E.2d 331, 333 (2000).

ANALYSIS

Clear View Defendants moved for separate trials on the grounds that separate trials for the claims concerning townhomes in Phase I and Phase II will prevent prejudice and unnecessary expense, which Clear View Defendants and other similarly situated parties will suffer in a combined trial of both phases of construction. After carefully considering the factual

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circumstances and legal issues pertaining to Clear View Defendants' Motion, this Court exercises the discretion provided to it by Rules 18(c) and 42(b) of the South Carolina Rules of Civil Procedure to order separate trials for Phase I and Phase II.

The alleged construction defects at issue in this matter will require extensive testimony and evidence regarding experts' investigations, repair estimates, the parties' scope of work, and alleged damages. Phase I and Phase II were constructed by different contractors and subcontractors, which will present a jury with the difficult task of following and analyzing the evidence as it applies to each party's involvement in the project. Separate trials of the two phases will eliminate the potential for defendants to be prejudiced should a jury confuse and incorrectly apply evidence concerning Phase I townhomes to parties who performed work solely on Phase II townhomes, or vice versa.

Further complicating a single trial for Phase I and Phase II could be the application of separate liability frameworks. It appears that all Phase II townhomes did not reach substantial completion until after July 1, 2005; if so, S.C. Code Ann. § 15-38-15 (1976) applies to Phase II. Under S.C. Code Ann. § 15-38-15, joint and several liability will not apply to claims against Phase II defendants, who are not found to be more than fifty percent at fault for the same damages. S.C. Code Ann. § 15-38-15 will not apply to claims concerning a number of Phase I townhomes for which Certificates of Occupancy were issued before July 1, 2005.

A single trial of all claims concerning Phase I and Phase II will require lengthy testimony from numerous witnesses. A single trial will subject parties such as Clear View Defendants to the unnecessary expense of participating in trial during the presentation of evidence concerning Phase I development and construction, in which they had no involvement. Furthermore, a single trial probably cannot be completed during the currently scheduled two-week term of court

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commencing October 28, 2013. Given the distinctions between Phase I and Phase II, separate trials for each phase will not result in injustice. *See Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 533 S.E.2d 331 (2000).

Finally, this Court notes that Marick has appealed four (4) orders granting summary judgment to a number of its subcontractors on Marick's cross-claims concerning Phase II construction. Marick's noticed its first appeal on October 12, 2012 and subsequently appealed the remaining orders on June 6, 2013. These appeals concern solely Phase II issues and claims; therefore, as Plaintiffs suggested to the Court in their Brief in Response to Marick's Request for Stay filed with the Court on October 29, 2012, a Phase I trial may proceed unimpeded by appeals concerning Phase II. This court does not rule herein on whether Phase II proceedings are stayed or otherwise affected by Marick's appeal.

Based upon the information presented to the Court and a review of the applicable law, this Court finds that separate trials for the claims concerning Phase I and Phase II will serve the purposes of Rules 18(c) and 42(b), SCRPC.

The Court hereby grants Clear View Defendants' Motion for Separate Trials of claims concerning Phase I and Phase II of Stoneledge. The parties are hereby ordered to comply with the Scheduling Order incorporated as part of this Order below.

SCHEDULING ORDER

A. Phase I Trial

The trial of Phase I claims will proceed on October 28, 2013. This order amends and replaces the May 9, 2013 Third Amended Scheduling Order. The parties to the Phase I trial shall abide by the following deadlines:

1. All dispositive motions shall be filed by: September 21, 2013;

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2. Pre-trial briefs and voir dire forwarded to trial judge by: October 7, 2013;
3. Trial readiness conference with trial judge conducted by: October 8, 2013;
4. Witness and exhibit lists exchange and motions in limine by: October 21, 2013;
5. Counsels' exhibit conference conducted by: October 23, 2013;
6. Exhibits pre-marked and a complete list provided to Clerk by: October 25, 2013; and
7. Trial Date: October 28, 2013.

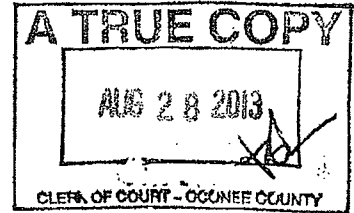
B. Phase II Trial

The trial of Phase II claims will proceed not before February 1, 2014; unless all Phase I claims are dismissed on or before September 2, 2013. If all Phase I claims are dismissed by September 2, 2013, the trial of Phase II claims will commence on October 28, 2013, and the Phase II parties shall abide by the Phase I Scheduling Order stated above. If all Phase I claims are not dismissed by September 2, 2013 the Phase II parties shall abide by the following deadlines, which shall be established after Phase II has been set for trial on or after February 1, 2014:

1. All dispositive motions shall be filed by: January 3, 2014;
2. Pre-trial briefs and voir dire forwarded to trial judge by: Fifteen Days Before Trial;
3. Trial readiness conference with trial judge conducted by: Fourteen Days Before Trial;
4. Witness and exhibit lists exchange and motions in limine by: Seven Days Before Trial;
5. Counsels' exhibit conference conducted by: Five Days Before Trial;
6. Exhibits pre-marked and a complete list provided to Clerk by: Three Days Before Trial; and
7. Specially set Trial Not Before: February 1, 2014.

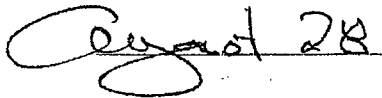
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A.V.

IT IS SO ORDERED.




Judge Alexander S. Macaulay

Walhalla, South Carolina

 August 28, 2013.

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2013 AUG 28 P 3:35

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009-CP-37-00652

FILED OCT 24 2013
BEVERLY H. WHITFIELD
CLERK OF COURT

Stoneledge at Lake Keowee Owners Association
Inc, et al

IMK Development Co LLC, et al

2013 OCT 29 AM 8 45

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court;

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	\$N/A
		\$
		\$

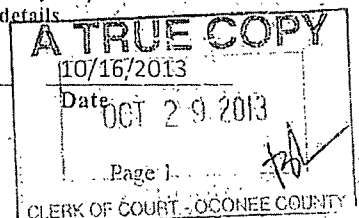
If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

s/Alexander S. Macaulay
Circuit Court Judge

2063
Judge Code

SCRPC Form 4C (03/2013)



00011

For Clerk of Court Office Use Only

This judgment was entered on the 29th day of October, 2013 and a copy mailed first class or placed in the appropriate attorney's box on this 29th day of October, 2013 to attorneys of record or to parties (when appearing pro se) as follows:

FILED 00007110
BEVERLY H. WHITFIELD
CLERK OF COURT

2013 OCT 29 AM 8 45

Robert T. Lyles

Jason M. Imhoff

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beverly H. Whitfield

CLERK OF COURT

Court Reporter: N/A

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON
PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT
CASE NUMBER: 2009-CP-37-0652

STONELEDGE AT LAKE KEOWEE OWNERS'
ASSOCIATION, INC., C. DAN CARSON, JEFFREY
J. DAULER, JOAN W. DAVENPORT, MICHAEL
FURNARI, DONNA FURNARI, JESSY B. GRASSO,
NANCY E. GRASSO, ROBERT P. HAYES, LUCY
H. HAYES, TY HIX, JENNIFER D. HIX, PAUL W.
HUND, III, RUTH E. ISAAC, MICHAEL D.
PLOURDE, MARY LOU PLOURDE, CAROL C.
POPE, STEVEN B. TAYLOR, BETTE J. TAYLOR,
AND ROBERT WHITE, INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS SIMILARLY SITUATED

Plaintiffs.

vs.

IMK DEVELOPMENT CO., LLC, KEOWEE
TOWNHOUSES, LLC, LUDWIG CORPORATION,
LLC, SDI FUNDING, LLC, MEDALLION AT
KEOWEE, LLC, BRADFORD D. SECKINGER,
JOHN LUDWIG, LARRY D. LOLLIS, WILLIAM C.
COX, INTEGRYS KEOWEE DEVELOPMENT, LLC,
MARICK HOME BUILDERS, LLC, M GROUP
CONSTRUCTION AND DEVELOPMENT, LLC,
BOSTIC BROTHERS CONSTRUCTION, INC., RICK
THOENNES, MEL MORRIS, JOE BOSTIC, JEFF
BOSTIC, CLEAR VIEW CONSTRUCTION, LLC,
MICHAEL FRANZ, MHC CONTRACTORS,
MIGUEL PORRAS CHONCOAS, BUILDERS FIRST
SOURCE SOUTHEAST GROUP, MIKE GREEN,
SOUTHERN CONCRETE SPECIALTIES, CARL
COMPTON D/B/A COMPTON ENTERPRIZE A/K/A
COMPTON ENTERPRISES, GUNTER HEATING &
AIR, ALL PRO HEATING, A/C &
REFRIGERATION, LLC, COLEMAN
WATERPROOFING, HEYWARD ELECTRICAL
SERVICES, INC., TINSLEY ELECTRICAL, LLC,
HUTCH N SON CONSTRUCTION, INC., CARL
CATOE CONSTRUCTION, INC., T.G.
CONSTRUCTION, LLC, DELFINO
CONSTRUCTION, FRANCISCO JAVIER ZARATE
D/B/A ZARATE CONSTRUCTION, ALEJANDRO
AVALOS CRUZ, HERBERTO ACROS HERNANDEZ,
MARTIN HERNANDEZ-AVILES, FRANCISCO
VILLALOBOS LOPEZ, AMBROSIO MARTINEZ-

ORDER GRANTING PARTIAL SUMMARY
JUDGMENT FOR IMK DEVELOPMENT
CO., MARICK HOME BUILDERS, LLC.
AND RICK THOENNES AGAINST
PLAINTIFFS

FILED 2009 OCT 29 10:30
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D.

RAMIREZ, ESTER MORAN, MENTADO, SOCORRO)
CASTILLO MONTEL, UPSTATE UTILITIES, INC.,)
SOUTHERN BASEMENTS, INC., MJG)
CONSTRUCTION AND HOMEBUILDERS, INC.)
D/B/A MJG CONSTRUCTION, KMAC, INC.,)
D/B/A KMAC NORTH CAROLINA, EUFACIO)
GARCIA, EVERADO JARMAMILLO, GARCIA)
PARRA INSULATION, INC., J&J CONSTRUCTION,)
JOSE NINO, JOSE MANUEL GARCIA, EASON)
CONSTRUCTION, INC., AND VINCENT MORALES)
D/B/A MORALES MASONRY, MILLER/PLAYER &)
ASSOCIATES,)

Defendants,)

BOSTIC CONSTRUCTION, INC.)

Third-Party Plaintiffs,)

vs.)

SOUTHERN STONE, INC. AND BUCK SMITH)
CONSTRUCTION,)

Third-Party Defendants.)

This matter came before the Court on September 23, 2013 by way of Motion for partial Summary Judgment, as to the breach of warranty of habitability claim asserted against IMK Development Co., LLC ("IMK"), Marick Home Builders, LLC ("Marick") and Rick Thoennes ("Thoennes")(collectively "Defendants"), by Stoneledge at Lake Keowee Owners' Association, Inc. (hereinafter "SOA"), C. Dan Carson (hereinafter "Carson"), Jeffrey J. Dauler (hereinafter "Dauler"), Joan W. Davenport (hereinafter "Davenport"), Michael and Donna Furnari (hereinafter "Furnari"), Jessy and Nancy E. Grasso (hereinafter "Grasso"), Robert P. and Lucy H. Hayes (hereinafter "Hayes"), Ty Hix and Jennifer D. Hix (hereinafter "Hix"), Paul W. Hund, III (hereinafter "Hund"), Ruth E. Isaac (hereinafter "Isaac"), Michael D. and Mary Lou Plourde (hereinafter "Plourde"), Carol C. Pope (hereinafter "Pope"), Steven B. and Bette J. Taylor (hereinafter "Taylor"), and Robert White (hereinafter "White") (hereinafter collectively "Plaintiffs").

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For the reasons set forth below, the motion is granted.

PROCEDURE/FACTS

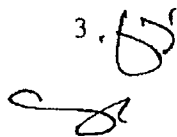
Stoneledge at Lake Keowee (hereinafter "Stoneledge" or "subject property") is an 80-unit lakefront townhome development located in West Union, South Carolina along the shores of Lake Keowee. Stoneledge was constructed in two separate phases. Construction of phase I at Stoneledge began in 2003. When the project began, the developer was Keowee Townhomes, LLC (hereinafter "Keowee") and the general contractor was Bostic Brothers Construction, Inc. (hereinafter "Bostic Brothers"). Bostic Brothers, along with numerous phase I subcontractors hired by Bostic Brothers, completed the exteriors of all 37 phase I units. The exteriors of the units in Phase I are the construction components at issue in this litigation.

In 2005, Keowee transferred subject property to IMK Development, LLC (hereinafter "IMK"). Marick Home Builders, LLC was hired by IMK as the general contractor on Phase I to finish the interiors of units in Phase I. Marick performed limited warranty work to the exterior of units; however, the exteriors of the Phase I units were completed at the time of the transfer from Keowee to IMK. Marick was not the general contractor for the at issue exterior components in this litigation.

Plaintiff's Complaint, based upon Marick's association with IMK, alleges that Marick has developer liability associated with the units located in phase I that were ultimately sold to end-users under a breach of warranty of habitability cause of action. Assuming this association does create liability for Marick, which Marick does not admit, the individual purchasers of Phase I units control only the interiors of these units. The exterior at issue components are controlled by the SOA. No named Phase I individual Plaintiffs purchased their units from IMK or Marick.

STANDARD OF REVIEW

Rule 56 of the South Carolina Rules of Civil Procedure requires that summary judgment be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with

3. 

the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." SCRC 56(c). *Tupper v. Dorchester County*, 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997).

DISCUSSION

The SOA may not maintain an action against Marick for Breach of Warranty of Habitability because the SOA did not purchase any units. Additionally, no individually named Plaintiffs purchased their units from Defendants, and are thus barred from maintaining an action against Marick for the breach of warranty of habitability for the interiors of their units.

The warranty of habitability arises or springs from the sale of the home. Kennedy v. Columbia Lumber and Mfg. Co., Inc., 299 S.C. 335, 384 S.E.2d 730 (1989). See Lane v. Trenholm Bldg. Co., 267 S.C. 497, 229 S.E.2d 728 (1976); and Arvai v. Shaw, 289 S.C. 161, 34 S.E.2d 715 (1986). An implied warranty of workmanlike service is distinct from the implied warranty of habitability. Id. The warranty of habitability springs from the sale. The determining factor is not whether the defendant actually builds the defective house, but that he places it, by the initial sale, into the stream of commerce. Kirkman v. Parex, Inc., 369 S.C. 477, 483, 632 S.E.2d 854, 857 (2006).

According to the deposition testimony of Phase I individual Plaintiffs submitted in Defendants' memorandum in support of this Motion, none of the individually named Plaintiffs owning unit in Phase I purchased their unit from Marick. Accordingly, Marick is entitled to summary judgment on the breach of warranty of habitability claims since Marick did not sell the named individual Plaintiffs their units. The SOA may not maintain an action against Marick for the breach of warranty of habitability since the SOA never purchased the units. Marick's Motion for Summary against Plaintiffs on the breach of warranty of habitability claim is therefore granted.

CONCLUSION

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[Signature]

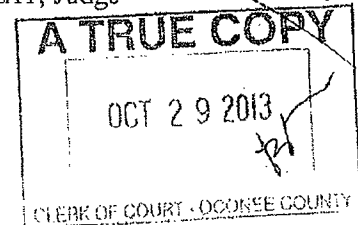
Based on the foregoing, Marick is entitled to summary judgment regarding Plaintiffs' claim for breach of warranty of habitability.

It is so ordered.

Walhalla, South Carolina
October 16, 2013



ALEXANDER S. MACAULAY, Judge



FILED OCT 29 2013
CLERK OF COURT
2013 OCT 29 AM 8 45

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009-CP-37-00652

Stoneledge at Lake Keowee Owners Association
Inc, et al

IMK Development Co LLC, et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	\$N/A
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

s/Alexander S. Macaulay

2063

01/21/2015

Circuit Court Judge

Judge Code

Date

SCRPC Form 4C (03/2013)

Copies to:

Atty (P) 12/16 (D) 12/16
 CSS 12/16 Other 12/16
 Mailed 12/16 Boxed 12/16 handed 12/16

Page 1



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For Clerk of Court Office Use Only

This judgment was entered on the 22nd day of January, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this 22nd day of January, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Robert T. Lyles

Jason M. Imhoff

Cynthia Buck Brown

Alan R. Belcher

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beverly H. Whitfield

CLERK OF COURT

Court Reporter: N/A

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT
CASE NUMBER: 2009-CP-37-0652

STONELEDGE AT LAKE KEOWEE OWNERS'
ASSOCIATION, INC., C. DAN CARSON, JEFFREY
J. DAULER, JOAN W. DAVENPORT, MICHAEL
FURNARI, DONNA FURNARI, JESSY B. GRASSO,
NANCY E. GRASSO, ROBERT P. HAYES, LUCY
H. HAYES, TY HIX, JENNIFER D. HIX, PAUL W.
HUND, III, RUTH E. ISAAC, MICHAEL D.
PLOURDE, MARY LOU PLOURDE, CAROL C.
POPE, STEVEN B. TAYLOR, BETTE J. TAYLOR,
AND ROBERT WHITE, INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS SIMILARLY SITUATED

Plaintiffs,

vs.

IMK DEVELOPMENT CO., LLC, KEOWEE
TOWNHOUSES, LLC, LUDWIG CORPORATION,
LLC, SDI FUNDING, LLC, MEDALLION AT
KEOWEE, LLC, INTEGRYS KEOWEE
DEVELOPMENT, LLC, MARICK HOME
BUILDERS, LLC, BOSTIC BROTHERS
CONSTRUCTION, INC., MILLER/PLAYER &
ASSOCIATES, JOHN LUDWIG, ., CLEAR VIEW
CONSTRUCTION, LLC, MICHAEL FRANZ, MHC
CONTRACTORS, MIGUEL PORRAS CHONCOAS,
BUILDERS FIRST SOURCE SOUTHEAST GROUP,
MIKE GREEN, SOUTHERN CONCRETE
SPECIALTIES, CARL COMPTON D/B/A COMPTON
ENTERPRIZE A/K/A COMPTON ENTERPRISES,
GUNTER HEATING & AIR, ALL PRO HEATING,
A/C & REFRIGERATION, LLC, COLEMAN
WATERPROOFING, HEYWARD ELECTRICAL
SERVICES, INC., TINSLEY ELECTRICAL, LLC,
HUTCH N SON CONSTRUCTION, INC., CARL
CATOE CONSTRUCTION, INC., T.G.
CONSTRUCTION, LLC, DELFINO
CONSTRUCTION, FRANCISCO JAVIER ZARATE
D/B/A ZARATE CONSTRUCTION, ALEJANDRO
AVALOS CRUZ, HERBERTO ACROS
HERNANDEZ, MARTIN HERNANDEZ-AVILES,
FRANCISCO VILLALOBOS LOPEZ, AMBROSIO
MARTINEZ-RAMIREZ, ESTER MORAN
MENTADO, SOCORRO CASTILLO MONTEL,

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2015 JAN 22 PM 2 01

ORDER DENYING DEFENDANTS'
POST-TRIAL MOTIONS

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UPSTATE UTILITIES, INC., MJG CONSTRUCTION)
AND HOMEBUILDERS, INC. D/B/A MJG)
CONSTRUCTION, KMAC INC. D/B/A KMAC)
NORTH CAROLINA, EUFACIO GARCIA,)
EVERADO JARMAMILLO, GARCIA PARRA)
INSULATION, INC., J&J CONSTRUCTION, JOSE)
NINO, JOSE MANUEL GARCIA, EASON)
CONSTRUCTION, INC., AND VINCENT MORALES)
D/B/A MORALES MASONRY,)

Defendants;

BOSTIC CONSTRUCTION, INC.,

Third-Party Plaintiff

vs.

SOUTHERN STONE, INC., AND BUCK
SMITH CONSTRUCTION,

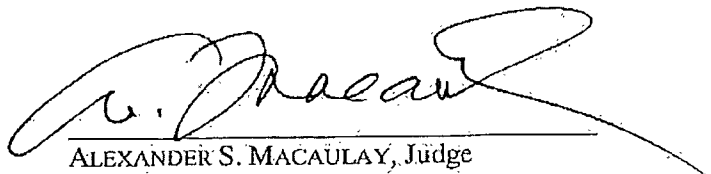
Third-Party Defendants.

FILED O'CONNOR, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2015 JAN 22 PM 2 01

Defendants Marick Home Builders, LLC, Rick Thoennes, IMK Development Co., LLC, Integrays Keowee, LLC, William C. Cox, and Larry D. Lollis timely made post-trial motions including motions for JNOV pursuant to Rule 50; Alter/Amend; New Trial, New Trial Absolute, New Trial Nisi Remittitur, Set off, and Election of Remedies.

After careful consideration of the record, along with the and filings and able arguments of Counsel, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or fact not appropriately considered. Accordingly, the Defendants' Motions, pursuant to Rules 50 and 59, SCRCP, are hereby DENIED.

AND, IT IS SO ORDERED.


ALEXANDER S. MACAULAY, Judge

Walhalla, South Carolina
January 21, 2015

STATE OF SOUTH CAROLINA)

COUNTY OF OCONEE)

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT
CASE NUMBER: 2009-CP-37-0652

STONELEDGE AT LAKE KEOWEE OWNERS'
ASSOCIATION, INC., C. DAN CARSON, JEFFREY
J. DAULER, JOAN W. DAVENPORT, MICHAEL
FURNARI, DONNA FURNARI, JESSY B. GRASSO,
NANCY E. GRASSO, ROBERT P. HAYES, LUCY
H. HAYES, TY HIX, JENNIFER D. HIX, PAUL W.
HUND, III, RUTH E. ISAAC, MICHAEL D.
PLOURDE, MARY LOU PLOURDE, CAROL C.
POPE, STEVEN B. TAYLOR, BETTE J. TAYLOR,
AND ROBERT WHITE, INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS SIMILARLY SITUATED)

Plaintiffs,)

vs.)

IMK DEVELOPMENT CO., LLC, KEOWEE
TOWNHOUSES, LLC, LUDWIG CORPORATION,
LLC, SDI FUNDING, LLC, MEDALLION AT
KEOWEE, LLC, INTEGRYS KEOWEE
DEVELOPMENT, LLC, MARICK HOME
BUILDERS, LLC, BOSTIC BROTHERS
CONSTRUCTION, INC., MILLER/PLAYER &
ASSOCIATES, JOHN LUDWIG, , CLEAR VIEW
CONSTRUCTION, LLC, MICHAEL FRANZ, MHC
CONTRACTORS, MIGUEL PORRAS CHONCOAS,
BUILDERS FIRST SOURCE SOUTHEAST GROUP,
MIKE GREEN, SOUTHERN CONCRETE
SPECIALTIES, CARL COMPTON D/B/A COMPTON
ENTERPRISE A/K/A COMPTON ENTERPRISES,
GUNTER HEATING & AIR, ALL PRO HEATING,
A/C & REFRIGERATION, LLC, COLEMAN
WATERPROOFING, HEYWARD ELECTRICAL
SERVICES, INC., TINSLEY ELECTRICAL, LLC,
HUTCH N SON CONSTRUCTION, INC., CARL
CATOE CONSTRUCTION, INC., T.G.
CONSTRUCTION, LLC, DELFINO
CONSTRUCTION, FRANCISCO JAVIER ZARATE
D/B/A ZARATE CONSTRUCTION, ALEJANDRO
AVALOS CRUZ, HERBERTO ACROS
HERNANDEZ, MARTIN HERNANDEZ-AVILES,
FRANCISCO VILLALOBOS LOPEZ, AMBROSIO
MARTINEZ-RAMIREZ, ESTER MORAN
MENTADO, SOCORRO CASTILLO MONTEL,)

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2015 MAR 13 PM 1 32

**ORDER DENYING BOSTIC BROTHERS
CONSTRUCTION INC'S RULE 59
MOTION TO RECONSIDER**

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UPSTATE UTILITIES, INC., MJG CONSTRUCTION)
AND HOMEBUILDERS, INC. D/B/A MJG)
CONSTRUCTION, KMAC INC. D/B/A KMAC)
NORTH CAROLINA, EUFACIO GARCIA,)
EVERADO JARMAMILLO, GARCIA PARRA)
INSULATION, INC., J&J CONSTRUCTION, JOSE)
NINO, JOSE MANUEL GARCIA, EASON)
CONSTRUCTION, INC., AND VINCENT MORALES)
D/B/A MORALES MASONRY,)

Defendants;

BOSTIC CONSTRUCTION, INC.,

Third-Party Plaintiff

vs.

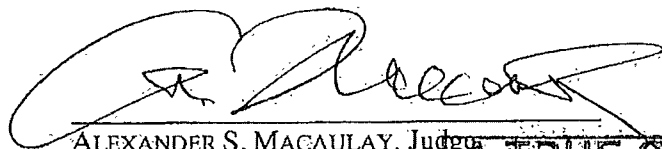
SOUTHERN STONE, INC., AND BUCK
SMITH CONSTRUCTION,

Third-Party Defendants.

FILED OCONEE, SC
BEVERLY H. WHITEFIELD
CLERK OF COURT
2015 MAR 13 PM 1 32

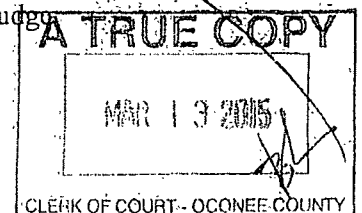
After careful consideration of the record and filings of Counsel, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or fact not appropriately considered. Accordingly, Bostic Brothers Construction, Inc.'s Motion, pursuant to Rule 59, SCRCP,¹ is DENIED.

AND, IT IS SO ORDERED.



ALEXANDER S. MACAULAY, Judge

Walhalla, South Carolina
March 12, 2015



¹ The Court, in its discretion, has determined this Motion on the filings, without oral argument, pursuant to Rule 59(f), SCRCP.

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009 -CP-37-00652

FILED OCONEE, SC
STONELEDGE AT LAKE KEOWEE OWNERS' ASSOCIATION,
INC. ET AL BEVERLY H. WHITFIELD
CLERK OF COURT

IMK DEVELOPMENT CO., LLC, LARRY D. LOLLIS,
WILLIAM C. COX, INTEGRYS KEOWEE DEVELOPMENT,
LLC; MARICK HOME BUILDERS, LLC, BOSTIC
BROTHERS CONSTRUCTION, INC.; RICK THONNES

2013 NOV 8 PM 12:48

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: Jury found for the Plaintiff on the cause of action for negligence as to Defendants Bostic Brothers Construction, Inc., IMK Development Co., LLC, and Marick Home Builders, LLC in the amount of \$3,000,000.00; Jury found for the Plaintiff on the cause of action for breach of warranty of workmanlike service as to Defendants Bostic Brothers Construction, Inc. and Marick Home Builders, LLC in the amount of \$1,000,000.00. Jury found for the Plaintiff on the cause of action for breach of fiduciary duty as to Defendants IMK Development Co., LLC, Integrlys Keowee Development, LLC, Rick Thoenes, William C. Cox and Larry D. Lollis in the amount of \$1,000,000.00 (See Attached Verdict Form and Apportionment Form for more specific details.) All parties have 10 days to submit post-trial motions.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : This trial encompassed Phase 1 of Stoneledge only.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Stoneledge at Lake Keowee Owner's Assoc., Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Isaac, Michael D.	IMK Development Co., LLC	\$1,150,000.00

Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, Robert White		
Stoneledge at Lake Keowee Owners' Assoc., Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessie B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Isaac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, Robert White	Larry D. Lollis	\$ 200,000.00
Stoneledge at Lake Keowee Owners' Assoc., Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessie B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Isaac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, Robert White	William C. Cox	\$ 200,000.00
Stoneledge at Lake Keowee Owners' Assoc., Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessie B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Isaac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, Robert White	Integrus Keowee Development, LLC	\$ 200,000.00
Stoneledge at Lake Keowee Owners' Assoc., Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessie B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Isaac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, Robert White	Marick Home Builders, LLC	\$ 950,000.00
Stoneledge at Lake Keowee Owners' Assoc., Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessie B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Isaac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, Robert White	Bostic Brothers Construction, Inc.	\$2,100,000.00

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009 CP-37-00652

Stoneledge at Lake Keowee

IMK Development Co., LLC, et al

Owners' Assoc., Inc., et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant

or

☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: See Page 1

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Stoneledge at Lake Keowee Owners' Assoc., Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Isaac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope Steven B. Taylor, Bette J. Taylor, Robert White, Nancy E. Grasso	Rick Thoennes	\$ 200,000.00

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2063
Judge Code11/08/13
Date

2013 NOV 8 PM 12:48

FILED OCONEE, SC
BEVERLY H. WHITEFIELD
CLERK OF COURT

For Clerk of Court Office Use Only

This judgment was entered on the 08th day of November, 2013 and a copy mailed first class or placed in the appropriate attorney's box on this 08th day of November, 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Robert T. Lyles

ATTORNEY(S) FOR THE PLAINTIFF(S)

Jason Imhoff, Alan Belcher,
Cynthia Brown

ATTORNEY(S) FOR THE DEFENDANT(S)

Beverly H. Whitfield
CLERK OF COURT

Court Reporter: Benee Tollison

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON
PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF OCONEE

) TENTH JUDICIAL CIRCUIT

Stoneledge at Lake Keowee Owners' Association, Inc.,)

Civil Action No.: 2009-CP-37-0652

C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport,)

Michael Furnari, Donna Furnari, Jessie B. Grasso,)

Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty)

Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Isaac,)

Michael D. Plourde, Mary Lou Plourde, Carol C. Pope,)

Steven B. Taylor, Bette J. Taylor, and Robert White,)

Individually and on Behalf of All Others Similarly)

Situated)

Plaintiffs,

vs.

IMK Development Co., LLC, Larry D. Lollis, William)

C. Cox, Integrys Keowee Development, LLC, Marick)

Home Builders, LLC, Bostic Brothers Construction,)

Inc., Rick Thoennes,)

Defendants

APPORTIONMENT FORM

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2013 NOV 8 AM 9 09

Using the combined **negligence** that proximately caused the plaintiffs' injuries as one hundred percent (100%), what percentage of that negligence is attributable to each defendant? [The percentage must add up to 100%.]

IMK Development Co., LLC/Marick Home Builders, LLC

40 %

Bostic Brothers Construction, Inc.

60 %

Total

100%

Using the combined breach of **implied warranty of workmanlike service** that proximately caused the plaintiffs' injuries as one hundred percent (100%), what percentage is attributable to each defendant? [The percentage must add up to 100%.]

IMK Development Co., LLC/Marick Home Builders, LLC

70 %

Bostic Brothers Construction, Inc.

30 %

Total

100%

Walhalla, South Carolina
November 7, 2013

Morris R. Cobb
MORRIS R. COBB, Foreman

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

STONELEDGE AT LAKE KEOWEE OWNERS'
ASSOCIATION, INC., ET AL

Plaintiffs,

vs.

IMK DEVELOPMENT CO., LLC, LARRY D. LOLLIS,
WILLIAM C. COX, INTEGRYS KEOWEE
DEVELOPMENT, LLC, MARICK HOME BUILDERS, LLC,
BOSTIC BROTHERS CONSTRUCTION, INC., RICK
THOENNES,

Defendants,

) IN THE COURT OF COMMON PLEAS
) FOR THE TENTH JUDICIAL CIRCUIT
) CASE NUMBER: 2009-CP-37-0652

VERDICT FORM

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2013 NOV 8 AM 9 09

1. On the cause of action for negligence as to the Defendant Bostic Brothers Construction, Inc., we, the jury, unanimously find for the:

✓ Plaintiff

 Defendant

On the cause of action for negligence as to the Defendants IMK Development Co., LLC, and Marick Homebuilders, LLC, we, the jury, unanimously find for the:

✓ Plaintiff

 Defendants

If you find for the Plaintiff on the negligence cause of action as to any of the above Defendants, please set forth the amount of actual damages resulting to the Plaintiff as a result of negligence.

three million dollars (\$ 3,000,000.00)

After you have completed the above, please respond to Number 2, below.

2. On the cause of action for breach of warranty of workmanlike service as to the Defendant Bostic Brothers Construction, Inc., we, the jury, unanimously find for the:

✓ Plaintiff
 Defendant

On the cause of action for breach of warranty of workmanlike service as to the Defendant Marick Homebuilders, LLC, we, the jury, unanimously find for the:

✓ Plaintiff
 Defendant

If you find for the Plaintiff on the breach of warranty of workmanlike service cause of action as to any of the above Defendants, please set forth the amount of actual damages resulting to the Plaintiff as a result of the breach of warranty of workmanlike service.

one million dollars (\$ 1,000,000.00)

After you have completed the above, please respond to Number 3 below.

3. On the cause of action for breach of fiduciary duty as to the following Defendants we, the jury, unanimously find for the:

- a. ✓ Plaintiff
 Defendant IMK Development Co., LLC
- b. ✓ Plaintiff
 Defendant Integrys Keowee Development, LLC
- c. ✓ Plaintiff
 Defendant Rick Thoennes

d. ✓ Plaintiff

 Defendant William C. Cox

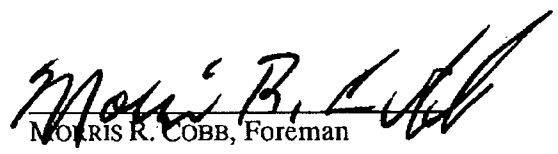
e. ✓ Plaintiff

 Defendant Larry D. Lollis

If you find for the Plaintiff as to any of the of the above Defendants on the breach of fiduciary duty on this cause of action, please set forth the amount of actual damages resulting to the Plaintiff as a result of the breach of fiduciary cause of action.

one millim dollars (\$1,000,000.00)

Walhalla, South Carolina
November 7, 2013


MORRIS R. COBB, Foreman

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF OCONEE

) TENTH JUDICIAL CIRCUIT

Stoneledge at Lake Keowee Owners' Association, Inc.,

) Civil Action No.: 2009-CP-37-0652

C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport,

Michael Furnari, Donna Furnari, Jessy B. Grasso,

Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty

Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Isaac,

Michael D. Plourde, Mary Lou Plourde, Carol C. Pope,

Steven B. Taylor, Bette J. Taylor, and Robert White,

Individually and on Behalf of All Others Similarly

Situated

Plaintiffs,

vs.

IMK Development Co., LLC, Larry D. Lollis, William

C. Cox, Integrays Keowee Development, LLC, Marick

Home Builders, LLC, Bostic Brothers Construction,

Inc., Rick Thoennes,

Defendants

APPORTIONMENT FORM

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2013 NOV 8 AM 9 09

Using the combined **negligence** that proximately caused the plaintiffs' injuries as one hundred percent (100%), what percentage of that negligence is attributable to each defendant? [The percentage must add up to 100%.]

IMK Development Co., LLC/Marick Home Builders, LLC

40 %

Bostic Brothers Construction, Inc.

60 %

Total

100%

Using the combined breach of **implied warranty of workmanlike service** that proximately caused the plaintiffs' injuries as one hundred percent (100%), what percentage is attributable to each defendant? [The percentage must add up to 100%.]

IMK Development Co., LLC/Marick Home Builders, LLC

70 %

Bostic Brothers Construction, Inc.

30 %

Total

100%

Walhalla, South Carolina
November 7, 2013

Morris R. Cobb
MORRIS R. COBB, Foreman

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT
CASE NUMBER: 2009-CP-37-0652

STONELEDGE AT LAKE KEOWEE OWNERS'
ASSOCIATION, INC., ET AL

Plaintiffs,

vs.

IMK DEVELOPMENT CO., LLC, LARRY D. LOLLIS,
WILLIAM C. COX, INTEGRYS KEOWEE
DEVELOPMENT, LLC, MARICK HOME BUILDERS, LLC,
BOSTIC BROTHERS CONSTRUCTION, INC., RICK
THOENNES,

Defendants,

VERDICT FORM

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2013 NOV 8 AM 9 09

1. On the cause of action for negligence as to the Defendant Bostic Brothers Construction, Inc., we, the jury, unanimously find for the:

✓ Plaintiff

_____ Defendant

On the cause of action for negligence as to the Defendants IMK Development Co., LLC, and Marick Homebuilders, LLC, we, the jury, unanimously find for the:

✓ Plaintiff

_____ Defendants

If you find for the Plaintiff on the negligence cause of action as to any of the above Defendants, please set forth the amount of actual damages resulting to the Plaintiff as a result of negligence.

three million dollars (\$ 3,000,000.00)

After you have completed the above, please respond to Number 2, below.

2. On the cause of action for breach of warranty of workmanlike service as to the Defendant Bostic Brothers Construction, Inc., we, the jury, unanimously find for the:

✓ Plaintiff
 Defendant

On the cause of action for breach of warranty of workmanlike service as to the Defendant Marick Homebuilders, LLC, we, the jury, unanimously find for the:

✓ Plaintiff
 Defendant

If you find for the Plaintiff on the breach of warranty of workmanlike service cause of action as to any of the above Defendants, please set forth the amount of actual damages resulting to the Plaintiff as a result of the breach of warranty of workmanlike service.

one million dollars (\$ 1,000,000.00)

After you have completed the above, please respond to Number 3 below.

3. On the cause of action for breach of fiduciary duty as to the following Defendants we, the jury, unanimously find for the:

a. ✓ Plaintiff

 Defendant IMK Development Co., LLC

b. ✓ Plaintiff

 Defendant Integrys Keowee Development, LLC

c. ✓ Plaintiff

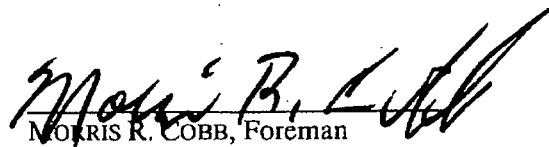
 Defendant Rick Thoennes

- d. ✓ Plaintiff
_____ Defendant William C. Cox
- e. ✓ Plaintiff
_____ Defendant Larry D. Lollis

If you find for the Plaintiff as to any of the of the above Defendants on the breach of fiduciary duty on this cause of action, please set forth the amount of actual damages resulting to the Plaintiff as a result of the breach of fiduciary cause of action.

one million dollars (\$1,000,000.00)

Walhalla, South Carolina
November 7, 2013


MORRIS R. COBB, Foreman

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2009 CP-37-0652

Stoneledge at Lake Keowee Owners' Association, Inc., et al.

IMK Development Co., LLC et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: Jury found for the Plaintiffs on the cause of action for negligence as to Defendants Bostic Brothers Construction, Inc., IMK Development Co., LLC, and Marick Home Builders, LLC in the amount of \$3,000,000.00; Jury found for the Plaintiff on the cause of action for breach of warranty of workmanlike service as to Defendants Bostic Brothers Construction, Inc. and Marick Home Builders, LLC in the amount of \$1,000,000.00. Jury found for the Plaintiff on the cause of action for breach of fiduciary duty as to Defendants IMK Development Co., LLC, Integrys Keowee Development, LLC, Rick Thoennes, William C. Cox and Larry D. Lollis in the amount of \$1,000,000.00. At trial these verdicts were ruled to be cumulative and are reflected as such herein (See Attached Verdict Form and Apportionment Form for more specific details). Plaintiff Stoneledge at Lake Keowee Owners' Association is responsible for disbursements of monies collected to its respective owners on a pro rata basis. This order hereby amends the prior Form 4C order filed on November 8, 2013. Additionally, this judgment shall be backdated to the filing date of the original Form 4C order, November 8, 2013.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

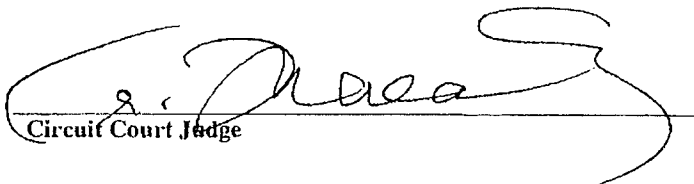
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Stoneledge at Lake Keowee Owners' Assoc., Inc.	Negligence: Bostic Brothers Construction, Inc.	\$2,144,088.23

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2015 JAN 30 PM 3 29

Stoneledge at Lake Keowee Owners' Assoc., Inc.	Marick Home Builders, LLC and IMK Development Co.	\$857,635.29
Stoneledge at Lake Keowee Owners' Assoc., Inc.	Breach of Warranty: Bostic Brothers Construction, Inc.	\$643,226.47
Stoneledge at Lake Keowee Owners' Assoc., Inc.	Marick Homebuilders, LLC	\$2,144,088.23
Stoneledge at Lake Keowee Owners' Assoc., Inc.	Breach of Fiduciary Duty: IMK Development Co.	\$2,144,088.23
Stoneledge at Lake Keowee Owners' Assoc., Inc.	Integrays Keowee Development, LLC	\$2,144,088.23
Stoneledge at Lake Keowee Owners' Assoc., Inc.	Rick Thoennes	\$2,144,088.23
Stoneledge at Lake Keowee Owners' Assoc., Inc.	William C. Cox	\$2,144,088.23
Stoneledge at Lake Keowee Owners' Assoc., Inc.	Larry D. Lollis	\$2,144,088.23
If applicable, describe the property, including tax map information and address, referenced in the order:		

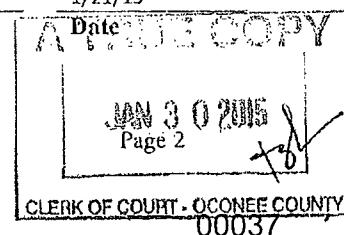
FILED O'CONNOR, SC
BEVERLY H. WHITEFIELD
CLERK OF COURT
2015 JAN 30 PM 3 29

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


Circuit Court Judge

2063
Judge Code

1/21/15
Date



For Clerk of Court Office Use Only

This judgment was entered on the 30th day of Jan, 20 15 and a copy mailed first class or placed in the appropriate attorney's box on this 30th day of Jan, 20 15 to attorneys of record or to parties (when appearing pro se) as follows:

Robert T. Lyles

ATTORNEY(S) FOR THE PLAINTIFF(S)

Jason Imhoff, Alan Belcher
Cynthia Buck Brown

ATTORNEY(S) FOR THE DEFENDANT(S)
Beverly H. Whitfield
CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT
CASE NUMBER: 2009-CP-37-0652

STONELEDGE AT LAKE KEOWEE OWNERS'
ASSOCIATION, INC., C. DAN CARSON, JEFFREY
J. DAULER, JOAN W. DAVENPORT, MICHAEL
FURNARI, DONNA FURNARI, JESSY B. GRASSO,
NANCY E. GRASSO, ROBERT P. HAYES, LUCY
H. HAYES, TY HIX, JENNIFER D. HIX, PAUL W.
HUND, III, RUTH E. ISAAC, MICHAEL D.
PLOURDE, MARY LOU PLOURDE, CAROL C.
POPE, STEVEN B. TAYLOR, BETTE J. TAYLOR,
AND ROBERT WHITE, INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS SIMILARLY SITUATED

Plaintiffs,

vs.

IMK DEVELOPMENT, CO., LLC, KEOWEE
TOWNHOUSES, LLC, LUDWIG CORPORATION,
LLC, SDI FUNDING, LLC, MEDALLION AT
KEOWEE, LLC, INTEGRYS KEOWEE
DEVELOPMENT, LLC, MARICK HOME BUILDERS,
LLC, BOSTIC BROTHERS CONSTRUCTION, INC.,
MILLER/PLAYER & ASSOCIATES, BRADFORD D.
SECKINGER, JOHN LUDWIG, WILLIAM COX,
LARRY D. LOLLIS, RICK THOENNES, M GROUP
CONSTRUCTION AND DEVELOPMENT, LLC, MEL
MORRIS, JOE BOSTIC, JEFF BOSTIC, CLEAR
VIEW CONSTRUCTION, LLC, MICHAEL FRANZ,
MHC CONTRACTORS, MIGUEL PORRAS
CHONCOAS, BUILDERS FIRSTSOURCE
SOUTHEAST GROUP, MIKE GREEN, SOUTHERN
CONCRETE SPECIALTIES, CARL COMPTON D/B/A
COMPTON ENTERPRIZE A/K/A COMPTON
ENTERPRISES, GUNTER HEATING AND AIR, ALL
PRO HEATING, A/C & REFRIGERATION, LLC,
COLEMAN WATERPROOFING, HEYWARD
ELECTRICAL SERVICES, INC., TINSLEY
ELECTRICAL, LLC, HUTCH N SON
CONSTRUCTION, INC., UPSTATE UTILITIES, INC.,
SOUTHERN BASEMENTS, INC., CARL CATOE
CONSTRUCTION, INC., T.G. CONSTRUCTION,
LLC, DELFINO CONSTRUCTION, FRANCISCO
JAVIER ZARATE D/B/A ZARATE CONSTRUCTION,
ALEJANDRO AVALOS CRUZ, HERBERTO ACROS
HERNANDEZ, MARTIN HERNANDEZ-AVILES,

SUMMONS

Third-Amended Complaint

FRANCISO VILLALOBOS LOPEZ, AMBROSIO)
MARTINEZ-RAMIREZ, ESTER MORAN)
MENTADO, SOCORRO CASTILLO MONTEL, MJG)
CONSTRUCTION AND HOMEBUILDERS, INC.,)
D/B/A MJG CONSTRUCTION, KMAC OF THE)
CAROLINAS, INC., EUFACIO GARCIA, EVERADO)
JARMAMILLO, GARCIA PARRA INSULATION,)
INC., J&J CONSTRUCTION, JOSE NINO, JOSE)
MANUEL GARCIA, EASON CONSTRUCTION, INC.,)
VINCENT MORALES MASONRY, AND)
MILLER/PLAYER & ASSOCIATES,)
Defendants,)

TO: ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to Answer the Third Amended Complaint in this action, a copy of which is herewith served upon you and to serve a copy of your Answer to said Complaint on the subscribers at their offices, Lyles & Lyles, LLC, 342 East Bay Street, Post Office Box 773, Charleston, South Carolina 29402, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Third Amended Complaint within the time aforesaid, the Plaintiffs in this action will apply to the Court for the relief demanded in the Third Amended Complaint and will seek a default judgment against you.

LYLES & LYLES, LLC
By: Catherine Bryan
Robert T. Lyles, Esquire
Catherine H. Bryan, Esquire
342 East Bay Street
Post Office Box 773 (29402)
Charleston, South Carolina 29401
T: 843.577.7730
F: 843.577.7172
rtl@lylesfirm.com
chb@lylesfirm.com
Attorneys for Plaintiffs

April 3, 2012
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF OCONEE)

IN THE COURT OF COMMON PLEAS

CASE NUMBER: 2009-CP-37-652

Stoneledge at Lake Keowee Owners')
Association Inc.; C. Dan Carson; Jeffrey J.)
Dauler; Joan W. Davenport; Michael)
Furnari; Donna Furnari; Jessy B. Grasso;)
Nancy E. Grasso; Robert P. Hayes; Lucy H.)
Hayes; Ty Hix; Jennifer D. Hix; Paul W.)
Hund, III; Ruth E. Isaac; Michael D. Plourde)
Mary Lou K. Plourde; Carol C. Pope;)
Steven B. Taylor; Bette J. Taylor; and)
Robert White, individually, and on behalf)
of all others similarly situated,)

Plaintiffs,)

vs.)

IMK Development Co., LLC; Keowee)
Townhouses, LLC; Ludwig Corporation,)
LLC; SDI Funding, LLC; Medallion at)
Keowee, LLC; Integrys Keowee)
Development, LLC; Marick Home Builders,)
LLC; Bostic Brothers Construction, Inc.)
Miller/Player & Associates; Bradford D.)
Seckinger; John Ludwig; William Cox;)
Larry D. Lollis; Rick Thoennes; M Group)
Construction and Development, LLC; Mel)
Morris; Joe Bostic; Jeff Bostic; Clear View)
Construction, LLC; Michael Franz; MHC)
Contractors; Miguel Porras Choncoas;)
Builders FirstSource Southeast Group;)
Mike Green; Southern Concrete Specialties;)
Carl Compton d/b/a Compton Enterprize)
a/k/a Compton Enterprises; Gunter Heating)
and Air; All Pro Heating, A/C &)
Refrigeration, LLC; Coleman)
Waterproofing; Heyward Electrical)
Services, Inc.; Tinsley Electrical, LLC;)
Hutch N Son Construction, Inc.; Upstate)
Utilities, Inc.; Southern Basements, Inc.;)
Carl Catoe Construction, Inc.; T.G.)
Construction, LLC; Delfino Construction;)
Francisco Javier Zarate d/b/a Zarate)

**THIRD AMENDED
COMPLAINT**
(Jury Trial Demanded)

Construction; Alejandro Avalos Cruz;)
Herberto Acros Hernandez; Martin)
Hernandez-Aviles; Francisco Villalobos)
Lopez; Ambrosio Martinez-Ramirez; Ester)
Moran Mentado; Socorro Castiello Montel;)
MJG Construction and Homebuilders, Inc.)
d/b/a MJG Construction; KMAC of the)
Carolinas, Inc.; Eufacio Garcia; Everado)
Jarmamillo; Garcia Parra Insulation, Inc.;)
J & J Construction; Jose Nino; Jose Manuel)
Garcia; Eason Construction, Inc.; Vincent)
Morales d/b/a Morales Masonry; and)
Miller/Player & Associates)
Defendants,)

NOW COME, the Plaintiffs above-named, individually, and on behalf of all others similarly situated, complaining against the above-named Defendants, as follows:

CLASS ALLEGATIONS

1. Plaintiff Stoneledge at Lake Keowee Owners' Association, Inc. ("Stoneledge HOA") is a corporation organized and existing pursuant to the laws of the State of South Carolina and conducts business in Oconee County, South Carolina. The Stoneledge HOA was created on May 24, 2005, pursuant to the South Carolina Horizontal Property Regime Act.

2. The Amended and Restated By-Laws and Declaration of Covenants, Conditions and Resolutions for Stoneledge at Keowee, dated November 1, 2005, recorded on November 30, 2005 at Book 1464, Page 33-65, and the Resolution dated March 3, 2010, recorded on November 24, 2010 at Book 1805, Page 241-243 (which are incorporated herein by reference) impose upon the Stoneledge HOA an obligation to maintain, repair, and replace components of the townhomes at Stoneledge.

3. Plaintiffs C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Isaac, Michael D. Plourde, Mary Lou K. Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, and Robert White (hereinafter the "Individual Owners"), are owners of townhomes located in Phase I and/or II of the townhome community known as Stoneledge at Lake Keowee (hereinafter "the Project"), and have all suffered injury and damage, or will suffer injury or damage, as a direct and proximate result of the acts of the above-named Defendants.

4. The Project is located in Oconee County, South Carolina.

5. The Individual Owners bring this action individually and pursuant to Rule 23 of the *South Carolina Rules of Civil Procedure*, on behalf of a class of individuals and/or entities composed of each and every other owner at the Project (hereinafter the other owners at the Project sometimes shall be referred to collectively as "Class Plaintiffs"). Excluded from the Class are Defendants, members of their immediate families and their legal representatives, heirs, successors, assigns and any entity in which Defendants have or had a controlling interest. Also excluded from the Class are claims determined to belong exclusively to Stoneledge HOA.

6. For class action purposes, the Individual Owners allege that:

- a. The class is sufficiently numerous that joinder of all members is impracticable;
- b. There are questions of law and fact common to the class;
- c. The claims of the Individual Owners are typical of the claims of the class;

- d. The Individual Owners will fairly and adequately protect the interest of the class; and
- e. The amount in controversy exceeds One Hundred and No/100 Dollars (\$100.00) for each member of the class.

7. Venue is proper in this Court because the principal place of business of one or more of the Defendants is in Oconee County, the property at issue is located in Oconee County, and the actions and/or inaction of the Defendants resulting in this lawsuit occurred in Oconee County.

FACTUAL ALLEGATIONS

8. The Defendant, IMK Development Co., LLC ("IMK"), upon information and belief, is a limited liability company organized and existing under the laws of the State of South Carolina and, at all times relevant to this action, was engaged in the business of property development in Oconee County. IMK developed and put certain of the Stoneledge townhomes into the stream of commerce.

9. Defendant Keowee Townhouses, LLC ("Keowee"), upon information and belief, is a limited liability company organized and existing under the laws of the State of South Carolina and, at all times relevant to this action, was engaged in the business of property development in Oconee County. Keowee developed and put certain of the Stoneledge townhomes into the stream of commerce.

10. Defendant Ludwig Corporation, LLC ("Ludwig"), upon information and belief, is a limited liability company organized and existing under the laws of the State of South Carolina and, at all times relevant to this action, was engaged in the business of property development in Oconee

County. Ludwig developed and put certain of the Stoneledge townhomes into the stream of commerce.

11. Defendant SDI Funding, LLC ("SDI"), upon information and belief, is a limited liability company organized and existing under the laws of the State of South Carolina and, at all times relevant to this action, was engaged in business in Oconee County, South Carolina.

12. Defendant Medallion at Keowee, LLC ("Medallion"), upon information and belief, is a limited liability company organized and existing under the laws of the State of South Carolina and, at all times relevant to this action, was engaged in the business of property development in Oconee County. Medallion was a developer of the Project and has or will put certain of the Stoneledge townhomes into the stream of commerce.

13. Plaintiffs are informed and believe that Medallion is the successor to SDI, Ludwig, or both of them, that it acquired the assets and liabilities of SDI, Ludwig, or both of them, through a merger, consolidation or equivalent transaction, that there exists a common identity of the officers, directors, and/or stockholders between Medallion and SDI, Ludwig, or both of them, that Medallion is a mere continuation of SDI, Ludwig, or both of them, and/or that the assets of SDI, Ludwig, or both of them, were transferred to Medallion in an effort to avoid or defeat claims of creditors or potential creditors.

14. Upon information and belief, Defendant Bradford D. Seckinger ("Seckinger") was a member, manager, owner and/or principal of Medallion, Ludwig and/or SDI at the time of development and construction of the Project and authorized, participated in and/or directed the tortious or otherwise wrongful acts of Medallion, Ludwig and/or SDI and is personally liable for the

liabilities of Medallion, Ludwig, and/or SDI. Unless specifically stated otherwise, references to Medallion, Ludwig, SDI and/or Developers when used herein are defined to include Seckinger.

15. Upon information and belief, Defendant John Ludwig was a member, manager, owner and/or principal of Ludwig, SDI, or both of them at the time of development and construction of the Project and authorized, participated in and/or directed the tortious or otherwise wrongful acts of Ludwig, SDI, or both of them, and is personally liable for the liabilities of same. Unless specifically stated otherwise, references to Ludwig, SDI and/or Developers when used herein are defined to include John Ludwig.

16. Defendant Integrys Keowee Development, LLC ("Integrys"), upon information and belief, is a limited liability company organized and existing under the laws of the State of South Carolina and, at all times relevant to this action, was engaged in the business of property development in Oconee County. Integrys a developer of the Project and placed certain of the Stoneledge townhomes into the stream of commerce.

17. Upon information and belief, Defendants Larry D. Lollis ("Lollis") and William Cox ("Cox") were members, managers, owners, and/or principals of IMK, Integrys, or both of them at the time of development and construction of the Project and authorized, participated in and/or directed the tortious or otherwise wrongful acts of IMK, Integrys, or both of them and are personally liable for the liabilities of IMK and/or Integrys. Unless specifically stated otherwise, references to IMK, Integrys, and/or Developers when used herein are defined to include Lollis and Cox.

18. Upon information and belief, Defendant Rick Thoennes, ("Thoennes") is or was a member, manager, owner and/or principal of IMK at the time of development and construction of the Project and authorized, participated in and/or directed the tortious or otherwise wrongful acts

of IMK and is personally liable for the liabilities of IMK. Unless specifically stated otherwise, references to IMK and/or Developers when used herein are defined to include Thoennes.

19. Defendant Marick Home Builders, LLC ("Marick"), upon information and belief, is a limited liability company organized and existing under the laws of the State of South Carolina and, at all times relevant to this action, was licensed as a South Carolina residential builder, and was engaged in the business of residential home building in Oconee County, South Carolina. Marick acted as the general contractor for certain of the townhomes at the Project. Marick, acting in concert with IMK, placed certain of the Stoneledge townhomes into the stream of commerce.

20. Upon information and belief, M Group Construction and Development, LLC ("M Group") is a limited liability company organized and existing under the laws of the State of South Carolina that conducts business in Oconee County, South Carolina. Plaintiffs are informed and believe that M Group is the successor to Marick, that it acquired the assets and liabilities of Marick through a merger, consolidation or equivalent transaction, that there exists a common identity of the officers, directors, and/or stockholders between M Group and Marick, that M Group is a mere continuation of Marick, and/or that the assets of Marick were transferred to M Group in an effort to avoid or defeat claims of creditors or potential creditors. Unless specifically stated otherwise, references to Marick and/or Contractors herein are defined to include M Group.

21. Defendant Bostic Brothers Construction, Inc. ("Bostic"), upon information and belief, is a corporation organized and existing pursuant to the laws of a state other than South Carolina which was, at all times referred to herein, doing business in Oconee County, South Carolina as a general contractor. Bostic acted as the general contractor for certain of the townhomes at the

Project. Bostic, acting in concert with Keowee, put certain of the Stoneledge townhomes into the stream of commerce.

22. Upon information and belief, Defendant Thoennes was a license holder, member, manager, owner, and/or principal of Marick at the time of construction of the Project and authorized, participated in and/or directed the tortious or otherwise wrongful acts of Marick and is personally liable for the liabilities of Marick. Unless specifically stated otherwise, references to Marick and Contractors herein are defined to include Thoennes.

23. Upon information and belief, defendant Mel Morris ("Morris") was President of Bostic at the time construction of the Project began and authorized, participated in and/or directed the tortious or otherwise wrongful acts of Bostic. Morris is personally liable for the liabilities of Bostic. Unless specifically stated otherwise, references to Bostic and/or Contractors herein are defined to include Morris.

24. Upon information and belief, defendants Joe Bostic and Jeff Bostic were owners, officers, directors, and/or principals of Bostic at the time of construction of the Project and authorized, participated in and/or directed the tortious or otherwise wrongful acts of Bostic and are personally liable for the liabilities of Bostic. Unless specifically stated otherwise, references to Bostic and/or Contractors herein are defined to include Joe Bostic and Jeff Bostic.

25. Upon information and belief, Defendant Clear View Construction, LLC ("Clear View") is a limited liability company organized and existing under the laws of the State of South Carolina which, at all times relevant to this action, was conducting business in Oconee County. Upon information and belief, Clear View provided stone work for the Project.

26. Upon information and belief, Defendant Michael W. Franz is the owner and operator of Clear View and authorized, participated in and/or directed the tortious or otherwise wrongful acts of Clear View and is personally liable for the liabilities of Clear View.

27. Upon information and belief, Defendant MHC Contractors, LLC ("MHC Contractors") is a limited liability company organized and existing under the laws of the State of South Carolina which, at all times relevant to this action, was conducting business in Oconee County. Plaintiffs are informed and believe that MHC Contractors provided work for the Project, including but not limited to stone work.

28. Upon information and belief, Defendant Miguel Porras Choncoa is the owner and operator of MHC Contractors and a resident of Greenville County, South Carolina, and authorized, participated in and/or directed the tortious or otherwise wrongful acts of MHC Contractors and is personally liable for the liabilities of MHC Contractors.

29. Upon information and belief, Defendant Builders FirstSource - Southeast Group, LLC ("Builders FirstSource") is an entity organized under the laws of a state other than South Carolina which, at all times relevant to this action, was conducting business in Oconee County. Plaintiffs are informed and believe that Builders FirstSource provided materials and labor for the Project, including but not limited to, framing work.

30. Upon information and belief, Defendant Mike Green is the principal of Builders FirstSource, and authorized, participated in and/or directed the tortious or otherwise wrongful acts of Builders FirstSource and is personally liable for the liabilities of Builders FirstSource.

31. Upon information and belief, Defendant Southern Concrete Specialties, Inc. ("Southern Concrete") is a corporation organized and existing under the laws of the State of South

Carolina which, at all times relevant to this action, was conducting business in Oconee County. Plaintiffs are informed and believe that Southern Concrete provided work for the Project including but not limited to flatwork and basement work.

32. Upon information and belief, Defendant Carl Compton d/b/a Compton Enterprize a/k/a Compton Enterprises ("Compton") was, at all times relevant herein, conducting business in Oconee County, South Carolina. Plaintiffs are informed and believe that Compton provided work for the Project, including but not limited to, roofing work.

33. Upon information and belief, Defendant Gunter Heating and Air ("Gunter") is a South Carolina corporation which, at all times relevant to this action, was conducting business in Oconee County, South Carolina. Plaintiffs are informed and believe that Gunter provided work for the Project, including but not limited to HVAC work.

34. Upon information and belief, All Pro Heating, A/C and Refrigeration, LLC ("All Pro") is a limited liability company organized and existing under the laws of the state of South Carolina which, at all times relevant to this action, was conducting business in Oconee County, South Carolina. Plaintiffs are informed and believe that All Pro provided work for the Project, including but not limited to, HVAC work.

35. Upon information and belief, Coleman Waterproofing was, at all times relevant herein, conducting business in Oconee County, South Carolina. Plaintiffs are informed and believe that Coleman Waterproofing provided work for the Project, including but not limited to, waterproofing work.

36. Upon information and belief, Heyward Electrical Services, Inc. ("Heyward Electrical") is a corporation organized and existing under the laws of the state of South Carolina

which, at all times relevant to this action, was conducting business in Oconee County. Plaintiffs are informed and believe that Heyward Electrical provided work for the Project, including but not limited to, electrical work.

37. Upon information and belief, Tinsley Electrical, LLC ("Tinsley") is a limited liability company organized and existing under the laws of the state of South Carolina which, at all times relevant to this action, was conducting business in Oconee County. Plaintiffs are informed and believe that Tinsley provided work for the Project, including but not limited to, electrical work.

38. Upon information and belief, Hutch N Son Construction, Inc. ("Hutch N Son") is a corporation organized and existing under the laws of the state of South Carolina which, at times relevant to this action, was conducting business in Oconee County. Plaintiffs are informed and believe that Hutch N Son provided work for the Project, including but not limited to, grading work.

39. Upon information and belief, Upstate Utilities, Inc. ("Upstate") is a corporation organized and existing under the laws of the state of South Carolina which, at all times relevant to this action, was conducting business in Oconee County. Plaintiffs are informed and belief that Upstate provided work for the Project, including but not limited to grading work, pursuant to a subcontract with Hutch N Son.

40. In its Third-Party Complaint, Marick identified Clear View, Michael W. Franz, MHC Contractors, Miguel Porras Choncoa, Builders FirstSource, Mike Green, Southern Concrete, Cornpton, Gunter, All Pro, Coleman Waterproofing, Heyward Electrical, Tinsley, and Hutch N Son as subcontractors or principals of same and alleged that they are among the at-fault parties by virtue of their provision of the above-described services and/or products for this Project.

41. Upon information and belief, Southern Basements, Inc. ("Southern Basements") is a corporation organized and existing under the laws of the State of South Carolina which, at all times relevant to this action, was conducting business in Oconee County. Based on discovery responses provided by Marick, Plaintiffs believe Southern Basements provided work for the Project, including but not limited to basement work.

42. Due to Marick's involvement in the construction of the Project, Plaintiffs believe that there is a reasonable basis to assert fault on Clear View, Michael W. Franz, MHC Contractors, Miguel Porras Choncoa, Builders FirstSource, Mike Green, Southern Concrete, Compton, Gunter, All Pro, Coleman Waterproofing, Heyward Electrical, Tinsley, Hutch N Son, and Southern Basements.

43. Upon information and belief, Defendant Carl Catoe Construction, Inc. ("Catoe") is a corporation organized and existing under the laws of the State of South Carolina which, at all times relevant to this action, was conducting business in Oconee County. Plaintiffs are informed and believe that Catoe provided labor and materials for framing, installation of windows, doors, siding, trim, and other work at the Project.

44. Upon information and belief, Defendants T.G. Construction, LLC, Delfino Construction, Francisco Javier Zarate d/b/a Zarate Construction, Alejandro Avalos Cruz, Herberto Acros Hernandez, Martin Hernandez-Aviles, Francisco Villalobos Lopez, Ambrosio Martinez-Ramirez, Ester Moran Mentado, and Socorro Castillo Montel are individuals or entities which, at all times relevant herein, were conducting business in Oconee County by contracting to provide services, materials, or both for the Project, pursuant to subcontracts with Catoe, including framing, installation of windows, doors, siding, trim, and other work at the Project.

45. Upon information and belief, Defendants MJG Construction and Homebuilders, Inc. d/b/a MJG Construction; KMAC of the Carolinas, Inc.; Eufacio Garcia; Everado Jarmamillo; Garcia Parra Insulation, Inc.; J & J Construction; Jose Nino; Jose Manuel Garcia; Eason Construction, Inc.; and Vincent Morales d/b/a Morales Masonry are individuals or entities which, at all times relevant to this action, conducted business in Oconee County by contracting to provide and providing materials, services, or both, for the Project.

46. In its discovery responses and through correspondence from counsel, Bostic identified MJG Construction and Homebuilders, Inc. d/b/a MJG Construction; KMAC of the Carolinas, Inc.; Eufacio Garcia; Everado Jarmamillo; Garcia Parra Insulation, Inc.; J & J Construction; Jose Nino; Jose Manuel Garcia; Eason Construction, Inc.; and Vincent Morales d/b/a Morales Masonry as subcontractors who provided services, materials or both for the Project, including but not limited to, framing, masonry, roofing, siding, insulation, concrete form work, waterproofing and patio installation.

47. The defendants identified in Paragraphs 39, 42, 43, 44, and 45 above, are hereinafter collectively referred to as "Subcontractors."

48. Defendant Miller/Player & Associates ("MPA"), upon information and belief, is a corporation organized and existing under the laws of the State of South Carolina and, at all times relevant to this action, was engaged in the business of architecture in Oconee County. MPA acted as the architect for certain of the townhomes at the Project.

49. The Plaintiffs are informed and believe that IMK was the alter ego of Defendant Marick, M Group, Integrays, Lollis, Cox, and/or Thoennes in that Marick, M Group, Integrays, Lollis, Cox, and/or Thoennes totally dominated and controlled IMK and IMK manifested no separate

interest of its own and functioned solely to achieve the goals of Marick, M Group, Integrys, the principals of same, as well as Lollis, Cox and Thoennes.

50. Because IMK was the alter ego of Marick, M Group, Integrys, Lollis, Cox, and Thoennes, to recognize the corporate distinction promotes wrong and injustice and would contravene the public policy of South Carolina.

51. Additionally or alternatively, IMK, Marick, M Group and/or Integrys are corporate relatives whose interests and activities are so amalgamated as to blur the distinction between the entities. Because of this amalgamation of interests and activities, IMK, Marick, M Group and/or Integrys should be treated as one and the same and be held jointly liable on all theories of liability asserted herein, including Breach of the Implied Warranty of Habitability, Breach of the Implied Warranty of Workmanlike Service, Negligence, and Breach of Fiduciary Duty. Unless specifically stated otherwise, references to IMK, Marick, M Group, and/or Integrys when used herein, mean each and all of those entities.

52. Additionally, because IMK and Integrys failed to observe corporate formalities and because fundamental unfairness would result if the corporate entities are recognized, Lollis, Cox and Thoennes should be held personally responsible for the liabilities of IMK, Integrys, or both.

53. The Plaintiffs are informed and believe that Marick and/or M Group was the alter ego of Thoennes in that Thoennes totally dominated and controlled Marick and/or M Group and Marick and/or M Group manifested no separate interest of its own and functioned solely to achieve the goals of Thoennes. Because Marick and/or M Group was the alter ego of Thoennes, to recognize the corporate distinction promotes wrong and injustice and would contravene the public policy of South Carolina.

54. Additionally, because Marick and/or M Group failed to observe corporate formalities and because fundamental unfairness would result if the corporate entities are recognized, Thoennes should be held personally responsible for the liabilities of Marick, M Group or both.

55. The Plaintiffs are informed and believe that Ludwig was the alter ego of Defendants SDI, John Ludwig, and/or Seckinger in that SDI, John Ludwig, and/or Seckinger totally dominated and controlled Ludwig and Ludwig manifested no separate interest of its own and functioned solely to achieve the goals of SDI, John Ludwig and Seckinger.

56. Because Ludwig was the alter ego of SDI, John Ludwig and/or Seckinger, to recognize the corporate distinction promotes wrong and injustice and would contravene the public policy of South Carolina.

57. Additionally or alternatively, SDI, Ludwig and Medallion are entities whose interests and activities are so amalgamated as to blur the distinction between the entities. Because of this amalgamation of interests and activities, SDI, Ludwig and Medallion should be treated as one and the same and be held jointly liable on all theories of liability asserted herein, including Breach of the Implied Warranty of Habitability, Breach of the Implied Warranty of Workmanlike Service, Negligence, and Breach of Fiduciary Duty. Unless specifically stated otherwise, references to SDI, Ludwig and Medallion when used herein, mean each and all of those entities.

58. Additionally, because Ludwig and/or SDI have failed to observe corporate formalities, and because fundamental unfairness would result if the corporate entities are recognized, John Ludwig and/or Seckinger should be held personally responsible for the liabilities of Ludwig and SDI.

59. Additionally, because Medallion failed to observe corporate formalities, and because fundamental unfairness would result if the corporate distinction is recognized, Seckinger should be held personally responsible for the liabilities of Medallion.

60. "Contractors," when used herein, shall refer to Marick, M Group, Thoennes, Bostic, Morris, Jeff Bostic, Joe Bostic, and IMK, both collectively and individually.

61. "Developers," when used herein, shall refer to IMK, Keowee, Ludwig, SDI, Medallion, Integrys, Marick, Bostic, Lollis, Cox, Seckinger, John Ludwig, and Thoennes, both collectively and individually.

62. The Plaintiffs have become aware of certain problems at the townhomes at the Project, including, but not limited to, water intrusion through the exterior cladding of the townhomes which has resulted in severe rot and deteriorated components of the Project.

63. Repairs and investigation to date at the Project have revealed problems within the Project as outlined and identified in the Scope of Repair by Construction Science & Engineering, dated January 24, 2011, which is incorporated herein by reference.

64. The problems at the Project, including those identified in the preceding Paragraph, and those described in the remaining paragraphs, have resulted in water intrusion and have caused physical injury to the tangible property of others. Upon information and belief, the continuous and/or repeated exposure to substantially the same general harmful conditions has resulted in rot and other physical damage to the components of the townhomes at the Project.

65. Plaintiffs reported the problems at the Project to some or all of the Defendants who have failed and/or refused to investigate the problems or to repair them.

66. Upon information and belief, there are other latent defects at the Project that have yet to be uncovered and can only be uncovered through additional investigation and testing at the Project.

67. To date, Plaintiffs have expended significant sums in attempting to repair certain townhomes, and will continue to incur costs and expenses to investigate the pervasive deficiencies and to correct them. The repair of the deficiencies will also deprive the owners of the townhomes at the Project, including the Class Plaintiffs, of the use and enjoyment of their townhomes and will also result in the diminution in value of their townhomes because of the stigma associated with the deficiencies.

68. As a result of the above-referenced problems, and those yet to be discovered, Plaintiffs have or will suffer the following damages:

- a. Cost to investigate the problems at the Project, and the individual townhomes within the Project;
- b. The cost to develop a comprehensive repair for the Project, including the individual townhomes at the Project;
- c. The cost of accessing, repairing, and replacing all defective and/or unsuitable and damaged components at the Project and the individual townhomes within the Project;
- d. The diminished market value of the townhomes at the Project;
- e. Damages associated with the loss of use of the townhomes at the Project while repairs are undertaken; and
- f. Such other damages as may result from the conduct of the Defendants.

69. Some or all of the damages outlined in the preceding paragraph are common to all Class Plaintiffs and, in whole or in part, the Stoneledge HOA.

FOR A FIRST CAUSE OF ACTION
(Breach of Warranty: Developers)

70. Plaintiffs reassert and reallege the allegations contained in the above Paragraphs.

71. In acting as the developers of the Project and placing the individual townhomes into the stream of commerce, Developers provided an implied warranty of habitability to each owner at the Project and for the benefit of the HOA.

72. The above-referenced problems (and any subsequently-discovered problems) with the Project, and the townhomes within the Project, establish that this warranty has been breached by the Developers.

73. As a direct and proximate cause of the Developers' breach of the warranty of habitability, the Plaintiffs have been and will continue to be damaged as set forth herein.

74. Plaintiffs are entitled to a judgment against the Developers (including SDI) because of their breach of warranty of habitability in such amount as will be proven at trial.

FOR A SECOND CAUSE OF ACTION
(Negligence: Developers)

75. Plaintiffs reassert and reallege the allegations contained in the above Paragraphs.

76. The Developers owed a duty to the Plaintiffs to ensure that the Project was designed and constructed using a qualified architect and builder.

77. Additionally, the Developers retained control over the Board of the Stoneledge HOA up and until September, 2008, during such time Developers had a duty to inspect, repair, and

maintain components of the Project and to access funding needs and to make provisions for adequate funding.

78. The conditions uncovered to date at the Project establish that the Developers breached their duties to the Plaintiffs in that the defective conditions were not investigated or repaired and insufficient funds existed to effect such repairs at the time control of the Stoneledge HOA was transferred to the owners.

79. As a direct and proximate cause of the Developers' negligence and gross negligence, the Plaintiffs have suffered damages and the Plaintiffs will continue to suffer additional damages.

80. Plaintiffs are entitled to a judgment against the Developers because of their negligence and gross negligence in such amount as will be proven at trial, including punitive damages.

FOR A THIRD CAUSE OF ACTION
(Breach of Fiduciary Duty: Developers)

81. Plaintiffs reassert and reallege the allegations contained in the above Paragraphs.

82. A special relationship exists between the Developers and the Plaintiffs based on the following:

- a. The Developers developed the project;
- b. The Developers funded the design and construction of the Project;
- c. The Developers selected the builder and designer and others for the Project;
- d. The Developers marketed and sold the units at the Project and placed them into the stream of commerce; and,
- e. The Developers controlled the Stoneledge HOA until September, 2008.

83. Plaintiffs reposed special confidence in the Developers resulting in their owing to the Plaintiffs a fiduciary duty to accomplish the following non-exhaustive list of particulars:

- a. To fund adequately the design, construction, and upkeep of the Project;
- b. To select a qualified designer and builder for the Project;
- c. To ensure that the builder and designer produced a quality product free from the types of defects that currently exist at the Project;
- d. To establish sufficient capital reserves for the Association at its inception to address the maintenance and repairs at the Project;
- e. To maintain and upkeep all unsold units at the Project and the common areas of the Project; and,
- f. To ensure that at the time control of the Board of Directors of the Stoneledge HOA was turned over to the owners, in September 2008, that the components of the townhomes which the Stoneledge HOA is obligated to repair, maintain, and replace, were in reasonable condition, free of defects.

84. The deficiencies uncovered to date, which all existed on or before September 2008, establish that the Developers breached their fiduciary duty to the Plaintiffs.

85. As a direct and proximate cause of the Developers' breaches of fiduciary duties, the Plaintiffs have suffered damages and will continue to suffer additional damages.

86. Plaintiffs are entitled to a judgment against the Developers (including SDI) because of their breach of fiduciary duty in such amount as will be proved at trial, including punitive damages.

FOR A FOURTH CAUSE OF ACTION
(Breach of Warranty: Contractors and Subcontractors)

87. Plaintiffs reassert and reallege the allegations contained in the above Paragraphs.

88. The Contractors and Subcontractors, by virtue of their role in the construction of the Project, extended to the Plaintiffs a warranty of workmanlike service in regard to the construction of the townhomes within the Project.

89. The above-referenced problems (and any subsequently-discovered problems) at the Project establish that this warranty has been breached by the Contractors and Subcontractors.

90. As a direct and proximate result of such breach(es) of the warranty of workmanlike service, the Plaintiffs have been and will continue to be damaged as described herein.

91. Plaintiffs are entitled to a judgment against the Contractors and Subcontractors because of their breach of warranty of workmanlike service in such amount as will be proved at trial.

FOR A FIFTH CAUSE OF ACTION
(Negligence: Contractors and Subcontractors)

92. Plaintiffs reassert and reallege the allegations contained in the above Paragraphs.

93. The Contractors and Subcontractors, by virtue of their role in the construction of the Project, owed a duty to the Plaintiffs to retain, coordinate, and supervise competent subcontractors, and to accomplish such construction and/or repairs in accordance with all applicable codes, applicable industry standards, and any and all manufacturers' literature/instructions, and, when applicable, to conform such construction to whatever design documents existed at the time of constructing the Project and the townhomes within the Project.

94. The above-referenced problems (and any subsequently-discovered problems) with the Project establish that the Contractors and Subcontractors breached their duty in regard to these responsibilities which has proximately caused the deficiencies at the Project.

95. The violation of applicable building codes and the willful, reckless, and wanton failure to comply with the applicable standards establishes gross negligence on the part of the Contractors and Subcontractors.

96. As a direct and proximate result of the negligence or gross negligence of Contractors and Subcontractors, the Plaintiffs have been and will continue to be damaged as described herein.

97. Plaintiffs are entitled to a judgment against the Contractors and Subcontractors based on their negligence and gross negligence in such amount as will be proved at trial, including punitive damages.

FOR A SIXTH CAUSE OF ACTION
(Negligence: MPA- Architect)

98. Plaintiffs reassert and reallege the allegations contained in the above Paragraphs.

99. Defendant MPA was negligent, and/or grossly negligent in the design and inspection of the Project in one or more of the following particulars:

- a. failure to adequately design a waterproofing system so as to prevent water infiltration into the interior portions of the building;
- b. improper design of waterproofing of the exterior of the building and non-existent or improper design of flashing;
- c. inadequate inspection and acceptance of defective or non-conforming construction work;

- d. failure to design and insure construction in compliance with applicable building codes State and Federal laws and regulations and acceptable building practices; and,
- e. failure to properly specify appropriate materials to be used in the construction of the Project.

100. As a direct and proximate result and consequence of the negligence and gross negligence of Defendant MPA, Plaintiffs have suffered injuries and damages in an amount equal to the extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the structures, loss of use, depreciation in value and such punitive damages as may be appropriate.

FOR A SEVENTH CAUSE OF ACTION
(Breach of Express and Implied Warranty: MPA - Architects)

101. Plaintiffs reassert and reallege the allegations contained in the above Paragraphs.

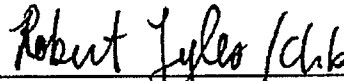
102. Defendant MPA expressly and impliedly warranted that its design of the Project would be of the highest quality and in conformance with the generally accepted standards of the architectural and construction industry, and further, that the specifications of materials and procedures would comply with the generally accepted principals in the industry.

103. Defendant MPA further expressly and impliedly warranted that the plans and specifications prepared for the Project were suitable and fit for use in constructing the Project, and that the building, when complete, would be free of design defects.

104. The plans and specifications as provided by MPA were not suitable or appropriate for their intended purpose, and as a result of MPA's breach of warranties by designing the Project

with severe structural and water intrusion problems, Plaintiffs are entitled to such actual damages as this Court may deem appropriate.

WHEREFORE, the Plaintiffs pray for a judgment against the Defendants on the above causes of action in such amounts as may be proven at trial, including consequential and punitive damages, the costs of this action, including attorney's fees, and for such other relief as the court deems just and proper.



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ATTORNEYS FOR PLAINTIFFS

Charleston, South Carolina

April 3, 2012

CERTIFICATE OF SERVICE

I, Ashley E. Poulnot, an employee of Lyles & Lyles, LLC, pursuant to Rule 5(b)(1), SCRCF and counsel's regular business practices, do hereby certify that I have this date, mailed via the United States Postal Service a true and correct copy of the **Plaintiffs' Third-Amended Summons and Complaint** to the following counsel of record:

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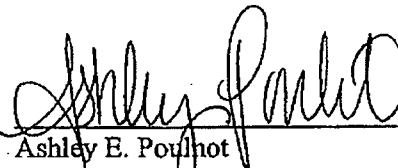
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Integrays Keowee Development and IMK Development

By:


Ashley E. Poulnot
Legal Assistant

This 3rd day of April, 2012
Charleston, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF OCONEE)

STONELEDGE AT LAKE KEOWEE OWNERS')
ASSOCIATION, INC., C. DAN CARSON, JEFFREY)
J. DAULER, JOAN W. DAVENPORT, MICHAEL)
FURNARI, DONNA FURNARI, JESSY B. GRASSO,)
NANCY E. GRASSO, ROBERT P. HAYES, LUCY)
H. HAYES, TY HIX, JENNIFER D. HIX, PAUL W.)
HUND, III, RUTH E. ISAAC, MICHAEL D.)
PLOURDE, MARY LOU PLOURDE, CAROL C.)
POPE, STEVEN B. TAYLOR, BETTE J. TAYLOR,)
AND ROBERT WHITE, INDIVIDUALLY AND ON)
BEHALF OF ALL OTHERS SIMILARLY SITUATED)

Plaintiffs,)

vs.)

IMK DEVELOPMENT CO., LLC, KEOWEE)
TOWNHOUSES, LLC, LUDWIG CORPORATION,)
LLC, SDI FUNDING, LLC, MEDALLION AT)
KEOWEE, LLC, INTEGRYS KEOWEE)
DEVELOPMENT, LLC, MARICK HOME BUILDERS,)
LLC, BOSTIC BROTHERS CONSTRUCTION, INC.,)
MILLER/PLAYER & ASSOCIATES, JOHN)
LUDWIG, CLEAR VIEW CONSTRUCTION, LLC,)
MICHAEL FRANZ, MHC CONTRACTORS,)
MIGUEL PORRAS CHONCOAS, BUILDERS FIRST)
SOURCE SOUTHEAST GROUP, MIKE GREEN,)
SOUTHERN CONCRETE SPECIALTIES, CARL)
COMPTON D/B/A COMPTON ENTERPRIZE A/K/A)
COMPTON ENTERPRISES, GUNTER HEATING &)
AIR, ALL PRO HEATING, A/C &)
REFRIGERATION, LLC, COLEMAN)
WATERPROOFING, HEYWARD ELECTRICAL)
SERVICES, INC., TINSLEY ELECTRICAL, LLC,)
HUTCH N SON CONSTRUCTION, INC., CARL)
CATOE CONSTRUCTION, INC., T.G.)
CONSTRUCTION, LLC, DELFINO)
CONSTRUCTION, FRANCISCO JAVIER ZARATE)
D/B/A ZARATE CONSTRUCTION, ALEJANDRO)
AVALOS CRUZ, HERBERTO ACROS HERNANDEZ,)
MARTIN HERNANDEZ-AVILES, FRANCISCO)
VILLALOBOS LOPEZ, AMBROSIO MARTINEZ-)
RAMIREZ, ESTER MORAN MENTADO, SOCORRO)
CASTILLO MONTEL, UPSTATE UTILITIES, INC.,)
MJG CONSTRUCTION AND HOMEBUILDERS, INC.)

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT
CASE NUMBER: 2009-CP-37-0652

SUMMONS AS TO THE CROSS CLAIM
AGAINST BOSTIC BROTHERS
CONSTRUCTION, CLEAR VIEW
CONSTRUCTION, LLC, MHC
CONTRACTORS, BUILDERS
FIRSTSOURCE SOUTHEAST GROUP,
SOUTHER CONCRETE SPECIALTIES,
CARL COMPTON D/B/A COMPTON
ENTERPRIZE A/K/A COMPTON
ENTERPRISES, GUNTER HEATING &
AIR, ALL PRO HEATING, A/C, &
REFRIGERATION, LLC, COLEMAN
WATERPROOFING, HEYWARD
ELECTRICAL SERVICES, INC, TINSLEY
ELECTRICAL, LLC, HUTCH N SON
CONSTRUCTION, INC., UPSTATE
UTILITIES, INC., SOUTHERN
BASEMENTS, INC., CARL CATOE
CONSTRUCTION, INC., TG
CONSTRUCTION, LLC, DELFINO
CONSTRUCTION, FRANCISCO JAVIER
ZARATE D/B/A ZARATE
CONSTRUCTION, ALEJANDRO AVALOS
CRUZ, HERBERTO ACROS HERNANDEZ,
MARTIN HERNANDEZ-AVILES,
FRANCISCO VILLALOBOS LOPEZ,
AMBROSIO MARTINEZ-RAMIREZ,
ESTER MORAN MENTADO, SOCORRO
CASTIOLLO MONTEL, MJG
CONSTRUCTION AND HOMEBUILDERS,
INC D/B/A MJG CONSTRUCTION, KMAC
OF THE CAROLINAS, INC., EUFACIO
GARCIA, EVERADO JARMAMILLO,
GARCIA PARRA INSULATION, INC., J&J
CONSTRUCTION, JOSE NINO, JOSE
MANUEL GARCIA, EASON
CONSTRUCTION, INC., VINCENT
MORALES D/B/A MORALES MASONRY;
AND MILLER/PLAYER & ASSOCIATES

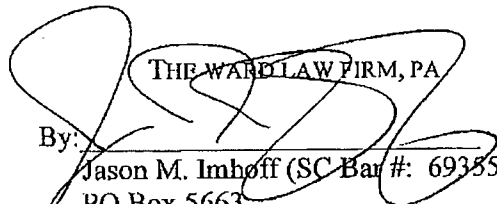
D/B/A MJG CONSTRUCTION, KMAC OF THE)
CAROLINAS, INC., EUFACIO GARCIA, EVERADO)
JARMAMILLO, GARCIA PARRA INSULATION,)
INC., J&J CONSTRUCTION, JOSE NINO, JOSE)
MANUEL GARCIA, EASON CONSTRUCTION, INC.,)
AND VINCENT MORALES D/B/A MORALES)
MASONRY,)

(JURY TRIAL DEMANDED)

Defendants,)

TO: THE DEFENDANTS ABOVE-NAMED:

You are hereby summoned and required to answer the Cross-Claim in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to the said Cross Claim on the subscribers at their offices, 233 S. Pine Street, Spartanburg, South Carolina, within thirty (30) days after the service hereof, exclusive of the day of service, unless you received your copy by certified mail, in which case you must serve a copy of your answer on the subscriber within thirty-five (35) days after the service hereof, exclusive of the date of such service; and if you fail to answer the Cross Claim within the time aforesaid, these Defendants in this action will apply to the Court for the judgment demanded in the Cross Claim.


THE WARD LAW FIRM, PA
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Attorneys for Marick Home Builders, LLC

April 5, 2012
Spartanburg, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT
CASE NUMBER: 2009-CP-37-0652

STONELEDGE AT LAKE KEOWEE OWNERS'
ASSOCIATION, INC., C. DAN CARSON, JEFFREY
J. DAULER, JOAN W. DAVENPORT, MICHAEL
FURNARI, DONNA FURNARI, JESSY B. GRASSO,
NANCY E. GRASSO, ROBERT P. HAYES, LUCY
H. HAYES, TY HIX, JENNIFER D. HIX, PAUL W.
HUND, III, RUTH E. ISAAC, MICHAEL D.
PLOURDE, MARY LOU PLOURDE, CAROL C.
POPE, STEVEN B. TAYLOR, BETTE J. TAYLOR,
AND ROBERT WHITE, INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS SIMILARLY SITUATED

Plaintiffs,

vs.

IMK DEVELOPMENT CO., LLC, KEOWEE
TOWNHOUSES, LLC, LUDWIG CORPORATION,
LLC, SDI FUNDING, LLC, MEDALLION AT
KEOWEE, LLC, INTEGRYS KEOWEE
DEVELOPMENT, LLC, MARICK HOME BUILDERS,
LLC, BOSTIC BROTHERS CONSTRUCTION, INC.,
MILLER/PLAYER & ASSOCIATES, JOHN
LUDWIG, CLEAR VIEW CONSTRUCTION, LLC,
MICHAEL FRANZ, MHC CONTRACTORS,
MIGUEL PORRAS CHONCOAS, BUILDERS FIRST
SOURCE SOUTHEAST GROUP, MIKE GREEN,
SOUTHERN CONCRETE SPECIALTIES, CARL
COMPTON D/B/A COMPTON ENTERPRIZE A/K/A
COMPTON ENTERPRISES, GUNTER HEATING &
AIR, ALL PRO HEATING, A/C &
REFRIGERATION, LLC, COLEMAN
WATERPROOFING, HEYWARD ELECTRICAL
SERVICES, INC., TINSLEY ELECTRICAL, LLC,
HUTCHINSON CONSTRUCTION, INC., CARL
CATOE CONSTRUCTION, INC., T.G.
CONSTRUCTION, LLC, DELFINO
CONSTRUCTION, FRANCISCO JAVIER ZARATE
D/B/A ZARATE CONSTRUCTION, ALEJANDRO
AVALOS CRUZ, HERBERTO ACROS HERNANDEZ,
MARTIN HERNANDEZ-AVILES, FRANCISCO
VILLALOBOS LOPEZ, AMBROSIO MARTINEZ-

MARICK HOME BUILDERS, LLC AND
RICK THOENNES' ANSWER TO
PLAINTIFFS' THIRD AMENDED
COMPLAINT AND CROSS CLAIM
AGAINST BOSTIC BROTHERS
CONSTRUCTION, CLEAR VIEW
CONSTRUCTION, LLC, MHC
CONTRACTORS, BUILDERS
FIRSTSOURCE SOUTHEAST GROUP,
SOUTHER CONCRETE SPECIALTIES,
CARL COMPTON D/B/A COMPTON
ENTERPRIZE A/K/A COMPTON
ENTERPRISES, GUNTER HEATING &
AIR, ALL PRO HEATING, A/C, &
REFRIGERATION, LLC, COLEMAN
WATERPROOFING, HEYWARD
ELECTRICAL SERVICES, INC, TINSLEY
ELECTRICAL, LLC, HUTCHINSON
CONSTRUCTION, INC., UPSTATE
UTILITIES, INC., SOUTHERN
BASEMENTS, INC., CARL CATOE
CONSTRUCTION, INC., TG
CONSTRUCTION, LLC, DELFINO
CONSTRUCTION, FRANCISCO JAVIER
ZARATE D/B/A ZARATE
CONSTRUCTION, ALEJANDRO AVALOS
CRUZ, HERBERTO ACROS HERNANDEZ,
MARTIN HERNANDEZ-AVILES,
FRANCISCO VILLALOBOS LOPEZ,
AMBROSIO MARTINEZ-RAMIREZ,
ESTER MORAN MENTADO, SOCORRO
CASTIOLLO MONTEL, MJG
CONSTRUCTION AND HOMEBUILDERS,
INC D/B/A MJG CONSTRUCTION, KMAC
OF THE CAROLINAS, INC., EUFACIO
GARCIA, EVERADO JARMAMILLO,
GARCIA PARRA INSULATION, INC., J&J

RAMIREZ, ESTER MORAN MENTADO, SOCORRO)	CONSTRUCTION, JOSE NINO, JOSE
CASTILLO MONTEL, UPSTATE UTILITIES, INC.,)	MANUEL GARCIA, EASON
MJG CONSTRUCTION AND HOMEBUILDERS, INC.)	CONSTRUCTION, INC., VINCENT
D/B/A MJG CONSTRUCTION, KMAC OF THE)	MORALES D/B/A MORALES MASONRY;
CAROLINAS, INC., EUFACIO GARCIA, EVERADO)	AND MILLER/PLAYER & ASSOCIATES
JARMAMILLO, GARCIA PARRA INSULATION,)	
INC., J&J CONSTRUCTION, JOSE NINO, JOSE)	
MANUEL GARCIA, EASON CONSTRUCTION, INC.,)	
AND VINCENT MORALES D/B/A MORALES)	(JURY TRIAL DEMANDED)
MASONRY,)	
)	
Defendants,)	
_____)	

Defendants, Marick Home Builders, LLC and Rick Thoennes, (hereinafter referred to as ("Defendants")) answering the Third Amended Complaint of the Plaintiffs, would respectfully allege and show unto the Court as follows:

1. These Defendants lack sufficient information to form a belief as to the truth of the allegations contained in Paragraph 1 of Plaintiffs' Third Amended Complaint and therefore deny the same.
2. These Defendants lack sufficient information to form a belief as to the truth of the allegations contained in Paragraph 2 of Plaintiffs' Third Amended Complaint and therefore deny the same.
3. These Defendants deny the allegations contained in Paragraph 3 of Plaintiffs' Third Amended Complaint.
4. These Defendants admit the allegations contained in Paragraph 4 of Plaintiffs' Third Amended Complaint.
5. Paragraph 5 of Plaintiffs' Third Amended Complaint sets forth a legal conclusion to which no response is required. Insofar as a response is required of them,

these Defendants deny the allegations of Paragraph 5 of Plaintiffs' Third Amended Complaint.

6. These Defendants deny the allegations contained in Paragraph 6 of Plaintiffs' Third Amended Complaint.

7. Paragraph 7 of Plaintiffs' Third Amended Complaint sets forth a legal conclusion to which no response is required. Insofar as a response is required of them, these Defendants admit the allegations of Paragraph 7 of Plaintiffs' Third Amended Complaint.

8. Defendants admit, upon information and belief, the truth of the allegations contained in Paragraph 8 of Plaintiffs' Third Amended Complaint.

9. Defendants admit, upon information and belief, the truth of the allegations contained in Paragraph 9 of Plaintiffs' Third Amended Complaint.

10. Defendants admit, upon information and belief, the truth of the allegations contained in Paragraph 10 of Plaintiffs' Third Amended Complaint.

11. Defendants admit, upon information and belief, the truth of the allegations contained in Paragraph 11 of Plaintiffs' Third Amended Complaint.

12. Defendants admit, upon information and belief, the truth of the allegations contained in Paragraph 12 of Plaintiffs' Third Amended Complaint.

13. Defendants admit, upon information and belief, the truth of the allegations contained in Paragraph 13 of Plaintiffs' Third Amended Complaint.

14. Defendants admit, upon information and belief, the truth of the allegations contained in Paragraph 14 of Plaintiffs' Third Amended Complaint.

15. Defendants admit, upon information and belief, the truth of the allegations contained in Paragraph 15 of Plaintiffs' Third Amended Complaint.

16. Defendants deny the allegations contained in Paragraph 16 of Plaintiffs' Third Amended Complaint.

17. Defendants deny the allegations contained in Paragraph 17 of Plaintiffs' Third Amended Complaint.

18. Defendants deny the allegations contained in Paragraph 18 of Plaintiffs' Third Amended Complaint.

19. These Defendants admit so much of the allegations of Paragraph 19 of Plaintiffs' Third Amended Complaint as allege that Marick Home Builders, LLC is a limited liability company organized and existing of the laws of the State of South Carolina and was a licensed South Carolina builder engaged in the business of building. Marick acted as a general contractor for several of the townhomes at the project. Defendants deny the remaining allegations of Paragraph 19 of Plaintiffs' Third Amended Complaint.

20. These Defendants deny the allegations contained in Paragraph 20 of Plaintiffs' Third Amended Complaint.

21. These Defendants lack sufficient information to form a belief as to the truth of the allegations contained in Paragraph 21 of Plaintiffs' Third Amended Complaint and therefore deny the same.

22. These Defendants deny the allegations contained in Paragraph 22 of Plaintiffs' Third Amended Complaint.

23. These Defendants lack sufficient information to form a belief as to the truth of the allegations contained in Paragraph 23 of Plaintiffs' Third Amended Complaint and therefore deny the same.

24. These Defendants lack sufficient information to form a belief as to the truth of the allegations contained in Paragraph 24 of Plaintiffs' Third Amended Complaint and therefore deny the same.

25. These Defendants lack sufficient information to form a belief as to the truth of the allegations contained in Paragraph 25 of Plaintiffs' Third Amended Complaint and therefore deny the same.

26. These Defendants lack sufficient information to form a belief as to the truth of the allegations contained in Paragraph 26 of Plaintiffs' Third Amended Complaint and therefore deny the same.

27. These Defendants lack sufficient information to form a belief as to the truth of the allegations contained in Paragraph 27 of Plaintiffs' Third Amended Complaint and therefore deny the same.

28. These Defendants lack sufficient information to form a belief as to the truth of the allegations contained in Paragraph 28 of Plaintiffs' Third Amended Complaint and therefore deny the same.

29. These Defendants lack sufficient information to form a belief as to the truth of the allegations contained in Paragraph 29 of Plaintiffs' Third Amended Complaint and therefore deny the same.

30. These Defendants lack sufficient information to form a belief as to the truth of the allegations contained in Paragraph 30 of Plaintiffs' Third Amended Complaint and therefore deny the same.

31. These Defendants lack sufficient information to form a belief as to the truth of the allegations contained in Paragraph 31 of Plaintiffs' Third Amended Complaint and therefore deny the same.

32. These Defendants lack sufficient information to form a belief as to the truth of the allegations contained in Paragraph 32 of Plaintiffs' Third Amended Complaint and therefore deny the same.

33. These Defendants lack sufficient information to form a belief as to the truth of the allegations contained in Paragraph 33 of Plaintiffs' Third Amended Complaint and therefore deny the same.

34. These Defendants lack sufficient information to form a belief as to the truth of the allegations contained in Paragraph 34 of Plaintiffs' Third Amended Complaint and therefore deny the same.

35. These Defendants lack sufficient information to form a belief as to the truth of the allegations contained in Paragraph 35 of Plaintiffs' Third Amended Complaint and therefore deny the same.

36. These Defendants lack sufficient information to form a belief as to the truth of the allegations contained in Paragraph 36 of Plaintiffs' Third Amended Complaint and therefore deny the same.

37. These Defendants lack sufficient information to form a belief as to the truth of the allegations contained in Paragraph 37 of Plaintiffs' Third Amended Complaint and therefore deny the same.

38. These Defendants lack sufficient information to form a belief as to the truth of the allegations contained in Paragraph 38 of Plaintiffs' Third Amended Complaint and therefore deny the same.

39. These Defendants lack sufficient information to form a belief as to the truth of the allegations contained in Paragraph 39 of Plaintiffs' Third Amended Complaint and therefore deny the same.

40. These Defendants admit so much of the allegations of Paragraph 40 of Plaintiffs' Third Amended Complaint as allege that in its Third Party Complaint Marick identified numerous parties as subcontractors or principles of same and alleged that they are among the at fault parties by virtue of their provision of services and/or products for this Project. Defendants deny the remaining allegations of Paragraph 40 of Plaintiffs' Third Amended Complaint.

41. These Defendants admit so much of Paragraph 41 of Plaintiffs' Third Amended Complaint as allege that Southern Basement, Inc is a corporation conducting business in Oconee County, specifically on the Project, including but not limited to basement work. Defendants deny the remaining allegations of Paragraph 41 of Plaintiffs' Third Amended Complaint.

42. Paragraph 42 of Plaintiffs' Third Amended Complaint requires no response from these Defendants. Insofar as Paragraph 42 of Plaintiffs' Third Amended

Complaint requires a response from them, these Defendants deny the allegations contained in Paragraph 42 of Plaintiffs' Third Amended Complaint.

43. Defendants admit, upon information and belief, the truth of the allegations contained in Paragraph 43 of Plaintiffs' Third Amended Complaint.

44. These Defendants lack sufficient information to form a belief as to the truth of the allegations contained in Paragraph 44 of Plaintiffs' Third Amended Complaint and therefore deny the same.

45. These Defendants lack sufficient information to form a belief as to the truth of the allegations contained in Paragraph 45 of Plaintiffs' Third Amended Complaint and therefore deny the same.

46. These Defendants lack sufficient information to form a belief as to the truth of the allegations contained in Paragraph 46 of Plaintiffs' Third Amended Complaint and therefore deny the same.

47. Paragraph 47 of Plaintiffs' Third Amended Complaint requires no response from them. Insofar as a response is required from them, these Defendants deny the allegations contained in Paragraph 47 of Plaintiffs' Third Amended Complaint.

48. Defendants admit, upon information and belief, the allegations contained in Paragraph 48 of Plaintiffs' Third Amended Complaint.

49. Defendants deny the allegations contained in Paragraph 49 of Plaintiffs' Third Amended Complaint.

50. Defendants deny the allegations contained in Paragraph 50 of Plaintiffs' Third Amended Complaint.

51. Defendants deny the allegations contained in Paragraph 51 of Plaintiffs' Third Amended Complaint.

52. Defendants deny the allegations contained in Paragraph 52 of Plaintiffs' Third Amended Complaint.

53. Defendants deny the allegations contained in Paragraph 53 of Plaintiffs' Third Amended Complaint.

54. Defendants deny the allegations contained in Paragraph 54 of Plaintiffs' Third Amended Complaint.

55. These Defendants lack sufficient information to form a belief as to the truth of the allegations contained in Paragraph 55 of Plaintiffs' Third Amended Complaint and therefore deny the same.

56. These Defendants lack sufficient information to form a belief as to the truth of the allegations contained in Paragraph 56 of Plaintiffs' Third Amended Complaint and therefore deny the same.

57. These Defendants lack sufficient information to form a belief as to the truth of the allegations contained in Paragraph 57 of Plaintiffs' Third Amended Complaint and therefore deny the same.

58. These Defendants lack sufficient information to form a belief as to the truth of the allegations contained in Paragraph 58 of Plaintiffs' Third Amended Complaint and therefore deny the same.

59. These Defendants lack sufficient information to form a belief as to the truth of the allegations contained in Paragraph 59 of Plaintiffs' Third Amended Complaint and therefore deny the same.

60. Paragraph 60 of Plaintiffs' Third Amended Complaint does not require a response from these Defendants. Insofar as Paragraph 60 of Plaintiffs' Third Amended Complaint requires a response of them, these Defendants deny the same.

61. Paragraph 61 of Plaintiffs' Third Amended Complaint does not require a response from these Defendants. Insofar as Paragraph 61 of Plaintiffs' Third Amended Complaint requires a response of them, these Defendants deny the same.

62. These Defendants lack sufficient information to form a belief as to the truth of the allegations contained in Paragraph 62 of Plaintiffs' Third Amended Complaint and therefore deny the same.

63. These Defendants deny the allegations contained in Paragraph 63 of Plaintiffs' Third Amended Complaint.

64. These Defendants deny the allegations contained in Paragraph 64 of Plaintiffs' Third Amended Complaint.

65. These Defendants deny the allegations contained in Paragraph 65 of Plaintiffs' Third Amended Complaint.

66. These Defendants deny the allegations contained in Paragraph 66 of Plaintiffs' Third Amended Complaint.

67. These Defendants deny the allegations contained in Paragraph 67 of Plaintiffs' Third Amended Complaint.

68. These Defendants deny the allegations contained in Paragraph 68 of Plaintiffs' Third Amended Complaint.

69. These Defendants deny the allegations contained in Paragraph 69 of Plaintiffs' Third Amended Complaint.

70. Insofar as Paragraph 70 of Plaintiffs' Third Amended Complaint requires a response from it, these Defendants reallege and incorporate herein by reference their responses to the allegations of Paragraphs 1 through 69 above.

71. Paragraph 71 of Plaintiffs' Third Amended Complaint sets forth a legal conclusion to which no response is required of these Defendants. Insofar as a response is required of them, these Defendants deny the allegations of Paragraph 71 of Plaintiffs' Third Amended Complaint.

72. Defendants deny the allegations contained in Paragraph 72 of Plaintiffs' Third Amended Complaint.

73. Defendants deny the allegations contained in Paragraph 73 of Plaintiffs' Third Amended Complaint.

74. Defendants deny the allegations contained in Paragraph 74 of Plaintiffs' Third Amended Complaint.

75. Insofar as Paragraph 75 of Plaintiffs' Third Amended Complaint requires a response from them, these Defendants reallege and incorporate herein by reference their responses to the allegations of Paragraphs 1 through 74 above.

76. Paragraph 76 of Plaintiffs' Third Amended Complaint sets forth a legal conclusion to which no response is required of these Defendants. Insofar as a response is required of them, these Defendants deny the allegations of Paragraph 76 of Plaintiffs' Third Amended Complaint.

77. Paragraph 77 of Plaintiffs' Third Amended Complaint sets forth a legal conclusion to which no response is required of these Defendants. Insofar as a response is

required of them, these Defendants deny the allegations of Paragraph 77 of Plaintiffs' Third Amended Complaint.

78. Defendants deny the allegations contained in Paragraph 78 of Plaintiffs' Third Amended Complaint.

79. Defendants deny the allegations contained in Paragraph 79 of Plaintiffs' Third Amended Complaint.

80. Defendants deny the allegations contained in Paragraph 80 of Plaintiffs' Third Amended Complaint.

81. Insofar as Paragraph 81 of Plaintiffs' Third Amended Complaint requires a response from them, these Defendants reallege and incorporate herein by reference their responses to the allegations of Paragraphs 1 through 80 above.

82. Paragraph 82 of Plaintiffs' Third Amended Complaint sets forth a legal conclusion to which no response is required of these Defendants. Insofar as a response is required of them, these Defendants deny the allegations of Paragraph 82 of Plaintiffs' Third Amended Complaint.

83. Paragraph 83 of Plaintiffs' Third Amended Complaint sets forth a legal conclusion to which no response is required of these Defendants. Insofar as a response is required of them, these Defendants deny the allegations of Paragraph 83 of Plaintiffs' Third Amended Complaint.

84. Defendants deny the allegations contained in Paragraph 84 of Plaintiffs' Third Amended Complaint.

85. Defendants deny the allegations contained in Paragraph 85 of Plaintiffs' Third Amended Complaint.

86. Defendants deny the allegations contained in Paragraph 86 of Plaintiffs' Third Amended Complaint.

87. Insofar as Paragraph 87 of Plaintiffs' Third Amended Complaint requires a response from them, these Defendants reallege and incorporate herein by reference their responses to the allegations of Paragraphs 1 through 86 above.

88. Paragraph 88 of Plaintiffs' Third Amended Complaint sets forth a legal conclusion to which no response is required of these Defendants. Insofar as a response is required of them, these Defendants deny the allegations of Paragraph 88 of Plaintiffs' Third Amended Complaint.

89. Defendants deny the allegations contained in Paragraph 89 of Plaintiffs' Third Amended Complaint.

90. Defendants deny the allegations contained in Paragraph 90 of Plaintiffs' Third Amended Complaint.

91. Defendants deny the allegations contained in Paragraph 91 of Plaintiffs' Third Amended Complaint.

92. Insofar as Paragraph 92 of Plaintiffs' Third Amended Complaint requires a response from them, these Defendants reallege and incorporate herein by reference their responses to the allegations of Paragraphs 1 through 91 above.

93. Paragraph 93 of Plaintiffs' Third Amended Complaint sets forth a legal conclusion to which no response is required of these Defendants. Insofar as a response is required of them, these Defendants deny the allegations of Paragraph 93 of Plaintiffs' Third Amended Complaint.

94. Defendants deny the allegations contained in Paragraph 94 of Plaintiffs' Third Amended Complaint.

95. Defendants deny the allegations contained in Paragraph 95 of Plaintiffs' Third Amended Complaint.

96. Defendants deny the allegations contained in Paragraph 96 of Plaintiffs' Third Amended Complaint.

97. Defendants deny the allegations contained in Paragraph 97 of Plaintiffs' Third Amended Complaint.

98. Insofar as Paragraph 98 of Plaintiffs' Third Amended Complaint requires a response from them, these Defendants reallege and incorporate herein by reference their responses to the allegations of Paragraphs 1 through 97 above.

99. Paragraph 99 of Plaintiffs' Third Amended Complaint makes no allegations against these Defendants and therefore requires no response from them. Insofar as a response is required of these Defendants, they lack sufficient information to form belief as to the truth of the allegations contained in Paragraph 99 of Plaintiffs' Third Amended Complaint.

100. Paragraph 100 of Plaintiffs' Third Amended Complaint makes no allegations against these Defendants and therefore requires no response from them. Insofar as a response is required of these Defendants, they lack sufficient information to form belief as to the truth of the allegations contained in Paragraph 100 of Plaintiffs' Third Amended Complaint.

101. Insofar as Paragraph 101 of Plaintiffs' Third Amended Complaint requires a response from them, these Defendants reallege and incorporate herein by reference their responses to the allegations of Paragraphs 1 through 100 above.

102. Paragraph 102 of Plaintiffs' Third Amended Complaint makes no allegations against these Defendants and therefore requires no response from them. Insofar as a response is required of these Defendants, they lack sufficient information to form belief as to the truth of the allegations contained in Paragraph 102 of Plaintiffs' Third Amended Complaint.

103. Paragraph 103 of Plaintiffs' Third Amended Complaint makes no allegations against these Defendants and therefore requires no response from them. Insofar as a response is required of these Defendants, they lack sufficient information to form belief as to the truth of the allegations contained in Paragraph 103 of Plaintiffs' Third Amended Complaint.

104. Paragraph 104 of Plaintiffs' Third Amended Complaint makes no allegations against these Defendants and therefore requires no response from them. Insofar as a response is required of these Defendants, they lack sufficient information to form belief as to the truth of the allegations contained in Paragraph 104 of Plaintiffs' Third Amended Complaint.

105. These Defendants deny each and every allegations of Plaintiffs' Third Amended Complaint not hereinabove specifically admitted, explained, or modified.

FOR A SECOND DEFEENSE

106. These Defendants incorporate herein the allegations of their foregoing defense not inconsistent herewith.

107. These Defendants allege that Plaintiffs' Third Amended Complaint fails to state facts sufficient to constitute a cause of action upon which relief can be granted against it and is, accordingly, barred.

FOR A THIRD DEFENSE

108. These Defendants incorporate herein the allegations of their foregoing defenses not inconsistent herewith.

109. Defendants allege that the Plaintiffs have failed to mitigate their damages in the manner provided for by law. Such failure to mitigate is a complete defense and bar to Plaintiffs' claims.

FOR A FOURTH DEFENSE

110. Defendants incorporate herein the allegations of their foregoing defenses not inconsistent herewith.

111. Defendants alleges that even if they were negligent or reckless in any respect, which is expressly denied and admitted solely for the purpose of this defense and no other, these Defendants are not liable to the Plaintiffs for any resulting damages, if any, because of the intervening, negligent, grossly negligent, reckless, willful and wanton acts of third-parties, which negligent and reckless acts on their part were not reasonably foreseeable and intervened and acted as the direct and proximate cause of the damages, if any, sustained by Plaintiffs.

FOR A FIFTH DEFENSE

112. Defendants incorporate herein the allegations of their foregoing defenses not inconsistent herewith.

113. Defendants state that the Plaintiffs have failed to give proper notice of the alleged defects pursuant to the South Carolina Code, or any other applicable State or Federal Statutes, and accordingly, Plaintiffs' Third Amended Complaint should be dismissed.

FOR A SIXTH DEFENSE

114. Defendants incorporate herein the allegations of their foregoing defenses not inconsistent herewith.

115. Defendants plead the doctrine of laches as a complete and total bar to Plaintiffs' claim.

FOR A SEVENTH DEFENSE

116. Defendants incorporate herein the allegations of their foregoing defenses not inconsistent herewith.

117. At the time of its construction, the Plaintiffs' homes met or exceeded all applicable Federal requirements, applicable State requirements, applicable construction requirements, and all applicable building codes and requirements in the industry, and accordingly Plaintiffs' Third Amended Complaint is barred.

FOR AN EIGHTH DEFENSE

118. Defendants incorporate herein the allegations of their foregoing defenses not inconsistent herewith.

119. Defendants state that if the homes are shown to contain a defect or malfunction, the Plaintiffs did not allow Defendants the opportunity to remedy said defects.

FOR A NINETH DEFENSE

120. Defendants incorporate herein the allegations of their foregoing defenses not inconsistent herewith.

121. Defendants state that this dispute is governed by an arbitration provision and therefore Plaintiffs' claims are barred in this forum and/or should be stayed and transferred to arbitration.

FOR A TENTH DEFENSE

122. Defendants incorporate herein the allegations of their foregoing defenses not inconsistent herewith.

123. Defendants state any alleged nonconformity does not impair the use, market value, or safety of the home, and accordingly, the Plaintiffs' Third Amended Complaint is barred.

FOR AN ELEVENTH DEFENSE

124. Defendants incorporate herein the allegations of their foregoing defenses not inconsistent herewith.

125. Defendants allege that insofar as Plaintiffs' Third Amended Complaint seeks punitive damages, such damages violate both the United States and South Carolina Constitutions. As such, Plaintiffs' claim for punitive damages is barred.

FOR A TWELFTH DEFENSE

126. Defendants incorporate herein the allegations of their foregoing defenses not inconsistent herewith.

127. Plaintiffs' claims are barred because Defendants have done all that is agreed to do under contract.

FOR A THIRTEETH DEFENSE

128. Defendants incorporate herein the allegations of their foregoing defenses not inconsistent herewith.

129. Plaintiffs' claims are barred in whole or in part by the economic loss rule.

FOR A FOURTEENTH DEFENSE

130. Defendants incorporate herein the allegations of their foregoing defenses not inconsistent herewith.

131. Defendants reserve and do not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery or otherwise.

FOR A FIFTEENTH DEFENSE

132. Defendants incorporate herein the allegations of their foregoing defenses not inconsistent herewith.

133. Defendants allege that any and all causes of action against it are barred by the applicable statute of limitations.

FOR A SIXTEENTH DEFENSE AND BY WAY OF CROSS CLAIM
(Equitable Indemnity)

134. These Defendants incorporate herein the allegations of their foregoing defenses not inconsistent herewith.

135. Upon information and belief, Clearview Construction is a South Carolina corporation conducting business in Oconee County, South Carolina, which provided stone work on the project at issue in this case. Michael Franz is the owner operator of Clearview Construction and a resident of Greenville County in the State of South Carolina.

136. Upon information and belief, MHC Contractors is a South Carolina corporation conducting business in Oconee County, South Carolina, which provided stone work on the project at issue in this case. Miguel Porras Choncoas is the owner operator of MHC Contractors and a resident of Greenville County in the State of South Carolina.

137. Upon information and belief, Miller/Player and Associates is a South Carolina Corporation conducting business in Oconee County, South Carolina, and provided architectural design for the project at issue in this case.

138. Upon information and belief, Builders FirstSource is a South Carolina corporation conducting business in Oconee County, South Carolina, which provided framing work on the project at issue in this case.

139. Upon information and belief, Southern Concrete Specialties is a South Carolina corporation conducting business in Oconee County, South Carolina, which provided concrete flatwork and basement work for the project at issue in this case.

140. Upon information and belief, Carl Compton d/b/a Compton Enterprize a/k/a Compton Enterprises are alternatively South Carolina corporations conducting business in Oconee County, South Carolina and/or the owner and/or operator of said companies and is a citizen and resident of Greenville County in the State of South Carolina and conducting business in Oconee County, South Carolina by providing roofing work for the project at issue in this case.

141. Upon information and belief, Gunter Heating and Air is a South Carolina corporation conducting business in Oconee County, South Carolina, which provided HVAC work for the project at issue in this case.

142. Upon information and belief, All Pro Heating, A/C, and Refrigeration, LLC is a South Carolina corporation conducting business in Oconee County, South Carolina, which provided HVAC work for the project at issue in this case.

143. Upon information and belief, Coleman Waterproofing is a South Carolina corporation conducting business in Oconee County, South Carolina, which provided waterproofing work for the project at issue in this case.

144. Upon information and belief, Heyward Electrical Services is a South Carolina corporation conducting business in Oconee County, South Carolina, which provided electrical work for the project at issue in this case.

145. Upon information and belief, Tinsley Electrical, LLC is a South Carolina corporation conducting business in Oconee County, South Carolina, which provided electrical work for the project at issue in this case.

146. Upon information and belief, Hutch N Son Construction is a South Carolina corporation conducting business in Oconee County, South Carolina, which provided grading work for the project at issue in this case.

147. Upon information and belief, Bostic Brothers Construction, Inc. is a corporation organized and conducting business under the laws of the State of South Carolina and doing business in Oconee County, South Carolina as a general contractor for certain townhomes at the project.

148. Upon information and belief, Upstate Utilities, Inc. is a corporation conducting business in Oconee County, South Carolina, which provided grading work and other work for the project at issue in this case.

149. Upon information and belief, Southern Basement, Inc. is a corporation conducting business in Oconee County, South Carolina, which provided basement work for the project at issue in this case.

150. Upon information and belief, Carl Catoe Construction, Inc. is a corporation conducting business in Oconee County, South Carolina, which provided labor and materials for framing, installation of windows, doors, sidings, trim, and other work at the project at issue in this case.

151. Upon information and belief, T.G Construction, LLC, Delfino Construction, Francisco Javier Zarate d/b/a Zarate Construction, Alejandro Avalos Cruz, Herberto Acros Hernandez, Martin Hernandez-Aviles, Francisco Villalobos Lopez, Ambrosio Martinez-Ramirez, Ester Moran Mentado, and Scocorro Castillo Montel are individuals or entities conducting business in Oconee County, South Carolina, which provided services, materials, or both including framing, installation of windows, doors, siding, trim, and other work at the project at issue in this case.

152. Upon information and belief, MJG Construction and Homebuilders, Inc. d/b/a MJG Construction, KMAC of the Carolinas, Inc., Eufacio Garcia, Everado Jarmamillo, Garcia Parra Insulation, Inc., J&J Construction, Jose Nino, Jose Manuel Garcia, Eason Construction, Inc., and Vincent Marales d/b/a Marales Masonry are individuals or entities conducting business in Oconee County, South Carolina, which provided materials, services or both to the Project at issue in this case.

153. Upon information and belief, each of the design professionals, contractors, and subcontractors named above provided services and/or products to Plaintiffs, Bostic, and/or Marick which Plaintiffs allege are defective in their Third Amended Complaint.

154. If Plaintiffs' allegations are true, which are specifically denied and admitted solely for this defense and Cross Claim and no other, in that the goods and services supplied by the design professionals, contractors, and subcontractors above are defective and failed and they were damaged by these goods and services, which has been denied by Marick, the conduct, acts and/or omissions of Michael Franz, Clearview Construction, Miguel Porras Choncoas, MHC Contractors, Miller/Player and Associates, Builders FirstSource-Southeast Group, Southern Concrete Specialties, Carl Compton d/b/a Compton Enterprize a/k/a Compton Enterprises, Gunter Heating & Air, All Pro Heating, A/C, & Refrigeration, LLC, Coleman Waterproofing, Tinsley Electrical, LLC, Heyward Electrical Services, Hutch N Son Construction, Southern Basement, Bostic Brothers Construction, Inc., Upstate Utilities, Inc., Carl Catoe Construction, Inc., T.G. Construction, LLC, Delfino Construction, Francisco Javier Zarate d/b/a Zarate Construction, Alejandro Avalos Cruz, Herberto Acroz Hernandez, martin Hernandez-Aviles, Francisco Villalobos Lopez, Ambrosio Martinez-Ramirez, Ester Moran Mentado, Socorro Castiello Montel, MJG Construction and Homebuilders d/b/a MJG Construction, KMAC of the Carolinas, Inc., Efacio Garcia, Everado Jarmamillo, Garcia Parra Insulation, Inc., J&J Construction, Jose Nino, Jose Manuel Garcia, Eason Construction, Inc., and Vincent Morales d/b/a Morales Masonry have led to those damages and may lead to additional damages being asserted against Marick Home Builders without any fault by it.

155. Assuming the allegations of Plaintiffs' Third Amended Complaint are true, which is expressly denied by Marick and admitted solely for the purpose of this defense and Cross claim and no other, the design professionals, contractors and

subcontractors have breached their duties to Plaintiffs and Marick, and as a result of that breach Plaintiffs and Marick have or will be damaged.

156. Due to the potential of liability and damages being assessed against Marick Home Builders, without any fault by it, Marick Home Builders alleges that if Plaintiffs are awarded damages against Marick Home Builders for the defective or deficient work, services, and/or products provided by Michael Franz, Clearview Construction, Miguel Porras Choncoas, MHC Contractors, Miller/Player and Associates, Builders FirstSource-Southeast Group, Southern Concrete Specialties, Carl Compton d/b/a Compton Enterprize a/k/a Compton Enterprises, Gunter Heating & Air, All Pro Heating, A/C, & Refrigeration, LLC, Coleman Waterproofing, Tinsley Electrical, LLC, Heyward Electrical Services, Hutch N Son Construction, Southern Basement, Bostic Brothers Construction, Inc., Upstate Utilities, Inc., Carl Catoe Construction, Inc., T.G. Construction, LLC, Delfino Construction, Francisco Javier Zarate d/b/a Zarate Construction, Alejandro Avalos Cruz, Herberto Acroz Hernandez, martin Hernandez-Aviles, Francisco Villalobes Lopez, Ambrosio Martinez-Ramirez, Ester Moran Mentado, Socorro Castiollo Montel, MJG Construction and Homebuilders d/b/a MJG Construction, KMAC of the Carolinas, Inc., Efacio Garcia, Everado Jarmamillo, Garcia Parra Insulation, Inc., J&J Construction, Jose Nino, Jose Manuel Garcia, Eason Construction, Inc., and Vincent Morales d/b/a Morales Masonry it is entitled to equitable indemnity from said contractors, subcontractors, and design professionals.

157. Marick alleges that the damages, if any, sustained by the Plaintiffs in this case were a direct and proximate result of the actions of design professionals, contractors and subcontractors listed above.

158. Marick alleges that if Plaintiffs are entitled to recovery by judgment or otherwise against it, Marick is entitled to equitable indemnity against Michael Franz, Clearview Construction, Miguel Porras Choncoas, MHC Contractors, Miller/Player and Associates, Builders FirstSource-Southeast Group, Southern Concrete Specialties, Carl Compton d/b/a Compton Enterprize a/k/a Compton Enterprises, Gunter Heating & Air, All Pro Heating, A/C, & Refrigeration, LLC, Coleman Waterproofing, Tinsley Electrical, LLC, Heyward Electrical Services, Hutch N Son Construction, Southern Basement, Bostic Brothers Construction, Inc., Upstate Utilities, Inc., Carl Catoe Construction, Inc., T.G. Construction, LLC, Delfino Construction, Francisco Javier Zarate d/b/a Zarate Construction, Alejandro Avalos Cruz, Herberto Acroz Hernandez, martin Hernandez-Aviles, Francisco Villalobos Lopez, Ambrosio Martinez-Ramirez, Ester Moran Mentado, Socorro Castiollo Montel, MJG Construction and Homebuilders d/b/a MJG Construction, KMAC of the Carolinas, Inc., Efacio Garcia, Everado Jarmamillo, Garcia Parra Insulation, Inc., J&J Construction, Jose Nino, Jose Manuel Garcia, Eason Construction, Inc., and Vincent Morales d/b/a Morales Masonry in the same amount. Marick further alleges that it should be reimbursed and indemnified for the cost of the action, including, but not limited to, attorney's fees and costs incurred in the defense.

FOR A SEVENTEENTH DEFENSE AND BY WAY OF CROSS CLAIM
(Breach of Contract-Contractors)

159. Defendants incorporate herein the allegations of their foregoing defenses not inconsistent herewith.

160. Michael Franz, Clearview Construction, Miguel Porras Choncoas, MHC Contractors, Miller/Player and Associates, Builders FirstSource-Southeast Group, Southern Concrete Specialties, Carl Compton d/b/a Compton Enterprize a/k/a Compton

Enterprises, Gunter Heating & Air, All Pro Heating, A/C, & Refrigeration, LLC, Coleman Waterproofing, Tinsley Electrical, LLC, Heyward Electrical Services, Hutch N Son Construction, and Southern Basement entered into a legally binding contract whereby Marick agreed to pay each contractor and subcontractor for furnishing appropriate and non-defective materials and work in each contractor's and subcontractor's specialty for Plaintiffs.

161. If the Plaintiffs' allegations are true, which is denied by Marick and admitted solely for the purpose of this defense and Cross Claim, contractors and subcontractors have provided defective materials or services in breach of each of their contracts with Marick.

162. If the Plaintiffs' allegations are true, which is denied by Marick and admitted solely for the purpose of this defense and Cross Claim, said breach of contract has resulted or could result in damage to Plaintiff, which could or will be assessed against Marick.

163. If the Plaintiffs' allegations are true, which is denied by Marick and admitted solely for the purpose of this defense and Cross Claim, each contractor or subcontractor breached the terms of its contract with Marick and Marick is informed and believes it is entitled to judgment against each contractor or subcontractor for actual damages, together with attorney's fees, and interest thereon.

FOR AN EIGHTEENTH DEFENSE AND BY WAY OF CROSS CLAIM
(Negligence)

164. Defendants incorporate herein the allegations of their foregoing defenses not inconsistent herewith.

165. As subcontractors, material men, or design professionals providing materials and work on the Property, Michael Franz, Clearview Construction, Miguel Porras Choncoas, MHC Contractors, Miller/Player and Associates, Builders FirstSource-Southeast Group, Southern Concrete Specialties, Carl Compton d/b/a Compton Enterprize a/k/a Compton Enterprises, Gunter Heating & Air, All Pro Heating, A/C, & Refrigeration, LLC, Coleman Waterproofing, Tinsley Electrical, LLC, Heyward Electrical Services, Hutch N Son Construction, Southern Basement, Bostic Brothers Construction, Inc., Upstate Utilities, Inc., Carl Catoe Construction, Inc., T.G. Construction, LLC, Delfino Construction, Francisco Javier Zarate d/b/a Zarate Construction, Alejandro Avalos Cruz, Herberto Acroz Hernandez, martin Hernandez-Aviles, Francisco Villalobos Lopez, Ambrosio Martinez-Ramirez, Ester Moran Mentado, Socorro Castiollo Montel, MJG Construction and Homebuilders d/b/a MJG Construction, KMAC of the Carolinas, Inc., Efacio Garcia, Everado Jarmamillo, Garcia Parra Insulation, Inc., J&J Construction, Jose Nino, Jose Manuel Garcia, Eason Construction, Inc., and Vincent Morales d/b/a Morales Masonry had a duty to perform their work in accordance with the plans and specifications, accepted building standards and practices, manufacturers instructions, or other direction and to provide materials and services conforming therewith.

166. To the extent that the Plaintiffs' allegations are true, which is denied by Marick and admitted solely for the purpose of this defense and Cross Claim, each of the above named breached their respective duties and were negligent in the work performed or material provided including, but not limited to, the following:

- i. Improper installation of roof;

- ii. Improper installation of HVAC units;
- iii. Defective framing;
- iv. Improper installation of stone cladding;
- v. Improper installation of siding;
- vi. Improper installation of windows;
- vii. Improper installation of concrete;
- viii. Defective electrical work;
- ix. Improper grading;
- x. Improper design;
- xi. Defective construction;
- xii. Use of improper materials;
- xiii. Improper or deficient supervision;
- xiv. Improper hiring; and
- xv. Defective or deficient design.

167. If the Plaintiffs' allegations are true, which is denied by Marick and admitted solely for the purpose of this defense and Cross Claim, the negligence, gross negligence, reckless, willful, and wanton conduct of each of the above named combined, concurred, or was a cause of the Plaintiffs' alleged resulting damages as alleged in the Third Amended Complaint.

168. If the Plaintiffs' allegations are true, which is denied by Defendants and admitted solely for the purpose of this defense and Cross Claim, the above named are all jointly and severally liable as each parties' work and/or materials proximately caused resulting property damage to other construction work product on the Property causing

Marick to incur attorneys' fees, costs, and face potential liability to the Plaintiffs for which they sue.

169. Should Plaintiffs prevail on their claims, Marick will be damaged as a direct and proximate result of Michael Franz, Clearview Construction, Miguel Porras Choncoas, MHC Contractors, Miller/Player and Associates, Builders FirstSource-Southeast Group, Southern Concrete Specialties, Carl Compton d/b/a Compton Enterprize a/k/a Compton Enterprises, Gunter Heating & Air, All Pro Heating, A/C, & Refrigeration, LLC, Coleman Waterproofing, Tinsley Electrical, LLC, Heyward Electrical Services, Hutch N Son Construction, Southern Basement, Bostic Brothers Construction, Inc., Upstate Utilities, Inc., Carl Catoe Construction, Inc., T.G. Construction, LLC, Delfino Construction, Francisco Javier Zarate d/b/a Zarate Construction, Alejandro Avalos Cruz, Herberto Acroz Hernandez, martin Hernandez-Aviles, Francisco Villalobos Lopez, Ambrosio Martinez-Ramirez, Ester Moran Mentado, Socorro Castiello Montel, MJG Construction and Homebuilders d/b/a MJG Construction, KMAC of the Carolinas, Inc., Efacio Garcia, Everado Jarmamillo, Garcia Parra Insulation, Inc., J&J Construction, Jose Nino, Jose Manuel Garcia, Eason Construction, Inc., and Vincent Morales d/b/a Morales Masonry negligence; as a result, Marick is informed and believes that it is entitled to recover from Michael Franz, Clearview Construction, Miguel Porras Choncoas, MHC Contractors, Miller/Player and Associates, Builders FirstSource-Southeast Group, Southern Concrete Specialties, Carl Compton d/b/a Compton Enterprize a/k/a Compton Enterprises, Gunter Heating & Air, All Pro Heating, A/C, & Refrigeration, LLC, Coleman Waterproofing, Tinsley Electrical, LLC, Heyward Electrical Services, Hutch N Son Construction, Southern Basement, Bostic

Brothers Construction, Inc., Upstate Utilities, Inc., Carl Catoe Construction, Inc., T.G. Construction, LLC, Delfino Construction, Francisco Javier Zarate d/b/a Zarate Construction, Alejandro Avalos Cruz, Herberto Acroz Hernandez, martin Hernandez-Aviles, Francisco Villalobos Lopez, Ambrosio Martinez-Ramirez, Ester Moran Mentado, Socorro Castiollo Montel, MJG Construction and Homebuilders d/b/a MJG Construction, KMAC of the Carolinas, Inc., Efacio Garcia, Everado Jarmamillo, Garcia Parra Insulation, Inc., J&J Construction, Jose Nino, Jose Manuel Garcia, Eason Construction, Inc., and Vincent Morales d/b/a Morales Masonry such as it may incur in legal fees and costs or is ordered to pay to the Plaintiffs for which they sue.

170. Marick is entitled to recover against each jointly and severally any and all damages recovered by the Plaintiffs against Marick including reasonable attorneys' fees and costs.

FOR A NINETEENTH DEFENSE AND BY WAY OF CROSS CLAIM
(Breach of Warranties)

171. Defendants incorporate herein the allegations of their foregoing defenses not inconsistent herewith.

172. Michael Franz, Clearview Construction, Miguel Porras Choncoas, MHC Contractors, Miller/Player and Associates, Builders FirstSource-Southeast Group, Southern Concrete Specialties, Carl Compton d/b/a Compton Enterprize a/k/a Compton Enterprises, Gunter Heating & Air, All Pro Heating, A/C, & Refrigeration, LLC, Coleman Waterproofing, Tinsley Electrical, LLC, Heyward Electrical Services, Hutch N Son Construction, Southern Basement, Bostic Brothers Construction, Inc., Upstate Utilities, Inc., Carl Catoe Construction, Inc., T.G. Construction, LLC, Delfino Construction, Francisco Javier Zarate d/b/a Zarate Construction, Alejandro Avalos Cruz,

Herberto Acroz Hernandez, martin Hernandez-Aviles, Francisco Villalobes Lopez, Ambrosio Martinez-Ramirez, Ester Moran Mentado, Socorro Castiollo Montel, MJG Construction and Homebuilders d/b/a MJG Construction, KMAC of the Carolinas, Inc., Efacio Garcia, Everado Jarmamillo, Garcia Parra Insulation, Inc., J&J Construction, Jose Nino, Jose Manuel Garcia, Eason Construction, Inc., and Vincent Morales d/b/a Morales Masonry expressly and/or impliedly warranted to Marick that their service and materials would be provided in a good and workmanlike manner free from defects and in accordance with applicable building codes and industry standards, manufacturers' instructions, or other applicable standards.

173. If the Plaintiffs' allegations are true, which is denied by Marick and admitted solely for the purpose of this defense and Defendants, Michael Franz, Clearview Construction, Miguel Porras Choncoas, MHC Contractors, Miller/Player and Associates, Builders FirstSource-Southeast Group, Southern Concrete Specialties, Carl Compton d/b/a Compton Enterprize a/k/a Compton Enterprises, Gunter Heating & Air, All Pro Heating, A/C, & Refrigeration, LLC, Coleman Waterproofing, Tinsley Electrical, LLC, Heyward Electrical Services, Hutch N Son Construction, Southern Basement, Bostic Brothers Construction, Inc., Upstate Utilities, Inc., Carl Catoe Construction, Inc., T.G. Construction, LLC, Delfino Construction, Francisco Javier Zarate d/b/a Zarate Construction, Alejandro Avalos Cruz, Herberto Acroz Hernandez, martin Hernandez-Aviles, Francisco Villalobes Lopez, Ambrosio Martinez-Ramirez, Ester Moran Mentado, Socorro Castiollo Montel, MJG Construction and Homebuilders d/b/a MJG Construction, KMAC of the Carolinas, Inc., Efacio Garcia, Everado Jarmamillo, Garcia Parra Insulation, Inc., J&J Construction, Jose Nino, Jose Manuel Garcia, Eason Construction,

Inc., and Vincent Morales d/b/a Morales Masonry breached their express and/or implied warranties.

174. Should Plaintiffs prevail on their claims, Marick will be damaged as a direct and proximate result of the above named parties' breach of their express and/or implied warranties; as a result, Marick is informed and believes that it is entitled to recover from Michael Franz, Clearview Construction, Miguel Porras Choncoas, MHC Contractors, Miller/Player and Associates, Builders FirstSource-Southeast Group, Southern Concrete Specialties, Carl Compton d/b/a Compton Enterprize a/k/a Compton Enterprises, Gunter Heating & Air, All Pro Heating, A/C, & Refrigeration, LLC, Coleman Waterproofing, Tinsley Electrical, LLC, Heyward Electrical Services, Hutch N Son Construction, Southern Basement, Bostic Brothers Construction, Inc., Upstate Utilities, Inc., Carl Catoe Construction, Inc., T.G. Construction, LLC, Delfino Construction, Francisco Javier Zarate d/b/a Zarate Construction, Alejandro Avalos Cruz, Herberto Acroz Hernandez, martin Hernandez-Aviles, Francisco Villalobes Lopez, Ambrosio Martinez-Ramirez, Ester Moran Mentado, Socorro Castiollo Montel, MJG Construction and Homebuilders d/b/a MJG Construction, KMAC of the Carolinas, Inc., Efacio Garcia, Everado Jarmamillo, Garcia Parra Insulation, Inc., J&J Construction, Jose Nino, Jose Manuel Garcia, Eason Construction, Inc., and Vincent Morales d/b/a Morales Masonry such as it may incur in legal fees and costs or is ordered to pay to the Plaintiffs for which they sue.

WHEREFORE, Marick Home Builders having fully answered the Plaintiffs' Third Amended Complaint and Cross Claiming against Michael Franz, Clearview Construction, Miguel Porras Choncoas, MHC Contractors, Miller/Player and Associates,

Builders FirstSource-Southeast Group, Southern Concrete Specialties, Carl Compton d/b/a Compton Enterprize a/k/a Compton Enterprises, Gunter Heating & Air, All Pro Heating, A/C, & Refrigeration, LLC, Coleman Waterproofing, Tinsley Electrical, LLC, Heyward Electrical Services, Hutch N Son Construction, Southern Basement, Bostic Brothers Construction, Inc., Upstate Utilities, Inc., Carl Catoe Construction, Inc., T.G. Construction, LLC, Delfino Construction, Francisco Javier Zarate d/b/a Zarate Construction, Alejandro Avalos Cruz, Herberto Acroz Hernandez, martin Hernandez-Aviles, Francisco Villalobes Lopez, Ambrosio Martinez-Ramirez, Ester Moran Mentado, Socorro Castiollo Montel, MJG Construction and Homebuilders d/b/a MJG Construction, KMAC of the Carolinas, Inc., Efacio Garcia, Everado Jarmamillo, Garcia Parra Insulation, Inc., J&J Construction, Jose Nino, Jose Manuel Garcia, Eason Construction, Inc., and Vincent Morales d/b/a Morales Masonry, prays that this court:

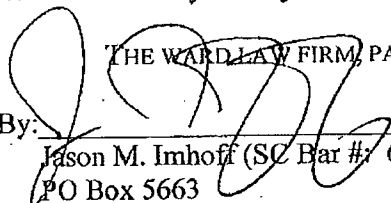
- a. Dismiss Plaintiffs' Third Amended Complaint with prejudice;
- b. In the alternative, that Marick Home Builders be granted judgment against Michael Franz, Clearview Construction, Miguel Porras Choncoas, MHC Contractors, Miller/Player and Associates, Builders FirstSource-Southeast Group, Southern Concrete Specialties, Carl Compton d/b/a Compton Enterprize a/k/a Compton Enterprises, Gunter Heating & Air, All Pro Heating, A/C, & Refrigeration, LLC, Coleman Waterproofing, Tinsley Electrical, LLC, Heyward Electrical Services, Hutch N Son Construction, Southern Basement, Bostic Brothers Construction, Inc., Upstate Utilities, Inc., Carl Catoe Construction, Inc., T.G. Construction, LLC, Delfino Construction, Francisco Javier Zarate d/b/a Zarate Construction, Alejandro Avalos Cruz, Herberto Acroz Hernandez, martin Hernandez-Aviles, Francisco Villalobes Lopez,

Ambrosio Martinez-Ramirez, Ester Moran Mentado, Socorro Castiollo Montel, MJG Construction and Homebuilders d/b/a MJG Construction, KMAC of the Carolinas, Inc., Efacio Garcia, Everado Jarmamillo, Garcia Parra Insulation, Inc., J&J Construction, Jose Nino, Jose Manuel Garcia, Eason Construction, Inc., and Vincent Morales d/b/a Morales Masonry in the sum to be determined by a jury for both actual and punitive damages, attorney's fees, for the costs of this action, interest, and for such other and further relief as this court may deem just and proper;

c. In the alternative, that Marick Home Builders be indemnified in whole or in part by Michael Franz, Clearview Construction, Miguel Porras Choncoas, MHC Contractors, Miller/Player and Associates, Builders FirstSource-Southeast Group, Southern Concrete Specialties, Carl Compton d/b/a Compton Enterprize a/k/a Compton Enterprises, Gunter Heating & Air, All Pro Heating, A/C, & Refrigeration, LLC, Coleman Waterproofing, Tinsley Electrical, LLC, Heyward Electrical Services, Hutch N Son Construction, Southern Basement, Bostic Brothers Construction, Inc., Upstate Utilities, Inc., Carl Catoe Construction, Inc., T.G. Construction, LLC, Delfino Construction, Francisco Javier Zarate d/b/a Zarate Construction, Alejandro Avalos Cruz, Herberto Acroz Hernandez, martin Hernandez-Aviles, Francisco Villalobes Lopez, Ambrosio Martinez-Ramirez, Ester Moran Mentado, Socorro Castiollo Montel, MJG Construction and Homebuilders d/b/a MJG Construction, KMAC of the Carolinas, Inc., Efacio Garcia, Everado Jarmamillo, Garcia Parra Insulation, Inc., J&J Construction, Jose Nino, Jose Manuel Garcia, Eason Construction, Inc., and Vincent Morales d/b/a Morales Masonry;

d. For the cost of this action from parties other than Marick Home Builders; and

e. For such other and further relief as this court may deem just and equitable.

By: 

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*Attorneys for Marick Home Builders,
LLC*

April 5, 2012
Spartanburg, South Carolina

CERTIFICATE OF SERVICE

I, Amanda D. Steward, an employee of The Ward Law Firm, PA, pursuant to Rule 5(b)(1), SCRPC and counsel's regular business practices, do hereby certify that I have this date, electronically mailed a true and correct copy of the **Marick Home Builders, LLC's Answer to Plaintiffs' Third Amended Complaint and Cross Claim against Defendants** to the following counsel of record:

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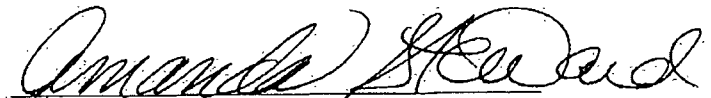
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By:



Amanda D. Steward

Paralegal to Jason M. Imhoff

This 9 day of April, 2012
Spartanburg, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS

STONELEDGE AT LAKE KEOWEE)
OWNERS' ASSOCIATION, INC.; C.
DAN CARSON; JEFFREY J. DAULER;
JOAN W. DAVENPORT; MICHAEL)
FURNARI; DONNA FURNARI; JESSY
B. GRASSO; NANCY E. GRASSO;
ROBERT P. HAYES; LUCY H. HAYES;
TY HIX; JENNIFER D. HIX; PAUL W.)
HUND, III; RUTH E. ISAAC; MICHAEL
D. PLOURDE; MARY LOU K.
PLOURDE; CAROL C. POPE; STEVEN)
B. TAYLOR; BETTIE J. TAYLOR;
ROBERT WHITE, INDIVIDUALLY,
AND ON BEHALF OF ALL OTHERS)
SIMILARLY SITUATED,

2009-CP-37-00652

APRIL 10, 2014

TRANSCRIPT OF RECORD

PLAINTIFFS,)

-VS-

IMK DEVELOPMENT CO., LLC;)
KEOWEE TOWNHOUSES, LLC;
LUDWIG CORPORATION, LLC; SDI
FUNDING, LLC; MEDALLION AT)
KEOWEE, LLC; INTEGRYS KEOWEE
DEVELOPMENT, LLC; MARICK
HOME BUILDERS, LLC; BOSTIC)
BROTHERS CONSTRUCTION, INC.
AND MILLER PLAYER &
ASSOCIATES,)

DEFENDANTS.

BEFORE:

THE HONORABLE ALEXANDER S. MACAULAY, JUDGE

APPEARANCES:

ROBERT LYLES, ESQUIRE
ATTORNEY FOR THE PLAINTIFFS

JASON IMHOFF, ESQUIRE
REED TEAGUE, ESQUIRE
CYNTHIA BROWN, ESQUIRE
BO WILSON, ESQUIRE
ALAN BELCHER, ESQUIRE
LINDSEY BUILDER, ESQUIRE
ATTORNEYS FOR THE DEFENDANTS

DANETTE P. HANKS
CIRCUIT COURT REPORTER

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PLAINTIFF'S EXHIBITS

NO	DESCRIPTION	ID	EV
	(NONE)		

DEFENDANT'S EXHIBITS

	(NONE)		

COURT'S EXHIBITS

	(NONE)		

APRIL 10, 2014

1 Marick Home Builders.

2 THE COURT: Yes, sir.

3 MR. WILSON: Bo Wilson.

4 THE COURT: All right. Very good. Thank
5 you.

6 All right. Then the next one is motion for JNOV,
7 new trial to alter or amend the setoff? Is that
8 correct?

9 LAW CLERK: Yes. We have three defendants.

10 THE COURT: Well, let's see what we've got
11 here.

12 LAW CLERK: To start with.

13 THE COURT: Which one have you got next?

14 LAW CLERK: Plaintiff's motion for costs.

15 THE COURT: All right. Plaintiff's motion for
16 costs. Mr. Lyles.

17 MR. LYLES: Yes, sir, Your Honor. We had
18 filed a motion for the recovery of costs on the basis
19 that we are the prevailing party in the case. We
20 submitted an affidavit in support of that motion.
21 These are costs that are recoverable under the rules.
22 Obviously not attorneys' fees. We broke those costs
23 down to the extent we could in the cost affidavit;
24 court fees, postage, copying costs, service of process,
25 deposition transcript costs and witness fees. The

1 total for that was thirty-seven thousand eight hundred
2 and ninety-two dollars and twenty-nine cents.

3 THE COURT: Now, is this seeking costs
4 against -- collectively against all -- or jointly,
5 rather, against all judgment defendants?

6 MR. LYLES: Yes, sir. Jointly against all
7 defendants.

8 THE COURT: But not severally?

9 MR. LYLES: Jointly and severally against all
10 ---

11 THE COURT: I'm just curious how ---

12 MR. LYLES: Just add it to the judgment
13 total.

14 THE COURT: All right. Is there anything in
15 opposition? Well, again, that's a good point; how
16 about those who settled?

17 MR. LYLES: Those who settled have settled.

18 THE COURT: All right. So they -- that was
19 part of the agreement with the ones who settled, that
20 they would not be subject to costs?

21 MR. LYLES: Yes, sir.

22 THE COURT: All right.

23 MR. TEAGUE: Judge, Reed Teague here for
24 Marick, just on the cost issue. Your Honor, the
25 plaintiff in its affidavit set forth five different --

1 or six different ---

2 THE COURT: Six.

3 MR. TEAGUE: Six different -- one is court
4 fees, postage, copying costs, service of process and
5 deposition transcript costs and witness fees. Within
6 the affidavit it doesn't have any breakdown of how this
7 specifically -- to copying costs nine thousand three
8 hundred and twenty-two dollars is calculated. And
9 additionally, as to deposition transcript costs of
10 seventeen thousand two hundred and eighteen dollars, no
11 breakdown of how this affidavit -- how he came up with
12 that. And he's asking for costs under a statute, and
13 that's under 15-37-10, and he's also, under the rules
14 of civil procedures 54(d), which says if there's a
15 statute on point that the court can award costs if the
16 prevailing party can point to a specific statute.

17 Now, under rule 54(d), the rule states that the
18 prevailing party can seek costs for costs authorized by
19 statute; fees to the clerk, fees of a sheriff, fees
20 incurred in service of process, witness fees, and such
21 fees for duplication and copies of papers necessarily
22 obtained for trial. And specifically as to that one,
23 it says the cost of one copy of a document introduced
24 into evidence in lieu of the original.

25 Now, the plaintiff here is seeking expense,

1 specifically for copying costs, nine thousand dollars.
2 I don't know, we probably need to have a breakdown to
3 determine if that was specifically as to the exhibits
4 that were set forth in trial and how they ---

5 THE COURT: So you're saying that there is a
6 limitation on the copying costs ---

7 MR. TEAGUE: Yeah.

8 THE COURT: --- only if you have a document
9 that you had admitted as a copy?

10 MR. TEAGUE: Yes, Your Honor. And then
11 specifically as to deposition transcript costs, there's
12 nothing in 54(d) and there's no statute that
13 specifically says that a party can obtain the costs for
14 deposition transcripts. And additionally, the court
15 has looked at that issue in Black versus Roche, which
16 is SC 315 -- 315 SC 223. I can hand it forth to the
17 court.

18 THE COURT: Please.

19 MR. TEAGUE: But basically the party in that
20 case asked for deposition costs and the court found
21 from looking at the rule and the statute that they were
22 not entitled -- the trial court found they were not
23 entitled to deposition costs and therefore the
24 appellate court did not overturn the trial court's
25 ruling. And so it's our argument that specifically as

1 to copying costs and deposition transcript costs, the
2 copying costs need to be broken down as to how much the
3 one copy that was presented at trial and the deposition
4 transcript cost is just part of litigation and
5 shouldn't be included in a cost -- an award of costs in
6 this matter.

7 And additionally, that the plaintiff needs to
8 point to a specific statute to be awarded any of the
9 fees under Rule 54(d).

10 THE COURT: Mr. Lyles.

11 MR. LYLES: I'll be glad to supplement our
12 ---

13 THE COURT: Well, I think he makes a good
14 point. Because obviously unless -- we have a new
15 millennium or whatever, sub-millennium, that this case
16 could go on for sometime, and there might be other
17 attorneys, as well as another judge, having to enforce
18 this judgment and the costs applied to it.

19 All right. If you would -- how much time do you
20 need to do that?

21 MR. LYLES: Ten days.

22 THE COURT: Well, let's say thirty days.

23 Anyone else want to be heard on this?

24 MS. BROWN: Your Honor, IMK or IK, Mr. Cox
25 and Mr. Lollis, would join in the arguments made ---

1 THE COURT: Ms. Brown?

2 MS. BROWN: Yes. I'm sorry.

3 THE COURT: All right. Good. Thank you.

4 All right. So if you'll do that. Break it down
5 so whoever has to look at it and understand what the
6 court's ruling -- or reason for the ruling.

7 MR. LYLES: Yes, sir.

8 THE COURT: All right. Very good. So we'll
9 give thirty days on the motion -- plaintiff's motion
10 for costs.

11 Next. Let me ask you, the next thing that I have
12 is plaintiff's motion for entry of judgment. But
13 apparently, you're not ready for that?

14 MR. LYLES: Oh, no, sir.

15 THE COURT: You are ready?

16 MR. LYLES: Oh, yes, sir.

17 THE COURT: But not costs?

18 MR. LYLES: Well, I thought I was ready for
19 the costs. But we'll supplement the costs. I think
20 that the entry of judgment motion is a motion that I
21 won't need to supplement anything on.

22 And Your Honor, there are three basic contentions
23 in our motion. The first has to do with the Form 4
24 order that was issued by the court. In the Form 4
25 order, the court has misapplied the apportionment

1 statute in assessing the net judgments that were
2 assessed against the various defendants. Specifically
3 on those two causes of action where the apportionment
4 statute was applied by the jury and the court. In the
5 negligence cause of action, which was -- the jury
6 allocated three million dollars for that. In the
7 negligence cause of action, Bostic was adjudicated, I
8 believe, sixty percent at fault. Marick was
9 adjudicated forty percent at fault.

10 Under the apportionment statute, if the party is
11 adjudicated more than fifty percent at fault, they're
12 not entitled to any apportionment. So on the final
13 judgment, Bostic should have received a full three
14 million dollar judgment on the negligence claim.
15 Marick should have received a forty percent share of
16 the negligence claim.

17 On the breach of the implied warranty of service
18 claim, which was also apportioned by the jury, they
19 reversed that. Bostic was at thirty percent for that
20 one million dollars; Marick was at seventy percent.

21 In the final judgment form, pursuant to the
22 apportionment statute, Marick took that whole share,
23 one million dollars. They're essentially joint and
24 severally liable for it. Bostic, on the other hand,
25 for that particular cause of action, would only be

1 responsible for thirty percent of it.

2 And the way it ultimately came out on the Form 4
3 is the court allocated each of those by the same
4 percentage that the jury found. But again, under that
5 statute, if they're more than fifty percent at fault,
6 they don't get the benefit of the apportionment.

7 The other problem with the Form 4 order is that
8 with respect to the breach of fiduciary duty claim, I
9 believe that there were five defendants included in
10 that claim in front of the jury. The jury awarded one
11 million dollars on that claim. In the Form 4 order,
12 that million dollars was allocated out pro rata among
13 the defendants for that cause of action. It should
14 have been joint and several, with each defendant
15 sharing jointly and severally in the full million
16 dollar award, as opposed to only having a one-fifth
17 share of that.

18 There was no request at all made to apportion for
19 breach of fiduciary duty claim. That wasn't submitted
20 to the jury, and I don't think it would have been
21 proper to do that.

22 So those are some issues and exceptions that I
23 have with respect to the Form 4 judgment itself.

24 Number two, and this is a -- on September the
25 25th, I wrote and provided the court, after having an

1 opportunity to go back and review my files, I provided
2 the court with a list of the ten settlements that we
3 had received and how those ten settlements were
4 allocated to Phase I. And that allocation for Phase I
5 was two million eight hundred fifty-five thousand nine
6 hundred eleven dollars and seventy-seven cents. And I
7 acknowledged and invited the defendants to correct me
8 if they believed I was wrong about amounts we had
9 received or about how they had been allocated. And I
10 don't think I received anything from them.

11 For purposes of setoff, the two million eight
12 hundred fifty-five thousand nine hundred eleven dollars
13 and seventy-seven cents should be deducted from the
14 five million dollar award that we received at trial,
15 which leaves a net judgment, globally, of two million
16 one hundred forty-four thousand eighty-eight dollars
17 and twenty-three cents.

18 So that is the net judgment, after setoff.

19 THE COURT: All right. Now, what was the
20 total amount of setoffs ---

21 MR. LYLES: Yes, sir. The total amount of
22 ---

23 THE COURT: --- according to the settlements?

24 MR. LYLES: Yes, sir, was two million eight
25 hundred fifty-five thousand nine hundred and eleven

1 dollars and seventy-seven cents.

2 THE COURT: Two million eight fifty-five ...

3 MR. LYLES: ... nine eleven seventy-seven.

4 THE COURT: Okay.

5 MR. LYLES: And again, to get to that total,
6 you can refer back to my November 25th letter. And
7 you'll notice in that, admittedly there was some
8 settlements involving defendants from each phase, and
9 so we tried to allocate that as best we could.

10 But anyway, the net judgment of the five million
11 that the jury awarded should have been two million one
12 hundred forty-four thousand eighty-eight dollars and
13 twenty-three cents.

14 When we filed the post trial motions, we referred
15 the court to a Court of Appeals case called Keeter
16 versus Alpine. And I think that the Keeter versus
17 Alpine case is directly on point with the case that we
18 have. In Keeter versus Alpine it involved a personal
19 injury, a broken back. But the plaintiff in that case
20 had suffered one damage related to the broken back, and
21 it asserted two or three different causes of action
22 against the defendant Alpine. Their verdict form
23 apparently read just like our verdict form read. Each
24 cause of action was submitted to the jury, along with a
25 line in it, for the jury to assess the amount of

1 damages for that cause of action, which is exactly what
2 we did.

3 The court in that case, like Your Honor, when the
4 jury verdict came back, he asked the jury if the award
5 was a cumulative award. They stated in the affirmative
6 that it was. In our case, you may recall, that we
7 didn't ask the jury, but you ruled -- I asked the
8 question, is it a cumulative award? And you held that
9 it was a cumulative award. There was no objection from
10 the defendants on that.

11 In the Keeter case, the Court of Appeals did the
12 analysis of that award and said, you know, there is
13 only one damage that resulted from the broken back.
14 There were simply multiple causes of action to seek
15 redress for those damages. Exactly like we have here.
16 We had one damage in this case, which is the emergency
17 repair costs plus the costs to repair going forward.
18 Essentially, the repairs. I think Your Honor opined or
19 ruled on that at some point in the trial. There was
20 one damage. We just had three different causes of
21 action.

22 In the Keeter case, the defendant demanded and the
23 court allowed or required the plaintiff in that case to
24 elect his remedies; to decide which damages that had
25 been allocated to which cause of action he wanted to

1 recover. And in the Keeter case, the Court of Appeals
2 said no election of remedies was required. Because the
3 remedy was the damages. And there was only one damage.
4 And there is no election of causes of action
5 necessarily. And so what the Keeter case did is, the
6 Keeter case compelled the lower court to essentially
7 reform the verdict and allocate the full amount of the
8 damages to each cause of action that had been pled by
9 the plaintiff. And that is what we seek to have done
10 here.

11 This is a cumulative five million dollar award.
12 And that cumulative five million dollar award, minus
13 the setoff, which we've already discussed, should be
14 allocated to each of the three causes of action,
15 because that clearly was the intent of the jury. There
16 was no damages -- there were no damages that were
17 separate and distinct for breach of fiduciary duty as
18 opposed to those that were for negligence. It was one
19 damage.

20 And so just like in the Keeter case, we would like
21 to have the verdict form reformed to reflect that for
22 each cause of action that we prevailed on, and it was
23 all of them, that the one damage that we presented is
24 allocated to each cause of action.

25 And what that would result in is an award of a net

1 amount of two million one hundred forty-four thousand
2 eighty-eight dollars and twenty-three cents on each
3 cause of action, subject to the apportionment that the
4 jury found on the negligence and the breach of warranty
5 claim.

6 So that is our request with respect to the entry
7 of the judgment.

8 THE COURT: Who wants to be heard first?

9 MR. BELCHER: Your Honor, Alan Belcher on
10 behalf of Bostic Construction. I wish there was a way
11 to simplify this to make it ---

12 THE COURT: I do, too.

13 MR. BELCHER: --- clear cut. But it's a big
14 ball of twine that we have to unravel here. And I
15 think that the way that I've looked at it in trying to
16 figure out how to deal with it, is that you -- we have
17 to look at that five million award. Yes, the court has
18 set its ---

19 THE COURT: Well, since you're using an
20 analogy, be careful, because my name is Alexander. You
21 know, when he was faced with the guardian knight, he
22 didn't unravel it. So let's proceed.

23 MR. BELCHER: That's an interesting point,
24 Your Honor. The five million dollar award does include
25 a one million dollar breach of fiduciary duty claim.

1 And I know that the plaintiffs claims that they have
2 one damage. But there was damages awarded for a breach
3 of fiduciary duty. And that brings me to the
4 contribution among joint tortfeasors act where we find
5 how to allocate settlements -- or how to allocate
6 setoffs -- settlement setoffs, and also how to allocate
7 or apportion responsibility at the end of a trial.

8 And the statute is very clear, (1) that it's a
9 contribution among joint tortfeasors; it's not a
10 contribution among joint breachers of contracts; it's
11 not the contribution among joint breachers of fiduciary
12 duty.

13 So the fiduciary duty issue, particularly, the
14 statute is ---

15 THE COURT: It's joint -- it's a contribution
16 between joint tortfeasors; that's a separate action.

17 MR. BELCHER: Right.

18 THE COURT: Between the tortfeasors.

19 MR. BELCHER: Right. Well, and I understand
20 that. But when we're dealing with as far as setting
21 off and how to set off and what part of the verdict is
22 actually part of the verdict that has to be dealt with
23 between the joint tortfeasors, that's one issue. But
24 you have claims here, negligence, which is sounding in
25 tort; breach of warranties, which is sounding in

1 contract, some sort of contract; and then you have
2 breach of fiduciary duty, which is something completely
3 distinct.

4 The contribution act says, people who breach
5 fiduciary duties are not entitled to setoffs; okay? So
6 I'm talking about setoffs at this point, not how the
7 contribution is going to be ---

8 THE COURT: I understand.

9 MR. BELCHER: --- is going to be settled.
10 But what we need to deal with here is that, yes,
11 there's a five million dollar verdict, but one million
12 of that, the breach of fiduciary duty damages that the
13 jury found, cannot receive the setoff.

14 Now, Mr. Lyles wants -- the plaintiffs want the
15 setoff to go against the whole five million, which
16 increases the amount that each individual defendant has
17 to pay. But what that does is it saddles Bostic
18 Construction with part of the damages that were not
19 pled against it, that it was not liable for in front of
20 the jury.

21 THE COURT: In other words, fiduciary duty?

22 MR. BELCHER: Right. So the statute says if
23 you breach a fiduciary duty, you're not entitled to
24 contribution. You're not entitled to contribution,
25 you're not entitled to offsets. All right? So that

1 one million needs to be set aside. And now we're
2 dealing with a four million dollar verdict with a three
3 -- with a two point eight five five setoff.

4 But I would take it one step further and say that
5 the setoff shouldn't apply to the breach of warranties
6 either because we're talking about contribution setoffs
7 with regard to joint tortfeasors. Now, breach of
8 warranty is a completely different cause of action, as
9 well.

10 And maybe in hindsight we could have made this a
11 little bit easier -- I don't know if we could have --
12 to the jury, but I thought the way we put together the
13 verdict form, about everybody pretty much agreed on
14 that. I thought it made sense to do it that way. I
15 thought everyone understood that that's why we're doing
16 it, is so that we'll know where those kind of setoffs
17 are going to apply.

18 So it's Bostic's position, the meat of most of our
19 motions deal with, it's not a five million dollar
20 verdict as to Bostic; it's a four million dollar
21 verdict between Bostic and Marick and that breach of
22 fiduciary duty is completely different.

23 We just need the court, it seems to me like the
24 quickest way to get done with all of this is to find
25 out where that setoff is going to apply. It's our

1 position that it only applies to the negligence cause
2 of action so the three million in negligence should be
3 offset by the two point eight five five, leaving a
4 delta of a hundred and fifteen thousand dollars.

5 That's our position and I think that's the way
6 we're asking the court to rule on that issue. Once
7 that setoff is taken care of and it's applied only to
8 negligence, then the breach of fiduciary duty issue,
9 which isn't entitled to any offsets, and the breach of
10 warranty claims, which doesn't fall under the
11 contribution act, we can deal with those separately,
12 but they're not part of what you allocate negligence
13 and damages, the majority of which the jury awarded.
14 As far as setoffs, you don't have to allocate it to any
15 of those other two causes of action.

16 THE COURT: Mr. Imhoff?

17 MR. IMHOFF: Your Honor, that is complicated
18 because there are a lot of different issues that Mr.
19 Lyles brought up. And I don't want to necessarily
20 change the order we're doing these in, but I guess the
21 biggest question is, what is the verdict? And we've
22 made motions for an election of remedy, which would be,
23 I guess, exactly the opposite of what Mr. Lyles is
24 doing. Mr. Lyles is saying, put five million dollars
25 on each cause of action. And I think all of the

1 defendants have made motions to say, the cause of
2 action are fine and the jury was clear what they
3 intended to do. They put different damages with
4 different apportionments on each one of those causes of
5 action for the exact same damages. And we've cited
6 case law, I think, in all of our briefs, which support
7 the court's finding that the plaintiff does, in fact,
8 have to elect his remedies. Does he want to recover
9 negligence; does he want to recover warranty; does he
10 want to recover for breach of fiduciary duty? Because
11 the only evidence that was submitted was the repair
12 costs. All of the damages across all of the causes of
13 action are exactly the same and the cases in briefs
14 that we've cited stand for the proposition that if the
15 damages are the same that the plaintiff must elect his
16 remedy. And I know we're talking about setoff now, but
17 I don't know if we can apply the setoff before we
18 determine what the verdict is; essentially does the
19 plaintiff have three five million dollar verdicts for
20 three different causes of action, and he has to elect
21 one of those? Or does he have a three million dollar
22 verdict, a one million dollar verdict and a one million
23 dollar verdict, and he has to elect from those.

24 If he has to elect from one of those, if the
25 homeowners' association has to elect from one of those,

1 then the analysis becomes much simpler because
2 presumably the plaintiff homeowners' association would
3 take the larger amount, the three million dollars. And
4 we don't have to talk about where the setoff goes.

5 And so I'm not trying to take things out of order,
6 but they seem to go together logically in that order.
7 If we determine what the verdict is, what the election
8 is, then we can talk about the setoff. And I think
9 everyone on this side is of the opinion and submitted
10 briefs and case law that because the damages are the
11 same, there were not damages that were introduced
12 separately for warranty or separately for breach of
13 fiduciary duty, then it must be election of remedy
14 situation, in which case, if the court asks the
15 plaintiff to do that, all of these issues either become
16 moot or much simpler.

17 And so I would ask that the court consider that
18 issue first and then we can decide whether or not we
19 need to talk about the issues of we have setoff, stays,
20 judgment, all of those things, but the arguments
21 necessarily fall away as we start cutting into this.
22 Otherwise I could make arguments on apportionment,
23 setoff and those types of things. But it seems to be
24 putting the cart before the horse to me.

25 THE COURT: All right. Anyone else? Ms.

1 Brown.

2 MS. BROWN: Yes, Cynthia Brown. I'm just
3 joining Mr. Imhoff's and Mr. Belcher's arguments to the
4 extent they're consistent with IMK's arguments, but I'm
5 more aligned with Mr. Imhoff. And to be candid, when
6 we prepared the verdict form prior to giving it to the
7 jury, I frankly was unaware that the fiduciary duty
8 cause of action could not be apportioned. I don't know
9 if that just escaped me, but I was not aware of that
10 fact.

11 And I think the fact that we have a situation now
12 where we have a -- I think Mr. Belcher is right, the
13 fiduciary duty clearly cannot be apportioned. So I
14 think that Mr. Imhoff is correct, and I would join in
15 his argument that there needs to be an election of
16 remedies.

17 THE COURT: Okay. Thank you. So that brings
18 us back to you, Mr. Lyles.

19 MR. LYLES: Yes, sir. Well, they've argued a
20 number of different things. I think, though, that we
21 all agree that ---

22 THE COURT: Well, let's start with the one
23 that Mr. Imhoff says is the simplest form. And as I
24 said, you might -- sometimes if we cut to the issue ...

1 MR. LYLES: Yes, sir.

2 THE COURT: Well, what do you say about
3 election? I mean, has he persuaded you now that there
4 is an election?

5 MR. LYLES: There is no requirement for an
6 election under the Keeter versus Alpine case. It says
7 because Larry, who was the plaintiff, sought only one
8 remedy, which were the damages for the broken back,
9 just like we sought one remedy in our case, the
10 doctrine of elections ---

11 THE COURT: Well, you did have different
12 remedies, I think, particularly with the breach of
13 fiduciary duties. I think the testimony was somewhere
14 in the neighborhood of six hundred thousand; was it
15 not?

16 MR. LYLES: No, sir.

17 THE COURT: It wasn't? I'm sorry.

18 MR. LYLES: No, sir. That was only
19 amalgamation of interest to the money that they had
20 misappropriated that the court, I think, in the Dunes
21 West case and cases that follow Dunes West, all say the
22 same thing, that the damages associated with breach of
23 fiduciary duty or the costs associated with bringing
24 the common elements up to the condition that they
25 should have been in, those ---

1 THE COURT: Right. I understand now.

2 MR. LYLES: Yes, sir.

3 THE COURT: It's been a while.

4 MR. LYLES: Yes, sir, I understand. Yes,
5 sir.

6 But as the court says in the Keeter case, as the
7 name states, the doctrine applies to election of
8 remedies, not the election of verdicts. And here we
9 had one damage. You cannot, as Mr. Imhoff has pointed
10 out a number of times, I think correctly, there weren't
11 special damages for each of these different causes of
12 action. There was one damage in the case. And under
13 the Keeter case, I'm not required to elect my remedy.
14 I'm simply not. Now, he said I've got three five
15 million dollar verdicts. I don't. I've got one five
16 million dollar verdict. And I've got three successful
17 prosecutions of three successful -- three different
18 causes of action. That's what I've got.

19 And so that verdict, that five million dollar
20 verdict should be applied to each of those causes of
21 action. But the one point I made earlier that I think
22 is fundamentally important to this argument that none
23 of them addressed, is this, while that jury was still
24 empaneled, I asked the court is this a cumulative
25 verdict? And Your Honor, you said, based on what I

1 heard and the arguments I heard Mr. Belcher make in
2 closing, it is a cumulative verdict. And there was no
3 objection to that.

4 So I have a five million dollar verdict. The jury
5 simply came up with it by allocating different amounts
6 to different causes of action. But it is a cumulative
7 verdict. It's precisely the facts of the Keeter case.
8 Precisely the facts.

9 THE COURT: Would an analogy to joint
10 tortfeasors or -- be appropriate that if you have --
11 each tortfeasor makes a contribution to the ultimate
12 damages? Not specifically, but just whether what they
13 did contributed to the ultimate injury to the claimant?

14 MR. LYLES: Yes, sir. And each of these
15 defendants, Marick and Bostic, for example, each of
16 them, with the apportionment statute, had the
17 opportunity to argue to the jury that they shouldn't be
18 responsible for the whole thing. And the jury had the
19 right to apportion the damages in whatever way they saw
20 fit. And the way this jury verdict came out, each of
21 them was adjudicated more than fifty percent
22 responsible for at least one of those causes of action.

23 THE COURT: But apportionment doesn't apply
24 to all causes of action.

25 MR. LYLES: Correct. That's right. Yes,

1 sir.

2 THE COURT: I mean, it wouldn't do any good
3 to argue to the jury that you must -- the legislature's
4 already, and the court's interpretation of the
5 legislation, is undecided which causes of action or
6 which actions are subject to apportionment.

7 MR. LYLES: Yes, sir.

8 THE COURT: And contribution.

9 MR. LYLES: That's right. But, you know,
10 with respect to the breach of fiduciary duty claim to
11 which the apportionment statute does not apply, you
12 know, it simply puts us back where we have been most of
13 our history, which is with several defendants being
14 jointly and severally liable for a verdict, for a
15 commonly caused harm.

16 THE COURT: Even though their contribution
17 was different in nature and effect?

18 MR. LYLES: Yes, sir. And if the
19 contribution statute applies, then so be it. If the
20 contribution statute doesn't apply, then they're in the
21 suit. And ---

22 THE COURT: Did you say in the suit or soup?

23 MR. LYLES: In the suit. I mean, if the
24 contribution statute doesn't give them any relief with
25 respect to their co-defendants or other people, then

1 they are simply outside of the protection of the
2 contribution statute. But there's nothing about the
3 fact that the contribution statute was created in 1988
4 or '89, or whenever it was created, that somehow
5 diminishes my clients' rights against defendants who
6 aren't subject to that statute. And so the breach of
7 fiduciary defendants are all subject to the judgment
8 that was rendered.

9 And with respect to the setoff, just very briefly
10 before I sit down, Mr. Belcher is referring to the
11 statute. Setoff is an equitable right. And it's an
12 equitable remedy that's to be applied by the court
13 equitably. And so for Mr. Belcher to contend that
14 somehow your right to apply setoff equally among all of
15 these causes of action because some of the causes of
16 action don't apply to the contribution statute or the
17 apportionment statute is -- doesn't make any sense.
18 That's your right equitably to apply setoff. And I
19 think that probably Mr. Imhoff and I'm certain Ms.
20 Brown would agree that to the extent you're going to
21 apply setoff, it should be applied equally among the
22 causes of action.

23 THE COURT: All right. Mr. Imhoff.

24 MR. IMHOFF: Your Honor, if I may, going back
25 to the election of remedies issue. We don't think the

1 Keeter case applies. And the reason we don't think the
2 Keeter case applies is because the judge polled the
3 jury and specifically asked the jury, Jury, what do you
4 mean by this verdict? Is this cumulative? And the
5 jury answered yes. We all, together, came up with the
6 process and the jury verdict form. We have places for
7 negligence, for breach of warranty, for breach of
8 fiduciary duty. We have places for damages for each of
9 those. And then we have apportionment and arguments of
10 apportionment for negligence and for breach of
11 warranty.

12 So all of that was submitted to the jury. We
13 asked the jury to do that. We all agreed on them doing
14 that. They came back, after plaintiffs argued that
15 they should award all damages for each cause of action.
16 Specifically in closing, said, I want you to give the
17 full damages for each cause of action. They decided to
18 do three million, one million, one million. We have a
19 poll. Nobody objected to that. We didn't ask them if
20 it was cumulative. The Keeter case, they specifically
21 asked if it's cumulative. The Keeter case is an
22 exception to the election of remedies requirements.
23 When the court and lawyers actually asked, Jury, what
24 does this mean?

25 Now we're six months down the road. We don't know

1 what the jury meant. But we do know what we asked them
2 to do. And we asked them to apply the full damages to
3 every cause of action. And so an election of remedies
4 should apply. If the damages are all of the same, then
5 the jury verdict doesn't make sense. Why would they
6 have different numbers and different apportionments.
7 They did that because that's how they found on each of
8 the different remedies. And so the plaintiffs should
9 be asked to elect one of them.

10 Now, not only is ---

11 THE COURT: Wouldn't that mean that there
12 were three different remedies?

13 MR. IMHOFF: That's right. There's three --
14 well, there's three different remedies that the
15 plaintiff needs to elect. But based on the same
16 damages ---

17 THE COURT: Well, no, that means that there
18 are three different remedies.

19 MR. IMHOFF: But it's based on the same
20 damages which ---

21 THE COURT: No, that's the difference. You
22 can have a remedy for one action that contributed to
23 the cumulative effect of the entire damages. In other
24 words, I'm not sure if I'm going to be in a position to
25 say that, well, you've got multiple defendants, which

1 one did what? Now, if they can sort it out and it's
2 subject to joint -- or to contribution, then why is it
3 under the statute or the law, then of course, they can
4 do it. But I'm not sure if I can make a plaintiff
5 decide, well, we had a preexisting condition or
6 something like that, that was caused by somebody else
7 and so therefore you're not going to be -- I think,
8 that in fact it's contrary to our law.

9 MR. IMHOFF: The reason that we believe that
10 you can do that is not necessarily based on the remedy
11 but based on the recovery and the possibility that ---

12 THE COURT: Well, it's easy enough where
13 you've got the recovery, meaning that -- what was the
14 contribution to the cumulative damages?

15 MR. IMHOFF: And that would be making, and
16 that would be making the verdict cumulative, which we
17 don't believe ---

18 THE COURT: Well, I know. I mean, that's why
19 we're here, because you don't.

20 MR. IMHOFF: So we would submit that this
21 would allow ---

22 THE COURT: Well, I tell you what. It's
23 going to take me a little bit more than what I've got
24 right now.

25 MR. IMHOFF: Okay.

1 THE COURT: The only thing is, I think we've
2 been together long enough and I think I've got pretty
3 much an appreciation if not altogether understanding of
4 what your positions are.

5 So when I ask for help in making a determination
6 of what applies and what doesn't, I don't need argument
7 as much as I need authority citing what you've done
8 with the case. I'm more comfortable with a case that
9 stands for your proposition than listening to you and
10 your eloquence. You know, don't -- I don't think we
11 need to -- we're kind of into something else. I think
12 it's later into here that there were some proposed
13 orders that were submitted, but no memorandum. And
14 somebody has suggested they wanted those proposed
15 orders made a part of the record. So if there is an
16 appeal that the record would have those as a memorandum
17 of what the position was and the -- in this court, in
18 the trial court.

19 Have y'all -- I know I'm jumping ahead, but that's
20 one of the reasons I'm saying that I don't need a whole
21 proposed order. I need something just pretty much
22 succinctly pointed to the particular question that's at
23 issue.

24 Now, are you ready to address that? I've
25 forgotten who has -- was it yours, Mr. Lyles, that you

1 had several proposed orders?

2 MR. LYLES: Yes, sir. You had told us very
3 clearly at the end of trial that you wanted proposed
4 orders.

5 THE COURT: Right.

6 MR. LYLES: And so what I did ---

7 THE COURT: Rather than memoranda.

8 MR. LYLES: And what I did is I did proposed
9 orders ---

10 THE COURT: All right. Is there any
11 objection to just -- all I would be doing is asking the
12 clerk to mark those orders as proposed and then making
13 it a part of the record. Because it has been something
14 I've considered in getting us here. I mean, is there
15 any objection to that? I'm just thinking of just
16 housekeeping sort of things. Of course, you want your
17 orders considered or made a part of the record.

18 MR. LYLES: Yes, sir.

19 THE COURT: Any objection from any of the
20 other parties? Do you understand what I'm saying?

21 MR. TEAGUE: Treat the orders like
22 memorandum?

23 THE COURT: Memorandum, exactly. And that's
24 what they are. They're a memorandum of the argument
25 put before the court. In other words, so someone in

1 their infinite wisdom in multiple robes don't say,
2 well, it wasn't raised in the trial court. Obviously
3 it was because I asked for it. So I mean, but is there
4 any objection to asking our clerk to just -- on each of
5 those proposed orders that were not adopted and signed
6 -- because you received copies of them; did you not?
7 Rule 5 requires that.

8 MR. TEAGUE: Yes, sir.

9 THE COURT: All right. So in other words,
10 it's not a surprise or anything. But they would just
11 become memorandum or memoranda of the arguments made.

12 MR. BELCHER: Is that for all parties, Your
13 Honor?

14 THE COURT: Certainly. I mean ---

15 MR. BELCHER: A memorandum saying the
16 proposed order ---

17 THE COURT: Well, if you did both, I mean,
18 it's going to kind of make your record a little bit
19 cumulative.

20 MR. BELCHER: I think I just misunderstood
21 what the court was asking for, because we wrote a
22 memorandum then an order that would reflect what the
23 memorandum said ---

24 THE COURT: Well, I'm dealing with Mr. Lyles
25 because apparently I said and they understood that all

1 I wanted, really, was a proposed order rather than
2 having to read their memorandum and then read the
3 order, you know. It was for my benefit. And so now
4 I'm trying to make -- but if you've submitted a
5 memorandum and you filed it with the court, then of
6 course -- I mean, with the clerk -- then that is a part
7 of the record. And if you submitted a proposed order
8 that was filed with the clerk, that's part of the
9 record.

10 MR. BELCHER: Thank you, Your Honor.

11 THE COURT: I'm just talking about where a
12 proposed order was -- without memoranda was submitted
13 to the judge.

14 MR. BELCHER: I understand.

15 THE COURT: That I will now hand it to the
16 clerk and she will just mark on it that it was a,
17 quote, proposed order, rather than an adopted order.

18 MR. BELCHER: I understand.

19 THE COURT: All right. Ms. Brown.

20 MS. BROWN: We don't -- let me back up. When
21 we got Mr. Lyles' proposed orders, I believe we sent
22 correspondence to the court objecting to the way that
23 was ---

24 THE COURT: Right.

25 MS. BROWN: I understood the procedure

1 differently. However, if it is going to be treated as
2 a memorandum, then we don't have an objection.

3 THE COURT: No, it's just memoranda -- their
4 position. As I say, I'm just trying to avoid, you
5 know, being faced with that, well, you didn't raise it
6 on -- in the lower court. Or the lower court wasn't
7 aware that that was, you know, an issue. And didn't
8 rule on it. See, if I had signed the order, I ruled on
9 it. And I would suggest my failure to adopt the
10 proposed order, if there was, I did not accept it. I
11 rejected it. At that point. That's not saying
12 something else ...

13 All right. Anyone else on that issue?

14 MR. LYLES: The only thing that I would just
15 like to add in response to Mr. Imhoff is this on the
16 issue of the cumulative verdict, that there are certain
17 -- clearly the case in Keeter, the court actually
18 inquired of the jury whether or not their intent was to
19 give a cumulative verdict because they, too, had
20 assessed different damages for different causes of
21 action. The forelady of the jury said, we intended to
22 be cumulative. The judge confirmed that. That was the
23 end of it. Here, that's why I raised the issue with
24 the court, is this a cumulative verdict and the court
25 responded that it was cumulative. There was no

1 objection from the defendants. And so that is a
2 distinction between the case that is without a
3 difference. This is a cumulative verdict just like
4 that one was a cumulative verdict.

5 Curiously, in that case the reason the trial court
6 was reversed is he got confirmation from the jury it
7 was a cumulative verdict and then he allocated
8 different amounts to different causes of action. And
9 so they reversed him.

10 THE COURT: All right. Very good. Yes,
11 ma'am.

12 MS. BROWN: One more point. I have had this
13 experience before in the past where the court gives the
14 jury instructions on what to do and we've all agreed on
15 it and then the jury, in their infinite wisdom, does
16 something different. And in this situation, it does
17 appear the jury did something different. And by doing
18 so, I think it forces us to look at it in a different
19 way. And that's why I think ---

20 THE COURT: Well, the only thing is, and this
21 is where I differ, is that my understanding was that it
22 was cumulative because, again, I treated it more as
23 joint tortfeasors. In other words, under the actions,
24 all of them that all of you -- they were tort claims
25 rather than a contract claim, that they were just

1 talking and you had different contributions or people,
2 you know, were responsible for the ultimate damages,
3 even though they did different things. The plaintiffs,
4 in other words, were -- all the claimants were out
5 certain damages.

6 And so I made that decision. And that's -- and of
7 course, it's subject to review by the court, that why
8 is it -- that it was incorrect. But apparently the --
9 this is authority that why is it when a jury does that,
10 that's what they mean. You know, we don't want to --
11 I'm not sure -- forgive me for I wasn't even thinking
12 about how a judge goes behind a jury's verdict.
13 Because we have a special rule that says, you know,
14 whatever the jury does cannot be inquired about. But
15 I'm sure that was not an issue in that case.

16 So what we have to do is we, as judges, rather
17 than find out why a jury did something unless it is
18 ultra vires. In other words, if it is something that
19 was not within the evidence or the law submitted to the
20 jury, then of course, outside influences, that's what
21 the rule says, then you can inquire as to the jury's
22 functions.

23 But anyway, I'm just saying that why is it -- the
24 record here would reflect that the court, as a matter
25 of law, ruled that such a verdict would be cumulative.

1 If I made an error then why is it all these other
2 things would be corrected. And of course, I'll review
3 it. And that's why I want to do this. You know, it's
4 like eating a bear. You know, I want to do it a piece
5 at a time rather than try to take everything at one
6 time. So then I think Mr. Imhoff makes a good point,
7 maybe it's better to take each little piece at a time
8 and see if it's sufficient to get the nourishment you
9 can get from a bear. I don't know if you get any
10 nourishment from a bear or not; but anyway.

11 All right. So let's move on. But for the record,
12 I will ask the clerk to mark the proposed orders that
13 Mr. Lyles submitted without memorandum as proposed.
14 And so that will make them memoranda of what his
15 arguments were.

16 MR. IMHOFF: May I just take care of a little
17 housekeeping matter?

18 THE COURT: Yes, sir. That's what we're
19 doing right now.

20 MR. IMHOFF: I have a memorandum in response
21 to plaintiff's post trial motions, and maybe even some
22 co-defendants. I just wanted to make sure that the
23 court had it. My paralegal is out; her child is having
24 surgery today. I don't know if I've filed a copy. Can
25 I just hand this to you?

1 THE COURT: Well, you could. Now, would it
2 have been filed with the clerk's office?

3 MR. IMHOFF: Yes, sir. They should have all
4 been filed.

5 THE COURT: Well, that's just -- let me --
6 all right. Now, you're relying on what has been filed;
7 not this. So this is for -- this is a courtesy copy to
8 the court so it can -- the court can consider it?

9 MR. IMHOFF: Yes. If you have not seen or do
10 not have with you that ---

11 THE COURT: I can assure you that Ms. Burton
12 has quite a few things in her office to the top of the
13 wall that I have not seen.

14 All right. And this is on all motions, all post
15 trial motions, Mr. Imhoff?

16 MR. IMHOFF: In response to plaintiffs' and
17 co-defendants' post trial motions.

18 THE COURT: Okay.

19 MR. IMHOFF: We have our own motion in
20 memorandum for our options.

21 THE COURT: All right. Do y'all want to take
22 a short break?

23 MR. IMHOFF: Whatever you want to do.

24 THE COURT: Let's do. That'll be good.
25 We'll take just five minutes.

1 (WHEREUPON, the court stood at recess for a short
2 break.)

3 THE COURT: All right. Let's see. Maybe we
4 need to just -- well, I need further information on the
5 plaintiffs' motion for cause and the entry of judgment.
6 And let's see, this is the last one we're going to take
7 up?

8 LAW CLERK: Those two will be last because
9 they don't have anything to do with the post trial
10 motions.

11 THE COURT: All right. And then the next one
12 would be motion to stay entry of judgment, which is
13 probably granted at least temporarily until I can ...
14 Do you want to do that, just go ahead, the motion to
15 stay, carry it over until the court does reach a
16 decision on the motion to set the judgment or entry of
17 judgment?

18 MR. LYLES: Yes, sir, that'll be fine.

19 THE COURT: Any objection? In other words,
20 that will be carried with the motion for entry, either
21 will or will not.

22 All right. Well, let me just ask. I'm down to
23 the defendants' motions now for JNOV, setoff and --
24 well, I guess reconsideration for a new trial. All
25 right. How do you want to do -- do you want to do each

1 -- JNOV -- let's see, do you have any common grounds
2 for motion notwithstanding the verdict?

3 MR. IMHOFF: I'm sorry, Your Honor.

4 THE COURT: Do you have any common grounds
5 for the motion or just to take up each one? I have the
6 -- the first group, I have Bostic's motions for JNOV.

7 MR. IMHOFF: IMK, Lollis, and that group and
8 Marick does have the JNOV breach of fiduciary duty
9 which they share ---

10 THE COURT: Okay. Well, that's what I'm
11 looking for, you know, what you do have in common so I
12 can address it. That would be as to whether or not
13 there was sufficient evidence or law to go to the jury
14 on?

15 MR. IMHOFF: Yes, sir. Can I hand up ---

16 THE COURT: Certainly.

17 MR. IMHOFF: This is my motion in memorandum
18 in support of Marick's and Rick Thoennes' ---

19 THE COURT: It looks like I do have it. I
20 think I have that. Or rather I'll consider it again.

21 All right.

22 MR. IMHOFF: Your Honor, again, Jason Imhoff
23 for Marick Home Builders, and I'm just going to do the
24 ones that I have in common with IMK at this time, Your
25 Honor.

1 The first is a judgment notwithstanding the
2 verdict for the breach of fiduciary duty. What's
3 important about this motion, Your Honor -- and again,
4 we made this at trial -- but is that all of the case
5 law regarding breach of fiduciary duty in regard to a
6 developer and turning over a development to an owners'
7 association, talk about defects that were known. That
8 the developer, the builder, turned over the project
9 knowing there were defects, knowing the owners'
10 association did not have the money to fix them or
11 repair them. All of the case law talks about that.

12 In this case, at trial, there was no evidence
13 submitted. I'm going to talk about Marick and Rick
14 Thoennes. There was no evidence submitted that Marick
15 or Rick Thoennes knew about the defects. And in fact,
16 if you recall, Marick and Rick Thoennes were gone.
17 They had left the project and left it to IMK and IK for
18 the last year or six months and it was IK and IMK that
19 turned it over. Mr. Lyles introduced some evidence
20 about some distributions out of IK and ---

21 THE COURT: That's what I was going -- now,
22 who made up IK, again?

23 MR. IMHOFF: That was Bill Cox, Larry Lollis
24 and one other ---

25 MS. BROWN: He asked IMK.

1 MR. IMHOFF: Oh, you said IMK?

2 THE COURT: No. I was thinking IK.

3 MS. BROWN: Oh.

4 MR. IMHOFF: IK was Bill Cox and Lollis. It
5 was not Rick Thoennes. It was not Marick. And they
6 were gone and didn't receive any of those
7 distributions.

8 THE COURT: All right. Thoennes, the father
9 and son, who were they?

10 MR. IMHOFF: Marick Home Builders, Your
11 Honor.

12 THE COURT: Okay. And they did receive some?

13 MR. IMHOFF: They did not, Your Honor. Not
14 -- there wasn't any evidence of that submitted that
15 they received those funds after complaints of
16 construction defects. And I think ---

17 THE COURT: But weren't they in control at
18 that time?

19 MR. IMHOFF: No, Your Honor. They were gone.
20 Long gone. And that was what the evidence was. There
21 was never any evidence submitted that Rick Thoennes was
22 still in control, was still at the site, was still
23 actively building when the distributions that were put
24 into evidence were done. And I think Mr. Lyles put
25 into evidence that they were done after the lawsuit was

1 filed. But none of that money went to Marick or Rick.
2 But regardless of that, there is no evidence at that
3 time when my client was there that he knew about these
4 defects. In fact, he testified that he did not. We
5 also argue the business judgment rule, Your Honor. The
6 business judgment rule essentially says that the court
7 should not -- or the jury should not submit their
8 opinion of what should be done as the homeowners'
9 associations is a nonprofit organization, unless there
10 is some fraud. And it shifts the burden to plaintiff
11 to prove that before you can overrule a business
12 judgment rule.

13 In this case the business judgment rule would be
14 that the owners' association, the builder, decided to
15 repair items that they knew instead of take the entire
16 buildings apart or take the entire buildings down. So
17 that's the business judgment rule.

18 Your Honor, you're going to hear me say numerous
19 times proximate cause. And at the trial I said
20 proximate cause a lot. And this is what I mean by
21 that. Derrick Hodgins who was plaintiff's expert, I
22 specifically asked him, I said, before Marick, IK, IMK,
23 Rick Thoennes, before any of them showed up on the
24 project, did your entire scope of work need to be done
25 because of the initial errors in construction? And he

1 said, yes, except for maybe some extra damage to
2 framing or something like that. So the only evidence
3 was, Your Honor, is that the damages existed. The need
4 to repair these buildings existed before Marick, IK,
5 IMK, any of them ever even showed up on the project.

6 And so you have a proximate cause issue. The
7 damages are already necessary before my client ever did
8 a thing. And so you'll hear me argue proximate cause
9 in regard to several different causes of action under
10 different motions. But that was what we were trying to
11 show the jury and trying to prove to the jury, is that
12 the damages in these causes of action, were already
13 there before my client ever got there. And so they
14 couldn't possibly have been the proximate cause.

15 The only concrete evidence about that was we asked
16 the -- Bostic's expert, if it had been fixed in 2006,
17 would the damages have been less? In other words, when
18 my client there, they fixed it in 2006, would the
19 damages be less? He said, maybe two hundred and fifty
20 thousand dollars, just because over time as it kept
21 leaking it would damage more things. That was the only
22 evidence of the proximate cause of what my client did
23 to exacerbate or worsen conditions that existed before
24 they ever got there.

25 And so those are, those are our arguments on

1 breach of fiduciary duty, Your Honor. I have further
2 arguments, as I said, that I have in common -- or
3 Marick has common, amalgamation, piercing the corporate
4 veil; and those I can go into. Or I can sit down and
5 let other folks address breach of fiduciary duty.

6 THE COURT: What are you thinking, Mr. Lyles,
7 because obviously you're to be the principal ones that
8 ---

9 MR. LYLES: The court inquired about Marick's
10 involvement with IK. And Mark wasn't involved with IK,
11 but you may recall that Marick was, in fact, involved
12 with the developer of the project, IMK. That stood for
13 Integrys-Marick-Keowee. You may also recall, Your
14 Honor, with respect to Mr. Thoennes and Marick, that we
15 introduced two bits of evidence that were disseminated
16 to the homeowners by IMK, Mr. Thoennes' partnership.
17 The first was an introduction when they purchased the
18 project from Bostic identifying the board for the
19 Stoneledge Association. That board consisted of, among
20 others, Mr. Thoennes. In 2000, and I guess ---

21 THE COURT: The father or the son?

22 MR. LYLES: The father. In 2008 when the
23 regime was turned over -- in 2009 when the regime was
24 turned over to the owners, we introduced another piece
25 of evidence which was a letter advising that the

1 current board members, including Mr. Thoennes, were
2 stepping down. So Mr. Thoennes not only owned the
3 development company; he also was a member of the board
4 at the time the common elements or the project was
5 turned over to the owners in 2008 or 2009.

6 To contend that he did some construction work
7 before or after that that the issue for breach of
8 fiduciary duty is control of the board. And clearly
9 this developer, IMK, his company, turned over control
10 of this association when the exterior building
11 envelopes were in bad condition. There was ample
12 testimony about that.

13 With regard to the business judgment rule and all
14 of those sorts of things, Concerned Citizens of Dunes
15 West case doesn't say anything about the business
16 judgment rule. It imposes a common law fiduciary duty
17 on developers to turn over control of an association
18 when the common elements are in good condition. And
19 what it says is if you don't do it you're responsible
20 for the costs to repair those conditions ---

21 THE COURT: Regardless of the cause?

22 MR. LYLES: Regardless of the cause.

23 THE COURT: When you're approached to,
24 whatever the cause was?

25 MR. LYLES: Regardless of the cause. It,

1 frankly, is our court's effort to impose upon
2 developers, those people like Mr. Thoennes, who he says
3 he wasn't doing anything except his company, if you
4 recall, sold the vast majority of the Phase I units.
5 Concerned Citizens of Dunes West case is an attempt by
6 our Supreme Court to impose responsibility for
7 problematic conditions on the people who put the
8 project in the stream of commerce. In this case that
9 would include Mr. Thoennes.

10 MR. IMHOFF: If I may address it just
11 briefly.

12 THE COURT: Please. Yes.

13 MR. IMHOFF: I know Cynthia wants to say
14 something on that.

15 First of all, Mr. Thoennes is not a member of IMK.
16 I know that that was said repeatedly through the trial.
17 He's not a member of IMK. His company, Marick
18 Homebuilders, was a member of IMK. He was the
19 shareholder of Marick Homebuilders. This was ---

20 THE COURT: Who was the other shareholder?

21 MR. IMHOFF: Of Marick Homebuilders?

22 THE COURT: Yes.

23 MR. IMHOFF: His son.

24 THE COURT: I see.

25 MR. IMHOFF: But their company was then a

1 member of IMK. They had no connection with IK. But I
2 just wanted to correct that, Your Honor.

3 But what we're talking about is strict liability.
4 And that's what I'm arguing. Essentially what the
5 plaintiffs want this court to approve is that if you
6 turn over a development, an apartment complex, condos,
7 anything, you turn it over to the owners' association,
8 and if there is a defect, any defect, whether you know
9 it or not, you are strictly liable for fixing that
10 defect or having the money in the coffers to fix it.
11 That is not what any of the cases say. He talks about
12 Hope versus Heritage Communities, Magnolia North
13 Property Owners' Association; I've put all these in my
14 brief, Your Honor. Goddard versus Fairways, Concerned
15 Dunes West residents is the one he just cited. Every
16 single one of those cases, the developer, when they
17 turned it over, knew about the defects. Every single
18 one of them. Otherwise, the law of this state would be
19 that if you're a developer/builder and you turn over
20 buildings, condos, apartments, whatever, if there are
21 any defects, you're liable. That can't possibly be the
22 law of this state.

23 THE COURT: Well, then would the law be then,
24 as you apparently presented, that if you don't know the
25 defects then you're not responsible?

1 MR. IMHOFF: Well, I think that's right, Your
2 Honor. That's exactly right. There has to be, under a
3 breach of a fiduciary duty -- and remember, this is a
4 different cause of action, this breach of fiduciary
5 duty -- there has to be some evidence that you knew and
6 you breached your fiduciary duty ---

7 THE COURT: What is a fiduciary duty?

8 MR. IMHOFF: Well, the fiduciary takes care of
9 the owners, Your Honor.

10 THE COURT: Well, I mean, is it not -- I
11 think I probably gave you my old adage about the Battle
12 of Copenhagen, if he puts a blind eye to it, he's not
13 going to see any difficulty. The Battle of Copenhagen
14 was that Boyd Nelson, when he was a captain, the
15 admiral sent him into Copenhagen to find out if the
16 French fleet was there, and he reported back he saw no
17 fleet. So the admiral said, go on in. Well, of
18 course, the whole fleet was there. Fortunately, he was
19 successful so they didn't court marshal him. And then
20 the admiral realized that he had lost his eye at
21 Trafalgar. And so he put up his spy glass and he
22 looked right in there and he said he saw no fleet.
23 So, I mean, I'm not sure if that fiduciary duty
24 says that you can put a blind eye as to your
25 responsibilities and avoid them.

1 MR. IMHOFF: And that's why I think you need
2 to have some evidence that there was knowledge or you
3 should have had knowledge; you saw something. It can't
4 be strict liability. In all of the cases ---

5 THE COURT: Were they selling these units;
6 some of them?

7 MR. IMHOFF: IMK was selling units.

8 THE COURT: But I mean, IMK, the Thoennes'.

9 MR. IMHOFF: No, Your Honor. IMK is made up
10 of Marick ---

11 THE COURT: And Marick is the Thoennes?

12 MR. IMHOFF: And Marick is the Thoennes.

13 THE COURT: Oh, yeah, IMK -- all right.

14 MR. IMHOFF: It's sort of a Christmas tree
15 ---

16 THE COURT: No, that's just it.

17 MR. IMHOFF: But anyway, that's our point, is
18 that we don't believe it's a strict liability standard.
19 We believe ---

20 THE COURT: Well, I don't think it's strict
21 liability. I think a fiduciary duty is not strict
22 liability. Why is it that you have a responsibility as
23 a fiduciary, because that's why they put trust in you,
24 that you know what you're doing. One of the things is,
25 if you're selling them, you're going to know if they're

1 in pretty good shape. I mean, I don't know unless you
2 -- there is something, again, that you say as far as --
3 nobody tells me that's why is it the roof leaks or
4 whatever, I don't have to worry about where the water
5 comes from. I'm not, I'm not convinced of that one.

6 All right. What's the next one?

7 MS. BROWN: Your Honor, ---

8 THE COURT: Yes, ma'am, Ms. Brown.

9 MS. BROWN: If I may on this same topic with
10 regards to -- Cynthia Brown -- with regards to Mr. Cox,
11 Mr. Lollis, IMK and IK. And while I do agree with Mr.
12 Imhoff in the fact that the cases that are before that
13 are in the context of patent defects in construction,
14 the board knew that there were these defects because
15 they had to report it. But breach of fiduciary duty
16 cannot -- I mean, it doesn't logically extend to say,
17 somebody's individual unit has a roof leak and they've
18 got water coming down and they don't report it, how can
19 that be the board's responsibility if somebody's -- a
20 homeowner doesn't say, I've got a roof leak. And the
21 truth of the matter is -- and there was testimony at
22 trial about this -- that when they -- we gave over the
23 HOA responsibilities to the homeowners in 2008, and
24 actually it was in the middle of 2008. The complaint
25 wasn't filed until 2009. In 2008 we gave over the

1 administration of the homeowners' association to the
2 homeowners. There were no requests for maintenance or
3 repairs that had not been fulfilled. And there was
4 testimony from ---

5 THE COURT: So they were fulfilling repairs?

6 MS. BROWN: Yes.

7 THE COURT: So they did know that it was a
8 perfect ---

9 MS. BROWN: Well, they were making repairs to
10 the complaints that were made and even -- and the
11 plaintiffs testified that to their knowledge there
12 wasn't any existing repairs that needed to be made.
13 And so ---

14 THE COURT: To their knowledge?

15 MS. BROWN: Right. To ---

16 THE COURT: What they saw?

17 MS. BROWN: I'm sorry?

18 THE COURT: What they saw?

19 MS. BROWN: Yes. And so there was nothing
20 there to indicate to the homeowners' association or ---

21 THE COURT: Other than there had been in the
22 past?

23 MS. BROWN: Other than the repairs that had
24 been previously ---

25 THE COURT: Same project, same contractor,

1 same -- well, it's the same project. And some of them
2 had been made, but all of those have been corrected?

3 MS. BROWN: But Mr. Bostic ---

4 THE COURT: And then you say that they turned
5 it over in 2008 and they bring the suit in 2009. Is it
6 the position of the defendants that all of this
7 happened after 2008 -- or I mean, that certain half of
8 2008?

9 MS. BROWN: No. The position is on the
10 fiduciary duty claim ---

11 THE COURT: I'm just asking. So in other
12 words, there were problems. It's just that the
13 fiduciary representative did not know about them?

14 MS. BROWN: That's correct.

15 THE COURT: Okay. And that's -- I understand
16 that.

17 MS. BROWN: Okay.

18 THE COURT: But they did know about there had
19 been problems?

20 MS. BROWN: To the extent that IMK was the
21 developer at the time after purchasing it from the
22 Bostic brothers.

23 We're just doing the fiduciary duty issue right
24 now or ---

25 THE COURT: That'll be fine. Again, I want

1 to move this thing along. So anything you can help.
2 Right now I think we were on fiduciary duty as being
3 whether or not it's strict liability. In other words,
4 that there is no liability until you actually know
5 about it.

6 MS. BROWN: And our -- or have some notice to
7 investigate. I think that ---

8 THE COURT: Like if there had been problems
9 that you wouldn't be noticing the other problems?

10 And as I remember, this is a -- sort of an
11 absentee type of development? In other words, these
12 are not necessarily permanent residences?

13 MS. BROWN: I think there was some testimony
14 on that. I don't remember that exactly.

15 THE COURT: Well, I thought that's what the
16 Bostic brothers did, they were alumni of Clemson and
17 all. I mean, this is -- I mean, this is just what I
18 picked up from listening to the testimony, that they
19 saw a good thing and we've got them all over, which is
20 wonderful, you know, where the alumni come back. In
21 fact, a former judge, Gaffney, is now running for
22 county council in Pickens. He retired from the bench
23 and he's a Clemson alumni. Alumnus, I guess.

24 But anyway, I thought that was the whole thing,
25 that it was not necessarily for permanent residences,

1 which means that they, again, have to put their trust
2 in the people that are in charge.

3 Go ahead. I'm sorry.

4 MS. BROWN: I think that's all I've got on
5 the fiduciary duty.

6 THE COURT: Okay. Anything else?

7 MR. IMHOFF: Your Honor, we sort of hit on
8 this a little bit. I believe -- I think the only other
9 one I share with the IMK folks on the JNOV is the
10 amalgamation of alter ego and veil piercing. We
11 started to get into that a little bit. And if I may,
12 this is a long one, Your Honor, so I'm going to go very
13 quickly through it, if you don't mind.

14 THE COURT: Okay.

15 MR. IMHOFF: And there it is, as I said,
16 there is a lot of case law cited in the brief and I
17 know in IMK's brief also -- or I'm sorry, IK's brief
18 also, there is a lot of information in here.

19 The beginning of it is there is -- we cannot find
20 -- there's no legal authority in South Carolina to
21 amalgamate corporations, limited liability companies,
22 and entities and individuals. And ---

23 THE COURT: Maybe when we tried this case, I
24 probably think that your argument was more persuasive.
25 But now, I understand the United States Supreme Court

1 has said that corporations are people. They have the
2 same rights. So it seems like they have the same
3 responsibility. I don't know. I think it's McCutcheon
4 versus -- the most recent. And the one before that was
5 the Taxpayers or somebody.

6 So I mean, at one time maybe that was the
7 corporate veil. I'm not sure it runs the status of our
8 law these days, which suggests that that's so
9 impenetrable -- not so much impenetrable. It's just
10 that you have to look at and see the old ideas of
11 having to bring the corporate records in and find out
12 when the last meeting was and all that. I think it was
13 probably -- it's now being looked at in a different
14 fashion when you're talking about people who exercise
15 -- or when entities, be they individuals or
16 corporations, exercise certain rights, they realize
17 that they also have responsibilities and they can't,
18 again, avoid what they don't see because they weren't
19 really there. It was somebody else.

20 MR. IMHOFF: And I understand that, Your
21 Honor.

22 THE COURT: Again, maybe this -- maybe we
23 need to revisit, you know, what's necessary, and even
24 if it is necessary to pierce the corporate veil.

25 MR. IMHOFF: Well, I believe the court's

1 ruling was that the Christmas trees, so to speak, are
2 all the same. They're amalgamated; they're all the
3 same. And the Christmas tree, if you think of it as a
4 triangle, definitely ---

5 THE COURT: You've got IMK at the top.

6 MR. IMHOFF: IMK at the top.

7 THE COURT: IK and Marick at the next level.

8 MR. IMHOFF: And the Thoennes have no
9 relationship with Bill Cox and Larry Lollis.

10 THE COURT: Well, that's kind of like a drag
11 racer's past don't have any relationship with each
12 other, but they enter into a track race and they run
13 over somebody, then they have joint responsibility.

14 MR. IMHOFF: Well, I agree, except the case
15 law is new. It's 2011, 2012, talks about the analysis
16 you do to amalgamate. And the analysis is complete
17 control, sharing offices, sharing phone numbers from
18 one entity ---

19 THE COURT: Well, didn't we have some phone
20 numbers here in this case?

21 MR. IMHOFF: We talked about that, Your
22 Honor. As a matter of fact, there was testimony that
23 they shared separate offices. That they were separate.
24 That there were emails. Their computer systems were
25 different. Their phones were different. Their names

1 were different. They had completely separate offices
2 and separate duties and obligations. And there's an
3 analysis that if you -- if you'd like you can look at
4 any of the cases that we cite ---

5 THE COURT: Well, I'll look at all of them.
6 I mean, give me the ones that you want me to
7 particularly concentrate on.

8 MR. IMHOFF: Well, they're in here, Your
9 Honor. But Kincaid versus Landing Development, Hope
10 versus Heritage Community, Magnolia Properties. All of
11 those stand for the proposition that to amalgamate, you
12 have to find that all the entities had the same board
13 members, were all managed by one person, all employees
14 reported to one person and worked among entities,
15 shared offices, all the bills were paid by one entity.
16 And that's just to amalgamate, to make them the same.
17 If you make them the same, then there still needs to be
18 a piercing the corporate veil. And you've got the
19 Christmas tree. You've got IMK at the top. Underneath
20 that is American IK. And then underneath that are the
21 shareholders of that. And I know that you've seen the
22 piercing analysis before. That is a very substantial
23 -- as you just said, you bring in when was the last
24 meeting and all this. That's a substantial amount of
25 work to find out.

1 And none of that was done in this case. There was
2 no evidence presented that the corporate entities, the
3 three of them, were fictitious at all. They had
4 separate bills, offices, all of those things that I
5 just talked about.

6 Your Honor, as I said, it's very long, but to
7 pierce the corporate veil, the first of two prongs is
8 an eight-factor analysis of the shareholders'
9 relationship with the corporation and observe some
10 corporate formalities and then it goes through the
11 eight things when the corporation was grossly under-
12 capitalized, failure to observe the corporate
13 formalities. All of those things that I know the court
14 is aware of.

15 And the evidence wasn't presented and the analysis
16 wasn't done to push all of these people together. And
17 that's what happened. Is when we went and we asked the
18 jury to render their decision, they were all grouped
19 together. Larry Lollis specifically said, I think, he
20 put eight or ten thousand dollars in as an investment.
21 That's all he did. He put money in. I don't believe
22 he was ever on the board. He never actively managed
23 it. I don't even think he went out there more than one
24 time. But what happened is Larry Lollis and Rick
25 Thoennes, III, who's the son, who didn't have anything

1 to do with this project, were thrown in the same box.
2 And they're all amalgamated. There's no corporate
3 formality at all. And the verdict is rendered against
4 all of them together, despite the fact that Rick, III
5 and Larry Lollis probably never met each other.

6 And so the evidence wasn't submitted, the work
7 wasn't done to amalgamate, to pierce, to prove alter
8 ego, and then the analysis, based on the evidence,
9 wasn't worked through to go through the two prongs, the
10 eight factors, the analysis, that type of thing. And
11 as I said, it's laid out here in the brief. And I'll
12 let Cindy take over, but I think there are four pages,
13 Your Honor.

14 THE COURT: All right. Ms. Brown.

15 MS. BROWN: I get to take over after making
16 me sit in the back.

17 MR. IMHOFF: You could have sat right here.
18 Come on.

19 MS. BROWN: No, I'm kidding. The only part
20 of it that I'll address separately is this Mr. Lollis,
21 because I think that the rest of them, Mr. Imhoff's
22 arguments cover our position, along with our brief, on
23 those parties.

24 Mr. Lollis, however, is a separate concern, simply
25 because holding Mr. Lollis responsible for what was

1 happening on that side or there was a negligence, is
2 like holding a Gulf investor liable for an oil spill.
3 The investor in the company is not an officer, has no
4 involvement in the construction. Only puts in money
5 and sits around and waits, hopefully, for money to come
6 in. In this situation, Mr. Lollis invested and sat
7 there and ended up losing money and having to continue
8 -- is still continuing to put money in.

9 So the situation with Mr. Lollis is completely
10 different. He had no knowledge, no involvement at all.
11 Even -- the only piece of evidence that was put in with
12 regards to any work or any involvement by Mr. Lollis
13 with IK, the actual investor in IMK, was a check from
14 IK. The check from IK was for the amount of the money
15 that he -- that Mr. Lollis should have gotten as his
16 percentage partnership from an IMK distribution to IK.
17 There was never any testimony that he should not have
18 gotten that amount of money. It was just the fact that
19 it came from a check written by IK.

20 Now, going back to that for just a minute. Keep
21 in mind that Mr. Lollis, his interest in IK, he had no
22 controlling interest in IK. He was a minority
23 investor. He could not have even turned around and
24 said, you didn't write the check on the right account;
25 change it. He had no control over that entity. Like I

1 said, he is your ---

2 THE COURT: Did he negotiate it? Did he
3 negotiate the check?

4 MS. BROWN: Yes. Yes, he did.

5 THE COURT: So apparently there was some
6 authority for issuing the check as they did. Even
7 though they were separate and distinct entities; IMK
8 and IK.

9 MS. BROWN: Right. IMK and IK were distinct
10 entities. Mr. Lollis had no involvement in IMK ---

11 THE COURT: Well, I'm just saying, except for
12 the check?

13 MS. BROWN: Yes, he did.

14 THE COURT: But he had a check? I mean,
15 that's why he invested; wasn't it, to get the check?
16 So he got something from his investment in IK, but it
17 was paid by IMK. I don't know. I mean, you say
18 there's no evidence. I just ---

19 MS. BROWN: But again, what I'm saying is
20 that he had no control over IK. If he got a check from
21 IK, it would be part of his rightful distribution. And
22 the fact that he got a rightful distribution -- if they
23 weren't giving out distributions, we'd be not observing
24 corporate formalities.

25 THE COURT: All right. But the corporate

1 formality didn't authorize IMK to write the check. I
2 mean, IK was not IMK's -- I mean, I understood with all
3 this Christmas tree thing is that you've got a star up
4 here and all the little bulbs and all that don't belong
5 to the same tree.

6 It sounds like Mr. Lollis received a check for
7 being a member of IK, but the check was actually from
8 IMK. There must be some sort of connection, unless the
9 bank refused payment on it and said that this is not a
10 proper withdrawal. I don't know. I'm just -- I think
11 that's the problem with all of this. We try to get a
12 tangled web sometimes involved when we have too many
13 things involved.

14 MS. BROWN: Your Honor, the other ---

15 THE COURT: That's why I think sometimes you
16 have to just cut through and use common sense. I agree
17 with all the eight, you know, principals of piercing
18 the corporate veil. But at one time corporations were
19 something more than we have today. And I'm not -- are
20 any of these traditional corporations or are they LLCs
21 and other limited corporations?

22 MS. BROWN: To my knowledge they're LLCs.

23 THE COURT: Yes, sir. Yes, ma'am. I'm
24 sorry.

25 MS. BROWN: The only other point I would make

1 on the amalgamation theory, it appeared that the ruling
2 from the court on the amalgamation theory was that
3 there was too much self-dealing. And I understand
4 that. However, that self-dealing is really not a part
5 of amalgamation law. That's more a piercing the
6 corporate veil or alter ego. When I looked at the
7 factors for making an amalgamation argument, especially
8 as to Mr. Lollis, he doesn't fit with the case law
9 that's there. And we've made the argument in our brief
10 and I'll leave it at that. Thank you, Your Honor.

11 THE COURT: Very good. Thank you. Next.
12 Mr. Belcher, you got anything on this one?

13 MR. BELCHER: Not in this one, Your Honor.

14 THE COURT: All right. Anybody else have
15 anything they want to offer to the court? All right.

16 MR. IMHOFF: Your Honor, this is -- I'm going
17 to move on ---

18 THE COURT: Please.

19 MR. IMHOFF: --- if that's okay. So the next
20 one, Your Honor, I have is JNOV for -- based on
21 proximate cause. I've already argued this, but just to
22 again briefly reiterate it. The testimony and the
23 evidence was that all of these damages, the necessity
24 to repair these buildings was present before my client,
25 before IMK, IK, any of us arrived on the scene. That

1 testimony came from Derrick Hodgin, plaintiffs' expert,
2 and from John Folk, Bostic's expert. At the very most,
3 the damages that were caused by Marick, IK, IMK, if
4 they're all together, or even if they're separate,
5 would have been two hundred and fifty thousand dollars,
6 testified to to Mr. Folk, which is the continuing
7 deterioration of these buildings if they weren't fixed
8 as soon as Marick, IK and IMK came onto the site. But
9 the damages themselves, the six point two or whatever
10 it was estimate that plaintiffs submitted, the entirety
11 of that, except for maybe this two hundred and fifty
12 thousand, was necessary, was proximately caused by
13 Bostic and not proximately caused by Marick. Again,
14 they didn't build it. It was there and existing.

15 Now, I'm going to -- that's the partial -- I'm
16 sorry -- on proximate cause. But if you recall -- and
17 Your Honor, I'm going to actually hand this up. I'm
18 going to make your job easier.

19 THE COURT: Very good. Thank you.

20 MR. IMHOFF: This is the Roundtree Villas
21 case, Your Honor. And in the Roundtree Villas case, if
22 you look at keynote number four, Your Honor, this bank,
23 a lender, created a corporation, it says right in the
24 middle, a corporation it created and undertook to
25 repair defects which existed in order to promote sales,

1 have a common law duty to use due care in the making of
2 the repairs. Therefore, lender and its advisors could
3 be held liability to non-profit corporation which owned
4 and administered the common elements, could be liable
5 to the owners' association for any damages proximately
6 caused by the alleged negligent repair of the common
7 element property. The last part is the best part, Your
8 Honor. But not for any original damages proximately
9 caused by negligence of the builder, architect or
10 contractor.

11 And Your Honor, that is exactly this case. A
12 corporation was created to repair, to sell, to market
13 these. At the most IMK, Marick, IK, however you want
14 to do that, Your Honor, would be liable for the
15 improper repairs, the negligent repairs, that
16 proximately caused the damage. But this court says,
17 but not for any original damages. And the testimony is
18 absolutely clear on that. There was no question about
19 that testimony. Derrick Hodgin, John Folk, the two
20 experts, both testified the scope of repair is
21 necessary before Marick ever gets there. And so that's
22 the proximate cause argument, Your Honor.

23 And I don't know that I could have found a better
24 case. I agree that this is a lender, but it's a lender
25 that created a corporation to do exactly what Marick,

1 IK and IMK did. And that was our and is our proximate
2 cause argument.

3 And Your Honor, again to save time, that's the
4 same -- we would apply that proximate cause argument to
5 breach of the implied warranty of workmanlike service.
6 Again, the implied warranty of the workmanlike service
7 is a warranty on the work that you did. It's not a
8 warranty on selling units. It's a warranty that the
9 work you did is done in a good, reasonable way and
10 workmanlike way. The only work that Marick did on
11 these buildings is the repairs. And so the only thing
12 that it could be liable for under the warranty of
13 workmanlike service is the damages proximately caused
14 from their repairs, if they weren't good repairs. The
15 only evidence again being two hundred and fifty
16 thousand dollars maybe.

17 And so the reason that we would ask you to not
18 award the three million dollars and one million dollars
19 on negligence and implied warranty is because the
20 evidence doesn't support that verdict. Marick can't be
21 liable for damages that were already there, that were
22 already necessary before it even knew about the
23 project, let alone going out there.

24 THE COURT: Did they sell any of these units?

25 MR. IMHOFF: Did Marick? No, Marick didn't

1 sell any.

2 THE COURT: I mean IK?

3 MR. IMHOFF: But again, that's what warranty
4 of habitability ---

5 THE COURT: Well, I'm just curious, you know,
6 did they sell any of them?

7 MR. IMHOFF: Marick did not sell any. No,
8 Your Honor.

9 THE COURT: Did IK sell any?

10 MR. IMHOFF: I don't believe so. I think
11 they were all sold ---

12 THE COURT: Well, who was the one that was
13 supposed to be selling them?

14 MR. IMHOFF: IMK, Your Honor.

15 THE COURT: Well, all right, IK and Marick
16 are IMK; aren't they?

17 MR. IMHOFF: But even in this case ---

18 THE COURT: All right. So IMK did sell some
19 of the units as they found them?

20 MR. IMHOFF: And so did this bank in
21 Roundtree Villas. So did this corporation in Roundtree
22 Villas. And the court found that they could only be
23 proximately liable for their repairs, not the original
24 work.

25 THE COURT: Well, it seems like the lender,

1 for this particular purpose, created a corporation to
2 make repairs and to sell them. What you did -- not
3 you, but IMK and IK and Marick and all the others did
4 was to take it as they found it and continue them in
5 the course of commerce. Not that it's strict
6 liability, but you do have some -- and I don't know.
7 All right. I see your argument. In other words, it's
8 not workmanlike service or whatever, but it is because
9 the carpenter is the one that is liable?

10 MR. IMHOFF: Yes, Your Honor, that
11 proximately caused the damages.

12 THE COURT: I mean, of course a banker
13 wouldn't cause any damages. It's limited just to what
14 work a person does. You've got to be the carpenter.
15 He's the one that pounds the nails.

16 MR. IMHOFF: The fact scenario and the
17 allegations are exactly the same.

18 THE COURT: That came up in this case, was it
19 Bostic Brothers never pounded a nail or something like
20 that.

21 MR. IMHOFF: The brothers themselves never
22 did, Your Honor.

23 THE COURT: Yeah. So they shouldn't be
24 responsible either. Okay.

25 MR. IMHOFF: No, Your Honor. The facts of

1 that case are exactly -- they're exactly the same.

2 THE COURT: I see what you mean. All right.

3 MR. IMHOFF: Your Honor, I think the last
4 one, and I can move through the rest of these because
5 they're repeated in the request for new trial and alter
6 to remit, is the breach of the implied warranty of
7 workmanlike service. I've already shared with you the
8 proximate cause. Again, the breach of implied warranty
9 of workmanlike services is only applicable work you
10 did. And again, all of the defective conditions on
11 this site were not work we did. The only work we did
12 were repairs.

13 THE COURT: Okay. I mean, I don't want to
14 overdo my cuteness, but that's pretty much Bostic's
15 defense, is they never, you know, lifted a hammer. So
16 any unworkmanlike condition of their project was not
17 their responsibility. Under that principal.

18 MR. IMHOFF: As a general contractor, though,
19 if you're supervising subcontractors that are doing
20 your work, you still have a workmanlike service
21 warranty.

22 THE COURT: Well, I would think also to
23 discover things that need to be done. And if you don't
24 then you pretty much adopt them.

25 MR. IMHOFF: I think that would be a

1 different cause of action.

2 THE COURT: I understand. I mean, I'm not
3 sure if they would be, but it seems that.

4 MR. IMHOFF: But if we didn't build it, how
5 can we warrant it?

6 THE COURT: I'm with you. But I think Bostic
7 is asking to reconsider the verdict against them.

8 MR. IMHOFF: Yeah, Bostic doesn't agree with
9 that. They wanted us to take full liability.

10 THE COURT: Well, I would think so, because
11 they didn't do anything.

12 MR. IMHOFF: So, Your Honor, we ---

13 THE COURT: Other than invest. I mean,
14 really, that was their sole connection with the
15 project. They just invested like the bank.

16 MR. IMHOFF: So we believe, Your Honor, that
17 we can't warranty -- a jury can't return an award for
18 warranty workmanlike service if we didn't build it.

19 In addition to that, if you recall, the warranty
20 of workmanlike service resulted in a one million dollar
21 verdict, which was then apportioned seventy/thirty.
22 And if you recall, I objected twice after the charge
23 because the workmanlike service charge included the
24 sale of the units. The jury, if you recall, asked to
25 hear that charge again. We brought them back in. It

1 was charged again. If you recall, I got up after the
2 jury went out and I said, Your Honor, you again charged
3 them with the warranty of workmanlike service arises
4 out of a sale of the units. It doesn't. That's the
5 warranty of habitability.

6 THE COURT: Well, I mean, you do have some
7 authority for that?

8 MR. IMHOFF: Yeah, there is authority.

9 THE COURT: Well, that would be one of the
10 things I'd like to see, is that.

11 MR. IMHOFF: Okay.

12 THE COURT: Because otherwise I -- even
13 though the Bostic Brothers settled, I think; is that
14 correct?

15 MR. IMHOFF: No, sir.

16 THE COURT: They didn't settle?

17 MR. IMHOFF: Well, the Bostic brothers
18 themselves settled, but ---

19 THE COURT: Oh, the individuals, but not
20 Bostic Brothers, the company, the corporation? All
21 right. In other words, what I'm saying is that from
22 your theory, the fact that you're in the business of
23 developing and selling property, unless you actually
24 did some work on the properties that you're selling,
25 you have no responsibility?

1 MR. IMHOFF: Well, that's not my theory
2 exactly.

3 THE COURT: Well, let me ---

4 MR. IMHOFF: The only cause of action given
5 to the jury was warranty of workmanlike service. The
6 warranty of habitability was not submitted to the jury.
7 And that arises out of the sale, and we argued that,
8 and you actually granted summary judgment on that cause
9 of action.

10 Your Honor, what happened after those two charges,
11 which included the sale, was that Bostic Brothers
12 argued that IMK/Marick sold seventy percent of the
13 units. Bostic only sold thirty percent of the units.
14 So the jury heard it the first time. They asked to
15 hear it again. And then it was argued to the jury that
16 they should apportion seventy percent of the liability
17 to Marick because Marick sold seventy percent of the
18 units. It's clear that the jury used that charge to
19 then attribute seventy percent of the liability under
20 this warranty cause of action based on sale. And this
21 warranty cause of action isn't based on sale. It's
22 based on work. Well, what swinging the hammer did you
23 do? And so we would ask that the award on the warranty
24 be overturned for those -- both of those reasons.
25 First, we can't be liable for work we didn't do. But

1 second, it clear that the jury's verdict was based on
2 an erroneous understanding of the law.

3 THE COURT: Well, should I read Roundtree to
4 suggest that -- it's not Roundtree. What is it? Let
5 me see. Yeah, it is Roundtree. If Roundtree didn't do
6 anything -- in other words, it didn't undertake repairs
7 after it formed the corporation to sell the -- or
8 recoup the funds that they had lent, if they didn't do
9 anything, they wouldn't be responsible when they sold
10 them.

11 MR. IMHOFF: Well, that analysis, again, is
12 under a negligence cause of action.

13 THE COURT: Well, I'm just curious. It would
14 not be under the sales?

15 MR. IMHOFF: I think they should have brought
16 a cause of action for warranty of habitability. If you
17 sell them and they're defective, then under a warranty
18 of habitability theory, then the homeowners could
19 recover against the Roundtree; yes. But this is a
20 negligence analysis based on proximate cause. Warranty
21 of habitability was not an issue in this case. It
22 wasn't submitted to the jury, Your Honor.

23 THE COURT: Mr. Lyles. Wait a minute. Ms.
24 Brown, anything further?

25 MS. BROWN: Not on this. Just join in his

1 arguments from the standpoint that we're amalgamated.

2 THE COURT: All right. Very good. Mr.

3 Lyles.

4 MR. LYLES: First, I guess I'd like to say,

5 he made these arguments to the jury. He submitted

6 these arguments to the jury and the jury may have

7 accepted them in part and didn't accept them in part.

8 You may recall that Marick, when they went out to the

9 project to do the repair of the project, pulled

10 building permits with the stated value in excess of, I

11 believe, a million dollars for the work.

12 There was ample testimony in the record that

13 Marick fixed waterproofing problems, fixed roofing

14 problems, fixed some window problems, did some

15 foundation work to repair problems. There was evidence

16 that Marick was aware of firewall problems in those

17 units and failed to correct them. So there was ample

18 evidence about what Marick did and did not do in Phase

19 I, from which the jury could assess properly, I think,

20 the damages to be awarded again them.

21 Mr. Thoennes, when you asked about sales, it's an

22 interesting question. You may recall that Mr. Thoennes

23 testified effusively, if you will, about the fact that

24 he wore multiple hats. He was the general contractor

25 and he was the head of the sales force. That's what

1 his job was on this project. The jury had the
2 opportunity to consider all of that evidence in coming
3 up with their award.

4 With respect to the charge, I have a different
5 recollection of how that occurred than Mr. Imhoff's.
6 And I just don't know what the charges reflect. But I
7 do recall that we did bring a habitability claim. The
8 court threw that out in summary judgment. The implied
9 warranty of service claim was, I think, properly
10 charged to the jury. There was also a habitability
11 claim that was charged to the jury. When that issue
12 was brought up as a -- objected to by Mr. Imhoff, I
13 think that by the time the objection had occurred, they
14 had already heard it and you did not submit the
15 habitability claim to the jury. And that's how we
16 addressed the fact that they had heard the law relative
17 to habitability. I think that's how it happened. I
18 think the implied warranty of service charge was a
19 proper charge.

20 Admittedly, Bostic got up and asked the jury as a
21 way to think about apportioning the breach of warranty
22 claim, Mr. Belcher simply said, hold us responsible for
23 the ones we sold; hold them responsible for the ones
24 that they sold, and that's what the jury did. But I
25 don't think that was based on your charge. I think

1 that was based on his argument. So that's what I would
2 say. I think the negligence -- excuse me -- the
3 implied warranty of service claim was properly charged.

4 THE COURT: All right. What's next?

5 MR. IMHOFF: Your Honor, I think I can move
6 through these pretty quickly because they're
7 duplicative of the JNOV motion, but there's a motion to
8 alter or amend and a motion for a new trial. The
9 motion to alter or amend is essentially the same
10 arguments. If you would like me to, I will repeat
11 them. I would ask that ---

12 THE COURT: No. I think I have heard enough.
13 In other words, it was first of all the amalgamation
14 was improper to find that there was an amalgamation or
15 that there was some responsibility by reason of the
16 organizations. And the second, of course, is that
17 there's no liability for -- or liability for
18 workmanlike warranty would not be recoverable here.

19 MR. IMHOFF: Yeah, there were several. Would
20 you like me to repeat them or ---

21 THE COURT: No. I mean, I'll have the
22 record. But also I'll have whatever you submit to me
23 as something you want me to look at in a more precise
24 way.

25 MR. IMHOFF: I submitted a motion and a brief

1 on these. Again, I would just ask that you would
2 preserve the arguments for the motion to alter or amend
3 the verdict based on them being the same arguments that
4 I made ---

5 THE COURT: In other words, you adopt those
6 arguments for the same motions.

7 And Ms. Brown, do you join in that motion?

8 MS. BROWN: Yes, Your Honor.

9 THE COURT: All right. So all of those
10 matters have and will be considered, but -- that you
11 mentioned.

12 MR. IMHOFF: Your Honor, and then the last
13 two are a request for a motion for a new trial. And
14 then a motion for a new trial nisi remittitur. A new
15 trial is, again, based on many, if not all, of the same
16 arguments that I argued for JNOV motion to alter or
17 amend. Also, the thirteenth juror standard, Your
18 Honor, or doctrine, which allows you to grant a new
19 trial if the evidence does not justify the verdict.
20 Again, based on the fact that Marick didn't proximately
21 cause the damages. They already existed before they
22 got there. The inconsistent verdict, we believe,
23 reflects the jury's confusion. Again, if it's the
24 exact same damages, there's only one damage estimate
25 submitted by plaintiffs. Or there was only one type of

1 damage submitted by plaintiffs. They gave a
2 sixty/forty Bostic/Marick split for negligence and then
3 a seventy/thirty Marick/Bostic split for warranty.
4 That appears to be inconsistent.

5 And again, if you'll recall, plaintiffs asked the
6 jurors specifically to award the entire damages, all of
7 the damages, for every single cause of action. So if
8 they thought the entire damages was five million,
9 plaintiffs asked them to put five million on
10 negligence, five million on warranty, five million on
11 breach of judiciary duty and then presumably he would
12 elect his remedy.

13 Clearly, the jury was confused. Because not only
14 did they not do that, they had three, one and one, but
15 they apportioned differently for the exact same
16 damages. There's no question that there's a repair, a
17 repair needs to be done, and they decided that that
18 repair needed to be done sixty/thirty [verbatim] under
19 warranty and sixty/forty the opposite way on the
20 negligence.

21 So we would submit that that inconsistent verdict
22 reflects the jury's confusion and a new trial should be
23 granted. We believe that the verdict as to Marick is
24 excessive, again, based on proximate cause, plus the
25 fact that Marick did not build the defective components

1 of these townhouses. Mr. Lyles was correct. Marick
2 built out many of the interiors in these town homes.
3 There's no evidence and no testimony that they built
4 the defective components, stone, roofs, windows, doors,
5 decks, none of that. There's no evidence of that.

6 So that's the -- Your Honor, that is our motion
7 for a new trial. Again, I would ask to preserve all of
8 the arguments we made previously in regard to the
9 motion to alter or amend or the JNOV on that. And then
10 finally, ---

11 THE COURT: Well, let the record reflect that
12 those -- that motion to include prior submissions will
13 be included in the record.

14 MR. IMHOFF: Your Honor, and then the new
15 trial, we seek remittitur. We would ask the court to
16 reduce the verdict against Marick on any and all causes
17 of action to the two hundred and fifty thousand dollars
18 that is supported by the only testimony, the only
19 testimony was John Folk, that the most Marick could be
20 responsible for that would have proximately caused,
21 would have been maybe two hundred and fifty thousand
22 dollars in increased damages due to the water intrusion
23 and why over the years.

24 Thank you, Your Honor. I believe that covers
25 everything for Marick, Your Honor.

1 THE COURT: All right. Ms. Brown.

2 MS. BROWN: Just joining in Mr. Imhoff's
3 arguments on behalf of Marick and the other entities.
4 We would just add that we also had a -- on the new
5 trial JNOV, the request that we made two jury charge
6 requests that the court did not give that were based on
7 corporate entities and liability of individuals for
8 corporate debt. And those were refused to be given.
9 And we do believe they could have had an effect on the
10 trial.

11 THE COURT: All right. So you're excepting
12 to the failure to charge?

13 MS. BROWN: Yes.

14 THE COURT: Very good. And noted for the
15 record. All right. Mr. Belcher?

16 MR. BELCHER: No, Your Honor. I'll just save
17 it for my motions. That's fine. I don't have
18 anything.

19 THE COURT: All right. Mr. Lyles, anything
20 further on these that we've taken up so far?

21 MR. LYLES: Nothing else. I guess I would
22 point out to the court, we included this in one of our
23 proposed memorandum, reference to a Fourth Circuit case
24 called Vigilant Insurance Company of New York versus
25 McKinney's. And it has to deal with the issue of jury

1 confusion and inconsistent verdicts and the waiver of
2 those rights by defendants who fail to inquire about
3 the jury's intention while the jury is empaneled. So
4 questions about the jury's verdict or their potential
5 confusion have been waived by these defendants.

6 THE COURT: All right. Very good. All
7 right. Anything else?

8 MR. BELCHER: We still have motions.

9 THE COURT: How many you got, Mr. Belcher?

10 MR. BELCHER: I believe there are three, Your
11 Honor.

12 THE COURT: Three?

13 MR. BELCHER: Yes, sir.

14 THE COURT: It's one twenty; what do you want
15 to do?

16 MR. BELCHER: I'm prepared to move forward.
17 If anyone else needs a break, we can take a break.

18 THE COURT: Let's do take a break. Come back
19 at one thirty. Danette, is that all right?

20 THE REPORTER: That's fine with me.

21 THE COURT: Okay. We'll do that. Is there
22 anything else that we need to take up this afternoon?
23 Which is now afternoon? This morning?

24 MR. BELCHER: Just my three post trial
25 motions.

1 THE COURT: All right. That'll be good.

2 That's what I'm trying to do; rather than take an hour
3 for lunch and then come back and reassemble and doing
4 all that. If you need to get something, I don't know
5 -- we don't even have a canteen here; do we?

6 MR. BOWMAN: There's a gas station across the
7 street.

8 THE COURT: A gas station across the street,
9 Mr. Bowman tells me. All right. We'll see you at one
10 thirty or as soon thereafter as possible.

11 (WHEREUPON, the court stood at recess for a short
12 break.)

13 THE COURT: All right. Mr. Belcher.

14 MR. BELCHER: Thank you, Your Honor. Alan
15 Belcher on behalf of Bostic Construction Company.

16 Your Honor, I think where I'll start is with our
17 request for a judgment notwithstanding the verdict,
18 which also sort of dovetails into the motion to alter
19 or amend a ruling based on the directed verdict
20 arguments that we made at the close of evidence at the
21 trial. And what I've heard here today I think really
22 makes it clear what we need to ask the court to do. I
23 think the court can do what we're asking, based on what
24 I've heard.

25 We're talking about the statute of limitations

1 here. We're talking about when who knew what about
2 what was wrong with the buildings. That was the whole
3 crux of our argument, is that Bostic was off of this
4 project very early on after everything was built. I
5 think they left in 2005, is what the testimony bore
6 out. This new HOA comes in with IMK, IK, Lollis,
7 Thoennes, whatever it is, and now the jury, the jury
8 has told us that they found that all of those people,
9 by virtue of their association with the homeowners'
10 association, breached a duty, fiduciary duty, to the
11 homeowners. All right. That's established now. We're
12 not asking you to change that at all. It's
13 established. They breached a fiduciary duty.

14 Well, what is that breach of fiduciary duty? That
15 consists of -- from the evidence that we heard, it
16 consists of their failure to turn over the property in
17 good condition in 2008. But it also deals with the
18 fact that all the evidence that came in and testimony
19 that came in, that they were aware of all these
20 problems. That HOA would have nothing to do with
21 Bostic whatever was aware of these problems more than
22 three years before they filed a lawsuit against Bostic.
23 They were aware before 2007 and this is a 2010 filing
24 as to Bostic. They were aware in 2006 when they took
25 the program over. They had photographs of all these

1 issues. Their expert said all these issues existed in
2 2006 and 2007, which is another part of an argument
3 that I've already heard here today. That HOA had
4 nothing to do with Bostic. Who had the responsibility
5 to sue Bostic and has not been found to have breached
6 its fiduciary duties and I would submit to you in part
7 because they never did anything about construction
8 deficiencies of which they were aware for years. It
9 has nothing to do with Bostic.

10 Now there was some -- I think where the confusion
11 was at the directed verdict stage is, where is Bostic
12 involved in all of this HOA. And I think that the jury
13 did a great job of really taking that out of the
14 equation because our verdict form and the jury's
15 verdict did not find Bostic in its capacity as a HOA
16 manager or as a HOA member of anything or a director or
17 anything. They didn't find Bostic liable for breach of
18 a fiduciary duty. And in fact, they weren't even
19 charged and that wasn't even an option.

20 So Bostic's role in the HOA has nothing to do with
21 anything because its cutoff with Marick, IK, IMK,
22 whoever took over the HOA, took it over at the sale
23 back in 2006 from Thoennes to Keowee LLC, the Bostic
24 Entity to IMK, IK, Marick in 2006. Homes existed then.
25 Nobody sued Bostic in 2006 for those problems. They

1 just took a discount on what they were going to buy the
2 remaining property for. They continued to band-aid it.
3 They continued to mask it.

4 Steve Taylor testified, one of the homeowners out
5 there, that when Marick came -- and this is his exact
6 trial testimony -- when Marick came to the site in 2006
7 or so when they started to come around, when Marick
8 came to the site, we thought they were our savior
9 because we had issues with the buildings. We had
10 leaks. They were coming in. They were doing this
11 warranty work. They were fixing walls. Like Mr. Lyles
12 said, they were fixing roofs, fixing walls, fixing
13 windows in this 2006/2007 time frame. Yes, Marick --
14 perhaps at the direction -- it doesn't matter -- of
15 IMK, IK, but that group, it was the HOA board. He's
16 doing all this work. They're aware of these detects.
17 Your whole Roundtree analysis and everything flies
18 right back into this and makes it even more clear that
19 based on the testimony in the record, what the jury did
20 with regard to breach of fiduciary duties and what they
21 didn't do as to Bostic with regard to those same
22 duties, and the time line, the testimony in the record
23 that all these damages were known well in advance of
24 three years before they filed suit against Bostic and
25 the HOA and the individual unit owners. It's a clear

1 cut case of the claims against Bostic at this point.
2 Clearer now than it was at directed verdict, the claims
3 against Bostic Construction are barred by the statute
4 of limitations. They were not timely filed in the
5 three-year window prior to the filing of this suit. In
6 the three-year window from when they knew or reasonably
7 should have known that there were damages -- that was
8 damages and construction defects to the units.

9 THE COURT: All right. Mr. Lyles.

10 MR. LYLES: As you recall, Your Honor, the
11 control of the homeowners' association was not turned
12 over to the owners, my clients, until September of
13 2008; less than two years before Bostic was sued. We
14 believe that to the extent any statute of limitations
15 began to run before that, the court has the authority
16 with equitable tolling to toll the statute until at
17 least my clients who are ultimately responsible for
18 this project even have the right to sue, which occurred
19 in September of 2008.

20 And I refer you back to the Magnolia North versus
21 Heritage Communities case with respect to that
22 argument.

23 And then secondarily, what I would say is that
24 with regard to the reference that my clients believe
25 that Marick was the savior, if you recall, the project

1 was incomplete. It had been left abandoned by Bostic.
2 And so my clients were delighted when Marick showed up.
3 But the testimony about the homeowners about known
4 problems up until shortly after turn-over, was that the
5 problems that they were experiencing were being fixed
6 by Marick on an as-needed basis. And at least from the
7 standpoint of Mr. Taylor and Mr. White, they didn't
8 think that they had any reason to sue anybody because
9 the window leaks that they had experienced in their own
10 units had been addressed by Marick, who at the time
11 said they were going to be responsible for it.

12 So I don't think fundamentally that there is
13 sufficient evidence to start the statute of limitations
14 running anyway, and I've cited the Hollywoods case in
15 my brief. But more fundamentally, my clients did not
16 take this project over until September 2008.

17 THE COURT: Mr. Belcher.

18 MR. BELCHER: And this is the same
19 distinction that the plaintiffs are making in this case
20 that led to the confusion at the trial stage. All
21 right. Regardless of when the current control of the
22 HOA came into being, the HOA has always been the same
23 corporate not-for-profit body since its inception,
24 regardless of who's a member of it, when it was turned
25 over, what have you. The HOA has always been a Marick,

1 IMK and all of those other people; it's their baby.
2 It's not Bostic's baby. Bostic didn't have an HOA.
3 Bostic didn't have any fiduciary duties that it
4 breached as an HOA member. This is a creation not
5 involving Bostic. The HOA knew before it was turned
6 over to the current homeowners that there were defects.
7 The homeowners' recourse under that circumstance is not
8 equitable tolling to someone else, and we can discuss
9 that in a moment, but the recourse for those homeowners
10 after the turn-over is against the former boards of
11 directors of the HOA who -- or the HOA itself who
12 failed to file the lawsuit when they should have filed
13 the lawsuit when they were aware of the damages.

14 And I'll tell you this too, Your Honor, the jury
15 said, yes, that is where the recourse is. And that's
16 one way that they breached their fiduciary duties over
17 there. And that's why you have a million dollar
18 verdict against certain defendants not involving Bostic
19 for breach of fiduciary duties because they didn't do
20 what they were supposed to do in repairing these
21 buildings for all of that time. Bostic's liability
22 stops three years after any unit owner of the HOA, the
23 HOA involving Cox, Lollis, Marick, IMK, three years
24 from the date they know or should know that they have
25 had a right invaded. They do not need to know the

1 extent of their damages. And I've cited the Barr case
2 in my brief, which is very clear on that. You don't
3 need to know how bad you've been damaged or the extent
4 of the damage; you only need to know that someone has
5 invaded your right. That's when the clock starts
6 ticking. That clock started ticking in 2005 or '06 or
7 at the very latest sometimes before February of '07.
8 The lawsuit is filed in February '10.

9 There are no written undertakings by Bostic to do
10 anything that would have extended the statute of
11 limitations. There's no reason in equity to toll a
12 statute of limitations because in equity if there's
13 another remedy of law available to those unit owners,
14 then equity does not need to be applied. The unit
15 owners, after turn-over, their remedy is at law, and
16 it's against the HOA for failing to disclosure, for
17 failing to correct those issues throughout the
18 statutory time or requiring Bostic to do so or filing a
19 lawsuit. They didn't do it.

20 THE COURT: So the HOA was really controlled
21 by -- was it Thoennes? Who was the member of the HOA
22 at the time they turned it over?

23 MR. IMHOFF: They created it in 2005 and Mr.
24 Cox and Mr. Thoennes were board members, among some
25 others. And they turned it over in September of 2008

1 to my clients. And a lawsuit was filed initially
2 against Marick in May of 2009. And then Bostic was
3 brought in in 2010.

4 THE COURT: But you had Thoennes and Marick?

5 MR. IMHOFF: Thoennes was on the board. Mr.
6 Cox was on the board.

7 THE COURT: Cox?

8 MR. IMHOFF: Yes, sir.

9 MR. BELCHER: And I don't recall there being
10 any evidence at trial that Bostic Construction, Jeff
11 Bostic, Joe Bostic, Townhomes at Keowee LLC, any Bostic
12 entity was ever a member of that HOA. Never involved.
13 I don't even think it existed until after Bostic left
14 because these people were just moving in. There may
15 have been documents prepared that would govern an HOA.
16 But none of the entities that I represented in this
17 trial ever had anything to do with that HOA. It was a
18 creature of creation by Marick and that group of
19 contractors and that group of developers and they were
20 doing whatever they were doing out there to mask
21 whatever they say Bostic created in the way of
22 conditions.

23 THE COURT: Well, then, how could -- if they
24 weren't in existence, how could they have brought an
25 action?

1 MR. BELCHER: No. The HOA was in existence
2 in 2006.

3 THE COURT: Oh, I see. I thought ---

4 MR. BELCHER: Bostic and -- well, during its
5 tenure on the project, the HOA may have been -- it
6 could have existed in theory and, yes, as soon as
7 people live here we're going to implement it and y'all
8 are going to be a part of it when it's turned over and
9 all that stuff. But that never happened because Bostic
10 left. So the HOA throughout the entire ---

11 THE COURT: Well, let me just ask you, was it
12 in existence when Bostic left?

13 MR. BELCHER: The bylaws provided for one.

14 THE COURT: Well, ---

15 MR. BELCHER: I'm telling you there's no
16 evidence in the record at the trial that I recall that
17 suggested that that ---

18 THE COURT: Well, was it? I mean, do we have
19 any evidence that it was? I'm just curious. To have a
20 statute of limitations arguments, you would have to
21 have somebody that would have the authority to bring
22 the action.

23 MR. BELCHER: Then let's entertain and see
24 what your analysis ---

25 THE COURT: I mean, I don't know. I'm just

1 curious.

2 MR. BELCHER: Well, I think I can answer the
3 question.

4 THE COURT: Very good.

5 MR. BELCHER: Is that in 2006, which is -- we
6 have a 2010 filing. In 2006 it exists. And it doesn't
7 exist for anybody with anybody from any Bostic entity
8 on board on it. Okay. So that's when it exists. And
9 we know it exists. And it's got Thoennes, IMK, IK,
10 whoever it is, and I don't know which ones of those
11 people are on it. But it exists in 2006 and they're
12 aware that they have a claim against Bostic for faulty
13 construction. They're out there doing work, fixing
14 roofs, fixing walls, fixing windows in 2006. They
15 don't file until 2010. That's four years. So we don't
16 have to split hairs about how many days past three
17 years it is. It's past three years that that HOA board
18 is aware -- and yeah, it gets turned over later. But
19 whoever it gets turned over to, again, their recourse
20 is against the former HOA; Marick, Thoennes and IMK,
21 and the jury compensated them for that with a one
22 million dollar award under a breach of fiduciary duty
23 claim. So Bostic is out of it. If they wanted to sue
24 Bostic, they needed to do it between 2006 and 2009, at
25 the very latest, and they didn't do it.

1 THE COURT: Mr. Lyles.

2 MR. LYLES: Yes, sir. Just a brief follow-
3 up. You may recall that their testimony was quite
4 contradicted about what the Marick/IMK control board
5 knew about the defects of the project. You may
6 remember, Mr. Thoennes said specifically that while he
7 wore the hat as the contractor and he wore the hat as
8 the seller that he was aware of problems out there that
9 he was fixing to everyone's satisfaction as they were
10 becoming apparent to him. He says he refused to admit,
11 on cross examination of Mr. Belcher and Mr. Gresh, that
12 he advised the board of that. There's a paucity of
13 evidence about what that board knew about the defects.

14 Further, the experts testified -- I think all the
15 experts in the case; I know Mr. Hodge and others
16 testified that the defects that gave rise to this claim
17 were largely hidden. They were hidden behind walls and
18 behind -- under the roofs. Which again, is why I refer
19 you to the Hollywoods case.

20 THE COURT: All right. So that's your JNOV
21 based on statute of limitations?

22 MR. BELCHER: Yes, Your Honor.

23 THE COURT: Okay. All right. What's next?

24 MR. BELCHER: The next one gets us back
25 around to the setoff issue.

1 THE COURT: Okay.

2 MR. BELCHER: The issue of apportionment, the
3 issue of what are we going to do with this verdict?
4 This is an issue that everybody wants to know the
5 answer to so we know what's the next step and what
6 we're ---

7 THE COURT: And so in other words, we're back
8 to the verdict? Is it going to be combined or separate
9 recoveries?

10 MR. BELCHER: Right. And I understand that
11 the first motion I probably set the tone improperly
12 back then. The first motion that the court entertained
13 was the entry of the judgment.

14 THE COURT: Right.

15 MR. BELCHER: And I think we probably put the
16 cart -- the apple cart before the horse or whatever it
17 is.

18 THE COURT: Whatever it is, yeah.

19 MR. BELCHER: Yeah. Our -- Bostic's issues
20 are this, whether the verdict is cumulative or not.
21 Okay, if you treat this -- if the court treats this as
22 a five million dollar verdict, the joint and several
23 aspect of this case cannot be such that it's a joint
24 and several five million dollar verdict, because Bostic
25 -- the jury did not find Bostic responsible for a

1 million dollars of this verdict. The jury found Cox,
2 Lollis, IK, IMK, whatever, responsible for one million
3 dollars of this verdict. We are not joint and several
4 because we did not engage in that behavior that created
5 liability to the plaintiffs in this case.

6 So Bostic is looking at this from the standpoint
7 of this is not a five million dollar verdict. The
8 setoffs, which I'm going to address here in a moment,
9 or the allocations of prior settlements we're going to
10 address in a moment. But it is our position that at a
11 minimum we're looking at a four million dollar verdict
12 with the different allocations on breach of warranties
13 and on negligence.

14 All right. Now, what we have proposed to the
15 court, and I have two orders for you because in our
16 estimate if the court agrees that the breach of
17 fiduciary duty is not joint and several liability among
18 all the parties here because they did something
19 different to create liability for themselves and we
20 didn't have anything to do with it. If we're looking
21 at a four million dollar verdict that we have to deal
22 with contribution, we have to deal with the settlement
23 setoff, and all of that, then there's an equation for
24 that. But we are taking the stance that when you are
25 applying the setoffs, and Mr. Lyles says that it's an

1 equitable remedy. I don't disagree with Mr. Lyles.
2 But it is also in the statute itself. In the statute
3 itself it says that when someone settles a case on a
4 release or covenant not to sue, it's 15-38-10, and I
5 think I'm specifically speaking about 13- -- or 15-38-
6 40, I believe. In any event, it clearly says that you
7 -- a settling defendant does not absolve the liability
8 of the non-settling defendant. However, the amount
9 owed to the plaintiff is reduced by the amount paid by
10 the settling defendant. All right. Now, if we're
11 talking about something other than an equitable setoff
12 there; maybe we are. That's what the statute says.
13 That's the language of the statute. The language of
14 the statute is that for whatever -- every penny that
15 somebody else pays, is one less penny that I pay off
16 the ultimate jury verdict if I don't settle. Mr. Lyles
17 probably allocated, I guess, two point eight five five
18 million dollars as pretrial settlements.

19 Now, when you use that statute to set off a
20 verdict, which will reduce a verdict because of prior
21 settlements, I think we need to take a step back and
22 just look at what that statute is. It deals with
23 tortfeasors. It does not deal with people who break
24 contracts. It does not deal with people who breach
25 fiduciary duties. It deals with people who have

1 committed torts, people who are liable in negligence
2 for damages. So we see evidence, we would submit to
3 the court, that our first argument on this is that the
4 two point eight five five million dollars reduces the
5 verdict only as to the negligence cause of action. It
6 is not appropriate in a breach of contract action or a
7 breach of a common law warranty action to reduce a
8 verdict based on anything other than damages related to
9 that breach. And that's the way the verdict form read.
10 A lot of people don't like the way it read. I don't
11 know how you read it any other way. And I don't want
12 to get too bogged down in whether there are multiple
13 remedies or multiple elections or -- you know, all of
14 that issue, to me it doesn't make sense to do that. It
15 makes sense to determine if you have two point eight
16 five five million dollars amount in settlements, that
17 by statute it's supposed to reduce the verdict. Where
18 do you reduce that verdict? Well, since we're dealing
19 with the statute, it deals with tort negligence,
20 breaches of duties not contractual, you apply all of
21 that money from all of our contractors who committed
22 those same torts, negligence in their construction, you
23 apply it to the negligence part of the verdict.
24 In our order that we submitted to the court is
25 going to be off because our math was different from Mr.

1 Lyles. But we're accepting what Mr. Lyles says,
2 there's two point eight five five million that would
3 reduce the negligence damages of three million to about
4 ---

5 THE COURT: About a hundred and fifty.

6 MR. BELCHER: A hundred and fifty. So that -
7 - our proposed order which would be delineated to
8 suggest the one fifty or one forty-five or whatever it
9 becomes, that is what we're asking the court to do here
10 today. If we have clear direction from the court today
11 as to where that -- the settlements, the prior
12 settlements, are going to go to reduce which portion of
13 the verdict and we absolutely agree that it shouldn't
14 be the fiduciary duty one. Also, because the statute
15 itself speaks on, that people who breach fiduciary
16 duties because their conduct is a little bit worse than
17 negligence, perhaps, they don't get the benefit of the
18 reduction based on settlements. That's the way I read
19 section (g) of 15-38- -- it's 15-38- ---

20 THE COURT: So 15-38- ---

21 MR. BELCHER: --- 40(g)? It's 15-38-20(g).
22 It says the contribution among joint tortfeasors act is
23 clear that the setoff does not apply to breach of
24 fiduciary duties. They're not entitled to the money
25 that my subcontractors paid in settlement to help

1 reduce their -- the verdict against them. They don't
2 get that benefit. But I do because I was the general
3 contractor and Bostic and its general contractors are
4 in the same boat. They're negligent. They're
5 tortfeasors. The act applies, but they're also
6 entitled to the prior settlements to reduce the verdict
7 on the negligence claims.

8 So our first -- best argument, if you will, is
9 that a hundred fifty thousand dollars should be the
10 remaining amount due on the negligence verdict. There
11 should remain a million on breach of fiduciary duty and
12 a million on the warranties.

13 THE COURT: What do you say, Mr. Lyles?

14 MR. LYLES: Well, besides taking exception to
15 the characterization of the different verdicts, I think
16 the cumulative verdict, I think it's one set of
17 damages. Everybody, I think, has agreed to that today.
18 The jury simply -- at Mr. Belcher's urging the jury
19 attempted to allocate that among these causes of
20 action, which I think under the Keeter case was
21 improper.

22 With respect to setoff, again, he continues to go
23 back to the apportionment statute and contribution
24 statute. There are causes of action to which that
25 doesn't apply. It doesn't mean that the people who are

1 liable for breach of fiduciary duty are entitled to
2 setoffs. They absolutely are. And so I don't know how
3 you would apply setoff without applying setoff in some
4 equitable manner among all three causes of action.
5 Again, it's an equitable remedy. He wants to try to
6 take a statute that was created for the benefit of
7 defendants and helping defendants parse out their own
8 responsibility and somehow make that cumulative with
9 respect to my client and limit my client's ability to
10 collect the verdict.

11 Again, setoff is equitable. Setoff should be
12 applied equitably. I think the fiduciary duty
13 defendants have as much entitlement to equitable setoff
14 as anybody else.

15 THE COURT: All right. Anything else on that
16 point?

17 MR. BELCHER: No, Your Honor. I think we've
18 belabored it enough.

19 THE COURT: Well, the thing is, you're right,
20 I think you belabored it because it's something that's
21 intriguing, if you want to know the truth. But we do
22 need to determine whether or not the verdict -- what
23 will be the judgment, if any, entered, or judgments.
24 And I think that would carry the others, so therefore
25 it's going to be important that the -- and I'm using

1 this word advisedly -- submissions. Not memorandums or
2 proposed orders, but yet -- my father used to say -- he
3 was a dentist so he was a lot smarter than I am -- that
4 you have to put the fodder down where the calves can
5 get it. And this calf sometimes needs a little help.

6 You've given me some good case law today. And
7 it's been a while since I've looked at the file. And I
8 think maybe that'll help me some. But I do -- I need
9 to -- well, going back to our original exchange, Mr.
10 Belcher, that I need to -- if I can find a way to cut
11 through it all, I definitely will. All right. If I
12 can find appropriate rather than unduly confuse it even
13 more.

14 All right. Next?

15 MR. BELCHER: New trial.

16 THE COURT: New trial? You've got a new
17 trial absolute and a new trial remittitur?

18 MR. BELCHER: I think the remittitur motion
19 just tracks what we've already talked about.

20 THE COURT: Okay.

21 MR. BELCHER: And I would just incorporate my
22 briefs on both the court's ---

23 THE COURT: When you say a remittitur, do you
24 have any ideas what amount would be appropriate, if
25 any?

1 MR. BELCHER: Yes, Your Honor. It's in our
2 proposed order, and it would be the one hundred fifty
3 thousand dollars before you. That's the amount that
4 Bostic -- it probably says ninety-two in our brief, but
5 that's the amount that we would like to have the court
6 enter judgment against Bostic Construction for, so we
7 can then deal with that amount.

8 THE COURT: Okay.

9 MR. BELCHER: The other issues, Your Honor,
10 are simply bullet point items with the way that trial
11 was conducted and we don't believe that any oral
12 argument is necessary on that. They are files that are
13 part of the court's record ---

14 THE COURT: Right.

15 MR. BELCHER: --- if you choose to review
16 them on brief. We're perfectly fine with that.

17 THE COURT: All right. Anything else, Mr.
18 Lyles?

19 MR. LYLES: No.

20 MS. BROWN: Just one point. I would ask the
21 court to consider the fact that the plaintiffs'
22 position is that any latent defects preserved, there's
23 a stand with the statute of limitations.

24 THE COURT: Right.

25 MS. BROWN: That would also rule out

1 fiduciary duty.

2 THE COURT: That sounds like one of those
3 petards.

4 MR. BELCHER: And that's my point, Your
5 Honor. They can't say they didn't know about them in
6 one place and they did know about them in another. The
7 jury has already decided they knew about them because
8 they popped some people for a million bucks on
9 fiduciary duties, so they had to know about them. And
10 that jury's award makes it easier for the court now to
11 rule on an issue because it's had the guidance of the
12 jury's verdict on the issue. They were aware because
13 they got hit for a million bucks for being aware. And
14 now they can't say they weren't aware because they want
15 to continue to sue Bostic. That sums it up well,
16 Judge.

17 THE COURT: Thank the lady.

18 All right. Mr. Lyles, looks like ---

19 MR. LYLES: Just to briefly address that
20 point. Again, in the Hollywoods case that I cited, the
21 court does an exercise where the court realizes that at
22 times certain deficiencies can be known and repaired.
23 And that does not bar future claims for deficiencies
24 that were unknown and unrepaired. Here there was
25 abundant evidence that Cox and Lollis were aware of

1 problems generally at the project. The extent of that
2 knowledge, I don't know what the extent of that
3 knowledge was. Mr. Thoennes denied having knowledge of
4 significant repairs throughout the project. Mr. Cox,
5 and I think Mr. Lollis, did as well, that they were not
6 aware until those porches started being taken apart the
7 extent of the rot and decay and the degradation of the
8 building materials.

9 But going back to a more fundamental point that
10 Ms. Brown raised, and they both argued it, and I've
11 tried to not address it too much because I've addressed
12 it repeatedly, but if you look at the Concerned
13 Citizens of Dunes West case and you look at the
14 Magnolia North case, and you look at how the court has
15 defined and clarified the breach of fiduciary duty, the
16 court does not mention in a single word of that,
17 neither did your jury charges, which I think were
18 proper jury charges, that there needs to be proof of
19 prior knowledge of problems by the developer.

20 The court uses the word ensure in that cause of
21 action. And if these common elements are turned over
22 to the public, to the owners, with problems under Dunes
23 West and its project, there is liability for the
24 developers. Just like if there was a habitability
25 claim pending. It doesn't say you're liable for breach

1 of implied warranty of habitability if you know the
2 construction was bad. What it says is, you're liable
3 for breach of implied warranty of habitability if you
4 put something in the stream of commerce that's
5 defective. And it's the same thing under breach of
6 fiduciary duty claim. They're reading into those
7 causes of action requirements for knowledge that do not
8 exist.

9 THE COURT: All right. Mr. Imhoff.

10 MR. IMHOFF: Just housekeeping, Your Honor.
11 You asked for submissions a moment ago. Did you have a
12 time frame?

13 THE COURT: No, I -- I'll tell you what, this
14 is going to be just administrative type things, so we
15 can go off the record to discuss how we want it done.

16

17 [END OF REQUESTED TRANSCRIPT OF RECORD]

1 CERTIFICATE OF REPORTER

2 I, the undersigned Danette P. Hanks, Official
3 Court Reporter for the Tenth Judicial Circuit of the
4 State of South Carolina, do hereby certify that the
5 foregoing is a true, accurate, and complete transcript
6 of record of all the proceedings had and evidence
7 introduced in the trial/hearing of the captioned case,
8 relative to appeal, in the Court of Common Pleas for
9 Oconee County, South Carolina, on the 10th day of
10 April, 2014.

11 This transcript may contain quoted material. Such
12 material is reproduced as read by the speaker.

13 I do further certify that I am neither of kin,
14 counsel, nor interest to any party hereto.

15 May 11, 2015

16

17

18

19

Circuit Court Reporter

State of South Carolina

County of Oconee

In the Court of Common Pleas

Stoneledge at Lake Keowee)
Owners' Association, Inc., C. Dan)
Carson, Jeffrey J. Dauler, Joan W.)
Davenport, Michael Furnari, Donna)
Furnari, Jessy B. Grasso, Nancy E.)
Grasso, Robert P. Hayes, Lucy H.)
Hayes, Ty Hix, Jennifer D. Hix,)
Paul W. Hund III, Ruth e. Isaac,)
Michael D. Plourde, Mary Lou K.)
Plourde, Carol C. Pope, Steven B.)
Taylor, Bette J. Taylor, Robert)
White, individually and on behalf)
of all others similarly situated,)

Plaintiffs,)

-vs-)

IMK Development Company LLC,)
Keowee Townhouses LLC, Ludwig)
Corporation LLC, SDI Funding)
LLC, Medallion at Keowee LLC,)
Bradford D. Seckinger, John)
Ludwig, Larry D. Lollis, William)
C. Cox, Integrys Keowee)
Development LLC, Marick Home)
Builders LLC, M Group)
Construction and Development)
LLC, Bostic Brothers Construction)
Inc., Rick Thoennes, Mel Morris,)
Joe Bostic, Jeff Bostic, Clear View)
Construction LLC, Michael Franz,)
MHC Contractors, Miguel Porras)
Choncoas, Builders First Source)
Southeast Group, Mike Green,)
Southern Concrete Specialties, Carl)
Compton d/b/a Compton Enterprize)
a/k/a Compton Enterprises, Gunter)
Heating & Air, All Pro Heating,)
A/C & Refrigeration LLC,)
Coleman Waterproofing, Heyward)

2009-CP-37-652

October 28 - 31, 2013 AND
November 4 - 7, 2013

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Electrical LLC, Hutch N Son	)
Construction Inc., T.G.	)
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Construction, Francisco Javier	)
Zarate D/B/A, Zarate Construction,	)
Alejandro Avolos Cruz, Herberto	)
Acros Hernandez, Martin	)
Hernandez-Aviles, Francisco	)
Villalobos Lopez, Ambrosio	)
Martinez-Ramirez, Ester Moran	)
Mentado, Socorro Castillo Montel,	)
Upstate Utilities Inc, Southern	)
Basements Inc, M.J. Goodwin	)
Construction and Homebuilders Inc	)
D/B/A M.J. Goodwin Construction,	)
KMAC Inc. D/B/A KMAC North	)
Carolina, Eufacio Garcia, Everado	)
Jarmamillo, Garcia Parra Insulation	)
Inc., J&J Construction, Jose Nino,	)
Jose Manuel Garcia, Eason	)
Construction Inc., Vincent Morales	)
D/B/A Morales Masonry and	)
Miller/Player & Associates,	)
	)
Defendants.	)

B E F O R E:

The Honorable Alexander Macaulay, Judge

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1 October 28, 2013

2 (WHEREUPON, court convened with all parties present
3 and the following proceedings were had commencing at
4 approximately 11:00 a.m.)

5 THE COURT: All right. We are here on the
6 matter of Stoneledge at Lake Keowee Owners Association,
7 Inc., et al, verus I.M.K. Development Company, L.L.C., et
8 al, 2009-CP-37-652. I understand this is a motion
9 hearing for a trial to begin at two o'clock this
10 afternoon. Is that correct, Mr. Lyles?

11 MR. LYLES: Yes, sir.

12 THE COURT: And Mr. Belcher?

13 MR. BELCHER: Yes, Your Honor.

14 THE COURT: All right. Let's see. I need to
15 be -- who are the others? Well, of course, I know Mr.
16 Imhoff. But who's ---

17 MR. GRESH: Your Honor, I'm Jack Gresh here
18 with Alan Belcher.

19 THE COURT: Okay. Very good. Now, would
20 somebody like to tell me where we are other than Oconee
21 County? In other words, have there been any developments
22 since we last met?

23 MR. LYLES: I have a couple of additional
24 settlements, Your Honor, that we would like to get on the
25 record at some point in time.

1 THE COURT: We'll do those. Well, let me have
2 the names, if you could.

3 MR. LYLES: Yes, sir.

4 THE COURT: Because our court reporter has been
5 trying to put together, you might call it a test.

6 MR. LYLES: And Madam Court Reporter, I have
7 reached settlements with the Defendants John Logan
8 personally, Ludwig Corporation, and S.D.I. Funding. And
9 I have also reached a settlement agreement with the
10 Defendant Eason Construction. So those will not be
11 participating.

12 THE COURT: There's a gentleman in the back
13 there, Mr. Lyles.

14 MR. SMITH: And Haywood Electrical as well.

15 MR. LYLES: Yeah. I thought you were already
16 on there, but maybe not.

17 Haywood Electrical too. He's here. We made that
18 settlement so long ago, I thought that everybody was
19 aware of that.

20 THE COURT: I see that you have someone with
21 you at your table, Mr. Lyles, I don't remember you
22 introducing.

23 MR. LYLES: This is Kelly West. Kelly is a
24 lawyer who works with us. He's agreed to come ---

25 THE COURT: Okay. Thank you. Glad to have you

1 with us.

2 All right. Your name, please, sir, for ---

3 MR. SMITH: Chris Smith on behalf of Haywood
4 Electrical.

5 THE COURT: All right. And I understand, your
6 cases or matter has been settled as well?

7 MR. SMITH: That's correct, Your Honor.

8 THE COURT: Very good. Thank you.

9 Has that been done on the record or by agreement?

10 MR. LYLES: I think we've actually got a
11 settlement agreement with Haywood Electrical, and the
12 money has been paid there.

13 THE COURT: All right. Fine. I just want to
14 be sure that all the requirements of the settlement are
15 in order.

16 MR. LYLES: Whenever you're ready, I've got --
17 Chad Poteat is here for Eason Construction. And Chad and
18 I have a written letter between us, but Chad wanted to
19 put our terms on the record.

20 THE COURT: Okay.

21 MR. LYLES: And then I have got a signed letter
22 with the lawyers for Ludwig and S.D.I. Because Frank
23 Smith was out of town over the weekend, I just got his
24 letter today. So I can put that on the record this
25 afternoon or in the morning.

1 THE COURT: Well, let's do that. And, of
2 course, then if we do have any attorneys here that would
3 like to be done earlier, we'll do it when we take a
4 break.

5 MR. LYLES: Okay.

6 THE COURT: All right. Very good.

7 Mr. Belcher, anything from your parties?

8 MR. BELCHER: No new developments, Your Honor.

9 THE COURT: All right.

10 Mr. Imhoff?

11 MR. IMHOFF: Nothing new, Your Honor..

12 THE COURT: All right. Now, I understand there
13 have been some motions or something filed recently?

14 MR. LYLES: We filed some, I think, fairly
15 standard motions in limine going to the conduct of the
16 trial. I think a number of parties might have filed
17 motions in limine. I don't know what the status of all
18 of those motions is. The other two motions that I think
19 are pending before you relate to the habitability
20 arguments that Marick made about a month ago. And I
21 don't think that there's a signed order on that. I know
22 we both supplemented the materials on that since you
23 ruled from the bench. And then the other thing is Mr.
24 Imhoff and Marick filed a motion on Friday addressing the
25 issue of the assignments for non-named plaintiffs --

1 excuse me -- non-plaintiff owners in phase one to the
2 association, which we also briefed after our last get-
3 together. And I think Jason filed that motion out of an
4 abundance of caution just to make sure there was a motion
5 on the record, and we responded to that over the weekend.

6 THE COURT: All right.

7 Mr. Imhoff?

8 MR. IMHOFF: Your Honor, I think that's right.
9 I mean, I don't have -- what order you want to do it in,
10 but the settlements, the motion in limine. I have a
11 motion, as you know ---

12 THE COURT: Well, what I'd like to do this
13 morning is to get all of the trial matters out of the
14 way. And then I'll take up others. And, of course, the
15 reason I'm looking at the plaintiffs' motion to add
16 assignment plaintiffs or new plaintiffs. I understand
17 what his position is, and I've gotten your motion. But
18 I'm curious if you'd like to -- he wants to do it.

19 MR. IMHOFF: Oh, yes, Your Honor. I happy to
20 argue it. I'm ready to argue it. I'm good to argue it
21 now.

22 THE COURT: All right. That's what I'm trying
23 to get to, is just if we could have some sort of
24 resolution to that matter because otherwise we'd have to
25 -- what is it? -- amend the pleadings and everything

1 else.

2 MR. IMHOFF: Well, that's right, Your Honor. I
3 think, as I look around the room here, I think that
4 Defense is unanimous in opposition to the addition. And
5 anybody can stand up and tell me they're not in
6 opposition. But the addition of these twenty-six new
7 plaintiffs. And I know that Mr. Lyles doesn't want me to
8 call them plaintiffs, but they certainly are, Your Honor.

9 THE COURT: In the order of things, they
10 certainly are not defendants.

11 MR. IMHOFF: That's right. You denied -- Your
12 Honor, they have not been on the pleadings since they
13 were filed in 2009 or any of the amendments. You denied
14 class certification, so there is not a class
15 representative that can speak for them. So if the
16 statute is not tolled ---

17 THE COURT: By the way, I just signed a short
18 order on denial of the class certification. I thought it
19 had been done on the record.

20 MR. GRESH: Thank you, Your Honor.

21 MR. IMHOFF: So if they -- if the class has not
22 been certified, as you say, and they are not on the
23 pleadings, and so they are now assigned. I mean, they've
24 never been on the pleadings. They've never been
25 identified individually, then they are absolutely new

1 plaintiffs. If they are not barred by the statute of
2 limitations -- what Mr. Lyles keeps arguing is that the
3 statute of limitations does not apply to them. And I
4 don't think there's any question that they knew in 2009
5 that they had claims when this lawsuit was filed. Mr.
6 Lyles will argue to you that the statute of limitations
7 shouldn't apply to them. The statute of limitations
8 should be equitably tolled. I don't agree with that.
9 But the bigger point to all of us is that these are
10 twenty-six brand new folks. And this Court has decided
11 that all of the homeowners have different and varying
12 claims. They have different damages inside their unit.
13 They have different loss of use. They bought their units
14 from different people. Different people built their
15 units. And so if by this procedural last-minute
16 maneuver, these twenty-six folks are able to join this
17 case and the H.O.A. or representative of the owners is
18 going to sit on the stand and testify about all twenty-
19 six of these other people, they just did an end runaround
20 your denial of class certification because they've never
21 had to answer discovery specific to them. They won't be
22 cross-examined specific to what their damages are or who
23 they believe caused their damages, who sold the units to
24 them.

25 This Court does have discretion, based on what I

1 have read, in whether or not to join parties at the last
2 moment. And I think that the standard is prejudice. And
3 this is absolutely prejudicial because twenty-six
4 homeowners out there will get to joint the litigation
5 without going through the litigation process. And I
6 think that's the objection.

7 And, again, I invite anybody to stand up. But I
8 think that's unanimous with all of the defendants,
9 understanding that we could have taken every owners'
10 deposition out there. At the time, it was a class
11 certification motion. So we took every owner whose name
12 was on the pleadings. And I think we took over a hundred
13 depositions in this case.

14 So, Your Honor, I think the statute has run. These
15 twenty-six folks could have joined the lawsuit at any
16 time in the last four years or frankly any time in the
17 last nine years. Most of them in phase one knew about
18 the deck issues and the other issues. If the statute
19 does not apply, it is equitably tolled, then this Court
20 has the discretion to refuse to allow the joinder of
21 those twenty-six people through the use of these
22 assignments. And we would ask that you use your
23 discretion and refuse to either allow them to join the
24 lawsuit or -- procedurally, I'm not sure what is correct
25 here -- or grant summary judgment as to those twenty-six

1 people and refuse to join them.

2 THE COURT: All right. Mr. Belcher? And I'm
3 looking at you because you have the place of honor at the
4 Defense table. Do you have anything to add in opposition
5 to ...

6 The reason I'm skipping over you is I want to hear
7 what's in opposition before I hear you because I think I
8 know what you're going to say.

9 MR. BELCHER: Well, Your Honor, it creates --
10 it creates a difficult situation for us as defendants and
11 as plaintiffs in this case because whatever your ruling
12 is is going to impact whether or not we try this case
13 more than once. We have one trial date which we've had
14 now for several months. We want to try the case. The
15 Bostic Construction people want to try this case. They
16 want to have their day in court, their opportunity to
17 have resolution to this case and to get these plaintiffs
18 taken care of in however way this jury's going to take
19 care of the H.O.A. That's the big claim that we're
20 dealing with here is the H.O.A. claims. All these
21 individual unit owners' claims, their claims are for
22 purported loss of use damage and some damage to the
23 interior of their units during repairs, which is probably
24 going to be taken care of anyway. So what my concern is,
25 is that we're going to find ourselves in a situation

1 where a jury renders a verdict here in a few days. And
2 that verdict may very well be that they don't agree that
3 these plaintiffs that are named plaintiffs in this
4 lawsuit are entitled to loss of use damages, which is
5 well and good. But now we may be faced with a situation
6 where we have to go litigate the issue of loss of use
7 damages with additional people that we didn't contemplate
8 having to deal with. So that's my only concern here is
9 that we subject ourselves to inconsistent findings of
10 fact and remedies for these plaintiffs. And they may
11 find themselves in a situation where some of the unit
12 owners are entitled to these loss of use damages and some
13 of them aren't just because we've had two different
14 evidentiary proceedings and two different verdicts by a
15 jury. So that's something else that I think the Court
16 needs to consider as it determines what it's going to do
17 with these latecomers to the game.

18 THE COURT: Are you're saying they're
19 latecomers? You mean their cause of action just arose
20 recently?

21 MR. BELCHER: No.

22 THE COURT: Well, I'm just curious in what
23 regard you meant they were latecomers.

24 MR. BELCHER: Well, the fact of the matter is
25 is that this case is so complex that we did not take the

1 time, with all the other depositions ---

2 THE COURT: I understand. I was being somewhat
3 facetious because as I understand it, they were there in
4 the beginning and knew what was happening. And obviously
5 somebody might have talked to them or they could have
6 discovered they had some defect or some complaint to be
7 made. So that's not a latecomer.

8 MR. BELCHER: No. I mean to the table for
9 today.

10 THE COURT: All right. Very good.

11 All right. Now, Mr. Lyles?

12 MR. LYLES: Yes, sir. And I appreciate Your
13 Honor only ---

14 THE COURT: Let me ask you about this
15 assignment.

16 MR. LYLES: Yes, sir.

17 THE COURT: That's sort of an interesting --
18 I'm not familiar with assignment of something. I'm
19 familiar with subrogations.

20 MR. LYLES: Yes, sir.

21 THE COURT: In a subrogation, of course -- what
22 is it? -- some consideration is an exchange for the
23 ability to stand in the shoes of someone else.

24 MR. LYLES: Yes, sir.

25 THE COURT: Now, does an assignment have some

1 significance outside of the statute of limitations?

2 MR. LYLES: Well, significance in terms of a
3 bargain for exchange. The assignments themselves, if I
4 am correct, reference the consideration for the
5 assignment being the efforts of the H.O.A., paying the
6 experts, and so on and so forth.

7 THE COURT: Well, now, of course, it says that
8 now they've got twenty-six other people to -- what is it?
9 -- incur an expert and depositions for. I mean, they're
10 entitled. How else would you determine what the claim
11 was?

12 MR. LYLES: Well, I think that ---

13 THE COURT: That was assigned?

14 MR. LYLES: Yes, sir. The claim that has been
15 assigned has been a part of this lawsuit since it was
16 first filed.

17 THE COURT: Then why didn't they file? If it
18 was a part of it, why didn't they file?

19 MR. LYLES: They did. Your Honor, they were
20 all members of a punitive class. And under Rule 23, that
21 was how they participated in this litigation. And the
22 ---

23 THE COURT: When was the class -- what is it?
24 -- declared or decided?

25 MR. LYLES: The class allegations were in the

1 initial filing.

2 THE COURT: But they were never -- it was never
3 determined that it was a class action until it was heard?

4 MR. LYLES: It was not. It was alleged that it
5 was a class action. None of the defendants moved to
6 dismiss the class action allegations. The class action
7 was pending in conformance with the rules and all of the
8 orders of the Court until it was determined by the Court
9 that the class would not be certified. And I think
10 importantly under Rule 23 ---

11 THE COURT: Well, wasn't it your allegation
12 that it be certified as a class action?

13 MR. LYLES: Well, we ---

14 THE COURT: Why didn't you go ahead and do that
15 so they would know that they were going to have to face
16 an additional twenty-six claims?

17 MR. LYLES: Well, they were aware of the class
18 allegations with the filing of the original lawsuit.
19 They were aware of the names of the owners, and they were
20 aware of the damages that were being claimed by the class
21 members.

22 THE COURT: But you didn't have grounds for
23 summary judgment?

24 MR. LYLES: I'm not sure -- summary judgment on
25 what issue?

1 THE COURT: Class action, that it was a class
2 action.

3 MR. LYLES: We didn't file a motion for summary
4 judgement on class action.

5 THE COURT: Because that would be -- it was a
6 matter of law that you're entitled to, not a matter of
7 fact.

8 MR. LYLES: Well, if you -- the question to me
9 was when did they get notice that they were going to have
10 to defend these claims. And the answer to that is, I
11 think, May the 24th of 2009.. The way we responded to our
12 interrogatories ---

13 THE COURT: Well, have you got those twenty-six
14 names on your interrogatories?

15 MR. LYLES: Yes, sir. Yes, sir, we do.

16 THE COURT: And are they as members of the
17 homeowners association or individually?

18 MR. LYLES: They are listed. A question was
19 asked in two ---

20 THE COURT: Well, I'm just curious. I mean,
21 you never once listed the twenty-six individuals that you
22 now wish to be included in the -- as plaintiffs?

23 MR. LYLES: We did list them, yes, sir.

24 THE COURT: As plaintiffs?

25 MR. LYLES: Well, the pleadings themselves

1 establish that the owners in phase one and phase two were
2 class members.

3 THE COURT: Well, that was an allegation.

4 MR. LYLES: An allegation.

5 THE COURT: Yeah. An allegation until the
6 Court ruled on whether or not they ---

7 MR. LYLES: Correct.

8 THE COURT: --- satisfied the class action
9 requirement under law, not facts. The facts were
10 undisputed, so no controversy as for the jury to find.

11 MR. LYLES: I understood your question to be,
12 when did they get -- when were ---

13 THE COURT: No. I'm asking when you. And
14 that's my problem. In other words, it does seem to be a
15 little bit late. And you do not have any sort of -- the
16 homeowners association hasn't made any sort of direct
17 payment or anything like that. What these twenty-six
18 will be getting would be the benefit that the others who
19 have been contributing.

20 MR. LYLES: Well, no. They've all been
21 contributing.

22 THE COURT: Well, they haven't been deposited.
23 And that's something of a contribution, just -- what is
24 it? -- haven't contributes time and inconvenience.

25 MR. LYLES: Well, they were certainly

1 identified. Everybody has known who they are. We
2 answered our discovery based on -- and if you remember
3 that what we did is we framed the damages for the class
4 members very specifically and uniformly throughout, which
5 is loss of use, which is a number we identified two years
6 ago that applied to every single class member. It was
7 included in our damages summary and all of our
8 interrogatory responses. And we also assigned to the
9 individual class members an allocation for the repair
10 costs of eighty-five hundred dollars, which was disclosed
11 two years ago, and multiplied by a total of eighty for
12 all of the class members. And the names of all the class
13 members being the owners of Stoneledge units who were
14 identified in discovery as soon as they were requested in
15 September of 2012 and again in December of 2012. And of
16 course, they obviously also are part of the public
17 record. The only thing that we did not do is move for
18 class certification. And the reason we didn't move for
19 class certification -- I think this was stated previously
20 on the record -- is because oftentimes, rather than have
21 a fight over class certification, it is in the best
22 interest of the defendants -- and Mr. Belcher referenced
23 this this morning already -- to have a class certified
24 for ease of settlement.

25 THE COURT: Then why didn't he do that?

1 MR. LYLES: Why didn't he do what?

2 THE COURT: Move for the certification?

3 MR. LYLES: Well, he would have moved ---

4 THE COURT: If it's in his best interest. Now
5 he's saying it's prejudicial.

6 MR. LYLES: Well, what he's saying ---

7 THE COURT: I mean, is it one foot or the other
8 foot?

9 MR. LYLES: I don't think that he's saying that
10 -- my point, Your Honor, the reason for the delay is we
11 tried to get this case settled. It is easier to settle a
12 construction defect case if the parties agree to a
13 settlement and then they agree on class certification.

14 THE COURT: Well, then why didn't you go ahead
15 and move for the certification early so that you could
16 have that convenience? Why did you wait until the last
17 -- late until the -- after the statute of limitations run
18 to do it?

19 MR. LYLES: Because I was -- parties that would
20 oppose class certification under normal circumstances ---

21 THE COURT: So there was a reason that you
22 couldn't do it before that?

23 MR. LYLES: It's not couldn't. It's a decision
24 I made.

25 THE COURT: All right.

1 MR. LYLES: And I think we put it on the
2 record, the parties that would oppose class certification
3 -- for example, even Marick today. If Marick were to
4 settle this case today, Marick would obviously want class
5 certification because they would like to make sure that
6 they get a resolution of all claims.

7 THE COURT: Well, that's why we have statute of
8 limitations.

9 MR. LYLES: Well, the statute of limitations is
10 a ---

11 THE COURT: Well, it's kind of like hoisting
12 yourself on your own batard (phonic). Either the twenty-
13 six you're saying now should have been included in the
14 class because they knew what their loss was, or they did
15 not know what their loss was and they had to wait till
16 the last minute to be included in the class -- or to be
17 done individually. And either way, though, it seems that
18 the time has passed for them to be either included as
19 part of the class or individually.

20 MR. LYLES: Your Honor, they were a member of a
21 punitive class up until you denied class certification.

22 THE COURT: Until a court ordered it, it was
23 punitive.

24 MR. LYLES: Correct. And during the period of
25 time that they were a member of the punitive class, the

1 statute of limitations is tolled. They participated in
2 this litigation as they're allowed to participate in this
3 litigation under Rule 23. And I think that the law is
4 clear about that. Whether the Court wants to allow us
5 through the H.O.A. to prosecute the claims via assignment
6 is a separate issue. But these owners participated in
7 this litigation because they're allowed to participate in
8 litigation under the rules.

9 THE COURT: Well, let me ask you.

10 MR. LYLES: Yes, sir.

11 THE COURT: And this is a very simple question.
12 If the class certification was not granted ---

13 MR. LYLES: Yes, sir.

14 THE COURT: --- and they weren't participating
15 as a member of the class, would they be entitled to a
16 judgment?

17 MR. LYLES: If they were not a member of the
18 class and it was -- no, sir, they wouldn't.

19 THE COURT: Okay.

20 MR. LYLES: They've got the right now. I think
21 in light of the Court's ruling, they simply have the
22 right to go out and file their own claim.

23 THE COURT: If the statute of limitations says
24 that they're within that protection, then, of course,
25 they'd be entitled to do it.

1 MR. LYLES: Yes, exactly. And so that is the
2 alternative they've got. And what they have sought to do
3 was to try to avoid that effort and expense and take
4 advantage of this through the assignments.

5 THE COURT: Very good. All right. Anything
6 else from the defendants or any of the defendants that
7 still have an interest in whether or not the complaint be
8 amended?

9 Yes, sir. Your name, please?

10 MR. BUCKLEY: Your Honor, Ed Buckley. I'm here
11 for Everado Jaramillo, J-A-R-A-M-I-L-L-O. The only thing
12 I would add -- and I understand it's been briefed by some
13 of the parties who have actually briefed this issue. But
14 Rule 23(d)(1), the rule itself, actually says that as
15 soon as practicable after the commencement of the action
16 brought as a class action, the court shall determine by
17 order whether it is to be so maintained. So the court
18 recognizes that this issue can be avoided because class
19 certification should be brought to the court as soon as
20 practicable after the commencement of the action so that
21 we avoid exactly what we're doing here today.

22 THE COURT: Very well. Anything else?

23 All right. As I say, the class certification, when
24 it was brought to the Court's attention, was denied
25 either on the record, and now a form order in writing has

1 been made. I do find that the addition that has been
2 mentioned today is that by reason of the delay in
3 bringing the action or moving for certification, that it
4 would be prejudicial to the parties who had been involved
5 in the litigation up until now, to include others who
6 have settled. Apparently, they would -- I'm not sure
7 where they would be in the matter, depending on what the
8 agreements were as far as hold harmless or something like
9 that. I don't know. In other words, it just opens the
10 door to further activity to the Court. And I can assure
11 you the Court has had enough activity for quite a period
12 of time.

13 All right. Anything else? All right. So the
14 motion to amend to add the twenty-six is denied.

15 Yes, sir?

16 MR. IMHOFF: The motion, I guess -- well, I'm
17 not sure what procedurally it is. The motion to strike
18 the twenty-six or motion for summary judgment on the
19 twenty-six?

20 THE COURT: Well, they don't have -- isn't the
21 caption still what the caption was?

22 MR. IMHOFF: Yes, Your Honor.

23 THE COURT: It doesn't have the twenty-six
24 names. That's what they wanted to do was to include the
25 twenty-six -- what is it? -- was it not?

1 MR. IMHOFF: Yes. And I'm just not sure if --
2 it was my motion to exclude them. So I guess -- because
3 I don't think -- the plaintiffs didn't make a motion to
4 bring them in.

5 THE COURT: I'm reading your motion. Motion to
6 dismiss or alternatively motion for summary judgment,
7 compel or to strike plaintiffs' addition by assignment of
8 twenty-six new plaintiffs. And that's what I've granted.

9 MR. IMHOFF: Great. Okay. Your Honor, the
10 grounds that you said was discretion and prejudice ---

11 THE COURT: Well, not only discretion, but also
12 I feel that the rule itself requires that it be brought
13 in a reasonable time.

14 MR. IMHOFF: Are you finding that they're
15 barred by the statute of limitations, Your Honor?

16 THE COURT: Well, I think that that's something
17 that will have to be determined if they should bring an
18 action. What we are saying is they are individuals. And
19 each individual has to be determined whether or not they
20 had cause to realize that they had a claim.

21 MR. IMHOFF: Thank you, Your Honor.

22 THE COURT: It might be that -- what is it? --
23 it was an inference. And heaven help anybody in Oconee
24 being incarcerated. So it might have been a rule for --
25 what is it? -- tolling the statute. Those would have to

1 be decided on individual cases.

2 All right. Anything else? I mean, as far as
3 housekeeping in bringing an action and how it will be
4 tried this week, hopefully.

5 MR. LYLES: The other issue that I know we're
6 waiting on is a ruling from the Court on the motion that
7 Marick made to dismiss the habitability claim. And
8 Marick made that motion on behalf of itself and I.M.K.
9 And we had briefed that issue too after that argument
10 about a month ago. As I understood the proposed order
11 that Marick submitted, the basis of the order granting
12 dismissal of the habitability claim was a lack of privity
13 of contract. And I ---

14 THE COURT: And you brought two cited
15 authority. I think Mungo and -- was it Columbia Lumber?

16 MR. LYLES: Yes, sir, it's goes back to ---

17 THE COURT: And both of those were vendors;
18 right?

19 MR. LYLES: Well, Kennedy was not -- Kennedy
20 versus Columbia Lumber was a general discussion of this
21 law.

22 THE COURT: Which they didn't accept.

23 MR. LYLES: Well, in Kennedy, that was actually
24 started off, I think, as a lender case. But what they
25 did in that case is they held, among other things, that

1 an implied warranty of service attaches to the builder's
2 work which does not require privity of contract to
3 assert. But in the same discussion, the court in Kennedy
4 reviewed the history of the implied warranty law and I
5 thought made it very clear that in South Carolina there
6 is no privity of contract requirement to assert an
7 implied warranty claim, whether it's habitability or the
8 implied warranty of service. And I ---

9 THE COURT: I thought they did and they just
10 said that that's the -- what is accepted in some
11 jurisdictions and by some writers.

12 MR. LYLES: I think Judge Toal said that the
13 Court in South Carolina had been steadfast in holding
14 that privity of contract is not a requirement for implied
15 warranty claim. And they cited the J.K.T. Hardwick case
16 in which the court said, "We seek to still all whispers
17 of a requirement of privity of contract to assert an
18 implied warrant of habitability ..." Excuse me. "... an
19 implied warranty claim," generally speaking. And so
20 that's the basis of my request that you not sign that
21 order.

22 THE COURT: Mr. Imhoff?

23 MR. IMHOFF: Your Honor, interestingly, I don't
24 disagree with Mr. Lyles. We're just talking past each
25 other. What he's talking about, Your Honor, is whether a

1 subsequent purchaser could sue the seller.

2 THE COURT: Oh, gracious. By the way, I'm not
3 so quick in memory. In fact, I can't even remember where
4 my car's parked. But I knew that certain cases came to
5 mind when you mentioned the motion. The reason for that
6 is apparently I granted an order, an order granting
7 partial summary judgment, by I.M.K. Development Company
8 and Marick Home Builders, L.L.C., and Rick Thoennes ...

9 MR. IMHOFF: Yes, Your Honor.

10 THE COURT: ... against the plaintiff on
11 October the 16th. And apparently, it just has not been
12 filed as yet.

13 MR. IMHOFF: Yes, Your Honor.

14 THE COURT: I apologize.

15 MR. IMHOFF: You're hearing plaintiffs' motion
16 to reconsider your decision.

17 THE COURT: Oh.

18 MR. IMHOFF: That's what Mr. Lyles is ---

19 THE COURT: Well, that's easy enough.

20 MR. LYLES: Well, I had no idea the order had
21 been signed. So what I had done is asked you not to sign
22 it. But apparently that didn't ---

23 THE COURT: Well, apparently it came after it
24 was signed. I'm not sure why I would have signed it if
25 there was some -- what is it? -- reason not to. But

1 apparently the reason that you proposed was not enough to
2 get me to go back and unsign it.

3 MR. LYLES: Okay.

4 THE COURT: So, again, I will hear this as a 59
5 motion, and I think it's -- I'll grant that it's timely
6 filed. But I'd also find that I'm satisfied that there's
7 no error of law or fact and that all matters have been
8 considered after due and complete consideration. And I
9 thank you, sir. But the thing is your Rule 59 will also
10 be denied.

11 MR. LYLES: Yes, sir. Thank you.

12 THE COURT: Okay. All right. Anything else?
13 By the way, thank you for helping me.

14 The last, what was it -- within the last month I've
15 been in trial almost every week. So I hope you will
16 forgive me and grant me a little patience or whatever as
17 not being up-to-date on everything.

18 All right. Anything else? Any other outstanding or
19 pending motions?

20 Yes, ma'am?

21 MS. BROWN: Your Honor, Cynthia Brown for
22 I.M.K., I.M.K., Cox and Lollis. And I have a pending
23 order -- a motion to reconsider your order that was filed
24 with regards to Marick's order granting summary judgment
25 on the cross-claims by my clients. And I submitted the

1 motion to reconsider. It mostly is for clarification of
2 the order because of some of those statements that were
3 made in the order were inaccurate. I'm not sure if Mr.
4 Imhoff has an objection to my motion.

5 MR. IMHOFF: I don't, Your Honor. We just need
6 to rewrite the order.

7 THE COURT: That'll be fine, yeah.

8 MS. BROWN: Okay. Would you like me to submit
9 a proposed order?

10 THE COURT: Well, let me suggest that the one
11 who wants the order done does the order.

12 MS. BROWN: Okay. All right.

13 THE COURT: And if he agrees, that's fine. All
14 he'll do -- what is it? -- is just show the Court that he
15 consents.

16 MS. BROWN: Okay. I'll take care of it.

17 THE COURT: Yes, ma'am. Thank you.

18 MS. BROWN: And the only other one -- concern
19 that I have is related to bankruptcy filing with Mr.
20 Seckinger.

21 THE COURT: Now, that's the gorilla that's in
22 the room.

23 MS. BROWN: Yes, Your Honor.

24 THE COURT: Has anybody addressed the gorilla?
25 Now, I'm not talking on a personal basis, but -- what is

1 it? -- just the question.

2 MS. BROWN: I appear to be a sacrificial lamb.
3 Your Honor, I did a little bit of research over the
4 weekend. I do not believe that it stays the entire case.

5 THE COURT: Well, first of all -- now, again,
6 you know, obviously bankruptcy is not something that our
7 state courts are involved in. I think the Constitution
8 takes care of that. But I do, of course -- what is it?
9 -- have parties who are involved in bankruptcy. And the
10 only thing the Court has gotten on this bankruptcy is a
11 fax or email about somebody having allegedly filed a
12 bankruptcy proceeding. But I have no statement there is
13 a pending -- which is the usual course. Am I wrong? I
14 mean, y'all are all out there, and y'all are real
15 lawyers. So I mean, y'all probably could practice in
16 federal court as well as state, but I can only do my part
17 in the state court. Don't you usually have to have some
18 sort of statement from the Court that there is a
19 bankruptcy proceeding pending or a matter?

20 MS. BROWN: Your Honor, Ed Buckley for Jose
21 Jaramillo. I don't think that's true. I think the
22 bankruptcy filing automatically acts ---

23 THE COURT: Well, how do we know it's a filing?

24 MR. BUCKLEY: --- whether this Court has notice
25 or not. But I agree with Ms. Brown that the only matters

1 that are stayed are the claims against the person who
2 filed bankruptcy. All other matters can go forward.

3 MS. BROWN: Well, and Mr. Buckley, my knowledge
4 of bankruptcy is probably the most limited in this room.
5 However, I do know from reading the 362 stay, upon filing
6 of the bankruptcy, the way the statute reads in plain
7 meaning it says, the commencement -- okay. I'm sorry.
8 § 11 USC 362(a) creates a stay of, number one, "the
9 commencement or continuation, including the issuance or
10 employment of process of a judicial, administrative or
11 other actionable proceeding against the debtor that was
12 or could have been commenced before the commencement of
13 the case under this title, or to recover a claim against
14 the debtor that are both before the commencement of the
15 case under this title." The way that I read that
16 statute, it is an automatic stay. And by saying that, it
17 means that it makes us seek relief from the stay to
18 continue.

19 THE COURT: But my point is that I'm here in
20 South Carolina in a state court. And I've got an action
21 that involves -- what is it? -- multiple parties. It was
22 then -- and I think I was the idiot that -- what is it?
23 -- determined it was complex so I'd have to take it and
24 keep it. I can't, you know, slough it off to somebody
25 else. But the fact is I have nothing. I'm not -- I

1 could walk in the federal courthouse and say, you know,
2 I'm a circuit judge in South Carolina. And let me file
3 something as a circuit judge in South Carolina. They'd
4 probably, what standing do you have? What standing do I
5 have to stop everything in South Carolina Circuit Courts
6 or trial courts because somebody sends an email that says
7 that? Somehow I think our system does require notice of
8 some sort. I mean, we can't commence an action without
9 service -- I mean, filing and service. We can stop an
10 action by a mere -- and, again, I understood from his
11 email that he had an attorney, a bankruptcy attorney.
12 And you're tell me bankruptcy attorneys don't -- what is
13 it? -- send notices to litigants in pending matters that
14 that action will be stayed against their attorney -- I
15 mean, against their client?

16 MS. BROWN: Your Honor, I ---

17 THE COURT: Mr. Buckley, I'd like to hear from
18 you.

19 MR. BUCKLEY: It's actually a crime for Mr.
20 Lyles to try to proceed against that bankruptcy debtor
21 whether he knows about the bankruptcy or not. Once he's
22 been notified that there is a pending bankruptcy ---

23 THE COURT: Well, I'm not -- again, Mr.
24 Buckley, my concern is we lost a war trying to decide who
25 was in charge of litigation and bankruptcy, for example.

1 And I don't want to fight the civil war over again. When
2 somebody tells me the federal has authority and has
3 jurisdiction and all of that, all I ask is they tell me
4 that. Otherwise, I'm putting you all out in jeopardy or
5 whatever if Mr. Lyles doesn't, you know, respond and it
6 turns out the fellow was not -- what is it? -- in
7 bankruptcy.

8 MR. BUCKLEY: I just want you to understand
9 from Jose Jaramillo's perspective, nothing is stayed
10 except the claims against the bankrupt debtor.

11 MR. LYLES: And, Your Honor ---

12 THE COURT: All right. So it's my
13 understanding y'all are all going to defend me when --
14 what is it? -- Judge Cain pulls me into federal court.
15 Well, I guess it wouldn't be Judge Cain. It would be --
16 what is it? -- one of the bankruptcy judges -- for
17 ignoring an email. You're all going to say, well, we
18 were there that day when he put his whole -- what is it
19 -- judicial life on the line and said that he's going to
20 let this matter go forward even though he had an email.

21 MR. LYLES: Your Honor, just to show that I've
22 got your back.

23 THE COURT: Oh, right.

24 MR. LYLES: On Friday ---

25 THE COURT: After all I've done you for?

1 MR. LYLES: On Friday upon hearing this, I told
2 the Court we will not proceed in our claims against Mr.
3 Seckinger. So the claims -- as far as I'm concerned, the
4 stay is in effect as it relates to our claims against
5 him, and we're not proceeding with that.

6 THE COURT: Well, I understand there are some
7 cross-claims and things of that nature, or are they?

8 MR. BELCHER: Here's my concern with that, Your
9 Honor.

10 THE COURT: Yes, sir.

11 MR. BELCHER: Alan Belcher for Bostic. That
12 you had dismissed all of those claims for failure to
13 prosecute or for otherwise failure to appear at the last
14 hearing. That was my recollection. Which you did that
15 from the bench. But I think there's some issue with the
16 timing of the entry of your order in the court's record
17 that this bankruptcy filing may have been made in the
18 interim. I just want to make sure that your order from
19 the bench is good so that we don't -- so that they don't
20 come back -- the Trustee in bankruptcy doesn't come back
21 and sue Bostic on these cross-claims.

22 THE COURT: Well, forgive me. Again, that's
23 exactly what I wanted too. But I'm told now I don't need
24 to do it. And that's why -- what is it? -- I have just
25 -- what is it? -- sworn you all in as -- what is it? --

1 witnesses that it's not. Now, what -- that what has been
2 done until now does not affect the proceedings here. I
3 can't give you that assurance. I'm not a federal judge.
4 I'm not a bankruptcy judge.

5 MR. IMHOFF: Your Honor, if I may, as to
6 Marick? I think there are only, if they exist at all,
7 equitable indemnity claims from Seckinger versus my
8 client. If I have any claims against Seckinger, Marick
9 has any claims against Seckinger, we dismissed them.

10 THE COURT: All right.

11 MR. IMHOFF: We're not bringing them.

12 THE COURT: Well, just forgive me. And maybe
13 I'm making too much of it because why should I worry
14 about what happens. It's all -- y'all are all ready to
15 go, so I'm more than ready to get rid of it. The idea,
16 though, is that it is unusual that I am not going to --
17 perhaps this case, because I've got so many good lawyers
18 that are going to defend me on it, I'll let it go. But I
19 hope that the bankruptcy bar and those litigants who find
20 themselves in bankruptcy don't think that they can send
21 emails to judges in the state courts -- I don't know. I
22 guess, magistrate might be governed by an email -- and
23 that would stay whole proceedings. And obviously, that
24 was his intent. Because otherwise if he -- he sent it to
25 me. I guess he copied all of y'all. I don't know. Did

1 everybody get a copy of the email?

2 MR. LYLES: We got it from the clerk. He
3 didn't send it to any of us.

4 THE COURT: Oh, that's right. I forgot. He
5 didn't even consider any of you.

6 MR. LYLES: I did talk to him this weekend, and
7 I know he has no intention of being here.

8 THE COURT: Well, he didn't have any intention
9 of being here before, and that's why his actions were
10 dismissed.

11 MR. IMHOFF: Right.

12 MS. BROWN: Judge Macaulay, let me throw out
13 one thing. I understand that Mr. Lyles has said that he
14 won't pursue those claims. My sole concern with regards
15 to my clients is that if it comes out of bankruptcy and
16 we haven't done this the right way, they're going to be
17 exposed again to another situation. But I think that
18 could be solved by Mr. Lyles taking a 40(j) on the
19 record.

20 THE COURT: He can't take a 40(j) without the
21 other party's consent.

22 MR. LYLES: 40(j) as to what?

23 MS. BROWN: Seckinger's claims.

24 THE COURT: All right. So you have stated
25 pretty much what the Court's concern is. It's not so

1 much my -- what is it? -- feelings that -- what is it? --
2 I'm inferior to an email from a bankruptcy client. Not
3 even an attorney. But the fact is I'm put in jeopardy if
4 there are any irregularities in the bankruptcy filing
5 because at least the rule, as you read or advised me --
6 what is it? -- does require a filing. Not just a I'm
7 going to or -- what is it? -- I did. But an actual
8 something that has a stamp on it that says this has been
9 done. So if y'all are ready to proceed, I am. But you
10 do so at your own peril.

11 Mr. Buckley, you seem to be ---

12 MR. BUCKLEY: We can handle it.

13 THE COURT: All right. Very good. All right.
14 Either speak now or forever because this matter is going
15 forward because it's been pending long enough. I think
16 if we can't resolve it that the parties remain
17 unresolved.

18 MS. BROWN: Thank you, Your Honor.

19 THE COURT: Thank you, ma'am.

20 All right. Anything else?

21 MR. IMHOFF: I'm still thinking about whether
22 I'm protected or not, Your Honor. But, yeah, we do have
23 motions in limine if ---

24 THE COURT: Oh, yeah. I'm going to take those
25 up. Those are trial matters.

1 MR. IMHOFF: Okay.

2 THE COURT: I'm going to take a break, and then
3 I'm going to take up that. But I wanted to get all of
4 these other things because obviously there's a lot of
5 things out there. And I do apologize and beg your
6 indulgence because I have been somewhat otherwise
7 involved. That's why I didn't sign orders and didn't
8 file orders I had signed.

9 MR. IMHOFF: I don't want to reopen this ---

10 THE COURT: All right.

11 MR. IMHOFF: --- but may I just say for the
12 record with the bankruptcy thing that I think Marick and
13 my clients are protected because Mr. Lyles has dismissed
14 his claims against Seckinger. And Seckinger's claims
15 against my client, I believe, are on the equitable
16 indemnity. And so he can't recover against me. I don't
17 have any claims against him. I mean, isn't that how
18 everybody else looks at that?

19 MR. LYLES: Not Cynthia.

20 THE COURT: Yeah, that's the first time I ever
21 heard -- what is it? -- an attorney ask another attorney
22 or attorneys for an advisory opinion. There's a reason
23 judges don't do it because you don't know where that
24 dog's going to come from the next time. All right.

25 All right. Is there anything else though on these

1 motions that have been outstanding?

2 (No response)

3 THE COURT: All right. So we are ready to go
4 through the pretrial questions about voir dire and
5 motions in limine.

6 Okay. Well, let's take a short break, and then
7 we'll come back and do that. Now, I understand the jury
8 in this case is coming in at two.

9 Is that right, Madam Clerk?

10 THE CLERK: That is correct, yes, sir.

11 THE COURT: Very good. Thank you. All right.
12 Let's stand at ease.

13 Oh, by the way, also, the exhibits. Now, if you
14 have -- I notice I've been furnished with schedules of
15 exhibits. But be sure that the clerk has those and she's
16 either marked them or whatever, you know, that she needs
17 before we begin. Do you understand? In other words, if
18 you've got exhibits that you can, the parties can agree
19 on as far as authenticity and things of that nature, go
20 ahead and have them marked for identification, either
21 plaintiffs or defendant or whatever, as the court
22 reporter would suggest. And then, of course, if you can
23 agree on them, in other words no further proof needs to
24 be -- or proffer needs to be made, then let's go ahead
25 and agree on them. Then you can use them in your opening

1 statements or everybody can use the same exhibits. All
2 right. Any questions? Very good.

3 We'll stand at ease. Let's say about -- at least
4 fifteen minutes and we'll be back at twelve.

5 (WHEREUPON, court stood at recess for a short
6 break.)

7 THE COURT: Looking at one of the first motions
8 in limine as to the Defendant Ludwick, as I understand
9 it, that matter has been resolved?

10 MR. LYLES: Yes, sir.

11 THE COURT: Mr. Mack?

12 MR. WOODS: Your Honor, Mr. Mack's not here.
13 I'm in his firm. And he's told me that that ---

14 THE COURT: All right. So that's no longer
15 necessary?

16 MR. WOODS: No longer necessary.

17 THE COURT: All right. Very good. Give the
18 court reporter your name.

19 MR. WOODS: Bill Woods.

20 THE COURT: Thank you, sir. All right.

21 All right. Another one is as to Jose Nino. All
22 right. As I understand it, there are three areas of
23 interest that the defendant Jose Nino seeks to have
24 limited settlement or negotiations, other residences or
25 projects in which Mr. Nino has performed work and

1 insurance. All right. Mr. ---

2 MR. MARTIN: Curtis Martin for Jose Nino,
3 Judge. As you said, they're very straightforward.
4 Settlement discussions, investigation of other residences
5 by Mr. Nino and any discussions regarding insurance
6 coverage.

7 THE COURT: All right. Mr. Lyles?

8 MR. LYLES: I don't have any opposition to
9 that, Your Honor.

10 THE COURT: All right. So in other words --
11 and one thing I did notice -- and I appreciate you doing
12 that, Mr. Martin -- is that in the event that you even
13 see -- or anybody who is participating in the trial of
14 the case sees a reason or maybe a call to go into any of
15 those matters with Mr. Nino -- about Mr. Nino's
16 situation, that you should bring it to the Court's
17 attention, let the Court address it prior to it being
18 published or taken up before the jury. Any question
19 about that, Mr. Lyles?

20 MR. LYLES: No, sir.

21 THE COURT: Anyone else? All right. So your
22 motion in limine is granted. Now, I might note that, of
23 course, a motion in limine has to be renewed at the time
24 of trial. So in other words, it's also up to you to
25 anticipate if you think something's going to violate the

1 Court's preliminary ruling on the testimony.

2 MR. MARTIN: Understood. Thank you.

3 THE COURT: Very good. Thank you.

4 All right. The next one is Mr. Imhoff's. Again, as
5 to settlements and negotiations, matters affecting phase
6 two, reference to insurance and Trehel estimates or Able
7 estimates or John Folk estimates.

8 All right. Mr. Imhoff?

9 MR. IMHOFF: Yes, Your Honor. I believe that
10 the reference to insurance settlement negotiations, I
11 think those are both agreed to by plaintiff, Your Honor.

12 THE COURT: All right. Any objection to that?

13 MR. LYLES: The settlement, are you talking
14 about phase two? Did you just mention phase two?

15 MR. IMHOFF: I'm talking all settlement
16 agreements.

17 MR. LYLES: Yeah, settlement agreements, Your
18 Honor.

19 THE COURT: All right. Settlement agreements
20 and insurance. That's one and three on his motion.

21 MR. LYLES: Yes, sir.

22 THE COURT: All right. And how about
23 construction of phase two?

24 MR. IMHOFF: Your Honor, we just had a
25 discussion about that. I think we have mostly an

1 agreement on that. My motion is to keep any discussion
2 of phase two out of the trial of this case as it would
3 paint Marick or be used to paint Marick as incompetent or
4 deficient or defective in phase one. In other words, if
5 we're going to be bifurcating the trial, I see them as
6 two completely different trials. Obviously, we're going
7 to have to discuss at some point some phase two in some
8 capacity. The jury's just going to ---

9 THE COURT: Oh, I understand.

10 MR. IMHOFF: But I don't want Mr. Hodgin on the
11 stand saying, well, it's so bad in phase two that I can
12 assume that it's that bad in phase one. And I don't know
13 that the plaintiff intends to do that. He's told me he
14 doesn't. But I would like that motion.

15 THE COURT: All right. How about the Trehel
16 and Able and John Folk estimates?

17 MR. IMHOFF: Your Honor, the Trehel estimate is
18 Plaintiffs' -- I think it's somewhere around a six
19 million dollar estimate to repair this. And Bob White,
20 who is the H.O.A. representative, a 30(b)(6) deponent,
21 has testified that they don't intend to use Trehel to do
22 the work out there. That John Folk, himself, I believe
23 has testified that he doesn't think he's going to get the
24 job. And then we know that our expert, who's giving a
25 different price, is actually out on site doing the repair

1 work, Your Honor. So we believe it's a misrepresentation
2 to the ---

3 THE COURT: How about Able?

4 MR. IMHOFF: I'm sorry?

5 THE COURT: How about Able?

6 MR. IMHOFF: I think Able Constructors then
7 became Trehel or John Folk left Able Constructors and
8 went to Trehel, but it's all the same estimate, I
9 believe.

10 THE COURT: Is that correct, Mr. Lyles?

11 MR. LYLES: Yeah, John Folk was with Able when
12 he did the first estimate. Now he is with Trehel.

13 THE COURT: With Trehel. Okay. So in other
14 words, we're talking about the same testimony?

15 MR. LYLES: Yes, sir.

16 THE COURT: The same estimate. All right.

17 MR. IMHOFF: All right. So basically the
18 motion is that it would be a misrepresentation to tell
19 the jury that they're going to use an estimate and
20 numbers that they're clearly not going to use by
21 admission, by testimony, and by the fact that they've
22 hired our expert to go out there and actually start
23 repairing the units. And his number, our expert, has a
24 very different number, as you can imagine, from the
25 Trehel estimate. So there isn't any basis to ---

1 THE COURT: Well, what I was going to say,
2 though, I think that the estimates would have to be
3 proffered before the amounts or anything would come in.
4 In other words, let's just do this. Do you have other
5 testimony as far as the estimates as to repair or
6 restore?

7 MR. LYLES: Well, a couple of things. First of
8 all, I don't think that there is any requirement in
9 offering an estimate that the owners represent that they
10 have agreed to contract with that estimator. These
11 people have expert opinions coming in from people my
12 folks have no intention of contracting with. An
13 estimate's an estimate. That would go to the weight of
14 the estimate and so on and so forth.

15 And number two, we have now made ---

16 THE COURT: Well, don't you think -- I mean,
17 you just wouldn't take somebody off the street. Wouldn't
18 you have to have somebody that has, you know, some
19 proffer ---

20 MR. LYLES: Yes.

21 THE COURT: --- you'd say that -- what is it
22 ---

23 MR. LYLES: Well, Trehel is definitely capable
24 and competent. And I think what Mr. White testified to
25 is -- and this is not Mr. White's obligation. This is

1 going to be a board decision that's going to be made
2 about the repair contractor. And I think that Mr.
3 Furnari will testify that this association fully intends
4 to give Trehel the opportunity to do this work when this
5 case is over. And they have given Trehel the opportunity
6 to go out and do repair work, which they've paid Trehel
7 to do. They've asked Trehel to do emergency repair work.

8 THE COURT: Well, I will treat it the same as I
9 would all motions in limine. As far as the estimates,
10 before any testimony comes in, you might want to proffer
11 it outside the jury's hearing. In other words, just tell
12 me you have a matter to take up with the Court.

13 MR. LYLES: Yes, sir.

14 THE COURT: And then I'll -- what is it? -- let
15 them take a break and I'll hear you. And we'll find out
16 if there is any -- it does kind of concern me that -- and
17 then, of course, I know Trehel very well. But -- what is
18 it? -- it somewhat opens the door to opinion testimony
19 coming in based on lack of validation or whatever.
20 Validation, I say, which means that we limit particular
21 opinion testimony as to damages and values, even though I
22 don't agree with it, to Judge Ness' rule about only
23 landowners can testify to the value and damages to their
24 property without any sort of basis. And first you have
25 to lay -- before you hear the fee, you have to lay the

1 foundation. And that's what I would suggest in this
2 case, that if you're going to use a witness from Trehel
3 or I guess -- and all three of them are now connected --
4 then -- what is it? -- let's proffer it before the Court.
5 Because otherwise you might have somebody coming in and
6 testifying to a windshield appraisal. And that wouldn't
7 be very good.

8 MR. LYLES: Well, I think we'll develop plenty
9 of foundation about the scope of repair that's necessary.

10 THE COURT: Well, there we go. That's what you
11 want to do. And the familiarity and -- what is it? --
12 anything else that might go to the credibility.

13 MR. LYLES: Yes, sir.

14 THE COURT: In other words, you don't just --
15 what is it? -- give somebody the opportunity to come in
16 and tell me what they think. That's politics. That's
17 not justice.

18 MR. LYLES: That was never our intention. And
19 we fully intend to call the defense pricing expert, even
20 though he hasn't given an updated or a complete estimate.

21 THE COURT: Well, then you can ask him why.
22 That would be a good idea.

23 MR. LYLES: And there's not actually a wide
24 disparity between his estimate and the Trehel estimate.

25 THE COURT: That sounds so compelling we might

1 as well just go home right now.

2 MR. LYLES: Well, it would suit me.

3 THE COURT: All right. Okay. Is there
4 anything else in your -- let's see. We took care of the
5 insurance and negotiations or offers for settlement.
6 Phase two, now, that's a delicate matter because
7 obviously anybody -- once the case is developed, it's
8 going to be clear that it only applies to a portion of
9 the development. And you're not proposing that they --
10 what is it? -- put up a curtain between the two phases?
11 In other words, I'm being facetious again.

12 By the way, my law clerk's given me a tee shirt that
13 says the sarcasm is free. So don't be offended. It
14 happens to all of you. All right.

15 MR. IMHOFF: No curtain, Your Honor. Just how
16 it's used or how it's discussed. We don't want it to
17 color the jury's opinion ---

18 THE COURT: Well, you know, that's a two-edged
19 sword. In other words, it's the type of thing I would
20 perhaps want to avoid regardless of which side you're on.
21 The plaintiff to suggest -- what is it? -- you know,
22 phase two, you know, is also there. But we're going to
23 have to deal with that later, which suggests that, of
24 course, that your client -- I mean, whoever the other
25 side is on phase two has some liability. But, however,

1 if you bring it up, it sort of admits that there is a
2 problem. I would somehow suggest that -- in fact, I
3 would even be prepared to instruct the jury not to
4 consider anything other than what's at issue here. I
5 mean, it's a -- again, you have to forgive my limited
6 experience, but I've done a little condemnation work.
7 And we had -- what is it? -- a whole series of parcels on
8 a project. And we were able to avoid talking about one
9 parcel in connection with another parcel because it was
10 -- even though it was the same project and everything
11 else and the jury knew that -- but without going into it.

12 MR. LYLES: One thought I had in discussing it
13 with these guys before we started this phase of the
14 proceedings was if phase two is out there, it's a pending
15 action. It's never been our intention to try to
16 establish liability for phase one because of defects in
17 phase two. So I don't think that's an issue.

18 THE COURT: Because you have different
19 contractors and everything else.

20 MR. LYLES: Yes, sir.

21 THE COURT: That's why I bifurcated it.

22 MR. LESTER: Yes, sir. Which leaves me ---

23 THE COURT: So, I mean, somehow I think you
24 don't need to mention it. And I usually don't permit
25 jurors to ask questions. And if they do have a question,

1 I usually ask them to submit it and then let the Court
2 instruct it.

3 MR. LYLES: But there are some documents that
4 don't relate to defects, establishing the defects,
5 though, that I want to use that to refer to phase two.
6 So what I had suggested to these lawyers is that perhaps
7 you could tell the jury that this is a trial of phase
8 one. This is not a trial of the phase two aspect of the
9 case, that that is still pending.

10 THE COURT: Well, if it comes up, that's
11 exactly what I'll do, but I would try to avoid it as much
12 as possible, you know.

13 MR. LYLES: Yes, sir.

14 THE COURT: And it depends on how it comes up
15 as to how my instructions will be to disregard. But my
16 instructions will be to disregard.

17 MR. LYLES: Yes, sir.

18 THE COURT: I mean, in other words, if -- well,
19 let's leave it at that. I will have to respond, but I do
20 not think that it is relevant to phase one. I've already
21 ruled that. So I want to be consistent with my prior
22 ruling.

23 MR. LYLES: Yes, sir.

24 THE COURT: All right. So let me see. That
25 takes -- well, all of them, as I say, will depend on

1 being -- if you're going to anticipate any of the matters
2 that you object to being addressed, either from the
3 plaintiffs or the defendants, that you give the Court a
4 heads-up. So, I mean, don't you blurt it out and don't
5 you -- what is it? -- invite it.

6 MR. IMHOFF: I understand, Your Honor. And
7 that goes for the witnesses and experts also, Your Honor?

8 THE COURT: Pardon?

9 MR. IMHOFF: That would go for witnesses and
10 experts?

11 THE COURT: Well, I would think that -- what is
12 it? -- you do not call a witness that you do not have
13 some -- what is it? -- influence with. And one of those
14 influences is you don't prejudice my case by saying
15 something you're not supposed to. Which was -- mistrials
16 are a lot easier to get around than -- what is it? --
17 having to sit through two weeks of a lengthy trial.

18 By the way, as I told you earlier, I'm going to be
19 out of here in a year, so I might be able to dodge you
20 for twelve months.

21 All right. Let's see. We've got one more, I think.
22 Now, this is -- no. This is -- let's see. I think that
23 was the one I just did. All right. Now, this is
24 plaintiffs' motion in limine, settlements and
25 negotiations. Apparently, y'all are in agreement on

1 that.

2 American civil justice system or lawsuits in
3 general. Now, I thought the Court was supposed to talk
4 about the justice systems and lawsuits. I didn't know
5 that we were going to -- you were going to have an expert
6 here to tell us what to do.

7 MR. LYLES: No, sir, I don't. What I am trying
8 to avoid is editorializing from anybody about the
9 inadequacies of the system or the unfairness of the
10 system or the opportunistic nature of the system or
11 otherwise being critical of the American justice system.

12 THE COURT: Mr. Imhoff or other defendants?
13 Does anybody want to go into the fact that -- what is it?
14 -- our system of justice is not perfect? I mean, I might
15 even take that as a personal affront.

16 MR. BUCKLEY: I'm not going to mention anything
17 about Mr. Lyles' brief, Your Honor.

18 THE COURT: All right. That's not a proper
19 topic, I think -- what is it. I'll say this -- what is
20 it? -- I used to be an attorney for a hospital. And my
21 worst problems with the hospital was that the doctors
22 would like to talk about each other. And the problem
23 with that was that whoever they talked about, whoever
24 they were talking to, the public, in other words, didn't
25 know which doctor it was. They just went over there.

1 The doctor would say the other doctor was not a good
2 doctor. And so it reflects on everybody. So when we
3 start undermining the confidence of the public in our
4 system of justice, then we all suffer the consequences.
5 And I would suggest we don't need to do that.

6 All right. Failure to call available witnesses.
7 Now, that depends.

8 MR. LYLES: Simply avoiding any insinuation
9 that our failure to call a witness that another party
10 could also have called ---

11 THE COURT: Well, I think the rule is fairly
12 clear, isn't it, that you have to have control over the
13 ---

14 MR. LYLES: Yes, sir.

15 THE COURT: I mean, I don't think you can say
16 the failure to call the President of the United States as
17 a witness or the former Secretary of State.

18 MR. LYLES: I agree.

19 THE COURT: All right. Any question about
20 that? I mean, anybody have a question that if you want
21 to have a charge on failure to call -- and that's where
22 it would come. It would come in in the instruction of
23 the law phase, not -- what is it? -- in argument unless
24 you get an instruction on the law. Then it would be
25 applicable. But I -- because otherwise, if the Court

1 hasn't ruled that such a comment would be appropriate,
2 meaning relevant and material, then -- what is it? -- it
3 wouldn't be supported by the evidence or the law. So
4 let's don't -- what is it? -- do anything to damage the
5 law or the evidence.

6 Testimony unavailable. Well, now, I don't exactly
7 know -- how would you get in testimony of a witness
8 merely because he's unavailable, unless it's an exception
9 to the hearsay rule?

10 MR. LYLES: I think, Your Honor, that I don't
11 anticipate that being a problem. I just don't want there
12 to be any insinuation in counsels' argument about what a
13 witness who did not testify might have said.

14 THE COURT: Y'all are so entertaining. There
15 is a Sherlock Holmes mystery about the dog that didn't
16 bark. And that was the element that solved the mystery.
17 So I think that sometimes you can talk about what is not
18 done, but it would only have to be in the area of a
19 Sherlock Holmes mystery. All right. I don't know. Was
20 it -- with the dog, it would have to be -- what is it? --
21 The Hound of Baskervilles or something. I know the
22 fellow was hiding out there, and the dog didn't bark
23 because he knew who the fellow was. But anyway, I can't
24 remember.

25 MR. LYLES: Your Honor, we'll be happy to

1 withdraw the last three.

2 THE COURT: Please do. Or otherwise you'll
3 have to listen to me, wouldn't you?

4 All right. Personal belief of a counsel, hostile
5 witness. All right. Now, hostile, that's governed by
6 the rule. It's not only hostile, but it's adverse. In
7 other words, if a witness obviously is identified with
8 another side, even though not a party, of course, that
9 would be the type of thing that has to be taken up prior
10 to cross-examining your own witness. Isn't that the only
11 area it comes up is with cross-examination?

12 MR. LYLES: Yes, sir.

13 THE COURT: And you say five, six, and seven
14 are withdrawn?

15 MR. LYLES: Yes, sir, we withdraw those.

16 THE COURT: All right. Now, have y'all looked
17 at each other's requests for voir dire?

18 MR. LYLES: Yes.

19 THE COURT: I mean, the thing is, I want to --
20 I'd like to have some guidance if you -- and I need
21 witness lists too. Have we got those? Now, everybody
22 has submitted a witness list that they want the jury
23 inquired about?

24 MR. LYLES: I think ...

25 Bo, didn't we submit a master witness list that

1 included ---

2 THE COURT: Perfect. That's exactly what I was
3 looking for.

4 MR. GRESH: Yes, sir.

5 MR. LYLES: I don't know if it includes, Alan,
6 your late witness, your Oconee County guy.

7 MR. BELCHER: I think we included that on our
8 supplemental.

9 MR. LYLES: I just don't know if it's on my
10 master list.

11 MR. BELCHER: It may not be on the master from
12 Bostic -- Alan Belcher for Bostic Construction. We did
13 submit a witness list that had two representatives from
14 the Oconee County building authority that may not be on
15 Mr. Lyles'.

16 MR. LYLES: Who are they so we can check?

17 MR. BELCHER: I can't recall their names.

18 THE COURT: Well, let's do find the names. I
19 mean, we've got some time before we -- the jury's not
20 going to be in until two.

21 MR. BELCHER: Yes, sir.

22 THE COURT: Well, let me ask you, we should
23 have -- we should be able -- well, they've already been
24 qualified generally, so this will be a case specific
25 qualification, is it not, Mr. Lyles?

1 MR. LYLES: The fellow downstairs told me that
2 our jury was coming in at two, but this jury ---

3 THE COURT: Oh, wait a minute. All right. So
4 it's a different jury. Is that right, Madam Clerk?

5 THE CLERK: That is correct.

6 THE COURT: All right. So we've got to
7 generally qualify them as well as case specific? All
8 right. So that -- and so we do have some time. But
9 between now and the time we get to the case specific, do
10 look over your jury lists and get the names. All right.
11 And let's ...

12 MR. LYLES: Bo, we can go over that during the
13 break before the jury gets here, go over that master
14 list. And I'm assuming that we can take out people on
15 that list that nobody's going to call. Because I think
16 what Holly did was just put down a list of everybody's.

17 THE COURT: Well, do that if you would, please.

18 MR. LYLES: Yes, sir.

19 THE COURT: Is there any problem with that? I
20 mean, I don't want to interfere with your lunch, but --
21 what it is -- no use asking people about people that are
22 not -- and let's also face the fact this is a small
23 county. And you're going to -- what is it? -- the more
24 names you have down there, the more people that are going
25 to be familiar. So, I mean, that can take forever. I

1 mean, there's a reason for that. All right.

2 All right. I'm starting with the plaintiffs'
3 request for voir dire. All right. One -- and this is
4 the way I usually do for those of you who have not been
5 with me before. One and two, I usually -- gosh, I don't
6 know how we're going to do this with as many plaintiffs
7 as we have. Except I can do it -- since we don't have
8 the twenty-six individuals now in addition, I think I can
9 just ask, Mr. Lyles, when I call for the plaintiff that
10 you will, if any of your plaintiffs are in the courtroom
11 or representatives of the plaintiffs like the homeowners
12 association, that they stand and look upon the jury.
13 And, of course, you introduce yourself and your law firm
14 or your practice.

15 MR. LYLES: Yes, sir.

16 THE COURT: In the same way, now, I need
17 probably -- and I do need someone to go through the
18 defendants to find out which ones are still involved.
19 And I'll do the same thing. I'll call the names of the
20 defendants that are still involved and ask the attorneys
21 to stand. And if they have a representative in the
22 courtroom, to ask them to stand. In other words, the
23 attorneys introduce their clients and themselves. In
24 other words, their law practices. And that's how I take
25 care of the -- do you know any of the lawyers

1 participating in this action? Actually, my question is,
2 "Has any of the lawyers or attorneys or their law
3 practices ever employed or represented them, any members
4 of the jury panel or their immediate family?" And then
5 the same thing. "Any members of your immediate family
6 know of any parties participating in this action?" So
7 that's how the introduction will work. And then the same
8 thing with the witness list. Is there witnesses -- when
9 the names are called if they're in the courtroom, if
10 they'd stand.

11 All right. I'm looking again at the plaintiffs'
12 four. "Are you familiar with the residence complex known
13 as Stoneledge at Lake Keowee?" How about this? "If so,
14 in what way?" Because there might be somebody lives
15 there or -- what is it? -- they're a member of the family
16 that sold a property or something like that. Then, of
17 course, the other question is going to be, "Can you be
18 fair and impartial?"

19 All right. Number five; any objection? It's about
20 lawsuits.

21 (No response)

22 THE COURT: All right. How about number six?
23 That's the one about complaint against bad experience
24 with a contractor or builder? Anybody? Number six?

25 (No response)

1 THE COURT: All right. Hearing none, I'll ask
2 it. All right. Number seven, if you'll forgive me, I
3 would put it more in a sort of a general way. "Have you
4 or a member of your family ever been involved in the
5 construction industry or business?"

6 MR. LYLES: Okay.

7 THE COURT: All right. Eight, again, I would
8 at the end of the question, "Have you or a member of your
9 family ever lived in or owned a condominium or
10 townhouse?" And if they answer yes, then I'd ask you,
11 "Would that interfere with your ability to give both the
12 plaintiff and defendant a fair and impartial trial?" Any
13 objection?

14 (No response)

15 THE COURT: All right. That's what I'll do.

16 All right. "Have you or a family member ever made a
17 claim for property damage?"

18 MR. LYLES: Judge, I'd suggest that we limit
19 that to a building or structure.

20 THE COURT: Well, that's what I was thinking.
21 Like I told you, I've had some experience with
22 condemnations and -- what is it? -- automobile accidents
23 and things like that, so ---

24 MR. LYLES: Building or structure.

25 MR. BELCHER: Your Honor, that gets a little

1 close to insurance in my estimation.

2 THE COURT: Good point.

3 MR. BELCHER: I don't want somebody to sit back
4 there and go into a diatribe about how much they hate
5 their insurance companies in front of the venire and
6 possibly ---

7 THE COURT: You don't think somebody would say,
8 "Well, they were on my side," or "I'm in good hands"?

9 MR. BELCHER: I doubt it.

10 THE COURT: All right.

11 MR. BELCHER: In Cincinnati.

12 THE COURT: Let's see. I think we have -- what
13 is it? -- don't we have one here about a lawsuit?

14 MR. LYLES: Yes, sir, we do.

15 THE COURT: Let's do that. I mean, otherwise
16 it could be so broad it could be anything. I've had a
17 laundry -- what is it? -- beat up on my buttons and all
18 that. All right. We'll not do that one.

19 Nine, all right, about punitive damages. First of
20 all, I think the final clause is perhaps inappropriate
21 for voir dire even. If warranted by the facts of this
22 case, I think that's something that has to be determined
23 by the facts of the case if the punitive damages are
24 charged. Just, "Is there anyone on the jury panel
25 opposed to awarding of punitive damages?"

1 All right, Mr. Imhoff?

2 MR. IMHOFF: I'll object to that, Your Honor.

3 I don't think it should be in there at all. Are we going
4 to explain what punitive damages are to the jury?

5 THE COURT: Yeah, eventually.

6 MR. IMHOFF: I mean -- I'm sorry. To the jury
7 pool.

8 THE COURT: What?

9 MR. IMHOFF: To the jury pool?

10 THE COURT: Well, that's just it. It's -- I
11 don't know. That's why I'm asking you.

12 MR. IMHOFF: I think that would be necessary
13 for that question to be asked. Otherwise, I don't think
14 it should be asked. It also implies that this is a
15 punitive damages case.

16 THE COURT: I think that's -- oh, now we hear
17 from you. All right. All right. Follow that racket.
18 You got on your feet in a hurry.

19 MR. GRESH: Yes, sir. John Gresh on behalf of
20 Bostic. I believe it somehow asks the panel to prejudge
21 the issue. I'd say applicability.

22 THE COURT: All right. I think you're right on
23 that. Now, just remember, the voir dire doesn't want to
24 exclude anyone, but it certainly -- what is it? --
25 doesn't want -- I think we have a term when I try capital

1 cases of staking out witnesses, that we get their views
2 on something and -- what is it? -- if they either hear it
3 or don't hear it, then -- what is it? -- that affects
4 their ultimate judgments. So we just don't stake them
5 out as to a particular issue that might be involved in a
6 case.

7 Now, anything else? Are those the only ones? No.
8 Here we go.

9 All right. Number one -- now, are these the lawyers
10 who are going to be involved: Robert T. Lyles, Lawrence
11 B. Orr, Francis M. Mack, Franklin J. Smith? Now, of
12 course, when I recognize you, that you will introduce
13 anybody else that might be assisting you in the trial of
14 the case so we'll have them all.

15 MR. LYLES: That sounds like a dated list.

16 THE COURT: It's updated or dated?

17 MR. LYLES: That's an old list.

18 THE COURT: All right. Well, now, tell me who
19 will be involved.

20 MR. BELCHER: Which document are you reading
21 from, Your Honor?

22 THE COURT: I'm sorry. Defendant S.D.I.
23 Funding's requests.

24 MR. BELCHER: They're no longer a party, so we
25 don't need that.

1 THE COURT: Bless your heart. All right. Jose
2 Nino, is he out? All right. That's -- I don't know who
3 it is. All right.

4 Yes, sir?

5 MR. ANDERSON: Good morning, Your Honor. John
6 Anderson for Jose Nino. Did you have a question on our
7 ---

8 THE COURT: Yeah. I just wanted to be sure you
9 were still involved.

10 MR. ANDERSON: Yes, sir.

11 THE COURT: I mean, in other words, the one I
12 just went through obviously was not. And I didn't need
13 to go through his.

14 MR. ANDERSON: Yes, sir.

15 THE COURT: All right.

16 MR. ANDERSON: Thank you.

17 THE COURT: Well, your number one I'm going to
18 cover. All right. I have Robert Lyles, Jonathan J.
19 Anderson, William B. Woods, Alan R. Belcher, Lawrence B.
20 Orr, Chad E. Poteat, Edward Buckley, David Yokel. Is Mr.
21 Yokel here?

22 MR. LYLES: No, sir.

23 THE COURT: Is he still in the case?

24 MR. LYLES: No, sir.

25 THE COURT: Who is that?

1 MR. BUCKLEY: Lawrence Orr and Chad Poteat ...
2 THE COURT: Yes, sir.
3 MR. BUCKLEY: ... are out.
4 THE COURT: But they're here.
5 MR. BUCKLEY: They're here.
6 THE COURT: And they're going to participate?
7 MR. BUCKLEY: No, sir.
8 MR. POTEAT: No, Your Honor. We're one of the
9 ones -- Chad Poteat on behalf of Eason Construction.
10 We're one of the ones that you're going to approve a
11 settlement on.
12 THE COURT: All right. So I need to put y'all
13 on the record on your settlement?
14 MR. POTEAT: Yes, sir.
15 THE COURT: What about Roy R. Hemphill?
16 MR. HEMPHILL: Yes, Your Honor.
17 THE COURT: Okay. There you are. All right.
18 "Are you or any member of your family or friends related
19 by blood or marriage?" All right. What do you say about
20 number two? "Are you or any member of your family had
21 any contact, social or business, with homeowners of
22 Stoneledge?" All right.
23 MR. LYLES: That's the similar to the question
24 that I had asked. I don't know if you want to ask it
25 again. But you had, I think, limited to -- in my voir

1 dire, I asked if anybody was familiar with Stoneledge.

2 And you said, "And if so, how?"

3 THE COURT: Okay.

4 MR. LYLES: So I didn't know.

5 THE COURT: All right. That's exactly why I go
6 over these things with you. You've got better memories
7 than I do.

8 MR. LYLES: Do you need more?

9 MR. ANDERSON: No.

10 Your Honor, we're happy as long as we can identify
11 the people on the jury who might be living there now.

12 THE COURT: Right.

13 Three apparently has to do with potential witnesses?

14 MR. ANDERSON: That is correct, Your Honor.

15 THE COURT: All right. So they would be
16 covered in the master list that I have and that you will
17 go over during lunch?

18 MR. ANDERSON: That is correct, Your Honor.

19 THE COURT: Okay. So I don't need to do any of
20 those.

21 And number four is covered. Number five, I think is
22 covered by four. I'm not going to ask them what type of
23 cases they have.

24 Now, what is the Department of Labor, Licensing and
25 Regulation? What does that have to do with this?

1 MR. ANDERSON: Your Honor, there's a procedure
2 that they could file complaints against contractors
3 without actually bringing any type of insurance claim or
4 a lawsuit. And if they have done that, we would like to
5 know that.

6 THE COURT: Well, isn't it covered by the other
7 one that I was going to ask that's not limited to L.L.R.?

8 MR. ANDERSON: Your Honor, our concern is, is
9 that it's a different type of complaint and they may not
10 include it within the manner in which you were asking the
11 other one.

12 THE COURT: Well, I was going to ask, "Have you
13 made a complaint against or had a bad experience with a
14 contractor or builder relating to repair or construction
15 of a structure?" And that's who you'd make that
16 complaint to. So I'm going to let that stand.

17 MR. ANDERSON: Thank you, Your Honor.

18 THE COURT: Now, remember any exceptions you
19 want to make to my rulings to protect the record, please
20 do so.

21 All right. The identification of Jose Nino is going
22 to be done, you know, as with the other parties.

23 MR. ANDERSON: Yes, sir.

24 THE COURT: And the same thing with eight. I
25 think it's covered.

1 MR. ANDERSON: I think nine probably falls in
2 that same category.

3 THE COURT: Okay. And I think ---

4 MR. ANDERSON: As does ten.

5 THE COURT: And ten because that's definitely
6 under L.L.R.

7 Let's see. Don't I have one in there about
8 townhouses?

9 MR. LYLES: Yes, sir, you do.

10 THE COURT: All right. So it's covered.

11 MR. LYLES: In mine.

12 THE COURT: How about twelve? All right. What
13 about homeowners association, property owners, number
14 twelve? Isn't S.D.I. out?

15 LAW CLERK: That was on S.D.I.'s voir dire.
16 But they're out, so they're not using that anymore. So
17 just disregard that notation.

18 THE COURT: Oh, okay. All right. So they're
19 out, but this is on Jose?

20 MR. ANDERSON: Right.

21 THE COURT: Do we have any counterclaims
22 against the homeowners?

23 MR. BELCHER: No.

24 MR. ANDERSON: Your Honor, the purpose of that
25 voir dire question is to identify people who may belong

1 to a housing -- or H.O.A.s or P.O.A.s and have been
2 involved either on boards or brought claims, not
3 specifically related to the H.O.A. or P.O.A. in this
4 case.

5 THE COURT: Well, you say involved in any
6 claims made by a homeowners association.

7 MR. ANDERSON: That would not be specific to.
8 That's any H.O.A. or any P.O.A.

9 THE COURT: All right. Any objection?

10 MR. LYLES: No, sir.

11 THE COURT: Hearing none.

12 All right. "Is there any member of the jury pool
13 who currently worked or has worked for a building
14 department?" I think that's appropriate.

15 And the property damage, I think I've already
16 struck.

17 MR. LYLES: Yes, sir.

18 MR. ANDERSON: Yes, sir.

19 THE COURT: And the same thing with the -- I
20 think I've not struck it, but I think it's already
21 covered on anybody living there.

22 All right. Where are we?

23 Now, on number one, this is I.M.K. Are those
24 individuals that are going to be witnesses or anything?
25 It looks like some of them were they named the

1 plaintiffs. Is that correct?

2 MS. BROWN: Yes, Your Honor. The names of the
3 witnesses. That's probably covered on one of the earlier
4 ones.

5 THE COURT: All right. So you're covered.
6 Look at them and be sure, you know, on that master list.
7 The same way with two is going to be covered. Now, these
8 are the Defendants, so that'll be covered. That'll be
9 covered when you go through your witness list.

10 MR. LYLES: And, again, many of the ones that
11 are listed here are people who have settled or ---

12 THE COURT: Well, that's what I'm saying.
13 You'll take them off of your master witness list ...

14 MR. LYLES: Okay.

15 THE COURT: ... rather than have me go through
16 each one, please.

17 The same way with number four, number five. Number
18 six, I'll ask. Number seven -- actually, number six,
19 seven, and eight are covered by my own charges or my own
20 voir dire. Number nine is interesting. Oh, wait a
21 minute. "Discuss with you." I'm going to ask that one
22 because I'm always interested in somebody having contact
23 with others.

24 Mr. Woods, you're from Lexington, aren't you?

25 MR. WOODS: Well, Your Honor, my office was in

1 Lexington for a lot of years.

2 THE COURT: Well, the only reason I ask you
3 that, you're familiar with the Gonzales murder case or
4 the Tillman murder case. Gonzales was killed by Tillman.
5 That's where the people went out and talked to all the
6 jurors and found out which side they were on before they
7 drew the jury. A very efficient method.

8 MR. WOODS: Yes. That was -- they used to do
9 that in Lexington County rather frequently.

10 THE COURT: All right.

11 MS. BROWN: Your Honor, if you recall, our
12 senior partner, Mr. Donald Harper, was a U.S. attorney,
13 and that's one he taught me to put in voir dire.

14 THE COURT: Oh, it's a good one. It's a good
15 one. Sorry I haven't seen it before or not as much. I
16 usually -- what is it? -- instruct the jury, of course,
17 that -- what is it? -- if anybody should discuss it or
18 try to discuss it.

19 All right. "Does any juror own any interest in a
20 limited liability corporation?" Any objection to that?

21 MR. LYLES: Not from me, Judge.

22 THE COURT: I think the general question that I
23 approved will cover number eleven. That's a little
24 specific. And number twelve the same way. I've covered
25 it or will cover it. Number thirteen, this is a small

1 county and, "Have you served on more than -- juries?" I
2 see people -- in the twenty years, I've seen some of the
3 same people. In fact, I've seen some of their
4 grandchildren. But anyway. All right. Any objection?

5 (No response)

6 THE COURT: Now, I'll have to think about that
7 one. By the way, if I don't charge something that I say
8 I am going to charge, you can also except to that too.

9 Now, that's something I usually, obviously reserve
10 for my jury charge. I might be interested in finding
11 out. Any objection to number fourteen?

12 (No response)

13 THE COURT: All right. Bostic Brothers.
14 Number one is covered. Number two is covered. Number
15 three is covered. Number four will be covered. I've
16 already got the, "Have you ever served on a jury before?"
17 since I said wouldn't charge that last one. Didn't the
18 last one say the same thing pretty much?

19 MR. BELCHER: It did, Your Honor. That's
20 correct. I.M.K. thirteen.

21 THE COURT: Yeah, thirteen. That will be
22 covered then. Number six will be covered. And number
23 seven is going -- that's what I was going to ask anyway,
24 but not all those specifics. What I usually ask, "Would
25 that affect your ability to give both the plaintiffs and

1 defendant ..." And that's the same way with eight. All
2 right. There's that "Will they follow ..." It'll be
3 covered from the other one. Oh, what have I said about
4 lawsuits involving construction-related matters? Haven't
5 we got that down somewhere?

6 LAW CLERK: I believe so.

7 THE COURT: I think I've -- I will cover ten.
8 Number eleven, I think if I ask if anybody knows anyone
9 or have a reason to know about Stoneledge at Lake Keowee
10 that that will be covered. "Has anyone on the jury ever
11 overseen or been involved in the remodeling or
12 construction of their own home?" The problem with that
13 is, it depends on who you ask, the husband or the wife.
14 The husband says, "Go ahead and do whatever you want to."
15 The wife says, "Whoa. Let's change this to that."
16 That's a sexist comment, I know. But -- what is it? --
17 what do y'all say about that? Is that ...

18 (No response)

19 THE COURT: All right. I'll ask it. I'd just
20 as soon find out. Now, thirteen is an important
21 question. I definitely will ask it. Number fourteen is
22 covered. How about fifteen? I'll ask it. I guess
23 seventeen would have to be asked too. Well, sixteen and
24 seventeen. Now we get into -- well, how about eighteen?
25 How is that applicable? "Have you or any member of your

1 family owned a small business?" Anybody that manages a
2 household owns a small business. You know, we don't want
3 to, one, exhaust the jury or the judge. I tell you what.
4 Unless I have someone insisting on it, I'm not going to
5 charge it. Haven't I covered the condominium or
6 apartment complex?

7 MR. LYLES: Yes, sir.

8 MR. BELCHER: Yes, Your Honor.

9 THE COURT: I think so. Y'all help me on this
10 because ---

11 MR. BELCHER: Yeah, I think twenty-one and
12 twenty-two are withdrawn too because you've already dealt
13 with those.

14 THE COURT: Right. I will ask twenty, though,
15 because we had the homeowners thing and I said not. But
16 I would ask if they've ever been a member.

17 MR. BELCHER: Twenty-one should be withdrawn.

18 THE COURT: Huh?

19 MR. BELCHER: Twenty-one should be withdrawn.

20 THE COURT: Twenty-one? Twenty-two?

21 MR. BELCHER: No. Twenty-two should be in.

22 THE COURT: Twenty-three is one of those
23 charges on the facts. I will not charge twenty-three.
24 Twenty-four would be covered.

25 How many saw "A Time to Kill" or read the book? Do

1 you remember what the jury did on the last day? You know
2 they voted the night before for conviction. And then
3 after the jury argument of the -- what is it? -- learned
4 counsel, they reversed it that soon. Something that they
5 probably should charge, but I'm not going to question
6 them about that because that's bad habits.

7 And number twenty-five, again, I'll charge that.
8 That goes without -- I don't think it's a type you
9 qualify a jury with.

10 I'm going to -- my general charge somewhat covers
11 that. In other words, if there's any reason you cannot
12 be -- what is it? -- fair. Oh, gracious. I tell you
13 what. I'll charge on twenty-seven, the second sentence.
14 "Do any of you have any religious or philosophical or
15 other reasons that would prevent you from acting as a
16 fair and impartial juror?"

17 All right. Next? Now, didn't KMAC settle?

18 MR. LYLES: Yes, sir.

19 THE COURT: All right. I had no requests for
20 charges on that.

21 All right. Everado Jaramillo. Is that you, Mr.
22 Buckley?

23 MR. BUCKLEY: That's me, Your Honor.

24 THE COURT: All right. I'll cover number one,
25 two, three. Those are all witnesses; is that not

1 correct?

2 MR. BUCKLEY: That's right, Your Honor.

3 THE COURT: All right. "Has anyone on the jury
4 ever employed by or performed any work for any of the
5 following?" Now ...

6 MR. BUCKLEY: Those are named plaintiffs.

7 THE COURT: All right. They will be covered
8 then. Five, that's going to be covered, I think. Oh, I
9 know it is.

10 MR. BUCKLEY: Six, I don't really care about,
11 Judge.

12 THE COURT: All right. I think I might have it
13 in another one, though, but I'll strike it here. What do
14 y'all say about seven and eight? And nine? I tell you
15 what. Nine pretty much covers seven and eight because
16 otherwise, as I say, I think you're probably staking them
17 out as to listing a particular item. So I'm going to
18 charge nine but not seven or eight, which is the same
19 thing as ten. I'll charge it. I think number eleven is
20 covered. Oh, gracious. Don't tell me you want me to ask
21 twelve ---

22 MR. BUCKLEY: That's all right.

23 THE COURT: --- in Oconee County.

24 MR. BUCKLEY: That's all right.

25 THE COURT: By the way, Oconee County is like a

1 big family. We don't always get along, so it doesn't
2 matter if we know each other or not.

3 MR. BUCKLEY: Yeah. I had a lawyer one time
4 tell me, "That's my law partner." I said, "Well, I might
5 want him on there."

6 THE COURT: Well, you know who I -- when I was
7 with the Attorney General's Office in Columbia trying
8 cases in Anderson and they had a lawyer named Ross
9 Anderson at that time. And of course, I was off. And he
10 -- we empaneled the jury. And as the juror was going
11 past the desk to get in the box or whatever, Ross looked
12 over at me. "That's my cousin." I said, "I'm glad I've
13 got somebody on there that knows about you." Of course,
14 he's a great American now being a district judge.

15 All right. Where are we? Number thirteen, same
16 thing. That'll be covered. I don't know if I've said
17 I'd cover fourteen or not, but I'll go ahead and ask it.

18 MR. BUCKLEY: I think a variation on fourteen,
19 Your Honor, is something that I meant to include but
20 didn't. But essentially, "Does any member of the jury
21 panel have any strong religious or personal belief ---"

22 THE COURT: I'm going to ask that.

23 MR. BUCKLEY: "--- which would prevent them
24 from following the law as you instruct them."

25 THE COURT: I've got that. I said I would

1 charge the bit about, you know, number 27 on -- I guess
2 that's Bostic -- on Bostic Brothers; right? All right.
3 I'll look at it. In other words, I don't want to get
4 them into the question of liability and damages or things
5 of that nature. But to ask that whether or not they
6 would be able to listen to the evidence and render a fair
7 and impartial. But I will ask, of course, if there's any
8 -- I'll work that one out.

9 Let me see here. All right. That's all of the voir
10 dire.

11 It's a quarter after. And I do want y'all to go
12 through the jury list -- I mean, not jury list, the
13 witness list -- and give me a clean -- not a clean, but
14 one that eliminates some of those who are not going to be
15 witnesses.

16 I know the jury is coming in at two. Madam Clerk,
17 how long will -- are they actually reporting at two?

18 THE CLERK: Yes.

19 THE COURT: So that means that you have to
20 clear them and all of that?

21 THE CLERK: That's correct.

22 THE COURT: So why don't you try to be back at
23 two fifteen, but two thirty will probably be when we --
24 so that gives you an hour and fifteen minutes.

25 All right. Anything else before we recede for

1 lunch?

2 Yes, sir?

3 MR. SMITH: Your Honor, would you still want to
4 put our ---

5 THE COURT: Yeah, I want to put your -- please
6 do. All right. So it'll be y'all and Mr. Lyles, I
7 think, is the only ones unless the others want to hear
8 what the settlement was.

9 All right. Those who want to leave, leave. Or do
10 you want to hear what the settlement was?

11 MR. SMITH: Your Honor ---

12 THE COURT: Just one second. Let's see. Those
13 who want to leave, go ahead and leave now so I can --
14 now, if you stay, you have to stay.

15 (Off record discussions)

16 THE COURT: All right. Is that everybody
17 that's going to remain?

18 MR. BUCKLEY: We're going to leave, Your Honor.

19 THE COURT: Very good.

20 MR. BUCKLEY: Thank you.

21 THE COURT: Thank you.

22 Mr. Belcher, are you leaving?

23 MR. BELCHER: No. I'll be right back, Your
24 Honor. I don't think I need to be here.

25 THE COURT: That's what I'm asking because I'd

1 like to go ahead and put these matters on the record.

2 MR. BELCHER: I'll wait.

3 THE COURT: All right. We are now here on some

4 matters in this action that have been resolved, as I

5 understand it, Mr. Lyles?

6 MR. LYLES: Yes, sir.

7 THE COURT: All right. And who's the first?

8 MR. SMITH: Chris Smith here on behalf of

9 Haywood Electrical.

10 THE COURT: Yes, sir.

11 MR. SMITH: Your Honor, it's my understanding

12 that the final paperwork has not been signed though; is

13 that right?

14 MR. LYLES: That's right.

15 THE COURT: Well, if you put the terms of the

16 settlement on the record, please?

17 MR. LYLES: Haywood Electric has agreed to pay

18 fifteen thousand in settlement.

19 MR. SMITH: That's correct. Fifteen thousand.

20 Two carriers will be splitting that.

21 MR. LYLES: In full settlement of the

22 plaintiffs' claims against Haywood Electrical.

23 THE COURT: All right. Is there any more to

24 it?

25 MR. SMITH: Not from us, Your Honor.

1 THE COURT: All right. Very good. And ---

2 MR. POTEAT: Yes, Your Honor. Chad Poteat ...

3 THE COURT: Yes, sir?

4 MR. POTEAT: ... on behalf of Eason
5 Construction, Inc.

6 MR. LYLES: And the plaintiffs have agreed to
7 settle all claims pending against Eason Construction for
8 the sum of one million dollars.

9 THE COURT: All right.

10 MR. POTEAT: That's correct, Your Honor. And
11 there are no claims pending against the principle of
12 Eason. But obviously this will be a full release of all
13 claims that we have agreed upon.

14 THE COURT: All right. Now, let me ask you on
15 these two claims. Mr. Smith, is there any time limit?
16 Because sometimes there's a question about if they're
17 timely as far as satisfaction.

18 MR. LYLES: No, sir. I don't think I included
19 the time limit on yours. I assume ---

20 MR. SMITH: You asked for a month, but I don't
21 know. It wasn't -- our offer and acceptance of the offer
22 was not conditioned upon the time limit. But we're doing
23 everything ---

24 THE COURT: Well, time is not of the essence
25 then. Is that what you're saying?

1 MR. SMITH: It's not a part of our settlement,
2 but it is.

3 THE COURT: Well, what's the term, as I
4 understand, means as far as a consequence of a contract
5 or agreement. If time is not the essence, then it has to
6 be reasonable.

7 MR. SMITH: Thank you, Your Honor. I think
8 that's the case.

9 THE COURT: And is -- is that what you're
10 saying, Mr. Lyles?

11 MR. LYLES: Yes, sir.

12 THE COURT: All right. Any question about
13 that?

14 MR. LYLES: No, sir.

15 THE COURT: All right. And how about yours?
16 I've forgotten your ---

17 MR. SMITH: Chris Smith for Haywood Electrical.
18 The same.

19 MR. POTEAT: And time is not of the essence in
20 our agreement either.

21 THE COURT: All right. Very good. Thank you
22 very much.

23 MR. LYLES: Thank you, Your Honor.

24 THE COURT: Thank you.

25 All right. Anything else, ladies and -- or lady and

1 gentlemen?

2 (No response)

3 THE COURT: All right. I'll see you about two
4 fifteen or two thirty.

5 MR. LYLES: Yes, Your Honor.

6 (WHEREUPON, court stood at recess for a lunch
7 break.)

8 THE COURT: All right. Are the plaintiffs
9 ready?

10 MR. LYLES: Yes, sir, Your Honor.

11 THE COURT: The defense ready, Mr. Belcher?

12 MR. BELCHER: Yes, Your Honor, we're ready.

13 THE COURT: Ladies and gentlemen, this is a
14 term of common pleas court, sometimes called a civil
15 court. A lawsuit is a civilized method of determining
16 disputes between citizens. The purpose here is to
17 resolve in an orderly manner disputes between citizens
18 who have cases in this court in a fashion which will
19 ensure that justice under the law is accomplished between
20 the parties to the lawsuit.

21 The trial of a case begins with the selection of a
22 jury. Because all parties to a lawsuit are entitled to
23 jurors who approach the case with an open mind, I will be
24 asking certain questions of the entire jury panel. The
25 trial jury must be as free as humanly possible from any

1 bias, prejudice or sympathy for either side or any party
2 and free from any preconceived ideas on the facts of the
3 case or the law of the case. The questions that will be
4 asked are designed to ensure that each side does have a
5 fair and impartial jury.

6 Now, I might instruct you and impress upon you that
7 if any person should talk with you or attempt to talk
8 with you about any case scheduled for this term of court,
9 it would be your solemn duty to immediately report that
10 matter to the Court's attention. The reason for that is
11 you have been sworn as jurors of the Court of Common
12 Pleas for the Tenth Judicial Circuit, and no one is to
13 interfere with your duty as such. As I say, if anybody
14 either speaks with you or attempts to speak with you,
15 report them immediately and I'll take the appropriate
16 action.

17 Now, we are about to begin the trial of the case of
18 Stoneledge at Lake Keowee Owners' Association, Inc.,
19 versus Bostic Brothers Construction, Inc., and I.M.K.
20 Development Company, L.L.C., Integrys Keowee Development,
21 L.L.C., Larry D. Lollis, William C. Cox, and Rick
22 Thoennes and Marick Home Builders, L.L.C., and Everado
23 Jaramillo and Jose Nino.

24 Now, the plaintiffs are represented by -- which is
25 2009-CP-37-652. The plaintiffs are represented by Mr.

1 Lyles.

2 Mr. Lyles, if you'd please stand and introduce
3 yourself, your law firm and anybody that will be
4 assisting you in the trial of this case and well as
5 anyone representing your corporate defendants.

6 MR. LYLES: Yes, sir.

7 THE COURT: Plaintiff. Excuse me.

8 MR. LYLES: My name is Robert Lyles. I'm a
9 lawyer from Charleston. I practice law in Charleston
10 with my first cousin whose name is Bill Lyles. And we
11 have a small firm down there, and we do a lot of
12 construction litigation. With me from my office is Kelly
13 West. She's an attorney who practices with me. Also
14 with me is Donna Furnari. Donna is a named plaintiff in
15 this case. I represent Donna as well as the Stoneledge
16 at Keowee Homeowners Association, L.L.C. -- or Inc.
17 actually.

18 I also represent a number of individual plaintiffs
19 in addition to Donna.

20 THE COURT: Let me -- Mr. Lyles, if you would,
21 ask your client to stand and to look upon the jury,
22 please.

23 MR. LYLES: Donna Furnari.

24 THE COURT: All right. And if any of your
25 other clients are in the room or are represented in the

1 room, ask them to stand as well.

2 MR. LYLES: Yes, sir.

3 (WHEREUPON, Ms. Furnari stood.)

4 THE COURT: Thank you, ma'am. You may be
5 seated.

6 MS. FURNARI: Thank you.

7 MR. LYLES: In the back, Donna's husband Mike
8 Furnari. Next to Mike is Steve Taylor. Next to Steve is
9 his wife Betty. And we have John and Cathy Wilson who
10 are also owners and residents at Stoneledge.

11 THE COURT: All right. The reason I do that,
12 of course, in these days and times we might not know
13 someone by their names, but we would recognize them. And
14 that's why I ask any of you who are being introduced to
15 the jury panel, that you look upon the jury panel so they
16 might see anyone they recognize.

17 All right. Go ahead.

18 MR. LYLES: I have just a couple of more people
19 that I represent personally who are not or were unable to
20 be here to day. And that's Jessie and Nancy Grasso,
21 Carol Pope and Bob White. Thank you.

22 THE COURT: Thank you very much.

23 Now, the defendants Bostic Brothers Construction,
24 Inc., are represented by Mr. Belcher. Mr. Belcher, if
25 you would, please, stand and introduce yourself and

1 anyone who will be assisting you as well as any of your
2 clients who might be present.

3 MR. BELCHER: Thank you, Your Honor.

4 Good afternoon, ladies and gentlemen. My name is
5 Alan Belcher. I practice with the law firm of Hall Booth
6 Smith. I lead the firm's South Carolina construction
7 practice group. With me today and over the next several
8 days assisting me is Jack Gresh, my law partner in the
9 firm. Also present are people that I have been asked to
10 represent here today: Jeff Bostic, Joe Bostic and Mr.
11 Mel Morris.

12 THE COURT: And I do think you have the client,
13 Mr. Cox?

14 MR. BELCHER: No, Your Honor. These are the
15 only people that I represent.

16 THE COURT: Oh, I see. I apologize. Thank
17 you, sir.

18 All right. I.M.K. Development, L.L.C., is
19 represented by Ms. Brown.

20 Ms. Brown, if you would, please stand and introduce
21 your law firm and anyone who'll be assisting in your case
22 and anybody that might be representing your clients or
23 are present.

24 MS. BROWN: Thank you, Your Honor.

25 My name is Cynthia Brown. I work with Harper,

1 Lambert & Brown. Our firm focuses on construction
2 litigation. Not with me here today is Ted Vick, also an
3 attorney with our firm, who may be assisting in this
4 case. I do represent I.M.K. Development, L.L.C., I.M.K.,
5 L.L.C., Mr. Lollis. He is also not here today because
6 he's had a death in the family. Will not be here
7 tomorrow, but will be present for the rest of the time.
8 And Mr. Cox who is sitting in the back of the room, I
9 represent him personally as well.

10 THE COURT: Very Good. And that's Mr. Larry D.
11 Lollis and Mr. William C. Cox?

12 MS. BROWN: Yes, Your Honor.

13 THE COURT: Very good. Thank you, ma'am.

14 Also as defendants is Marick Home Builders, L.L.C.,
15 represented by Mr. Imhoff.

16 Mr. Imhoff, if you would stand and introduce
17 yourself and your clients.

18 MR. IMHOFF: Yes, Your Honor. Thank you.

19 My name is Jason Imhoff. I work in the Ward Law
20 Firm over in Spartanburg, South Carolina. I do
21 construction litigation in the Upstate of South Carolina.
22 With me and assisting me is Jack Graham, who is also from
23 the Ward Law Firm. And we represent the Marick Home
24 Builders, L.L.C., and this gentleman Rick Hoffman.

25 THE COURT: Very good. Thank you, sir.

1 Now, the defendant, Rick Thoennes, is represented by
2 Mr. Hemphill:

3 Mr. Hemphill, if you'd please stand, introduce
4 yourself and anyone that would be assisting you and your
5 client.

6 MR. HEMPHILL: May it please the Court, Your
7 Honor.

8 Ladies and gentlemen, my name is Roy Hemphill, and I
9 practice law in Greenwood and generally in the Upstate.
10 I represent M. Group Construction and Development, a
11 construction company. And Mr. Thoennes, who you just
12 met, was the owner of that company and an engineer in
13 that company. Also, I anticipate that Mark Hutcherson
14 will also be here tomorrow. He also is with that
15 company.

16 THE COURT: Thank you, sir.

17 Also, we have Mr. Everado Jaramillo. You'll have to
18 forgive me. I'm not very good with names. Everado
19 Jaramillo. How about that? And represented by Mr.
20 Buckley.

21 MR. BUCKLEY: My name is Ed Buckley, and I
22 represent Everado Jaramillo. With me here is Nick Rivera
23 from my office. I'm from Charleston, South Carolina, as
24 well. And we'll be representing Mr. Jaramillo in this
25 case. Thank you.

1 THE COURT: Very good. Thank you, sir.

2 And Jose Nino, another defendant, is represented by
3 Mr. Anderson.

4 MR. ANDERSON: Thank you, Your Honor.

5 THE COURT: If you would, please.

6 MR. ANDERSON: Good afternoon. My name is J.J.
7 Anderson. I'm from Charleston. I practice with
8 Anderson, Reynolds and Stephens. Curt Martin with our
9 firm is going to be assisting me this week. We also are
10 assisted by Bill Woods, and I will let Mr. Woods
11 introduce himself.

12 MR. WOODS: My name is Bill Woods. I practice
13 law in Columbia with the firm of Richardson Plowden. I
14 primarily have my practice in the area of construction
15 defect cases statewide. Thank you.

16 THE COURT: All right. Before we select a
17 jury, I need to ask you some questions.

18 Is there any member of the jury panel related by
19 blood or marriage, now or formerly, or a close personal
20 friend or business associate of any of the parties to
21 this action? And that would include Stoneledge at Lake
22 Keowee Owners Association, Inc., Bostic Brothers
23 Construction, Inc., Mel Morris, Joe Bostic, Jeff Bostic,
24 I.M.K. Development Company, L.L.C., Integrlys Keowee
25 Development, L.L.C., Larry D. Lollis or William C. Cox,

1 Rick Thoennes or M Group Construction and Development,
2 Marick Home Builders, L.L.C., Everado Jaramillo, or Jose
3 Nino. Any member of the jury panel related by blood or
4 marriage, close personal friend or business associate of
5 any of the parties of this action, if you'd please stand
6 at this time.

7 (No response)

8 THE COURT: Is any member or has any member of
9 the jury panel or members of their immediate family ever
10 been represented by or employees of any of the attorneys
11 involved in this case or their law firms? If so, please
12 stand.

13 (No response)

14 THE COURT: Now, I'm going to be calling out a
15 list of possible witnesses in this case. When I say
16 possible witnesses, these are witnesses who may be called
17 in the case but do not necessarily have to be called.
18 Derek A. Hodgkin -- and if they're in the courtroom at the
19 time, if they'd please stand. Derek A. Hodgkin, Richard
20 J. Rogers, John Folk and other representatives of the
21 Trehel Corporation, Grasso, Jessie and Nancy.

22 Is that Jessie and Nancy Grasso?

23 MR. LYLES: Yes, sir.

24 THE COURT: Carol Pope, Furnari -- or Michael
25 and Donna Furnari. Thank you, ma'am. Steven and Betty

1 Taylor, Robert and Judy White, Bradford D. Seckinger,
2 Rick Thoennes III and Rick Thoennes, Joe Bostic, Jeff
3 Bostic, Mel Morris, Trina Wilkerson, Harold and Teri
4 Graham, John and Nancy Wilson, Steven Gosk, Paul and
5 Margaret Daniels, Dee Dyenson, Cheree Moody, Jerry
6 Lrasen, Everado Jaramillo, Jose Nino, Larry D. Lollis,
7 Tim Roberson, William "Bill" Cox, Robert "Chip" Albert,
8 Phillip and Debbie Alphin, Tristar Holdings, L.L.C.,
9 Emmanuel Joseph, John and Maralan Littlefield, Phillip
10 and Suzanne DiPietro, Sula Sizemore, Phil Schmmel and
11 Julia Eakes, Nathan Hornaday, F. Cannon Chambers, Mike
12 Smith and Linda Smith, Edward and Jackie Cocciadiferro,
13 James Log, Paul and Mary DuQue, Charles Gainey and Jeff
14 Rybak, Rad William and Anne Page, Gary and Pat Selvaggio,
15 Adam Beadles, Adam and Adrienne Bruckman, William Kerr
16 and Jennifer Murphy, Rodney Ownbey and Shannon Ownbey,
17 Walter and Dolly Schember, Richard and Catherine Welchel.

18 Anyone related by blood or marriage, close business
19 associate of any -- oh, excuse me. I have some other
20 names here of possible or potential witnesses.

21 J. David Horne, Professional Engineer, Marshall F.
22 Clark of M.C.A. Architecture, Richard A. Moore, Physical
23 Engineer -- or Professional Engineer -- excuse me. Steve
24 J.L. Watkins of Watkins Services.

25 Now, is any member of the jury panel related by

1 blood or marriage, close personal friend or business
2 associates of any of the potential witnesses in this
3 case? If so, please stand at this time.

4 Yes, sir, your name, please?

5 THE JUROR: Steven Lusk.

6 THE COURT: Yes, sir.

7 THE JUROR: I'm employed by Trehel Corporation.

8 THE COURT: All right. I'm going to excuse you
9 on the trial of this case. So you will be excused. In
10 fact, I think that will complete your service for this
11 week as well.

12 THE JUROR: Thank you.

13 THE COURT: All right. Thank you very much.

14 Anyone else? I guess I should ...

15 Yes, ma'am, let's start up ---

16 THE JUROR: I am not a close friend, but I do
17 know Trina Wilkerson.

18 THE COURT: All right. And your name, please,
19 ma'am?

20 THE JUROR: Judy Ledford.

21 THE COURT: Now, would that in any way
22 interfere with your ability to give both the plaintiff
23 and defendants a fair and impartial trial if she should
24 be a witness?

25 THE JUROR: No.

1 THE COURT: Very good. Thank you, ma'am.

2 Yes, sir?

3 THE JUROR: I'm a member of the Board of Zoning
4 Appeals in Oconee County. And I don't know if that would
5 interfere or not, but I ---

6 THE COURT: You're a member of the Board of
7 Appeals here in Oconee?

8 THE JUROR: Yes, sir.

9 THE COURT: Well, that would excuse you because
10 that is a commission here in Oconee County. And your
11 name, please, sir?

12 THE JUROR: Berry Nichols.

13 THE COURT: Mr. Nichols, you'll be excused, but
14 thank you for being here.

15 Also, I should ask you is any member of the jury
16 panel or their immediate family an officer, stockholder,
17 member or employee of any of the corporate or L.L.C.s who
18 are defendants in this matter or parties to the matter to
19 include the plaintiff homeowners association.

20 Any member of the jury panel or their immediate
21 family an officer, stockholder or member or employee of
22 the corporations in this action? That includes the
23 plaintiff as well as the defendant corporate parties. If
24 so, please stand.

25 (No response)

1 THE COURT: Is there any member of the jury
2 panel familiar with the residences or complex known as
3 Stoneledge at Keowee in West Union, South Carolina? Any
4 member of the jury panel who is familiar with the
5 residences or complex known as Stoneledge at Lake Keowee
6 in West Union, South Carolina, if you'd please stand at
7 this time.

8 (No response)

9 THE COURT: Has any member of the jury panel or
10 members of their immediate family ever been involved in a
11 lawsuit? If so, please stand. Any member of the jury
12 panel or members of their immediate family ever been
13 involved in a lawsuit, either plaintiff or defendant, if
14 you'd please stand at this time.

15 All right. Yes, ma'am. We'll start on that side.
16 Your name, please?

17 THE JUROR: My name is Pam Dame.

18 THE COURT: Yes, ma'am.

19 THE JUROR: My husband got hurt on the job and
20 hurt his back.

21 THE COURT: Has the matter been resolved?

22 THE JUROR: It has.

23 THE COURT: Very good. Thank you very much.

24 Now, would that in any way interfere with your ability to
25 give both the plaintiff and the defendants a fair and

1 impartial trial?

2 THE JUROR: No, sir.

3 THE COURT: All right. Thank you, ma'am.

4 Yes, ma'am, your name, please?

5 THE JUROR: April McGuffin.

6 THE COURT: Yes, ma'am.

7 THE JUROR: We were in a car accident, and

8 there was a lawsuit brought between us and ---

9 THE COURT: All right. Were you plaintiff or

10 defendant?

11 THE JUROR: Plaintiff.

12 THE COURT: All right. Has that matter been

13 resolved?

14 THE JUROR: Yes.

15 THE COURT: And would that in any way interfere

16 with your ability to give both the plaintiffs and the

17 defendants a fair and impartial trial?

18 THE JUROR: No.

19 THE COURT: Thank you, ma'am.

20 Yes, sir?

21 THE JUROR: James Bryson. My wife's involved

22 in a civil lawsuit at this time.

23 THE COURT: It's still pending?

24 THE JUROR: Yes, it is.

25 THE COURT: All right. As a plaintiff or

1 defendant?

2 THE JUROR: Defendant.

3 THE COURT: All right. You're not represented
4 by any of the parties to this action or any of the
5 attorneys?

6 THE JUROR: No.

7 THE COURT: All right. Would that interfere
8 with your ability to give both the plaintiff and the
9 defendant a fair and impartial trial?

10 THE JUROR: Probably not.

11 THE COURT: No. I need to know either if it --
12 let me explain that to you. I should have done this
13 earlier. There are two reasons that I ask the questions
14 about the fair and impartial -- ability to be fair and
15 impartial. Of course, the first is that the parties to
16 the action, all of the plaintiffs and all the defendants,
17 are entitled to a fair and impartial jury. Now, however,
18 you as jurors didn't ask to be here today. You were
19 drawn. You were summoned to come here today. And I do
20 not wish to interfere with your conscience or anything,
21 any sort of reservation you might have if you had to make
22 a decision.

23 So, therefore, I ask could you be fair and impartial
24 or would -- and somehow you feel it might compromise some
25 principle or something of that nature. So, therefore,

1 it's two sides. One for the parties but also for the
2 comfort, if you would, of the jurors. So would that in
3 any way interfere with your ability to give both the
4 parties, the plaintiffs and the defendants, a fair and
5 impartial trial?

6 THE JUROR: I would think not, but ---

7 THE COURT: Well, that's a very honest answer.
8 And that's the reason. But you do understand I'll need
9 to excuse you because I do have to have somebody that has
10 no reservation about doing what, you know, the law and
11 the evidence would provide. You understand?

12 THE JUROR: Yes, sir.

13 THE COURT: All right. I am going to excuse
14 you though. But I want to thank you for being here.

15 THE JUROR: Thank you.

16 THE COURT: Thank you, sir.

17 By the way, I might also note, since I'm trying to
18 catch up with myself, if you do respond to more than one
19 question, each time you respond, you need to stand and
20 give me your name. The reason for that is the court
21 reporter here is recording everything that is said and
22 done in the courtroom. So, therefore, the only way the
23 record would reflect who is speaking is if we identify
24 ourselves. So even though you answer more than one
25 question or you stand more than one time, each time you

1 do respond to a question, if you would, identify
2 yourselves by your names.

3 All right. Anyone else?

4 (No response)

5 THE COURT: Has any member of the jury panel or
6 any member of their immediate families ever been involved
7 in the construction business or industry? If so, please
8 stand. Any member of the jury panel or members of
9 immediate family ever been involved in the construction
10 business or industry, if you'd please stand.

11 All right. Here we go.

12 Your name, please, sir?

13 THE JUROR: Morris Cobb. I was with Duke Power
14 Construction for twenty years.

15 THE COURT: All right. Would that in any way
16 interfere with your ability to ---

17 THE JUROR: No, sir.

18 THE COURT: --- give both the plaintiff and the
19 defendant a fair and impartial trial?

20 THE JUROR: No problem.

21 THE COURT: Very good. Thank you, sir.

22 Yes, sir, on the end?

23 THE JUROR: Timothy Todd. I've been in masonry
24 construction for thirty years.

25 THE COURT: All right. Would that in any way

1 interfere with your ability to give both the plaintiff
2 and the defendant a fair and impartial trial?

3 THE JUROR: No, sir.

4 THE COURT: Thank you, sir.

5 Yes, sir?

6 THE JUROR: Ricky Rhodes. I worked
7 construction in Tennessee for fifteen years.

8 THE COURT: All right. Would that in any way
9 interfere with your ability to give both the plaintiffs
10 and defendants a fair and impartial trial?

11 THE JUROR: No.

12 THE COURT: Very good.

13 Yes, ma'am?

14 THE JUROR: Samantha Hoffman. My uncle is --
15 lays tile.

16 THE COURT: All right. Would that in any way
17 interfere with your ability to give both the plaintiff
18 and the defendant a -- plaintiffs and the defendants a
19 fair and impartial trial?

20 THE JUROR: No, sir.

21 THE COURT: Thank you, ma'am.

22 Yes, sir?

23 THE JUROR: Buffalo Rock, Buffalo Rock, Inc.
24 Construction. No, it would not. Joel Allen.

25 THE COURT: All right. Mr. Allen, it would not

1 interfere with your ability to give both plaintiff and
2 defendant ---

3 THE JUROR: No, it would not.

4 THE COURT: Thank you, sir.

5 Yes, ma'am?

6 THE JUROR: My make is Karen Shiverdecker. My
7 husband works as a heating and air technician.

8 THE COURT: All right. Would that in any way
9 interfere with your ability to give both the plaintiffs
10 and defendants a fair and impartial trial?

11 THE JUROR: No, sir.

12 THE COURT: Very good. Thank you, ma'am.

13 Yes, ma'am?

14 THE JUROR: Yes. My husband worked for
15 Spectrum Interiors for about sixteen years doing
16 construction. My name is Jennifer Guffie.

17 THE COURT: All right. Ms. Guffie, would that
18 in any way interfere with your ability to give both the
19 plaintiffs and the defendants a fair and impartial trial?

20 THE JUROR: No, sir.

21 THE COURT: Very good. Thank you, ma'am.

22 Yes, sir?

23 THE JUROR: Michael Krout. I did construction
24 work for twenty years.

25 THE COURT: All right. Would that in any way

1 interfere with your ability to give both the plaintiff
2 and defendants a fair and impartial trial?

3 THE JUROR: No, sir.

4 THE COURT: Very good. Thank you, sir.
5 Yes, sir?

6 THE JUROR: Brad Holder, Eldeko Electrical and
7 Keowee Stone.

8 THE COURT: All right. Would that in any way
9 interfere with your ability to give both the plaintiffs
10 and the defendants a fair and impartial trial?

11 THE JUROR: I don't believe so, but I don't
12 know all the particulars, so ...

13 THE COURT: No. That's what I said earlier,
14 that your decision could be made on the law and the
15 evidence. If you could be fair and impartial after
16 hearing all the law and the evidence applied to the case?

17 THE JUROR: Yes, sir.

18 THE COURT: Would your experience -- by being
19 in the construction industry, would that in any way
20 interfere with that ability?

21 THE JUROR: No.

22 THE COURT: Very good. Thank you, sir.

23 Yes, ma'am. And, again, we have to have your name.

24 THE JUROR: I'm sorry. Pam Dame.

25 THE COURT: Yes, ma'am?

1 THE JUROR: And my husband worked in
2 construction before he became disabled.

3 THE COURT: All right. Would that in any way
4 interfere with your ability to give both the plaintiffs
5 and the defendants a fair and impartial trial?

6 THE JUROR: No, sir.

7 THE COURT: Thank you.

8 Yes, sir?

9 THE JUROR: Thomas L. Bramlett.

10 THE COURT: Yes, sir.

11 THE JUROR: I worked with Trehel when I got out
12 of a high school a long time ago.

13 THE COURT: All right. Would that in any way
14 interfere with your ability to give both the plaintiffs
15 and the defendants a fair and impartial trial?

16 THE JUROR: No, sir.

17 THE COURT: Very good. Thank you, sir.

18 Yes, ma'am?

19 THE JUROR: Gale Metzel.

20 THE COURT: Yes, ma'am?

21 THE JUROR: Gale Metzel. My husband has his
22 own business as a builder.

23 THE COURT: All right. Would that in any way
24 interfere with your ability to give both the plaintiffs
25 and defendants a fair and impartial trial?

1 THE JUROR: To be honest with you, I'd be
2 partial to the builder.

3 THE COURT: All right. Well, that's what I
4 asked. So, again, you will be excused. I thank you very
5 much, though, for being here.

6 THE JUROR: Thank you.

7 THE COURT: Yes, sir?

8 THE JUROR: Richard Miller. My dad worked for
9 Davis McAllen.

10 THE COURT: All right. Would that in any way
11 interfere with your ability to give both the plaintiffs
12 and defendants a fair and impartial trial?

13 THE JUROR: No, sir.

14 THE COURT: Very good. Thank you, sir.
15 Yes, sir?

16 THE JUROR: Richard Coward. I have twenty-
17 eight years of masonry contracting.

18 THE COURT: All right. Would that in any way
19 interfere with your ability to give both the plaintiffs
20 and defendants a fair and impartial trial?

21 THE JUROR: No.

22 THE COURT: Very good. Thank you, sir.

23 Anyone else?

24 (No response)

25 THE COURT: Have you -- excuse me. Has any

1 member of the jury panel or a member of their immediate
2 families ever lived in or owned a condominium or
3 townhouse? Is there any member of the jury panel or
4 members of their immediate families ever lived in or
5 owned a condominium or townhouse? If so, please stand.

6 THE JUROR: Margaret Turissi-Toupet.

7 THE COURT: Yes, ma'am?

8 THE JUROR: I currently live in a townhome now.

9 THE COURT: All right. Would that in any way
10 interfere with your ability to give both the plaintiffs
11 and the defendants a fair and impartial trial?

12 THE JUROR: I'm really not sure.

13 THE COURT: I'm going to excuse you, but I
14 thank you for being here.

15 THE JUROR: Sorry.

16 THE COURT: Not at all. You did exactly right.
17 Thank you, ma'am. You may be excused.

18 THE JUROR: Thank you.

19 THE COURT: Yes, sir?

20 THE JUROR: Brad Holder. I lived in
21 condominium while I was employed.

22 THE COURT: All right. Would that in any way
23 interfere with your ability to give both the plaintiff
24 and the defendants a fair and impartial trial?

25 THE JUROR: No, sir.

1 THE COURT: Very good. Thank you, sir.

2 Yes, ma'am?

3 THE JUROR: My name is Mary Suski, and we own a
4 condo, and we live in our own home. We also own a condo.

5 THE COURT: All right. Would that in any way
6 interfere with your ability to give both the plaintiffs
7 and defendants a fair and impartial trial?

8 THE JUROR: No, sir.

9 THE COURT: Very good. Thank you, ma'am.

10 Yes, sir?

11 THE JUROR: Jonathan Moss. Me and my wife went
12 in with her parents and purchased a condo.

13 THE COURT: Would that in any way interfere
14 with your ability to give both the plaintiffs and
15 defendants a fair and impartial trial?

16 THE JUROR: No, sir.

17 THE COURT: Very good. Thank you, sir.

18 Yes, ma'am?

19 THE JUROR: My name is Jenny Eicher. My
20 parents own a condo, and it would not affect my decision
21 at all.

22 THE COURT: Very good. Do I understand that it
23 does not interfere with your ability to give both the
24 plaintiffs and defendant?

25 THE JUROR: It does not.

1 THE COURT: Very good. Thank you, ma'am.

2 All right. Is there any member of the jury panel or
3 members of their immediate family ever worked for or do
4 currently work for a building department or government
5 business license office? If so, please stand.

6 (No response)

7 THE COURT: Very good. Thank you.

8 All right. I instructed you not to discuss any fact
9 about this case with anyone or permit them to discuss it
10 with you. But has anyone discussed with you any fact
11 that may be involved in this matter or in the trial of
12 this case? If so, please stand. Any member of the jury
13 panel who has been approached or has discussed or had
14 people seek to discuss with you any fact that might be
15 involved in the trial of this case. If so, please stand.

16 Yes, sir, your name, please?

17 THE JUROR: Steve Loftis.

18 THE COURT: Yes, sir.

19 THE JUROR: I've been approached by some of the
20 property owners in the past about the possibility of
21 getting natural gas made available at Stoneledge.

22 THE COURT: Okay. Getting what?

23 THE JUROR: Natural gas being available.

24 THE COURT: Oh, I understand. All right. But
25 not anything about this particular case?

1 THE JUROR: No, sir.

2 THE COURT: All right. But that certainly --
3 or would that interfere with your ability to give both
4 the plaintiffs and the defendants a fair and impartial
5 trial?

6 THE JUROR: (Shook head side to side in the
7 negative). It would not interfere, no.

8 THE COURT: Very good. Thank you, sir.

9 All right. Has any member of the jury panel ever
10 previously served on a jury in a civil case? If so,
11 please stand.

12 Yes, ma'am. Your name, please?

13 THE JUROR: Karen Shiverdecker.

14 THE COURT: Yes, ma'am.

15 THE JUROR: I don't remember when. I think it
16 was in 1995 that I served.

17 THE COURT: All right. Was it a -- it was
18 civil case?

19 THE JUROR: (Nodded head up and down in the
20 affirmative)

21 THE COURT: All right. Would that in any way
22 interfere with your ability to give both the plaintiffs
23 and the defendant in this case a fair and impartial
24 trial?

25 THE JUROR: No.

1 THE COURT: Very good. Thank you, ma'am.

2 Anyone else?

3 THE JUROR: You said it was just in Oconee
4 County, or does it matter?

5 THE COURT: No, ma'am. Anywhere.

6 THE JUROR: Probably in the early '80s I served
7 on a car accident case.

8 THE COURT: All right. And would that ---

9 THE JUROR: But I was not part of the
10 deliberation. I was an alternate. But it won't, you
11 know, influence me for this.

12 THE COURT: Well, let me ask you, would that
13 experience in any way interfere with your ability to give
14 both the plaintiffs and the defendant a fair and
15 impartial trial in this case?

16 THE JUROR: No, sir.

17 THE COURT: Very good. Thank you, ma'am.

18 MADAM COURT REPORTER: Her name, please.

19 THE COURT: Oh, I'm sorry. I missed your name.

20 THE JUROR: Mary Suski.

21 THE COURT: Thank you, Ms. Suski.

22 Yes, sir?

23 THE JUROR: Thomas L. Bramlett. A few years
24 ago. It was a car accident.

25 THE COURT: All right. Would that experience

1 in any way interfere with your ability to give both the
2 plaintiffs and defendant a fair and impartial trial?

3 THE JUROR: No, sir.

4 THE COURT: Okay. Thank you.

5 MADAM COURT REPORTER: I missed his name.

6 THE COURT: I'm sorry, sir. Y'all have to
7 forgive me. My mind kind of rambles. Your name, please?

8 THE JUROR: Thomas L. Bramlett.

9 THE CLERK: He's number 20.

10 THE COURT: All right. Thank you very much,
11 sir.

12 All right. Has any member of the jury panel or
13 members of their immediate family ever been employed or
14 involved in the real estate or real estate developing
15 business? If so, please stand.

16 All right. Yes, sir, Mr. Lollis?

17 THE JUROR: My wife is a real estate broker
18 with her own office in the past.

19 THE COURT: All right. Would that in any way
20 interfere with your ability to give both the plaintiffs
21 and defendant a fair and impartial trial in this case?

22 THE JUROR: No, sir.

23 THE COURT: Very good. Thank you, sir.

24 Yes, sir.

25 THE JUROR: Joel Allan. We started a

1 subdivision in West Union, and ---

2 THE COURT: All right. Would that experience
3 in any way interfere with your ability to give both the
4 plaintiffs and defendant a fair and impartial trial?

5 THE JUROR: No, it will not.

6 THE COURT: Very good. Thank you, Mr. Allen.
7 Yes, ma'am?

8 THE JUROR: Veronica McClain. I work for
9 Bell's Property Management.

10 THE COURT: All right. Would that in any way
11 interfere with your ability to give both the plaintiffs
12 and the defendant a fair and impartial trial in this
13 case?

14 THE JUROR: No, sir.

15 THE COURT: Very good. Thank you, ma'am.

16 Has any member of the jury panel or members of their
17 immediate family ever been a member of any homeowners
18 association? If so, please stand.

19 All right. Yes, ma'am, your name, please?

20 THE JUROR: Susan McCalister. I'm a member of
21 the property owners association out at Lake Greenwood.

22 THE COURT: All right. Would that in any way
23 interfere with your ability to give both the plaintiffs
24 and the defendant a fair and impartial trial in this
25 case?

1 THE JUROR: No, sir.

2 THE COURT: Very good. Thank you, ma'am.

3 Yes, sir?

4 THE JUROR: I'm Scott Rogers, and I'm a
5 property owner and part of the association at Fiddler's
6 Cove.

7 THE COURT: All right. Would that in any way
8 interfere with your ability to give both the plaintiffs
9 and defendant a fair and impartial trial?

10 THE JUROR: It would not.

11 THE COURT: Very good. Thank you.

12 Yes, ma'am?

13 THE JUROR: I'm a member of the property
14 owners, homeowners for Still Water in Seneca and also for
15 the condos at the Woodlands in Central.

16 THE COURT: All right. And your name, please,
17 for the record?

18 THE JUROR: Mary Suski. I'm sorry.

19 THE COURT: Yes, ma'am. Thank you again.

20 Yes, sir?

21 THE JUROR: Steve Loftis. I'm a member of the
22 association at Still Water and Keowee II.

23 THE COURT: All right. Would that in any way
24 interfere with your ability to give both the plaintiffs
25 and the defendant a fair and impartial trial?

1 THE JUROR: No, sir.

2 THE COURT: Ms. Suski, did I ask you would that
3 interfere with your ability to give both the plaintiffs
4 and defendant a fair and impartial trial?

5 THE JUROR: You asked me. And it won't.

6 THE COURT: Very good. Thank you. You see how
7 this is going.

8 Yes, sir?

9 THE JUROR: My name is Robert Leitner. I'm a
10 member of Cross Creek Plantation and Four Points North
11 Property Owners Association.

12 THE COURT: All right. Would that in any way
13 interfere with your ability to give both the plaintiffs
14 and the defendant a fair and impartial trial?

15 THE JUROR: No, sir.

16 THE COURT: All right. Yes, ma'am?

17 THE JUROR: Christine Lewis. I'm a member of
18 the P.O.A. for Procipus (phonic).

19 THE COURT: Very good. Would that in any way
20 interfere with your ability to give both the plaintiffs
21 and the defendant a fair and impartial trial?

22 THE JUROR: No, sir.

23 THE COURT: Very good.

24 All right. Does any member of the jury panel have
25 any religious, philosophical or other beliefs that

1 prevent you from acting as an impartial juror in this
2 case? Any member of the jury panel who has a religious,
3 philosophical or other belief that would prevent that
4 person from acting as a fair and impartial juror in this
5 case? If so, please stand.

6 (No response)

7 THE COURT: Has any member of the jury panel or
8 members -- excuse me. Any member of the jury panel
9 formed or expressed an opinion about any issue or matter
10 that might be involved in this case? If so, please
11 stand.

12 (No response)

13 THE COURT: Is any member of the jury panel
14 aware of any bias or prejudice towards either the
15 plaintiffs or the defendants or any of them in this case?
16 If so, please stand.

17 (No response)

18 THE COURT: Lastly, does any member of the jury
19 panel know of any reason whatever why she or he should
20 not serve as a juror in this case? If so, please stand.

21 (No response)

22 THE COURT: Any further questions from any of
23 the plaintiffs?

24 MR. LYLES: No, sir.

25 THE COURT: Any further questions from any of

1 the Defendants?

2 MR. BELCHER: None from Bostic, Your Honor.

3 THE COURT: Are there any other defendants who
4 have any additional questions?

5 (No response)

6 THE COURT: Very well.

7 Now, Madam Clerk, if you would, please, give us a
8 jury.

9 The way a jury is selected in the Court of Common
10 Pleas and civil court is different from that in General
11 Sessions Court, which is criminal court. In civil court
12 the clerk prepares a list. It's called a strike list.
13 And from that list, each side will strike four jurors.
14 It's a list of twenty names.

15 THE CLERK: Alternates?

16 THE COURT: Four.

17 THE CLERK: Four?

18 THE COURT: And actually, we'll have four --
19 we'll have eight. Is that right? Pardon me. Excuse me.

20 Mr. Imhoff?

21 MR. IMHOFF: Your Honor, may I approach?

22 THE COURT: Certainly.

23 (WHEREUPON, a bench conference was held off the
24 record.)

25 THE COURT: All right. As I was saying, ladies

1 and gentlemen, the way that you draw a jury in the Court
2 of Common Pleas is that the Clerk of Court is preparing
3 what we call a strike sheet. There will be a list of
4 twenty names from which each side will strike four. In
5 other words, the plaintiffs will strike four, and the
6 defendants will strike four. They do this alternately.
7 But the idea is that that will leave the twelve from the
8 twenty that will constitute the jury. Also, we're going
9 to have two alternates. So you'll have six additional
10 names on the list. And each side will each strike one of
11 the first three and then the second three. So that will
12 leave two alternates. Now, of course -- what is it? --
13 the first twenty of the names are for the jury, and the
14 second three names will be -- twenty-one through twenty-
15 three, will be the first alternate. And then, of course,
16 the second alternate will be twenty-four through twenty-
17 six. Or -- well, no. That'll be right. Or until -- if
18 they don't use all the three strikes in the first
19 alternate, then you'll go to the next three strikes and
20 you get the next three names.

21 All right. With that, that does take some time.
22 Let's see. I'm going to suggest the defendants use the
23 grand jury room to go over the jury list and the
24 plaintiffs use the petit jury room to go over their list.

25 Now, they'll go over this list and then come back

1 and do the strike at that time.

2 How much time do you think you might need, Mr.

3 Lyles?

4 MR. LYLES: Ten minutes, fifteen minutes.

5 THE COURT: Well, all right. Let's say fifteen
6 minutes after five.

7 How about, Mr. Belcher, is that enough, you think,
8 for the defendants?

9 MR. BELCHER: Yes, Your Honor.

10 THE COURT: All right. Let's do that. So as
11 soon as you get the strike sheet, then retire to the jury
12 room for your groups.

13 All right. If you would, take the plaintiffs out
14 this door to the petit jury room. And then, of course,
15 the defendants can go out the back door to the grand jury
16 room.

17 All right. Now, let's be sure I've got this right.
18 The first twenty names, that's what you're going to
19 strike the jury?

20 THE CLERK: Yes, sir.

21 THE COURT: As far as the next alternates, do
22 the first -- each one gets a strike. Each side gets a
23 strike. So if we agree on the first one, then you'll go
24 to the next name. And then it'll be three names again,
25 rather than going three to twenty-six.

1 THE CLERK: Okay.

2 THE COURT: Okay. All right. Any question
3 about it, Mr. Lyles?

4 MR. LYLES: I think I got it.

5 THE COURT: All right.

6 MR. LYLES: I think I got it.

7 THE COURT: Mr. Belcher?

8 MR. BELCHER: I understand, Your Honor.

9 THE COURT: Thank you. All right. If we have
10 any questions, let's get it resolved.

11 MR. BELCHER: We understand, Your Honor.

12 THE COURT: The reason I say that is there's a
13 little confusion occasionally because when you draw an
14 alternate now, you have to go with the first alternate to
15 the second alternate. And you let the alternates -- what
16 is it? -- select which one. No, it is not. The first
17 alternate is the first one to fill in.

18 All right. We'll stand at ease until a quarter
19 after. So if you need to stretch your legs or anything,
20 go ahead and do that now. But do be back in the
21 courtroom before quarter after five.

22 (WHEREUPON, court stood at recess for a short
23 break.)

24 THE COURT: All right. Is it Mr. Telley? I
25 understand you mentioned something to the Clerk of Court

1 about ---

2 THE JUROR: Knowing the Bostics.

3 THE COURT: Yeah.

4 THE JUROR: I've been a Clemson fan. I would

5 be biased.

6 THE COURT: You would be biased?

7 THE JUROR: (Nodded head up and down in the

8 affirmative)

9 THE COURT: Then I'm going to excuse you.

10 Okay? Thank you for bringing that to our attention.

11 Thank you.

12 All right. Are we ready to proceed?

13 MR. LYLES: The plaintiff is, Your Honor.

14 MR. BELCHER: The defense is ready, Your Honor.

15 THE COURT: The defense ready?

16 MR. BELCHER: Yes, Your Honor.

17 THE COURT: Plaintiff ready?

18 MR. LYLES: Yes, sir.

19 THE COURT: All right.

20 Madam Clerk, if you would, give us a jury.

21 THE CLERK: Plaintiff strikes first the numbers

22 on the left.

23 MR. LYLES: Plaintiff strikes number 12.

24 THE CLERK: Plaintiff strikes number 12.

25 MR. BELCHER: Defense strikes number 6.

1 THE CLERK: Defendant strikes number 6.
2 MR. LYLES: Plaintiff strikes number 2.
3 THE CLERK: Plaintiff strikes number 2.
4 MR. BELCHER: Defendant strikes number 7.
5 THE CLERK: Defendant strikes number 7.
6 MR. LYLES: Plaintiff strikes number 15.
7 THE CLERK: Plaintiff strikes number 15.
8 MR. BELCHER: Defense strikes number 3.
9 THE CLERK: Defense strikes number 3.
10 MR. BELCHER: I'm sorry. I'm sorry. Number
11 10.
12 THE CLERK: Number 10, okay. Defense strikes
13 number 10.
14 MR. LYLES: Plaintiff strikes 17.
15 THE CLERK: Plaintiff strikes number 17.
16 MR. BELCHER: Defense strikes number 13.
17 THE CLERK: Defense strikes number 13.
18 For alternate number one?
19 MR. LYLES: Plaintiff strikes 22.
20 THE CLERK: Plaintiff strikes number 22.
21 MR. BELCHER: Defendant strikes 23.
22 THE CLERK: Defense strikes number 23.
23 And for alternate number two?
24 MR. LYLES: Plaintiff strikes number 26.
25 THE CLERK: Plaintiff strikes number 26.

1 MR. BELCHER: Defendant strikes number 24.

2 THE CLERK: Defendant strikes number 24.

3 Now we'll go over the strikes. Plaintiff strikes
4 number 2, number 12, number 15, number 17, alternate
5 number one number 22, and alternate number two number 26.

6 MR. LYLES: Yes, ma'am.

7 THE CLERK: Defendant strikes number 6, number
8 7, number 10, number 13, number 23 of alternate number
9 one, and number 24 of alternate number two.

10 MR. BELCHER: That's correct, ma'am.

11 THE CLERK: Ladies and gentlemen, as I call
12 your name, if you would, please come forward, bringing
13 your personal belongings and taking a seat in the jury
14 box.

15 Number 64, Jennifer Duncan.

16 Number 244, Johnny Wilbanks.

17 Number 208, Scott Simmons.

18 Number 121, Catherine Keahon.

19 Number 158, Marisol Moranchel.

20 Number 206, Karen Shiverdecker.

21 Number 63, Barry Duncan.

22 Number 106, Jarrod Holbrooks.

23 Number 84, Tony Freeman.

24 Number 42, Morris Cobb.

25 Number 234, Vanessa Tuck.

1 Number 1, Micah Adams.

2 For alternate number one, number 72, Margaret
3 Farmer.

4 And alternate number two, number 216, Peggy Smith.

5 THE COURT: All right. Is there any reason
6 this jury cannot be sworn for the trial of this case,
7 from the plaintiffs?

8 MR. LYLES: None from the plaintiff, Judge.

9 THE COURT: From the defendants?

10 MR. BELCHER: No, Your Honor.

11 THE COURT: All right. Ladies and gentlemen of
12 the jury, I'm going to excuse you for the balance of the
13 day. In fact, the day is over now because normally -- I
14 might as well tell you, my policy is that we usually try
15 to quit before five o'clock each day. So that means --
16 because it's been my experience that we all have two
17 days. One begins early in the morning; one goes to about
18 -- that goes to about five o'clock. And then we have one
19 that begins at five where we have to do other things that
20 goes on forever. So, therefore, I usually try to be sure
21 that jurors are out by five or soon thereafter, which
22 means that, of course, I don't start a witness close to
23 five o'clock that might carry us further. However, if
24 we're trying to finish up a witness -- in other words,
25 with examination, rather than split the testimony, I go

1 ahead and go a little bit beyond five. But this is a
2 good bit beyond five. So with that, I'm going to just
3 excuse you. I'm going to ask you to go back to the jury
4 room with the bailiff. And I'm going to ask you, out of
5 the first twelve of the jurors, if you would select a
6 foreperson for the jury. And then once you do that, come
7 back and I'll excuse you for the day. During that time
8 while you're selecting a foreperson, that's the twelve
9 that will be sitting.

10 Let's see, you're the two alternates, so everybody
11 in the first six seats on the front row and the first six
12 seats on the back row, if you would, please. And it can
13 be by secret ballot or however way you want it. But
14 just, if you would, select a foreperson for this jury.

15 All right. With that -- in fact, and I'll suggest
16 that -- well, no, we're not going to do it. We're going
17 to put everybody back in the jury room. But as soon as
18 you do have a foreperson for the jury, if you would knock
19 on the door and come back and we'll receive that. And
20 then we'll excuse you for the balance of the day.

21 All right. Everyone else remain seated while the
22 jury retires from the courtroom.

23 (WHEREUPON, the jury exited the open court at
24 approximately 5:57 p.m.)

25 THE COURT: All right. Ladies of gentlemen of

1 the jury panel who were not selected on the trial of this
2 case, as I told the entire panel earlier, this case is
3 going to probably last several days if not -- we've set
4 aside, in fact, two weeks for it. It probably will not
5 go that long. But the fact is, this will be the only
6 case we try at this term of court. So with that, I'm
7 going to excuse you. This will conclude your service as
8 jurors here in circuit court. And about the only thing I
9 -- I appreciate your patience with the Court today and I
10 thank you for your service. I hope it has not been
11 without some benefit to you. But the only thing I can do
12 for you, if you'll remember when I qualified the entire
13 panel this morning, I asked how many had served on a jury
14 the last three years. At least you won't have to be
15 summoned for another three years. So that will be some
16 benefit to you.

17 But I do thank you. And in all seriousness, our
18 system of justice would not function if we did not have
19 citizen participation. And I thank you for taking the
20 time and making the arrangements in order to be here
21 today for the selection of the jury. And I do want to
22 thank you on behalf of the County of Oconee as well as
23 our system of justice for your participation.

24 With that, I will excuse you. And y'all have a
25 wonderful week now without any further interference.

1 (WHEREUPON, the jury panel exited the open court at
2 approximately 5:57 p.m.)

3 THE COURT: I do understand that we do have a
4 foreperson. All right. I understand they have selected
5 a foreperson for the jury.

6 Anything from the plaintiffs before we bring the
7 jury back?

8 MR. LYLES: No, sir, Judge.

9 THE COURT: From the Defense?

10 MR. BELCHER: No, Your Honor.

11 THE COURT: All right. Very good. Ask the
12 jury to join us.

13 (WHEREUPON, the jury entered the open court at
14 approximately 6:01 a.m.)

15 THE COURT: Now, who was selected as the
16 foreperson?

17 THE JUROR: (Raised hand)

18 THE COURT: All right. Ms. Moranchel, you take
19 this first seat on the front row there. And we're not
20 going to swear you until tomorrow, but you'll be the
21 foreperson or foreman of the jury. You'll always sit in
22 that seat. The two alternates will always sit in the two
23 seats on the end of the back row. But all the other
24 seats are not in any way reserved, so you can sit
25 wherever you like.

1 Now, I'm going to excuse you today until ten o'clock
2 in the morning because we'll have some things we need to
3 do before the trial begins. But at that time, we will
4 begin the trial.

5 I tell the jurors in cases that this is the most
6 difficult part of the trial of the case for you because
7 you're going home, and somebody's going to ask "Well,
8 what are you doing?" And you're going to say, "Well,
9 I've been drawn on a trial." And they'll say, "Well,
10 what's the case about?" You're going to say, "Well, I
11 can't talk to you about it." And they'll say. "Well,
12 why not?" And you'll say, "Because the Judge said so."
13 And they'll probably say something to the effect, "Well,
14 that's ridiculous." Well, the fact is, I think you
15 understand, this is an important case to everybody
16 involved, and it needs to be resolved in a proper
17 fashion. And that means that no one who is not sitting
18 where you are now or in that jury room when you
19 deliberate for a verdict in this case can help you. In
20 other words, they haven't heard the first bit of
21 testimony or seen the first bit of evidence, nor will
22 they see the first bit of testimony or hear the first bit
23 of evidence. So they can only interfere with the proper
24 resolution of the matter.

25 So with that, I am going to instruct you that if

1 somebody should attempt to discuss it with you, I'll be
2 here about eight thirty in the morning, and I'll be glad
3 to explain it to them. But I think you understand this
4 is an important case that needs to be resolved in a
5 proper fashion.

6 With that, I'm going to excuse you until ten o'clock
7 in the morning. Just come back to the jury room. The
8 bailiff will show you how to get back to the jury room
9 that you'll be using. Well, let's see.

10 Yeah, we're going to be up here. So this jury room
11 will be the one we'll be using. With that, I wish you a
12 very -- well, first of all, I want to thank you for your
13 patience today. I wish you a very good evening, and I'll
14 see you in the morning.

15 Everyone else remain seated while the jury retires
16 from the courtroom.

17 (WHEREUPON, the jury exited the open court at
18 approximate 6:04 p.m.)

19 THE COURT: All right. Anything from the
20 plaintiffs before we take our evening recess?

21 MR. LYLES: No, sir.

22 THE COURT: Anything from the Defendants?

23 MR. BELCHER: No, Your Honor. Thank you.

24 THE COURT: All right.

25 Madam Clerk, if they do need to do something in the

1 courtroom, will the courthouse be open at 8:30 or so?

2 THE CLERK: 8:30.

3 THE COURT: All right. Very good. So do make
4 those arrangements.

5 And Madam Court Reporter, we'll start the trial at
6 ten.

7 All right. Very good. I'll see you in the morning.

8 MR. LYLES: Thank you, Judge.

9 THE COURT: Yes, sir.

10 (WHEREUPON, court stood at recess for the day at
11 approximately 6:04 p.m.)

12 **October 29, 2013**

13 (WHEREUPON, court convened with all parties present
14 and the following proceedings were had commencing at
15 10:23 a.m.)

16 THE COURT: All right. We're back on the case
17 of Stoneledge at Lake Keowee Homeowners Association,
18 Inc., et al, versus I.M.K. Development Company, L.L.C.,
19 et al, 2009-CP-37-652.

20 All right. Are the plaintiffs ready to proceed?

21 MR. LYLES: Yes, sir, Your Honor.

22 THE COURT: Are the defendants ready to
23 proceed? I'm going to sort of appoint Mr. Belcher as the
24 spokesman. And if anybody has any exceptions -- what is
25 it? -- if they would communicate that.

1 MR. BELCHER: The peanut gallery seems to
2 suggest we're ready to proceed, Your Honor.

3 THE COURT: All right. I'm trying not to be
4 Howdy Doody. But anyway ...

5 Gentlemen, ladies, apparently my questions yesterday
6 were not as forceful and intelligent as I had wanted
7 them. I have received a note from one of the jurors.

8 Yesterday my husband and I took a day off
9 and went to tend to my son. We really don't
10 have a baby sitter, and my parents work twelve-
11 hour shifts. And my husband's mother works
12 second shift and picks her children up before
13 going to work. And the time frame is iffy on
14 who's taking care of the children. If I stay,
15 my husband will have to ask for another day
16 off. It is his last one. And we have only one
17 car, and I would much rather him go to work
18 because we depend on his paychecks because I am
19 a stay-at-home mom only. I'd rather him keep
20 his job than lose it. I would be more than
21 happy to serve another time. Near a holiday
22 would be great.

23 As we've discussed before with other jurors, my
24 concern is not only that the parties have a fair and
25 impartial jury, but also the jurors are comfortable in

1 doing what they have to do, which is obviously pay
2 attention to what is happening in the courtroom during
3 the trial of the case. If there's anything that's going
4 to interfere with that, I feel that it would be better to
5 excuse her. I wish they had told me. I asked the
6 question particularly of any children, custody of
7 children whom care needs to be provided for or if they
8 couldn't provide care for while they served. And if not
9 -- what is it? -- they would be excused. Unfortunately,
10 as I say, maybe I was not as clear about it as I should
11 have been. Unless I have an objection, I'm going to
12 excuse the juror.

13 Now, that brings us down to two alternates. And I
14 forgot to look it up. But -- what is it? -- as I
15 understand, the way we do is the Clerk puts the two
16 alternates names in the -- I guess we'll have to use some
17 sort of container -- and draw the names out. In other
18 words, the rule now is that you do it the same way you do
19 original jurors. You do it at random. In other words,
20 the old days were good because you just moved the one up.

21 But so, Madam Clerk, if you would, please put the
22 two names of the alternates and fashion it and select
23 one.

24 THE CLERK: Okay.

25 THE COURT: Now, perhaps I should also remind

1 us that's going to bring us down, as I say, to twelve
2 jurors and one alternate. As I understood yesterday when
3 we drew the jury that there was an agreement to go to
4 eleven if we had to, of course, but no further. Now, is
5 that the same understanding you have today, Mr. Lyles?

6 MR. LYLES: Yes, sir.

7 THE COURT: Is that the same? Check with your
8 group. In other words, if we have two other problems ---

9 MR. BELCHER: I'm fine with proceeding with
10 eleven. I guess if anybody else has an objection to it,
11 they just need to speak up.

12 THE COURT: Very good. Thank you. So we will.
13 That's the process we'll follow.

14 All right. Would you ask Ms. Moranchel to join us,
15 please? I think -- if Buck's back there, he knows which
16 one it is, I believe.

17 THE BAILIFF: Yes, sir.

18 MS. BROWN: Your Honor?

19 THE COURT: Yes, ma'am.

20 MS. BROWN: This doesn't need to be on the
21 record.

22 (Off record discussion)

23 (WHEREUPON, the juror entered the courtroom.)

24 THE COURT: All right. I understand you have a
25 problem with providing for your children?

1 THE JUROR: Yes.

2 THE COURT: All right. So I'm going to excuse
3 you. All right?

4 THE JUROR: Thank you.

5 THE COURT: I want to thank you for serving.

6 THE JUROR: Thank you.

7 THE COURT: Thank you.

8 (WHEREUPON, Court's Exhibit Number 1 was marked for
9 identification only.)

10 THE COURT: Can you hear me now?

11 MS. BROWN: Yes, sir.

12 THE COURT: By the way, if anyone can't, if you
13 would, please, just raise your hand. I'll try to speak
14 up and speak more precisely or clearly or cogently. I'm
15 not sure I can do that. But anyway, I'll try.

16 All right. If there's nothing else, let's bring our
17 ...

18 Is there anything from the plaintiff?

19 MR. LYLES: The only thing I had, Judge ---

20 THE COURT: Yes, sir.

21 MR. LYLES: --- is I've talked to Lisa this
22 morning. I've got a few things that I want to put on an
23 easel this morning in my opening. And we've been trying
24 to figure out the best place to put the easel so that
25 defense counsel, the jury and you can see it.

1 THE COURT: How large is the ---

2 MR. LYLES: Just some posterboard.

3 THE COURT: I mean, really how far back can the
4 jury see it?

5 MR. LYLES: I think that that's too far. And
6 so I'm even happy to hold it and show it to defense
7 counsel and show it to you. I just don't want to put
8 anybody to the back of it. And as Lisa ---

9 THE COURT: Well, where are you planning to
10 put the easel?

11 MR. LYLES: Well, we moved it over here. I
12 originally had it over here this morning thinking that
13 that might be good.

14 THE COURT: Well, let me -- the thing is,
15 that's not bad because we don't use those two seats at
16 the end.

17 MR. LYLES: Okay.

18 THE COURT: And so that'll be -- can the
19 defense see it? You might have to move some of your
20 things there so they can -- no. That's going to be to
21 the back of the defense.

22 MR. LYLES: Yes, sir.

23 MR. BELCHER: If you'll just show it to me
24 before you put it up so I know what it is.

25 MR. LYLES: Is that okay?

1 THE COURT: Check with the other attorneys.
2 How many of these do you have?

3 MR. LYLES: There are about six or eight. Some
4 of them are just charts showing the parties.

5 THE COURT: All right. Well, let me ask you
6 this. Now, these are for demonstrative purposes; they're
7 not exhibits?

8 MR. LYLES: They're not exhibits. They will
9 be.

10 THE COURT: All right. Have they been marked?

11 MR. LYLES: No, sir.

12 THE COURT: Okay. All right.

13 MR. BELCHER: We had planned to put ours just
14 about right here so that anybody who wants to scoot over
15 and see it from this side of the courtroom can do that.

16 THE COURT: What do you think about that?

17 MR. LYLES: I'm happy to do that if that ---

18 THE COURT: That might be better really. And
19 ...

20 MR. LYLES: Yeah, I'm happy. I just want ---

21 THE COURT: Yeah. I think that would be
22 better. That also -- I do think that you should, when
23 you're presenting it, do show it to the defense first.

24 MR. LYLES: Okay. Yes, sir.

25 THE COURT: All right. We do need to draw that

1 name. Let's let Mr. Bowman use -- those wwho remember
2 how we used to do juries. You'll probably remember ...

3 Yes, sir?

4 MR. BELCHER: I apologize for interrupting,
5 Your Honor. My concern is, is that if the twelve, or
6 thirteen jurors back there see how easy it is to get off
7 the jury now because somebody's left, that we're going to
8 lose a couple more. Can we bring them out here and make
9 sure that we're not going to have any more people ---

10 THE COURT: Certainly. That'll be ---

11 MR. BELCHER: Because if we need to empanel
12 some more people, if we need to call some people back who
13 have been excused ---

14 THE COURT: That's a good point because we
15 haven't sworn the jury yet.

16 MR. BELCHER: Yeah.

17 THE COURT: Okay. Let's do that. But right
18 now we're going to draw an alternate.

19 THE CLERK: Mr. Bowman has drawn.

20 THE COURT: All right. Juror number 107 then
21 will be moved to the jury.

22 (Off record discussion)

23 MR. LYLES: There's not a he as an alternate.
24 There are two women alternates.

25 THE CLERK: You're right. You're right.

1 MR. LYLES: Okay.

2 THE CLERK: That's my fault. I'm sorry. I'll
3 do it again. I'm so sorry.

4 THE COURT: All right. Number 72 will be the
5 alternate now, Margaret M. Farmer. No. She'll be a
6 member of the jury panel, and the only alternate we'll
7 have then will be Peggy Smith.

8 All right. Anything from the plaintiff before we
9 bring the jury back?

10 MR. LYLES: No, sir.

11 THE COURT: From Defense?

12 MR. BELCHER: Nothing, Your Honor.

13 THE COURT: All right. Thank you.

14 Ask the jury to join us, please.

15 (WHEREUPON, the jury entered the open court at
16 approximately 10:36 a.m.)

17 THE COURT: All right. Let the record reflect
18 the jury, minus one plus the two alternates, are in the
19 jury box. And inasmuch as I had to excuse a juror, I'm
20 going to ask Ms. Farmer, if you would, move down to the
21 seat next to the foreman.

22 (WHEREUPON, the witness complied.)

23 THE COURT: Ms. Smith, you are now the only
24 alternate we have, so you can sit in either of those two
25 chairs. Thank you.

1 Mr. Foreman, ladies and gentlemen of the jury, we've
2 had to excuse two jurors after the panel was qualified.
3 Actually, no. I think there are two others and now one
4 of the alternates. This case requires a jury of twelve.
5 And as I mentioned, it's going to last -- it could last
6 as long as two weeks. We hope that -- what is it? --
7 it'll be completed before then, of course. But I need to
8 know if there is anything that you're aware of now that
9 might interfere with your sitting on this jury, because
10 otherwise, before we start the case, we would have to
11 draw a new jury. Now, rather than get your answer here,
12 I'm going to let you go back to the jury room. And if
13 any of you have any sort of concerns, I'm going to ask
14 you to bring it to the Court's attention.

15 Now, that goes for all twelve of you as well as you,
16 Ms. Smith. So, therefore, I'm going to ask you to retire
17 from the courtroom. If you need to discuss it, fine, but
18 I need to know that we can go forward because, as you
19 realize, this is an important case to everybody that's
20 involved and it needs to be resolved in the proper
21 fashion which requires twelve jurors.

22 So with that, I'm going to excuse you and ask you to
23 go back and see if there's anybody that has any further
24 problems. I mean, of course, if there's some emergency
25 or something like that, of course, we'd take care of

1 that. But I mean right now if you anticipate any
2 problems. And once you're ready to come back, Mr.
3 Foreman, if you'll knock on the door. Thank you.

4 (WHEREUPON, the jury exited the open court at
5 approximately 10:39 a.m.)

6 THE COURT: All right. Anything further from
7 the plaintiff?

8 MR. LYLES: No, sir, Judge.

9 THE COURT: From the Defense?

10 MR. BELCHER: No.

11 THE COURT: All right. Now, let's -- just for
12 the record, is there anything that we need to do before
13 we do -- if we swear the jury and go to the jury with
14 opening statements, is there anything we need to be
15 prepared for?

16 MR. LYLES: (Shook head side to side in the
17 negative)

18 THE COURT: Okay. If there is, let me know or
19 particularly let each other know so that we can get it
20 resolved before we try to get this underway again.

21 All right. We'll stand at ease.

22 (WHEREUPON, Court stood at ease after which the jury
23 entered the open court at approximately 10:45 a.m.)

24 THE COURT: All right. Mr. Foreman, have you
25 been able to discuss among the jury as to whether or not

1 there'll be any other problems that we know about or
2 reasonably anticipate?

3 MR. FOREMAN: Yes, sir, we did. And there is
4 no problem foreseen.

5 THE COURT: All right. Any objection from the
6 plaintiff to swear the jury?

7 MR. LYLES: None. None, from the plaintiff,
8 Judge.

9 THE COURT: From the defendants?

10 MR. BELCHER: No, Your Honor.

11 THE COURT: Very good.

12 Madam Clerk, if you would, please swear the jury.

13 (WHEREUPON, the jury was duly sworn.)

14 THE COURT: Mr. Foreman, ladies and gentlemen
15 of the jury, before the case begins, I'd like to tell you
16 a little bit about how we will proceed. The status of
17 foreman is the same as any other juror. The foreman does
18 act as a spokesperson for the trial jury. It is the
19 responsibility of the foreman to preside over the trial
20 deliberations and when you retire to reach a decision on
21 the issues of the case. As the jury deliberates its
22 verdict, the foreman has a duty to see that each juror
23 has a full and fair opportunity to express his or her
24 opinions and views on all aspects of the case.

25 Now, from time to time, it will be necessary to send

1 you out to take care of certain legal matters. When you
2 return to the courtroom, Mr. Foreman, please make sure
3 that all members of the jury are ready to come back at
4 the same time. The reason for that, of course, is from
5 this point on you must make your decision in this case
6 based solely on the testimony from this witness stand and
7 the evidence introduced in this courtroom. So it's
8 absolutely essential that every member of the jury has
9 the same opportunity to see and hear the same testimony
10 and evidence. So, therefore, if somebody's not quite
11 ready to come back, just wait and put everybody together.
12 And then when you are ready to return to the courtroom,
13 all come back together.

14 Now, as far as the trial is concerned, the first
15 thing that will happen is that the attorney for the
16 plaintiff -- the plaintiffs being the individuals who
17 have brought or the entities that have brought this
18 action or lawsuit. The plaintiffs' attorneys will make
19 an opening statement which will be followed by a similar
20 statement by the defendants' attorneys.

21 Now, these opening statements are not arguments.
22 The arguments will come at the conclusion of the case.
23 The purpose of these opening statements is for each party
24 to state the facts they intend to prove and the theory of
25 their case.

1 Now, following the opening statements, each side
2 will present its evidence with the plaintiff once again
3 going first. Now, evidence may take many forms. It may
4 be testimony, stipulations, documents, models,
5 photographs or the like. You should pay close attention
6 to all the evidence which is presented by each party
7 because, as I've said, you, the jury, are the sole and
8 only finders of the facts in this case. No one else will
9 be permitted to weigh the evidence and render a verdict
10 based upon it except you.

11 Now, after all the evidence has been presented, the
12 attorneys will make their closing arguments. Unlike the
13 opening statements, these final remarks will be true
14 arguments. That is each side will emphasize certain
15 portions of the evidence and try to persuade you to agree
16 with their versions of the facts.

17 After the arguments are finished, I will explain to
18 you the law which applies to this case. You will then
19 retire to the jury room and consider the facts and law.
20 And once you have done so, you'll return a verdict in
21 favor of one side or the other.

22 In this case, we have many parties, so there'll be
23 separate verdicts in each matter. And there are certain
24 additional comments I need to make before the case
25 begins. First, as I mentioned earlier, although I am the

1 only person who can tell you what the law is, you are the
2 only ones who can determine the facts. I do not have the
3 right to indicate how I may feel about the evidence
4 presented. And throughout this trial, my intention will
5 be to act impartially towards each party.

6 Second, from time to time, an attorney may object to
7 some bit of testimony or evidence which the other side is
8 seeking to present. As in sports, business or any other
9 structured activity, there are certain rules that both
10 sides must obey in presenting the evidence. These rules
11 have a definite purpose. They ensure that the
12 information you receive is the most trustworthy and
13 reliable evidence available.

14 An objection is the procedure we will use for an
15 attorney to call a possible violation of the rules to the
16 Court's attention. And for this reason, you should not
17 hold an objection against a plaintiff's client -- I mean,
18 a party's client, nor should you conclude from my ruling
19 on the objection that I favor one side or the other.

20 Finally, I would ask that you pay the closest
21 attention possible to the evidence presented to you. I
22 will ask that you do not take notes. For if the note
23 taker makes an error, those notes can be more detrimental
24 than helpful during the deliberations. The time-tested
25 system is for each of you to listen carefully, and I'm

1 confident that you will.

2 Now, the reason I suggest that jurors do not take
3 notes, it's been my experience if we take notes we have a
4 tendency to concentrate on the note that we are taking.
5 In other words, we're concentrating to be sure that we
6 write down what we think we hear. That in itself is a
7 problem because we might miss a word. In other words --
8 or even hear a word that wasn't spoken. And I use the
9 word "not." In other words in you write down the word
10 "not" in a note, it changes the meaning of the note
11 altogether if that was not actually said. And, also,
12 when we're concentrating on the note, you miss what is
13 happening on the witness stand and in the courtroom with
14 the evidence being presented. It's more important that
15 you keep your eyes on the courtroom and the witness
16 testifying at all times so that you'll be able to
17 evaluate the testimony and evidence because you, and you
18 alone, are the only ones who can determine the facts in
19 the case. And if you have a question in your own mind as
20 to what their testimony was, in your joint deliberations
21 you would -- same as you when you're going to reach a
22 verdict which must be unanimous, you depend on what the
23 others recall. And we have a tendency, also, if somebody
24 has it written down and says, "Well, I've got it written
25 down here," well, it's only good as what it reflects as

1 actually being said at the time. And sometimes we don't
2 hear everything or we miss some essential part, which is,
3 as I say, one might miss a word.

4 Now, having said all of that, I do take notes. And
5 that's not one of these things, do as I say not as I do.
6 Please understand you have entirely different purposes,
7 or we have entirely different purposes in this courtroom.
8 As I said, you are the only ones that can determine the
9 facts, to weigh the evidence, evaluate the evidence, to
10 determine the credibility of witnesses. I am not
11 concerned about the weight of the evidence or even the
12 evidence itself. The only thing I'm concerned about is
13 according to our procedures that certain things are done
14 as they are required to do. So what I'm doing is jotting
15 down what happens, not the significance of it. That is
16 for you.

17 So with that, I'll recognize Mr. Lyles for his
18 opening statement.

19 MR. LYLES: May it please the Court. Thank
20 you, Your Honor.

21 OPENING STATEMENT

22 BY MR. LYLES:

23 Good morning. I was introduced to you yesterday.
24 My name is Robert Lyles. It's a pleasure to appear
25 before you guys today. This is the first case I've ever

1 tried in Oconee County. I've been working on this case
2 for four years, and so it's been a pleasure to be up here
3 and be in this courthouse and be in your town and driving
4 through your county.

5 I told you I'm from Charleston. I have a law firm
6 down there. And I've been practicing law -- it's hard
7 for me to believe. But I've been practicing twenty-six
8 years which, as I said, is a little tough to imagine. I
9 was actually born in Clemson. And I'm from a family of
10 architects. And my father and mother were in school when
11 I was born. I was born over in Anderson. Clemson was my
12 first home.

13 We've added somebody to our table today. You might
14 have noticed. And that's Burgess Metcalf. Burgess is
15 also an architect. And Burgess works with a company
16 called Construction Science and Engineering. And you'll
17 hear a lot about this company. C.S.E. is what we call
18 it. It turns out Burgess is from a suburb of Fair Play,
19 and -- or he tells me. And he's a local Oconee County
20 boy himself.

21 In any event, I appreciate your service and your
22 attention. And I think I speak for all of the lawyers,
23 my colleagues and friends on the defense side too. Y'all
24 were here yesterday afternoon for what was, I'm sure, a
25 long afternoon for y'all. And you see how the process

1 works. And I can tell you that as you're sitting here
2 this morning that we, meaning me and my clients and the
3 defense lawyer and their clients, selected you to be
4 here. And we all appreciate the sacrifice that's
5 involved in jury service. And we appreciate it. And I
6 personally look forward to trying this case in front of
7 you this week.

8 As I mentioned, the case is four years old. So I
9 don't want you to believe that this is something that got
10 started a week ago or a month ago or even a year ago.
11 Four long years I've been working on this case. My
12 clients have been living with this case. The defendants,
13 most of them, have been involved in this case for four
14 long years too. So as I stand before you today, this is
15 something that I have been looking forward to doing for
16 four years. A little more than four actually. And it's
17 been a hard long process.

18 And I will tell you again on behalf of my
19 colleagues, as well as me, the trial that you see is the
20 result of thousands of hours of work and effort and I
21 think close to a hundred depositions that have been taken
22 in this case. Everybody's worked real hard. And me no
23 more than the defendants. Everybody's worked hard to
24 bring this case to you.

25 I will say that there is a little bit of a

1 distinction, though, between my clients and the
2 defendants. And nobody wants to be on the defendant's
3 side of a lawsuit, and I admit that. But the reason
4 we're here today is because my clients have a problem.
5 They have a big problem. And they are here today at what
6 I view as the beginning of the end of this process to ask
7 you to help them fix the problem that they have. And
8 that's the purpose of this proceeding.

9 Now, when I was in law school twenty-six years ago,
10 they told us in our trial advocacy class that an opening
11 statement is an opportunity for the lawyers to sort of
12 give the jurors a roadmap of the case. A little advanced
13 view of what the case is about and the type of evidence
14 that the jury is going to hear over the next week or two
15 weeks. To give you an opportunity to maybe understand a
16 little bit of context when you start hearing the evidence
17 that's coming from the witness stand in the form of
18 witnesses, the documents that you read, and the
19 photographs that you read and the other types of evidence
20 you may see. So I'm here to try to give you my roadmap
21 of this case so you understand how I see this case and
22 how I think this case will unfold over the course of the
23 next two weeks.

24 Let me begin that by reintroducing the parties to
25 you because we have a lot of parties. And it's going to

1 get confusing. By the end of this two weeks, you guys
2 are going to absolutely know who's who. But right now
3 you've probably got some questions about that.

4 So what I did -- excuse me -- I did some charts.
5 And the courtroom is tight because we've got so many
6 people in here. So we're all a little crunched up for
7 space. I've got a board here, and it just tells you who
8 my clients are. As Judge Macaulay said earlier, I
9 represent the plaintiffs. That is the people who are
10 bringing this claim. My client is The Stoneledge at Lake
11 Keowee Owners Association. We refer to that as the
12 H.O.A. or the association. You'll hear that a lot. It's
13 actually an incorporated entity in South Carolina. And
14 over the course of the next couple of weeks you'll hear a
15 lot about an H.O.A., and you'll hear what an H.O.A. does
16 and who are the members of an H.O.A. and what the
17 responsibilities are of an H.O.A. And you'll hear about
18 how an H.O.A. gets money to fund its operation and to
19 fund its obligations. So you'll hear lots about the
20 H.O.A.

21 I also represent a bunch or a few individual owners
22 of units in phase one at Stoneledge. The Furnaris, the
23 Taylors, Bob White, the Grassos and Carol Pope. And many
24 of my clients are out here today and other owners of
25 Stoneledge. Those are my clients.

1 As you know, my clients have brought these claims
2 against a number of defendants because they have this
3 problem. And so I want to show you the defendants again
4 in this format so that you are able to see a little more
5 clearly who the defendants are. And I'm sorry we're so
6 far away. I'm trying to make sure that the Judge and the
7 defense lawyers have an opportunity to see this too. And
8 I'll talk to you just very briefly about them.

9 The first listed up there is Bostic Brothers
10 Construction. This case is about Stoneledge, which is a
11 townhome community on Lake Keowee, and it's about phase
12 one of Stoneledge. We'll call it phase one. There's
13 another phase, but it's not at issue in this case.
14 Bostic Brothers Construction was the general contractor
15 for phase one of Stoneledge. They started construction
16 in, I believe, 2002. And you'll hear that Bostic left
17 the site in 2004 partially completed.

18 Also, we have Jeff Bostic, Joe Bostic and Mel
19 Morris, three individually named defendants, who are
20 seated over here. They were the members of Bostic
21 Brothers Construction. We also have in this courtroom
22 some Bostic subcontractors. That is, contractors who
23 Bostic hired to build certain components of phase one.
24 We have Jose Nino who was a framing subcontractor. We
25 have in the courtroom a subcontractor by the name of

1 Everado Jaramillo, who was also a Bostic framing
2 subcontractor. And you'll hear testimony about what
3 those subcontractors did and what their responsibilities
4 were in connection with this project.

5 The next line of defendants is a company called
6 I.M.K. It's I.M.K. Development Company, L.L.C., I
7 believe. I.M.K. was the company -- if you remember, a
8 moment ago, I told you that Bostic left the project not
9 completed. You'll hear that in 2005 I.M.K. came in and
10 took over the project, what remained to be done in phase
11 one. And they sold nineteen of the units in phase one as
12 a developer.

13 Now, I.M.K. is an L.L.C.. It's not a person. And
14 you'll hear that I.M.K. is made up of two other L.L.C.s.
15 Made up of Marick Home Builders, who has a successor
16 corporation called the M Group. And both of them are
17 here. They were a member of I.M.K. and contractor for
18 phase one. They completed the work that Bostic didn't
19 complete. And you'll hear that they made some repairs to
20 problems in the Bostic units after they took over.

21 We also have here in the courtroom a member of
22 Marick and M Group. His name is Rick Thoennes, Jr. Mr.
23 Thoennes, he's here. There he is, Mr. Thoennes. Mr.
24 Thoennes was the license holder of that general
25 contracting firm. He held the license. And importantly,

1 Mr. Thoennes was also a board member of the Stoneledge
2 H.O.A., my client.

3 The next defendant we have down here is Integrys
4 Keowee. Integrys was also a member of I.M.K. I.M.K. is
5 an acronym for Integrys, Marick, Keowee. Integrys Keowee
6 was comprised of three members, two of which are here,
7 Mr. Cox, Bill Cox, and Larry Lollis, both members of
8 I.M.K. And Mr. Cox also served on the board of the
9 Stoneledge H.O.A.

10 So that's a reintroduction to the parties. Pretty
11 dry, boring stuff. But it's important for you to
12 understand who's here and why they're here.

13 Now, let me tell you next a little bit about the
14 case because I've tried and tried to think about the best
15 way to portray this case as simply as I can in opening
16 statements. And the case, as you will hear as the
17 evidence unfolds, is about three things. The case is
18 about the failure of the contractors to do their jobs and
19 do their work in a manner that they should have done.
20 The case is about the contractors doing a bad job which
21 has caused the problem that my clients have.

22 The second thing this case is about -- the case is
23 about the developers' decision to not deal with those
24 contractor problems and defects, but rather to make those
25 problems the problems of my client which is why we're

1 here today.

2 And the third thing this case is about, it's about
3 my clients getting their homes repaired and the defects
4 and the problems that the contractors and developers
5 created corrected. That's what this case is about, and
6 that's why you're here.

7 Some evidence that you will hear -- and I will try
8 to be as brief as I can about that over the next couple
9 of weeks. The evidence that you will hear will be
10 essentially this. As I mentioned earlier, the developer
11 controlled the Stoneledge H.O.A. from the period of 2005
12 to 2008. That is, they sat on the board. They made
13 decisions for the H.O.A. They decided what got repaired
14 and what didn't from 2005 to 2008.

15 In September of 2008 the developer, Mr. Cox and Mr.
16 Thoennes among others, turned over the H.O.A. to my
17 clients. Imagine, if you will, handing the keys to the
18 car to somebody else. And in September of 2008 they said
19 to my clients who are the owners, who are the people that
20 had bought these units, "This H.O.A. is yours to take
21 care of and to control from here on out." That's
22 significant. My clients got the keys in September of
23 2008 and were told to manage the H.O.A.

24 What you'll hear is that in the early part of 2009,
25 my clients began to realize that the problem existed.

1 You'll hear that my clients began to understand that
2 units at Stoneledge in phase one leaked, that the units
3 in Stoneledge in phase one weren't performing as
4 intended. You will hear that by May of 2009, an owner at
5 Stoneledge had hired me to file this lawsuit just eight
6 months after the developers turned over the H.O.A. to my
7 clients. You'll hear that the association, who's my
8 client now -- wasn't my client then. You'll hear that
9 they worked through the summer of 2009 to try to remedy
10 these problems in a different way. You'll hear that by
11 late summer 2009, the association, not through me, had
12 hired another engineering firm, Grant Engineering Firm,
13 to come in and investigate problems that they had seen in
14 phase one. And that by the late summer of 2009, these
15 owners, now in control of the H.O.A., had actually had to
16 go out and structurally support porches and decks on the
17 lake side of their homes with six-by-six treated lumber
18 timbers because those decks and porches were already a
19 life safety issue less than a year after control of the
20 H.O.A. had been given to them by the developers.

21 You'll hear that ultimately the association decided
22 that they couldn't get satisfaction. And so they
23 ultimately joined the lawsuit that I had filed in May.
24 And their claim was brought in October of 2009.

25 At that time, the association retained C.S.E., the

1 engineering firm I told you you're going to hear a lot
2 about. And the principle of C.S.E., who will testify
3 probably Wednesday, maybe Thursday, is someone by the
4 name of Derek Hodgkin. I don't think any of you know him,
5 but Derek is local. He lives in Clemson. He's the
6 former mayor of Westminster. Derek's got an engineering
7 firm up here. He's somebody that I and other lawyers in
8 this case have known for many years. The association
9 hired Derek to come out and do a thorough top-of-the-
10 roof, bottom-of-the-foundation inspection and
11 investigation of their project to tell them what all is
12 wrong with their homes. And Mr. Hodgkin did that. And
13 Mr. Hodgkin is going to get on the witness stand, and he's
14 going to tell you what he found. And he's going to show
15 you what he found in phase one at Stoneledge.

16 And I want to show you just a few photographs of
17 conditions that you'll see in Mr. Hodgkin's presentation.
18 Mr. Hodgkin will describe all the photographs to you. And
19 he'll tell you what you're looking at, so I won't do
20 that. But I want you to see what he found.

21 These are some of the thousands of photographs that
22 have been taken of phase one at Stoneledge. These
23 photographs will be put up on the screen, so I won't be
24 jostling them around. I don't have that technological
25 capability myself. Exterior wall beneath a bedroom

1 window, I think. And the last photograph is the framing
2 beneath a porch where people go sit and have cocktail
3 parties and read.

4 After Mr. Hodgin did his investigation and he
5 reported his findings to my client, they then asked Mr.
6 Hodges [sic] to please tell them what they needed to do
7 to fix their house to solve the problem that we're all
8 here about today. And you'll hear from Mr. Hodges. And
9 he did a very thorough repair document because my clients
10 didn't want something fly-by-night or just general
11 instructions. You'll hear that they wanted a licensed
12 engineer in South Carolina, which Mr. Hodges is, to
13 describe for them and provide for them a specific scope
14 of repair that was sufficient to tell a general
15 contractor what he needed to do to fix it and provided
16 specifications and code provisions and manufacturers'
17 instructions so that when the problem is fixed, it's
18 fixed correctly. Mr. Hodgin will testify about that.

19 And then importantly, after they got Mr. Hodgin to
20 do the scope of repair, my clients hired an estimator, a
21 contractor, to tell them how much it would cost to do the
22 repair that Mr. Hodgin says has to be done. His name is
23 John Folk. You'll hear from Mr. Folk. He's now with
24 Trehel Construction. Mr. Folk looked at Mr. Hodgin's
25 estimate, used his years of experience estimating and

1 constructing jobs, and Mr. Folk estimated the price to do
2 what Mr. Hodgkin said needed to be done at four point five
3 million dollars.

4 Now, as I'm giving you the roadmap, another
5 estimator was also hired, a company called Watkins
6 Services. And you'll hear from them. You'll hear from
7 them in my case. Watkins Services is a company I'm
8 familiar with for twenty years. And they were hired by
9 the defendants in this case. You'll hear that Watkins
10 Services was also asked to give a price to do what Mr.
11 Hodgkin said needed to be done. Watkins Services came
12 back and said it's going to cost at least three point
13 eight million dollars to do what needs to be done.

14 It's fascinating as I'm standing before you, before
15 this trial even begins, you have an estimate from the
16 plaintiff at four point five, an estimate from the
17 defense at three eight plus. And that's seven hundred
18 thousand dollars, which is a lot of money, except it's
19 less than twenty percent of the estimate totals. We're
20 not that far off.

21 Finally, you'll hear that Mr. Hodgkin has also said
22 that the foundation walls in phase one also need to be
23 repaired because they just simply leak like a sieve. And
24 he's estimated -- or excuse me. He's done a scope of
25 repair for the foundation walls. Mr. Folk is the only

1 person who's done an estimate for that. And he says
2 that's going to cost also about a million dollars.

3 There's some other miscellaneous damages. And I
4 don't use the term miscellaneous to imply that they're
5 small. They're just generalized damages that you'll also
6 hear about, including the cost for an architect or an
7 engineer during the reconstruction to fix the problem.

8 And then finally, you'll hear a fair amount of
9 testimony over the next two weeks about what my clients
10 have been doing for the last four years as they have been
11 waiting on you because they've had to go out there and
12 they've had to do what we call emergency repairs to try
13 to prevent peoples' ceilings from falling in and things
14 like that. And so you'll see that number too.

15 And that's the roadmap of the case from our
16 perspective. And I hope and I'm confident that by the
17 time I get to get back up in front of you and speak to
18 you again in the closing part of this case we have
19 convinced you what it's going to cost to fix the problem
20 that my clients have.

21 Again, I appreciate your time and your
22 thoughtfulness. I look forward to trying this case with
23 you.

24 THE COURT: Mr. Belcher?

25 MR. BELCHER: Thank you, Your Honor. May it

1 please the Court.

2 OPENING STATEMENT

3 BY MR. BELCHER:

4 Good morning, ladies and gentlemen. I introduced
5 myself to you yesterday. My name is Alan Belcher. I'm
6 an attorney here in South Carolina. I practice
7 predominately down at the coast or up and down the coast,
8 but also over here as much as I can. I have family here
9 in the Greenville area. I really have enjoyed being up
10 here.

11 I do construction law too just like all of the
12 attorneys who introduced themselves to you. I didn't
13 grow up in a family of architects, but I grew up in the
14 dirt. So I figured when I got out of law school that was
15 what I knew how to do, so that's what I kept on doing. I
16 was probably, you know, four or five years old carrying
17 buckets of water up and down the hill for concrete for my
18 dad and my uncle. So I know a little bit about
19 construction, and I know what's wrong here.

20 We're here today about the Stoneledge project. And
21 I don't know how many of you all have been to Stoneledge
22 or how many of y'all know where it is. It's a townhome
23 development out on Lake Keowee. And if I can get it up
24 on the screen here, maybe I ...

25 Do you have a screen?

1 THE CLERK: Yes, sir.

2 MR. BELCHER: It's a development around Lake
3 Keowee in West Union off of Ebenezer Road. It's about
4 eighty townhomes. It's a very nice place, plenty of boat
5 docks. A nice place for people to have their second
6 homes.

7 As Mr. Lyles said, I.M.K. and Marick were the
8 general contractors who finished this project up for
9 these homeowners. They built an entire second phase in
10 the development. They built the pool. They built the
11 tennis courts. They built all of the amenities. I think
12 they added some boat docks. They took this project over
13 from Bostic Construction at some time. And I'm going to
14 talk to you about that a little bit.

15 But what we're here today to do is we're going to
16 have a trial in the case. And the trial is a result of a
17 lot of work. It's a lot of work from everyone at this
18 side of the table. It's a lot of work from Joe Bostic
19 and Jeff Bostic and Mr. Morris who have taken time out of
20 their schedules to be here.

21 Mind you, this project is about ten years old.
22 That's when Bostic left this project because the
23 developer said, "It's time to stop building. We're not
24 selling." Ten years ago, the Bostic Brothers left this
25 project. Now, I'm going to tell you here in a few

1 minutes that Joe wasn't even involved in the company
2 anymore, and that's an issue that we probably need to
3 address in this trial. Joe had already left Bostic
4 Brothers Construction before this project started to get
5 out of the ground. But they're here ten years later not
6 because -- just because they got sued; they're here ten
7 years later because they are upset about this. They are
8 not here to fuss about whether or not these buildings
9 need to be fixed. They want to make sure that the right
10 thing gets done here. They want to make sure that these
11 buildings get fixed. Because even though they didn't
12 complete this project, this is a Bostic project from its
13 beginning. And they want to make sure that it gets
14 fixed. So I want you to understand that from the very
15 outset, nobody is going to tell you that these buildings
16 don't need to be fixed. And nobody is going to tell you
17 that those pictures that you saw from Mr. Lyles are okay.
18 That's not what we're here about, and that's not the
19 fight.

20 Now, some of y'all, I don't know if any of y'all
21 have had the privilege or pain of serving on a jury
22 before, but you're probably all asking yourself, you
23 know, why are we here? What are we going to do? Well,
24 as you get comfortable in there in your seats and y'all
25 are sitting there thinking about it, what are we going to

1 do, we're asking you to do exactly what the Judge told
2 you yesterday to do. And what he told us yesterday, I
3 think makes a lot of sense. His quote was, "We have to
4 be fair." And the purpose of you all being here today is
5 to resolve the dispute in a fair and orderly manner. All
6 right? That's what we're asking you to do. We're asking
7 you to be fair to both sides. That's very important.

8 You have to weigh evidence in this case. We're
9 going to hear lot throughout this trial about scales of
10 justice and what is more likely than not and who's going
11 to be responsible for the damages that are out there.
12 The damage to the decks. The damages to the porch.

13 But what are you supposed to do? Well, the thing
14 you're supposed to do is just use your common sense. God
15 gave y'all common sense, gave us common sense. We're
16 going to hear a lot of testimony from the stand. Y'all
17 are going to learn a two or thing [sic] maybe. Maybe
18 some of y'all are already pretty well aware of what goes
19 in building a house. But you're going to learn stuff
20 about flashing at heads of windows and where a piece of
21 metal goes and where some caulk goes and how you put the
22 windows in and how do you put a porch together and how
23 you're going to integrate stone. So it's going to be a
24 learning experience for all of you probably to some
25 degree. But we're asking you to just weigh all that

1 evidence and render a fair, just and reasonable award at
2 the end of this, one that is fair to both sides for all
3 the people in the courtroom.

4 Now, I want to talk a little bit more about the
5 history of this project, who built it and why. This is
6 not some project that Joe and Jeff Bostic and Mel Morris
7 were looking at as get it done, get it sold and get out
8 of there. This is a project that is very close to their
9 hearts. It's a project that when they were approached
10 originally, they immediately jumped at the opportunity to
11 do it.

12 You'll hear probably some testimony that the
13 original architect for this development had shopped this
14 whole concept around to several contractors, many of whom
15 had just passed on it. Joe and Jeff Bostic found this
16 through the architect and a couple of equity investors
17 that found what was called Cobb's Cove, which is now
18 Stoneledge, and said, yes, we want to do that. We don't
19 want to build just an apartment building. We want to
20 build nice, well-appointed, custom-looking townhomes for
21 people to enjoy as second homes, for the Clemson Alumni,
22 for Joe and Jeff themselves who had it worked out and if
23 they were able to complete the job, probably would have
24 purchased one themselves for them and their kids to get
25 together on holidays and on football game weekends.

1 Now, Jeff Bostic in this company never swung a
2 hammer. When Jeff's first career was over, he went into
3 business with Joe. Joe finished his career, his first
4 career, earlier, went into the construction business
5 building some nice apartments in Greensboro. Jeff joined
6 Joe after Jeff retired. And they got together. They
7 started building apartments, student housing and some
8 condos and townhomes.

9 This one was a different job. This was not an
10 apartment complex with one thousand square foot
11 apartments like we've all probably lived in at some point
12 in our lives. This was supposed to be a high-end
13 construction, custom-looking construction, around the
14 lake.

15 Now, Jeff never swung a hammer. He didn't. That
16 wasn't his job. His job was to serve as an equity
17 investor. He was an equity recruiter. He knew people
18 throughout the country that had money and were willing to
19 invest in projects like this. He knew people who would
20 be the developers for these projects, that would hire the
21 expertise of the construction company to come in and
22 build the units after they were funded or at least
23 partially funded with cash equity. That's what he did.

24 He's not a general contractor. He's never had a
25 license to be a general contractor. That was not his job

1 in the business. Not his job. He's still a defendant in
2 this lawsuit. He's a defendant in this lawsuit under
3 Bostic Construction. I don't know why. I don't know
4 why. That's something that you all are going to have to
5 determine, if that makes any sense to sue Mr. Bostic as
6 -- not in his corporation, but as an individual for what
7 he did to help develop the money necessary to start
8 building this. That's something you all are going to
9 have to decide, whether that makes any sense at all.

10 Next is Joe Bostic. Now, Joe is a licensed
11 contractor. He started out on a very small scale in
12 Greensboro building duplexes and multi-family. By the
13 time -- and that would been in the '90s. I think the
14 early to mid '90s is when he started doing that. By the
15 time 2002 rolls around, 2002 and 2003 rolls around, Joe
16 Bostic has nothing to do with the day-to-day of the
17 construction. He's busy managing the business that had
18 grown rather large at the time.

19 Again, he wasn't out there swinging hammers, didn't
20 build anything at Stoneledge, didn't do anything right or
21 wrong at Stoneledge to cause the pictures that you're
22 seeing there. Yet, just like his brother Jeff, he's been
23 sued. Not as Bostic Construction; he's been sued as an
24 individual in this case. And he's had to come here and
25 defend his reputation and defend his family's name for

1 the next week in a lawsuit where he didn't swing a hammer
2 and he didn't do anything wrong. You, again, are going
3 to have to decide if that makes any sense whatsoever in
4 this lawsuit, for him to be an individual defendant that
5 these people are seeking recovery from.

6 Now, the other gentleman who is here with us is Mel
7 Morris. Mel Morris was -- at the time of construction of
8 Lake Keowee, he had assumed the president's role in
9 Bostic Construction. He had an expertise in construction
10 and did materials procurement. And he was the one who
11 knew how to organize the labor, get the people on the
12 site, get the site built and build an efficient, cost-
13 effective unit that cost -- which would be passed on to
14 the seller.

15 You're going to hear that under the Bostic model, we
16 weren't doing anything on the cheap, but we were using
17 the resources that Bostic had to deliver these units to
18 people at a price point that was almost affordable. Now,
19 affordable to the people who can afford a second home at
20 Stoneledge is different to a lot of us, but a price that
21 made it possible to have a second home. That price went
22 up after the Bostics left.

23 Now, they built Cobbs Cove. It was Cobbs Cove.
24 That was the original concept. They changed it to the
25 Townhomes on Keowee. So now it's Stoneledge as it is

1 today. What they had called it was the Townhomes on
2 Keowee. And they did it because of their allegiance to
3 Clemson, their ability to have a place this close to
4 Clemson so that they could go watch games on Saturdays
5 and only be thirty minutes away, to have a place for
6 their children to go and live when their children went to
7 Clemson. That's why they did this. So, again, they're
8 not building this with an eye towards maximizing profits
9 and getting rich off of a single job. They're building
10 this because they're going to live in this community.
11 And people who live in this community alongside of them,
12 they want them to be satisfied purchasers with these
13 units. They're not a fly-by-night operation, as you may
14 hear suggested. They built these with an eye to live in
15 them.

16 This is the original plat. Now, they began
17 construction around 2002 and 2003. That's what the
18 permits say. The permits -- we start pulling them in
19 2002, and we do the site work and the excavation. We get
20 the building pads down.

21 Before a single building is built, Joe has already
22 decided to retire from construction. So Joe is out as of
23 January 1st, 2003. He sells the company. He sells his
24 interest. I think Mr. Morris probably takes on a bigger
25 role in the company.

1 But this is something that Joe has even talked to me
2 about this morning. He's perplexed that he's still here.
3 He's willing to be here to defend his name, to do what he
4 needs to do and even defend his old company. But he is
5 still perplexed why he's here as an individual defendant
6 when he was long-gone from the company when these people
7 started to have problems with these buildings. And,
8 again, that's something you all are going to have to
9 decide.

10 Now, Bostic sold -- Bostic completed and obtained
11 what's called a certificate of occupancy from the
12 building department in the 2003 time frame. I've got a
13 -- behind here. But I've got something that may help you
14 back here. This is the -- you'll see a lot of this one.
15 This is the plat. I don't know if y'all can see that
16 from here, but this is the plat for phase one. And we're
17 going to be talking a lot about this.

18 When Bostic started, this is what it planned to do.
19 It was going to build these thirty-seven units and then
20 pause, determine interest and build a second phase of
21 about forty-three units. The second phase -- and you'll
22 see some pictures of it just because that's where all the
23 amenity centers and things are. You'll see pictures of
24 some of those units in the second phase. It goes out
25 this road, wraps around the lake.

1 So Bostic started. They got everything to a place
2 where it was at least, as you see here today, under roof.
3 And that's just a term that we use in construction
4 meaning the shingles are on the roof, most of the windows
5 are in. I think the siding is on. From the outside,
6 these units probably look like they are complete. Now,
7 there are very many of these. And I think that that
8 holds true for about thirty-three out of the thirty
9 seven. There were a couple that required a lot more
10 construction than that.

11 Of the number that were, quote, unquote, under roof,
12 some of them were sold by that developer, for that first
13 developer. From what we gather, there were eleven sold.
14 There remained twenty-seven. And you've already seen the
15 numbers of how many Marick sold and then how many the
16 next company in line sold. But we only obtained
17 certificates of occupancy on the ones that we sold.

18 Sometime in around October of 2004, the units
19 weren't selling because Bostic had built them at a price
20 point to try to sell them at what would be a low price
21 for a property like this in comparison to other lake
22 properties. But they couldn't sell it for that because
23 they had put all the money -- they had put more money
24 into it than they were able to sell them for.

25 So when that all happened, the developer shut down

1 the project. Bostic didn't complete the other twenty-six
2 or twenty-seven units in the phase. Some of those units
3 needed cabinetry, so it was almost complete. Some of
4 those units needed walls. Some of those units needed
5 plumbing and air. It just varied how complete they were.
6 So we don't have a great historical note of which was
7 what. We only go by the permits that were later pulled
8 by Marick to complete the job.

9 Now, when Marick comes in, they acquire all of these
10 unsold units, the twenty-six or twenty-seven unsold units
11 in phase one, that are least under roof and some of them
12 further along. They issue new permits on those about a
13 year after Bostic has left. Many of these buildings were
14 left sitting partially complete for a year just because
15 the developer told Bostic to stop. Bostic was having
16 financial issues as a result of this and other projects.
17 So the units sat, sat empty, partially complete.

18 The next time that you see permits being pulled and
19 certificates of occupancy being issued under Marick --
20 they did pull new permits, they had to pull new permits
21 because the buildings had sat unfinished -- is about a
22 year later.. And then Marick goes on and sells out almost
23 all of phase one at a much higher cost, considerably
24 higher. I think that there were people who paid upwards
25 of twice what Bostic may have sold its first units for

1 down here and throughout the complex. So that's
2 something that you need to understand as well.

3 Now, that all being said, Bostic is sitting here
4 today. And the Bostic Brothers, Joe and Jeff, can sit
5 here today, and they can make every argument in the world
6 that they're not responsible to all of these homeowners.
7 And, frankly, the law would probably support that. And
8 they could sit here and say that there's nothing wrong
9 with these buildings. And they could sit here and tell
10 you, "We don't think these people are entitled to any
11 thing." But that's not what they're doing.

12 You've seen all those pictures of everything that's
13 so bad, and I want to show you some other pictures. This
14 is what Joe and Jeff's idea ultimately turned into. This
15 is the front sign of Stoneledge. This is the front gate
16 and the guard shack and I think the mailboxes. This is
17 the entrance down to where all the homes are. This is a
18 typical unit that's out there. Okay? This is what
19 Bostic set out to build. It's fancy-looking lakefront
20 townhomes. This is what they set out to build as well.

21 Now, you're going to hear later -- you see these
22 pictures. And I'm going to show you some other pictures
23 here in just a minute. But these pictures, especially
24 where you have this porch issue -- and I'll tell you this
25 is a bad looking picture. That's probably right about

1 this area. Okay? That's where we see this issue right
2 around these columns right there on these porches. And
3 they have had to put -- or they have put -- don't know if
4 it's necessary or not. They put some big piers
5 underneath the big wood poles to support because there's
6 a fear that those porches in those areas are unstable.
7 There's some rotten wood at some of those locations.
8 Some of those locations do look like that. But that's
9 what it looks like on the outside. And that's what Joe
10 and Jeff set out to build. This is a look at more of the
11 units to show how they sort of stack with one another and
12 have lake views.

13 Now, what are the issues? One of the things that I
14 want you all to be very clear about as we move into this
15 is that there's going to be maybe a rush to judgment or a
16 rush to an understanding that these buildings are
17 terrible, that these buildings are falling off the hill,
18 sinking into the lake, and they just need to be torn down
19 and thrown away. Okay? There are issues. There are
20 issues that we have identified. There are issues that
21 they have identified. There are issues with the roof to
22 some extent and the way the roof intersects with certain
23 walls and materials that you're supposed to put in
24 between a roof and a wall. It can be technical what goes
25 there. And there's some places where that needs to be

1 corrected.

2 There are problems with the decks. That's a
3 problem. That needs to be corrected. There's some
4 problems with a couple of leaking windows. That needs to
5 be corrected. If windows leak, they need to be
6 corrected. There's some problems that they have pointed
7 to with framing. Somewhere all over this project there
8 are places where maybe the wood is this much too short or
9 the wood is this much too long. And that has to be
10 addressed. Well, if the code says address it, it needs
11 to be addressed.

12 Then there's some grading issues which ultimately
13 create one of the -- probably the biggest part of the
14 interior issues that you're seeing in the basements is
15 that the grading needs to be reworked, and there probably
16 needs to be a little bit of work done there.

17 Now, you're going to hear from C.S.E. and Derek
18 Hodgkin that because of what the general contractors did
19 -- and think that they failed -- I think he told you that
20 there are three issues, one of which is that there was a
21 failure by the contractors to build these buildings
22 right.

23 You're going to hear from Mr. Hodgkin and
24 Construction Science and Engineering that as a result of
25 these failures, every single stone on these houses needs

1 to come off. Every single piece of siding needs to come
2 off. Every single shingle needs to come off. These
3 buildings need to be stripped back to their skin and
4 reconstructed. And in the meantime, we're going to take
5 every porch off and put it back on too. And that's the
6 only way that Mr. Hodgkin is going to be satisfied that
7 these buildings are okay. Oh, and we're going to take
8 every single window out, regardless of whether it leaks
9 or not, and we're going to put it in a different way.

10 Now, you're going to see pictures like this. We
11 don't hide from pictures like this. We know this is out
12 there. Just like they did, we hired an expert to go out
13 there. With the benefit of what Mr. Hodgkin had already
14 done, we hired a gentleman by the name of Richard Moore
15 who's a very well-respected gentleman who works for
16 people who own homes, who works for people who build
17 homes. And he is a forensic engineer. He takes the time
18 to review the report of Mr. Hodgkin of Construction
19 Science and Engineering, and then he goes out and he does
20 his own destructive test cuts. He pulls out wood. He
21 pulls off stone. He developed a protocol of what he
22 wanted to do to find out not just that something's wrong
23 -- we know something's wrong -- but to find out the
24 extent of it, to find out if it's really fair to pull off
25 every stone, to find out if it's really fair to pull off

1 every piece of siding and every shingle and everything
2 else because ultimately what's fair is what they're going
3 to have to pay.

4 So let's look at what Mr. Moore found. And here are
5 just a couple of samples. Okay? Because I don't want
6 you to think that this situation is everywhere. I think
7 that's a disingenuous conclusion for anyone to make.
8 Here's a test cut of the same location where that was
9 found in at least one unit. Here's a picture of the
10 exact same thing. The cavity in-between the top of the
11 porch and the ceiling of the lower basement porch. The
12 exact same place, different unit. It's there. Here's
13 another place. Look through there. You don't see any of
14 these conditions. You don't see any of this mess. You
15 don't see any of that. Look there. You don't see any of
16 it. So I want you to understand as you go into this,
17 that, yes, there are pictures like that. There are
18 conditions like that. But there are conditions like what
19 I've just showed you too which means we are going to
20 offer you and you're going to have at your disposal an
21 alternative that's fair and reasonable. An alternative
22 to tearing these buildings down. An alternative to
23 ripping these buildings -- all the skin off of them and
24 putting it back on. An alternative to pulling out every
25 window whether it needs it or not. That's what we're

1 here to do. We're not here to fight about this or to
2 justify what we did or what our construction company did
3 or what the construction company did after Mr. Bostic was
4 no longer a part of it. We're here to show you how we're
5 going to fix it.

6 Now, Mr. Moore performed an investigation. He did,
7 I think, eighteen different test cuts all over phase one.
8 He developed a scope of repair. The scope of repair is
9 different than Mr. Hodgins's. The scope of repair is what
10 we call in this business a surgical repair, a repair that
11 does not require tearing off things that are not broken.
12 He does not suggest that just because they're missing
13 some vapor barrier here or you're missing some flashing
14 here that it all has to come off. Okay? He has a scope
15 of repair that he is going to testify about and stand
16 behind as being sufficient, more than sufficient, to
17 bring these buildings into a shape better than they've
18 ever been. All right? You're going to have that at your
19 disposal.

20 Now, a price of repair. You've heard about Mr.
21 Watkins, Watkins Services. The old Mr. Watkins, Steve
22 Watkins, did the original work on this for me. I hired
23 him to go out there and tell us how much is it going to
24 cost to fix these. Because at the time -- and what
25 you'll see on the board from the plaintiffs, their repair

1 estimate is essentially more than it costs the Bostics to
2 build these things from the ground up. So I hired Mr.
3 Watkins to go out there. I've worked with him before.
4 Mr. Lyles has worked with him before. There's not a
5 person in this courtroom that hasn't worked with him
6 before because this is his business to go in and do
7 remedial work. We hired him to come out there. He gave
8 us an estimate of -- well, here's some things -- here's
9 what some things are going to cost, but I need to have
10 some more information. I need to know quantities.
11 Here's what it would cost on a unit cost. And that
12 estimate was really low. We said, well, that's not a
13 good enough estimate. We know it's going to take more
14 than that. What ultimately happened, Mr. Watkins passed
15 away last year. But his son took over the company. So
16 you're going to hear testimony not from Steve Watkins but
17 from J.R. Watkins, who is Steve, Jr. He took over the
18 company. He is the guy who, when his dad was in charge,
19 he was the guy out in the field. He was the guy who knew
20 how to do what needed to be done to fix buildings. Well,
21 now he's in charge. And he does -- you're going to hear
22 about what he's going to do, and you're going to hear
23 what his final estimate is.

24 Now, you've heard that Watkins has an estimate
25 that's only seven hundred thousand dollars off from the

1 plaintiffs' estimate or whatever that number was. Well,
2 you're also going to hear that that is Watkins pricing
3 the same scope that they're suggesting needs to be done.
4 We're going to give you the benefit of a number that
5 these people are entitled to, what they've revised with a
6 surgical repair, a written scope of repair of what needs
7 to be done to fix these buildings and how much does that
8 cost. And you're going to hear that number. And that's
9 the number that we're going to suggest these people are
10 entitled to to fix the buildings.

11 Again, we're not running away and hiding on this.
12 We want these buildings fixed. We want people who live
13 in that community to say the Bostic Brothers did a great
14 job. They made it right. They made those issues right.
15 That's all we're asking for.

16 So just like Mr. Lyles' third issue in this case,
17 the third issue that he wants you to consider, fix the
18 buildings, that's what we want to do. That's what we
19 want to do. We're not here to make H.O.A.s rich. We're
20 not here to pay them for more than what they're entitled
21 to. But we're here asking you to return a verdict at the
22 end of evidence that will fix these buildings and make it
23 right.

24 With all that said, ladies and gentlemen, just
25 remember that the charges that you're going to hear from

1 the Judge and some of the initial charges you've heard
2 are that you're here to do something fair, just and
3 reasonable. You're here to return a fair, just and
4 reasonable award. If you just keep those three words in
5 the front of your head with everything you do, with all
6 the testimony you hear, with all the documents you see,
7 just keep an open mind and be fair, just and reasonable.
8 Thank you very much.

9 THE COURT: Mr. Foreman, ladies and gentlemen
10 of the jury, I am going to ask you if you'd take a very
11 short break before we continue with the opening
12 statements because we have several to be made. But I'm
13 thinking maybe not more than ten minutes, and then come
14 back, and we'll try to get as much out of the way before
15 lunch.

16 So, again, now, my instruction throughout the trial
17 of this case, Mr. Foreman, ladies and gentleman, is that
18 you are not to discuss this case among yourselves or
19 permit anyone to discuss it with you, even when you're
20 back in the jury room. Obviously, you can see that this
21 is a case that involves a lot of information. And until
22 you hear it all, then you shouldn't make a judgment
23 before you've heard everything including the law that's
24 applicable.

25 But with that, I'll excuse you and ask you to --

1 don't even talk about personality. Let's just stick with
2 something else. All right. Very good. Thank you very
3 much.

4 (WHEREUPON, the jury exited the open court at
5 approximately 11:48 a.m.)

6 THE COURT: Ladies and gentlemen, before we
7 take a break, there's something I just need to be sure
8 that is acceptable. Obviously, we've already started
9 with the order of the course of the trial with Mr. Lyles
10 going first in the plaintiffs' case, Mr. Belcher for
11 Bostic Brothers. Mr. Imhoff will be next with Marick
12 Builders.

13 MR. IMHOFF: Your Honor, may I?

14 THE COURT: Certainly.

15 MR. IMHOFF: The defense has actually agreed,
16 so that the jury can understand it a little bit, to go
17 chronologically. In other words, the Bostics and their
18 subs would go first because that's the construction. And
19 then M Group, I.M.K. Marick would go later because they
20 came later.

21 THE COURT: Well, then how about giving me an
22 order because this is the order I have. Mr. Belcher for
23 Bostic, Mr. Imhoff for Marick, Ms. Brown for I.M.K., Mr.
24 Hemphill for M Group, Mr. Buckley for Jaramillo and Mr.
25 Anderson for Nino.

1 MR. IMHOFF: May I tell you the order that we'd
2 prefer, Judge?

3 THE COURT: Well, that's what I'm asking for.
4 Yes, sir.

5 MR. IMHOFF: Obviously, Mr. Belcher would go
6 first for Bostic.

7 THE COURT: Right.

8 MR. IMHOFF: Mr. Anderson would go next for
9 Nino.

10 THE COURT: That will be for Mr. Nino?

11 MR. IMHOFF: Yes, Your Honor.

12 THE COURT: Okay. Wait a minute. Mr.
13 Buckley's got his hand up.

14 MR. IMHOFF: Mr. Buckley would go third for
15 Everado Jaramillo. I'm not sure how you say that.

16 THE COURT: Jaramillo.

17 MR. IMHOFF: I would go fourth, Your Honor, for
18 Marick.

19 THE COURT: Okay.

20 MR. IMHOFF: Ms. Brown would go fifth for
21 I.M.K., and then Mr. Hemphill would -- I think is the
22 last person.

23 THE COURT: Is that right, Mr. Hemphill, M
24 Group last?

25 MR. HEMPHILL: Yes, Your Honor.

1 THE COURT: All right. Very good. That's what
2 I needed to know. That's why we're taking a break to
3 make something of it. All right. Very good. Let's do
4 be back before twelve.

5 (WHEREUPON, court stood at recess for a short
6 break.)

7 THE COURT: All right. I understand the jury's
8 ready to come back.

9 (WHEREUPON, the jury entered the open court at
10 approximately 12:08 p.m.)

11 THE COURT: All right. Let the record reflect
12 the jury and alternate are in the jury box. We will now
13 proceed with Mr. Anderson.

14 MR. ANDERSON: Yes, Your Honor. Thank you.

15 OPENING STATEMENT

16 BY MR. ANDERSON:

17 Good morning. Or I guess it is officially this
18 afternoon, so ...

19 It's an honor for me to appear here in front of you
20 on behalf of Jose Nino. Jose Nino was the framer on the
21 job. And for those of you who don't know what a framer
22 does, the framer builds the skeleton of the building and
23 erects it. He hammered pieces of wood together. He was
24 given the material that he was to use by Bostic and was
25 told how and where to put it up. That's what he did on

1 this job.

2 You're going to see pictures, and have seen some of
3 them, of rot and damaged framing. The reason that that
4 occurs to the framing is because it was not properly
5 protected by the trades that came behind Mr. Nino. When
6 Mr. Nino left his work, you would just be able to see
7 lumber and sheetrock or O.S.B. on the walls. That's all
8 he does. Then he moves on to the next building or the
9 next job.

10 And you're going to hear terms like building wrap,
11 flashing, and waterproofing. Those terms all relate to
12 what is done to protect the framing, to keep it from
13 turning black or rotting or deteriorating. Now, Mr. Nino
14 did not do any of that work.

15 And the Judge is going to instruct you at the end of
16 this case that there are three things that Mr. Lyles
17 needs to prove to you. Number one is, is that there was
18 an obligation for one of the contractors to do something,
19 and they either didn't do it or they did it improperly.
20 That's the first step. And there has to be -- that has
21 to be the responsibility of that subcontractor.

22 The second thing is they have to show that there was
23 damage resulting to the building. And then the third is,
24 is that whatever the contractor failed to do or did wrong
25 actually caused that damage. And it's that cause

1 connection that we ask you to focus on when considering
2 Mr. Nino because nothing he did on the job would have
3 caused the water to come in and damage his own work. The
4 people that come behind him in the job in sequence are
5 required to protect the framing. That was not done in
6 some instances. And so we would like you to keep that in
7 mind.

8 Please listen carefully to the evidence, as I know
9 that you will. And one thing to listen to also is what
10 did each subcontractor contract to do. What did he sign
11 on -- what was his job? And what's important about that
12 is, is that there were a lot of people working out there.
13 A lot of different subcontractors. And one's
14 responsibility will stop short, and another is
15 responsible for completing that portion of the building.
16 And you need to know where those stops and starts are so
17 you can assign responsibility so that as Mr. Lyles is
18 going down the road on his roadmap, he doesn't run over
19 the wrong person. We would like to have the
20 responsibility placed where it belongs and ask you to do
21 that. Thank you.

22 THE COURT: Mr. Buckley?

23 MR. BUCKLEY: Thank you, Your Honor.

24 OPENINGS STATEMENT

25 BY MR. BUCKLEY:

1 Good afternoon. I'm Ed Buckley. We met yesterday.
2 I represent Everado Jaramillo or Jaramillo. And one
3 thing that I want you to understand perfectly when we
4 start this trial and to keep in mind throughout this
5 trial is that my client is being sued as a defendant. My
6 client has not a single burden in this case. Keep that
7 in mind. The plaintiff has the burden to prove what my
8 client did, that my client did it wrong, and that it
9 caused damage. And you are not to assume anything about
10 what my client did. You are not to assume anything about
11 what my client might have done. You are not to assume
12 anything about what my client might have caused to go
13 wrong at this project.

14 And what you're not going to hear in this trial is
15 any testimony from the people at Bostic who employed my
16 client, who worked with my client on that project. There
17 were three job superintendents who were present on the
18 entire project during the Bostic time frame. You're not
19 going to hear one bit of testimony from those people.
20 You're also not going to see a single invoice from my
21 client where he installed a window. But he's being
22 blamed for installing windows improperly.

23 The other thing you're not going to see is you're
24 not going to see my client present through his invoices
25 for a critical eight-month period. What you're also

1 going to see is that my client was working on a number of
2 projects for Bostic. You're going to hear from one of
3 the defendants over here, Mel Morris, that at the time
4 this project was underway, they had twenty projects
5 underway. Twenty that Bostic was working on. They were
6 as far away as Western Illinois University. They were in
7 Charleston and Greensboro, North Carolina. They were in
8 Savannah. They were up here. And my client was going
9 around to various projects, and there's an eight-month
10 gap where he isn't even here. And we're going to show
11 you what happened during that eight-month gap.

12 The other thing that's kind of interesting in this
13 case, I've known Robert Lyles for all of his twenty-six
14 years because I've been practicing thirty years. We grew
15 up practicing law together in Charleston. And Robert and
16 I try cases or litigate cases against each other. In
17 fact, it's kind of ironic. I've got a plaintiff's case
18 in Charleston that Robert's defending right now. And we
19 go head-to-head a lot.

20 But one of the things that has surprised me to learn
21 in this case is you heard the name Watkins. Watkins has
22 provided a defense expert -- I mean a defense estimate
23 for repairing Stoneledge problems. Well, guess who's
24 been doing repairs out there? Watkins. These folks have
25 hired Watkins because they have confidence in him. And

1 he's been out there doing foundation repairs. I just
2 think that's interesting.

3 Pay attention. Don't assume anything, and don't
4 rely on a witness whose only evidence is an assumption.
5 Thank you very much.

6 THE COURT: Mr. Imhoff?

7 MR. IMHOFF: Thank you, Your Honor.

8 OPENING STATEMENT

9 BY MR. IMHOFF:

10 Ladies and gentlemen of the jury, my name is Jason
11 Imhoff. I introduced myself to you yesterday. I
12 practice in Spartanburg County.

13 I was very, very pleased to see that the Judge gave
14 y'all a break. If you're ever been in the courthouse in
15 Spartanburg County, there are marks behind every one of
16 the jurors head on the wall from where I take it that
17 they sleep. So I appreciate it that he gave you a break.

18 This is a construction case. It's not C.S.I. or
19 those more interesting shows or whatever. It's a
20 construction case. We all know it. We live day out and
21 day in. Our wives and kids and everyone else probably
22 think we're boring. We'll probably bore you throughout
23 a lot of this case. We don't intend to. It's important
24 to our clients.

25 My client -- and I'm happy to represent him -- is

1 Rick Thoennes and his company, Marick Home Builders. The
2 case against Rick and his company is very, very, very
3 different from the rest of what you've heard this
4 morning. And the reason it's different is because Rick
5 and his company didn't build anything you've heard about
6 this morning. None of it. The allegation against Rick
7 and his company is that they didn't find it. All of
8 these pictures, if you look underneath the stone, the
9 shingles, the siding, the dirt, that's where you find
10 that damage. And all of those things, stone, shingles,
11 windows, siding, dirt, were put on these buildings by
12 someone else. So the allegation against him is he didn't
13 find it. They paid a lot of money, a lot of experts --
14 you'll hear it -- to go take all of that off and find all
15 of that.

16 The difference with Mr. Thoennes and his company and
17 his partners is they came to this project later. You've
18 already heard this morning that the project was built,
19 all of the exteriors were on, roof, windows, siding,
20 stone, dirt. The units were up. They were built. They
21 were built by Bostic Brothers who are good builders, who
22 are reputable builders. They were inspected by the
23 Oconee County building inspector, who I think you'll hear
24 from.

25 So Mr. Thoennes and his company came to the project.

1 And when they came to the project, I think you will hear
2 they were deemed as saviors. Eleven units had been sold,
3 and then the project went into bankruptcy. These folks
4 were in trouble. There were shells of buildings out
5 there. There was no pool. You don't want to have a lake
6 house without a pool; right? No tennis courts, no
7 meeting room, clubhouse. None of that was there. They
8 were in trouble. They were having problems with their
9 units. All of their money and their investment was in
10 trouble, and nothing was being done and nothing was being
11 built. And for Mr. Thoennes and his partners, they were
12 saviors.

13 When they get out there, they start constructing the
14 interiors of the units. And as you've heard, they're in
15 varying degrees. Some of them were complete and unsold,
16 and some of them didn't even have drywall up.

17 Mr. Thoennes and his company pulled permits for
18 them. You will see what the permits are for. You will
19 hear what they paid to be done out there. Floors, walls,
20 appliances, plumbing and electrical in some units. So
21 they were saviors. They started building out there.

22 You heard from the Bostics. You've seen the
23 pictures. This is a beautiful development. When Rick
24 and his partners went out there, they bought four of
25 them. They bought four of those units, and they were

1 neighbors with these homeowners, these plaintiffs. Not
2 only were they neighbors, but they helped these
3 plaintiffs. They helped their neighbors. They brought
4 their family, their friends out there. They were on
5 tubes and boats together out there, all together for
6 years 2005 until 2008.

7 While Rick was out there, we think -- it's hard to
8 go back and look. But about seventeen units were sold.
9 Four of those, I think, were sold to these folks, Rick
10 and his partners. But the evidence will come out. It's
11 a little bit cloudy. But they were sold while they were
12 out there.

13 2008, right? What happens in 2008? Builders go out
14 of business. It happened to Rick, unfortunately. Went
15 out of business. They had to leave the project. The
16 remaining units, nine or something like that, were
17 transferred to yet another developer, another builder.
18 And those are a whole 'nother issue.

19 Here's probably the most important part and what
20 you'll hear a lot about from my client and the case
21 against my client. Rick and his helper, Nathan, and the
22 people that they hired fixed everything that was reported
23 to them between 2005 and 2008. If you lived there and
24 your window leaks, call Rick or Nathan. If your door
25 sticks, call Rick or Nathan. If you have water, call

1 Rick or Nathan. Roofing, call Rick or Nathan. The
2 testimony will be they fixed everything for these folks.
3 Everything. And the people that lived out there knew it.
4 Then came the decks. This is going to be the issue
5 in the case. These big beautiful decks on these things.
6 I don't have it. Mr. Belcher had it. If you saw them,
7 they're beautiful. They're two-story, stone clad decks.
8 You've got a bottom with a cement pad. You've got a
9 second story with a cement pad. Half of it's covered.
10 They have a screened-in half of a porch. They're
11 beautiful.

12 They leaked. They leaked right through that stone
13 into the ceiling below them. There's no question.
14 Nobody's going to deny that. It was a problem. It was a
15 problem for these folks, Rick and his partners. It was a
16 problem for these folks who owned out there.

17 What do you do? There's a problem. They together
18 decided to hire a waterproofing company. You'll hear
19 that they hired someone called Coleman Waterproofing that
20 specialized in the waterproofing of those decks. And
21 they agreed, and you will hear I believe today, that the
22 homeowners that lived out there agreed and accepted that
23 repair and understood what it was and what it wasn't.
24 And they put that on the decks, and it's supposed to
25 waterproof the decks. And it worked. Don't know that it

1 worked completely, but it worked. And Rick paid for it
2 for everyone. Even the folks that he didn't sell to,
3 didn't build for, he paid for all of that.

4 So that's where we are. That's the case against my
5 client Rick Thoennes. He was the savior. They were
6 thankful. They were neighbors. He's being sued. He
7 takes the allegations very seriously. He lived next to
8 them for three years or at least on the weekends when
9 these folks went out to their vacation homes. He did
10 what he could for them and sometimes more than he was
11 required to do for them. And he was neighborly. And now
12 he's a defendant in this lawsuit. And he's here and he's
13 going to defend himself vigorously.

14 And we will ask you at the end of this to be fair,
15 to judge him fairly and judge his partners fairly. And
16 we appreciate you not making any marks on the back of the
17 walls here while we do that over the next two weeks
18 because we will bore you for a little while at times.
19 But we'll also take some breaks. Thank you very much.

20 THE COURT: Ms. Brown?

21 MS. BROWN: Thank you, Your Honor.

22 OPENING STATEMENT

23 BY MS. BROWN:

24 I am Cynthia Brown. I introduced myself yesterday.
25 I represent I.M.K., Integrys Keowee, Bill Cox and Larry

1 Lollis. Mr. Cox is here. As I mentioned yesterday, Mr.
2 Lollis has had a death in his family. He will be here
3 tomorrow and other times but has not been able to make it
4 yesterday or today.

5 We do thank you for your service. This is your most
6 important civil duty outside of serving in the military
7 for our country. We have the greatest justice system in
8 the world, and we appreciate your participation in what
9 we know will be a tedious case. Some of the evidence
10 will be quite tedious. Some of the witness, bless their
11 hearts, have to give a lot of tedious testimony. And we
12 just ask that you, you know, let the Judge know and the
13 bailiff know if you're nodding off and need to walk
14 around for a few minutes. Just stay with us, and we will
15 get through it as quickly as we can.

16 You know, this is a serious case, and I don't want
17 to minimize it or anything. But I thought, just give a
18 minute of levity for a second. I was talking to -- about
19 my husband wanted to know where I was going, what was
20 going on. I said, "Well, I've got a case in Oconee."
21 And I said, "You know, it's lake property in Oconee."
22 And he said, "Huh. Nods to George Strait, huh? Not
23 oceanfront property in Arizona; you've got lakefront
24 property in Oconee." So that's what we call the case at
25 my house now is lakefront property in Oconee.

1 My client, I.M.K., is a partnership or an L.L.C.
2 actually between -- Integrys Keowee is fifty percent, and
3 Marick Home Builders is fifty percent. And the way this
4 partnership worked was that Marick Construction was
5 building the facilities, the houses, without profit.
6 That was their contribution, the fifty percent
7 contribution to the L.L.C. Integrys Keowee's fifty
8 percent contribution was to provide funding, investment
9 monies. Also to provide certain management
10 responsibilities, accounting functions, I.T. functions.

11 The construction costs, not profit or fee, were paid
12 by Integrys Keowee. That was their fifty percent
13 contribution. So when Mr. -- well, when Marick Builders
14 was building something, would send in the bill, the cost
15 would be paid. That's what Integrys Keowee did.

16 And Integrys Keowee, that is where Mr. Cox and Mr.
17 Lollis come in. They were members of Integrys Keowee.
18 There's also another member named Tim Roberson who is not
19 a party. So there are three members of Integrys Keowee
20 involved solely on that basis.

21 It's unusual for me in a construction -- since I've
22 been doing construction litigation for almost twenty
23 years now, I don't represent construction clients. My
24 clients are investors and businessmen. Mr. Cox is in
25 financial, accounting, I.T. sort of software arena. And

1 Mr. Lollis is in medical supplies. That's why when it
2 comes to this case, when you hear about the construction
3 part of it, that really wasn't Integrysts Keowee or Mr. Cox
4 or Mr. Lollis. You know, like some of the other clients,
5 other defendants had said they were confused as to why
6 they're named in this lawsuit.

7 Now, I.M.K. was the developer. Half of it was
8 Marick, and we do understand that being part. But as far
9 as Integrysts Keowee goes and Mr. Cox and Mr. Lollis, we'd
10 ask that you pay close attention to see if you hear
11 anything that would show actionable -- what we call
12 actionable conduct by Mr. Cox or Mr. Lollis individually
13 or Integrysts Keowee. And at the end of the case, I'm
14 convinced that you won't have heard any evidence that
15 will implicate them in anything that's been done.

16 Now, as far as what you've also heard from other
17 attorneys, we agree that it needs to be fixed. Point
18 number three from Mr. Lyles. I.M.K. also agrees with Mr.
19 Belcher when he says, "That is what Bostic wants to do."
20 I.M.K. wants Bostic to do that too. We want them to fix
21 the property. Nobody's denying that there are some
22 construction issues on this property. They need to be
23 fixed. The people who are responsible should fix the
24 property. That is not going to be Integrysts Keowee, Mr.
25 Cox or Mr. Lollis.

1 I do think that it's important when you're hearing a
2 case like this to try and keep the parties straight. And
3 we'll do our best to help you with that. But it's very
4 important when you're looking at this to place the
5 responsibility where it belongs. And that's what we're
6 asking you to do is to listen carefully and see who is
7 responsible for the problems that these homeowners have
8 on their property. Thank you for your time.

9 THE COURT: Mr. Hemphill?

10 MR. HEMPHILL: May it please the Court, Your
11 Honor.

12 OPENING STATEMENT

13 BY MR. HEMPHILL:

14 Mr. Foreman, ladies and gentlemen of the jury, I was
15 introduced yesterday. Again, my name is Roy Hemphill.
16 And my office is located in Greenwood, but I have the
17 good pleasure of practicing in a number of counties here
18 in the Upstate. It's always good to come to the Golden
19 Corner. I represent a company known as M Group
20 Construction and Development. That company did not come
21 into being until five years after the construction was
22 over, the construction that's at issue in phase one. M
23 Group Construction and Development is made up of Mr.
24 Thoennes, who's seated over here, Rick Thoennes.

25 Rick Thoennes has two sons, Rick III and Mark. When

1 he formed this company in March of 2009, he had gone
2 through, like a number of builders throughout the United
3 States, the great recession. He had to change what he
4 had been doing. He had to change his business model.
5 Instead of doing townhomes, because nobody was buying
6 townhomes or high-end sorts of homes like that, he
7 decided to create a company in 2009 to build houses over
8 in the Simpsonville area of Greenville County. And those
9 houses were in the one to two hundred thousand dollar
10 range. He did not ditch Marick Home Builders. It's
11 still a company. What he did instead was he created a
12 new company, M Group Construction and Development.

13 Now, M comes from because he had two other people
14 join his outfit. And those two folks were his son Mark
15 and Mark Hutcherson, right over here, who is seated with
16 me on the second pew back there. They formed this
17 company and they started building those homes.

18 I will be the briefest. In fact, I'm almost through
19 talking because I think what's going to happen now is --
20 I don't know the Judge's exact schedule, but I think he's
21 probably going to let you go for lunch. And I know that
22 rule number one of public speaking is getting out of the
23 way of folks you're talking to if lunch is about to be
24 served.

25 So let me just say this. Nobody with an M Group hat

1 -- nobody rode up with an M Group -- in an M Group truck
2 back in the 2002 to 2004 time frame and swung the first
3 hammer or turned the first screw.

4 What's being asked of you throughout the trial or
5 certainly at the end of the trial, is to find that
6 certain outfits or certain companies are liable to these
7 owners for these repairs. But I would suggest to you, is
8 it fair that a company that did not come into being for
9 four or five years after the construction that's at issue
10 today should be held liable? Thank you.

11 THE COURT: Mr. Foreman, ladies and gentlemen
12 of the jury, I think the attorneys are correct that this
13 would be a good time to take a break because now we're
14 going to start the actual trial of the case with the
15 testimony and evidence of the parties. I'm going to --
16 well, let me just ask you. You check with your jury, Mr.
17 Foreman, if you would, as to how much time you would
18 probably need. I would suggest anywhere from an hour, an
19 hour and fifteen minutes to an hour and a half. You know
20 what's available and how long it takes you to get there.
21 But just check with your jury.

22 Now, this does not have to be unanimous. It's a
23 consensus of the jury. How long? An hour, which would
24 be one thirty, one forty-five or two o'clock?

25 MR. FOREMAN: Well, before we had discussed

1 previously about that you'd probably dismiss around one
2 to two thirty. I believe it was an hour and half.

3 That'd be sufficient, I believe, for everyone.

4 THE COURT: So one thirty?

5 MR. FOREMAN: I'm saying an hour and a half.

6 THE COURT: All right. Well, the thing is --
7 that's a good -- I'm glad you did that and I appreciate
8 you doing it. I think that's an excellent thought. All
9 right. So we'll come back at one thirty or as close as
10 you can. Isn't that right? One thirty or as close as
11 you can. And if you're a little bit late, that's all
12 right because obviously we can't start without you. All
13 right. Very good.

14 All right. You have not heard the whole case at
15 all, just the opening statements. Again, as I've said
16 from the very first, please do not discuss the case among
17 yourselves or permit anybody to discuss it with you.

18 With that, I will see you back at one thirty or
19 thereabouts. All right.

20 All right. Everyone else remain seated while the
21 jury retires from the courtroom.

22 (WHEREUPON, the jury exited the courtroom at
23 approximately 12:26 p.m.)

24 THE COURT: All right. Mr. Imhoff?

25 MR. IMHOFF: No, Your Honor. I think you were

1 just talking about -- I think it was actually less than
2 fifty-five minutes that you gave. And I don't want you
3 to yell at the jurors if they come back at ---

4 THE COURT: I don't yell at jurors.

5 MS. BROWN: Just the lawyers?

6 THE COURT: I will bark at a lawyer. No. I
7 hope I did give them enough flexibility. An hour to an
8 hour and a half. In other words, they don't have to be
9 back at the exact moment because we can't start without
10 them.

11 All right. With that, anything from the plaintiff
12 before we take a break?

13 MR. LYLES: No, sir.

14 THE COURT: Anything from the defendants?

15 MR. BELCHER: None from us, sir.

16 THE COURT: Very good. All right. We'll see
17 you at -- y'all can take an hour and ten minutes.

18 (WHEREUPON, court stood at recess for a lunch
19 break.)

20 THE COURT: All right. Is there anything from
21 the plaintiff before we bring the jury back?

22 MR. LYLES: No, sir.

23 THE COURT: From the Defendants?

24 MR. BELCHER: No, Your Honor.

25 THE COURT: Very good. Ask the jury to join

1 us, please.

2 (WHEREUPON, the jury entered the open court at
3 approximately 1:52 p.m.)

4 THE COURT: All right. Let the record reflect
5 the jury and alternate are in the jury box.

6 All right. Mr. Foreman, ladies and gentlemen of the
7 jury, we'll now begin with the plaintiffs' case.

8 Mr. Lyles?

9 MR. LYLES: The plaintiff would call Ms. Donna
10 Furnari as our first witness.

11 (WHEREUPON, the witness was duly sworn.)

12 THE COURT: If you would, please, ma'am, would
13 you give us your full name, spelling your last name for
14 the record.

15 THE WITNESS: Yes. It's Donna Marie Furnari,
16 F- as in Frank, U-R-N-A-R-I.

17 THE COURT: Very good. Thank you, ma'am.

18 Mr. Lyles?

19 **DONNA FURNARI,**

20 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

21 DIRECT EXAMINATION

22 BY MR. LYLES:

23 Q. Donna, I'm going to stand back here.

24 MR. LYLES: Can I -- I want to move this
25 microphone. Is it okay if I slide this over?

1 MADAM COURT REPORTER: (Nodded head up and down
2 in the affirmative)

3 MR. LYLES: Thank you.

4 Q. I'm going to try to stand back here. So I want you
5 to speak loudly when you speak to me and you speak to the
6 jury when you're answering questions; okay?

7 A. Yes, sir.

8 Q. I'm not trying to get away.

9 A. Okay.

10 Q. I'm not trying to crowd them.

11 Where you from?

12 A. I'm from a suburb of Cleveland, Ohio.

13 Q. Is that where you grew up?

14 A. That's where I grew up. Lived there all my life.

15 Q. Are you married?

16 A. I am.

17 Q. And who are you married to?

18 A. Michael Furnari.

19 Q. He's in the courtroom with us?

20 A. He is.

21 Q. Do you have any children?

22 A. Yes.

23 Q. Other family?

24 A. Yes.

25 Q. Tell me about your family.

- 1 A. I have three children, and my husband has a son.
2 We're kind of a blended family, but we get along great.
3 The kids all consider each other brothers and sisters.
4 My mom is still alive. I have a brother, a sister-in-
5 law. My husband has four sisters, their family.
6 Q. That sounds good. Do you work?
7 A. Yes, I do. I work part-time. My husband and I own
8 a small business in Ohio, and I do the books for that
9 business.
10 Q. What sort of business is it, Donna?
11 A. It's a packaging and manufacturing business. We
12 basically just provide labor. Our customers give us
13 parts, and we either put them in packages or boxes, or we
14 might do a little bit of assembly on them.
15 Q. How long have you had that company?
16 A. It has been about fourteen years now.
17 Q. You're obviously familiar with the project known as
18 Stoneledge; is that right?
19 A. Yes, sir, I am.
20 Q. Okay. And when did you become familiar with
21 Stoneledge?
22 A. Well, we purchased our unit in the spring of 2008.
23 My husband and I both purchased with the intent of
24 eventually moving down here to live here. As a matter of
25 fact, I am now living here full-time.

1 Q. What brought you down south?

2 A. Well, I was sick of the cloudy skies near Cleveland.

3 It's a beautiful part of the country. We did a lot of

4 looking around for where we might want to relocate. The

5 area just grabbed us. And once we saw it, everywhere

6 else we looked just didn't compare.

7 Q. Did you look at some homes or some projects other

8 than Stoneledge when you were searching?

9 A. Yes, we did. We looked at many.

10 Q. Okay. And what parts of the -- this state or

11 others?

12 A. This state and others. We looked at -- we had

13 decided that we wanted to be around a lake. That was

14 important to both of us. We looked in Tennessee. We

15 looked in North Carolina. And then we happened on Lake

16 Keowee and fell in love with it and the people around it

17 and just decided we needed to be on Lake Keowee if we

18 could.

19 Q. Okay. And so did you look around Lake Keowee?

20 A. We did. Once we decided on the area, we hired a

21 realtor. And we were trying to decide -- we weren't sure

22 if we wanted a home. We have a home in Ohio. We weren't

23 sure if we wanted a home here or whatever. But the more

24 we thought about it, since we weren't able to come here

25 immediately, it made more sense to get a condo or a

1 townhome where we didn't have to worry about the yard or
2 the outside of the unit while we weren't here or pay
3 somebody to do it.

4 Q. And how did you arrive at choosing Stoneledge?

5 A. Well, we looked at -- there aren't that many
6 townhome or condo communities out on the lake. There's
7 only a few. And most of the ones that we looked at gave
8 us the feel of like an apartment. Stoneledge, it felt
9 like a home. They were beautiful. They were just
10 absolutely beautiful.

11 Q. And at the time you selected Stoneledge, did it have
12 the amenities that you heard some of the lawyers talk
13 about today?

14 A. Yes.

15 Q. And were those amenities important to you?

16 A. Yes, they were.

17 Q. And did you talk to anybody about Stoneledge at the
18 time you decided to purchase it?

19 A. No, not really, other than our realtor is who we
20 talked to. And then at that same time, actually, we had
21 done a little bit of research on the Internet. When our
22 realtor brought up Stoneledge, my husband started looking
23 on the Internet. And he found that they were also
24 marketing units directly. He contacted a gentleman by
25 the name of Chip Albert. And Chip was going to show us

1 units that the developer was selling. We still had a
2 realtor involved who was going to show us a couple of
3 units that were up for resale.

4 Q. And who did Mr. Albert work for? Do you know?

5 A. He worked for Marick.

6 Q. And did you look at any other sort of brochures or
7 promotional material for Stoneledge?

8 A. Yes, we did.

9 Q. Okay.

10 MR. LYLES: Would you mark that for
11 identification?

12 (WHEREUPON, Plaintiff's Exhibit Number 1 was marked
13 for identification only.)

14 Q. Ms. Furnari, I'm going to show you a document that
15 we've marked for identification as exhibit 1. Have you
16 seen that material before?

17 A. Yes, I have.

18 Q. And what is that?

19 A. This is a brochure about the community, about
20 Stoneledge at Lake Keowee, describing the benefits of
21 living there and the amenities and so forth.

22 Q. And is that the brochure that you saw when you and
23 your husband were considering purchasing at Stoneledge?

24 A. Yes.

25 MR. LYLES: Your Honor, I'd like to move this

1 in as Plaintiff's Exhibit Number 1.

2 THE COURT: All right. Any objection from any
3 of the Defendants?

4 MR. IMHOFF: Can you identify what document it
5 is?

6 MR. LYLES: Thirty-one.

7 THE COURT: Just a moment.

8 MR. LYLES: Yes, sir.

9 THE COURT: Renee, is that going to be
10 Plaintiff's 1?

11 MR. LYLES: Yes, sir.

12 THE COURT: All right. Very well. Thank you,
13 You may proceed.

14 MR. IMHOFF: No objection, Your Honor.

15 THE COURT: Anyone else?

16 (No response)

17 THE COURT: Very well. Plaintiff's Number 1 is
18 admitted.

19 (WHEREUPON, Plaintiff's Exhibit Number 1 was
20 admitted into evidence.)

21 Q. Was there information contained within that brochure
22 that was significant to you at the time?

23 A. Yes.

24 Q. And tell me what information you found significant
25 to you and to Mike relative to Stoneledge in that

1 brochure?

2 A. As I mentioned before, we were very interested in
3 finding a place where we did not have to be responsible
4 for either yard work or exterior components of the house
5 and things that we couldn't control when we were there.
6 There were certain amenities that we were looking forward
7 to. And we were looking for a quality built home.

8 Q. And was information relative to the quality of the
9 home contained within the brochure?

10 A. Yes.

11 Q. And are there references in the brochure to the
12 degree of maintenance that's going to be required of the
13 homeowner?

14 A. It says they're maintenance-free.

15 Q. Ms. Furnari ---

16 THE COURT: Let me ask you. Do you want the
17 lights down?

18 MR. LYLES: That may help a little bit.
19 Unfortunately, this has been scanned and copied so often.

20 Q. On that page, Ms. Furnari, is the language on that
21 page of that brochure that speaks to those things that
22 were important to you and your husband Mike?

23 A. Yes. It says, "The quality and attention to detail
24 of the cedar and stacked-stone homes are just as
25 breathtaking as the views.

1 Q. Okay. And are there any other pages of that
2 brochure that were of particular significance to you and
3 your husband?

4 A. It says, "Your homeowners association dues cover
5 both maintenance of the grounds and the exterior of your
6 home leaving you more time to enjoy the lake and
7 surrounding attractions."

8 Q. And is that what you believed?

9 A. Yes, it is.

10 MR. LYLES: You can cut the lights back on.

11 Q. Were you and Mike familiar, generally speaking, with
12 the requirements of home ownership and maintenance and so
13 on and so forth?

14 A. Yes. We owned a home for a great many years.

15 Q. And your belief with respect to this Stoneledge
16 purchase that you were going to make was that -- was what
17 in respect to maintenance?

18 A. Zero.

19 Q. Is that what the brochure said?

20 A. Yes. Maintenance-free. The only thing you would
21 have to do would be take care of the inside.

22 Q. Now, at the time you purchased your Stoneledge unit,
23 did you still live in Ohio?

24 A. Yes.

25 Q. And so how were you and Mike going to use your unit

1 while you lived in Ohio?

2 A. It was always our plan to just take any vacation
3 time -- and as I mentioned, we have a small business. So
4 sometimes it's hard for us to get away. So what we would
5 do, we would take holiday weekends and maybe just tap in
6 an extra day and come down. And, you know, we just
7 wanted to relax on the beautiful screened-in porch, enjoy
8 the lake views, go out on the boat.

9 Q. Was your objective to use it as a second home, or
10 was your objective to do more than that?

11 A. No. Our objective was always to make it our primary
12 home once we could get ourselves loosened from our
13 commitments up north to come down.

14 Q. I think you said that you bought it in 2008; is that
15 right?

16 A. Yes.

17 Q. Was it spring or summer?

18 A. It was spring.

19 Q. At any point in time, did you become involved in the
20 management of the homeowners association?

21 A. Yes.

22 Q. And when was that?

23 A. In August of 2008, an email was sent out by Mr. Tim
24 Roberson who was on the board of directors at that time.

25 It was Tim Roberson, Rick Thoennes and Bill Cox were

1 controlling the homeowners association. They sent an
2 email out saying that they were going to turn over the
3 homeowners association to the actual homeowners and that
4 they were looking for volunteers to be on a new board of
5 directors. So Mike and I were both -- either one of us
6 or both of us very interested in being a part of the
7 community and very interested in knowing what was going
8 on and helping to manage the community.

9 Q. Hang on just a minute, Ms. Furnari.

10 (WHEREUPON, Plaintiff's Exhibit Number 2 was marked
11 for identification only.)

12 Q. Ms. Furnari, I want to show you a document that is
13 marked as exhibit 2 for identification and see if you
14 recognize that document.

15 A. Yes, I do.

16 Q. And is that the letter that you saw from Mr.
17 Roberson?

18 A. Yes.

19 MR. LYLES: Your Honor, I'd like to move that
20 into evidence as Plaintiff's Exhibit 2.

21 THE COURT: Any objection?

22 MR. IMHOFF: No objection, Your Honor.

23 THE COURT: All right. Without objection, it
24 may admitted as Plaintiff's Number 2 or will be admitted
25 as Plaintiff's Number 2.

1 (WHEREUPON, Plaintiff's Exhibit Number 2 was
2 admitted into evidence.)

3 Q. Now, Donna, you indicated a moment ago that that
4 email refers to the currently comprised board that is
5 current in 2008; is that right?

6 A. That's correct.

7 Q. And who did you understand, based on that email, was
8 on the board of the homeowners association immediately
9 before turnover?

10 A. Tim Roberson, Bill Cox, and Rick Thoennes.

11 Q. Was your offer to volunteer to help with the
12 association -- was that accepted?

13 A. Yes, it was. There were seven of us that
14 volunteered. And our covenants call for the board of
15 directors to be composed of anywhere between four and
16 seven owners. And all seven of us were elected.

17 Q. And did you hold any sort of particular position, or
18 were you just -- were you president or secretary?

19 A. I was the secretary, probably because I was the only
20 woman.

21 Q. Had you ever been on an association board before?

22 A. I hadn't.

23 Q. Were you familiar with how a homeowners association
24 worked at that time?

25 A. I wasn't.

- 1 Q. Have you learned?
- 2 A. I have learned.
- 3 Q. You've learned a lot. If you will, tell the jury
- 4 what you've come to learn about how the Stoneledge
- 5 Homeowners Association operates, what that entity does.
- 6 A. The association is responsible for taking care of
- 7 the property grounds, the landscaping, the trash, the
- 8 sewer, maintaining the exterior building envelope,
- 9 maintaining the amenities, the pool. And the association
- 10 is the owners. If you buy a unit at Stoneledge, you're a
- 11 member of the association.
- 12 Q. I was going to ask about that. Members are all
- 13 homeowners?
- 14 A. All homeowners.
- 15 Q. Is it possible for somebody to walk in off the
- 16 street not owning a home and become a member?
- 17 A. No.
- 18 Q. Is it possible for somebody to buy a home at
- 19 Stoneledge and not be a member?
- 20 A. No.
- 21 Q. So your membership is by virtue of your ownership?
- 22 A. It is.
- 23 Q. And does the association help make rules?
- 24 A. Yes.
- 25 Q. Does the association hire property management firms?

1 A. Property managers, contractors that are needed to
2 perform work. We pay the bills.

3 Q. Does the association have a board?

4 A. Yes.

5 Q. And what does the board of the association do?

6 A. The board is basically representatives of the
7 homeowners. And they make decisions for the entire
8 association. They come up with a budget every year that
9 is then approved by all the homeowners at the annual
10 meeting. They hire contractors. They pay -- you know,
11 pay the bills. The board is the management, and they run
12 basically the association.

13 Q. And is that an elected position?

14 A. It is.

15 Q. Elected by the other homeowners?

16 A. Yes.

17 Q. You mentioned a moment ago that the homeowners
18 association is obligated to make repairs to the building
19 envelope?

20 A. Yes.

21 Q. Are there documents relative to the association that
22 set forth its creation and its purpose and its rules?

23 A. Yes. There's a declaration of covenants, and we
24 have bylaws.

25 (WHEREUPON, Plaintiff's Exhibit Number 3 was marked

1 for identification only.)

2 Q. Donna, I'm going to show you what was marked for
3 identification as number 3 and see if you recognize that?

4 A. Yes. These are our bylaws.

5 MR. LYLES: Your Honor, I'd like to move to
6 admit those as Plaintiff's Exhibit 3.

7 THE COURT: Any objection?

8 MR. IMHOFF: No objection.

9 THE COURT: All right. Without objection,
10 Plaintiff's Exhibit Number 3 is admitted.

11 (WHEREUPON, Plaintiff's Exhibit Number 3 was
12 admitted into evidence.)

13 Q. Ms. Furnari, as you mentioned a moment ago that in
14 addition to the bylaws there are also declarations and
15 covenants; is that right?

16 A. Yes.

17 (WHEREUPON, Plaintiff's Exhibit Number 4 was marked
18 for identification only.)

19 Q. I'm going to show you what has been marked for
20 identification as number 4 and see if you recognize those
21 documents.

22 A. Yes. This is the declaration of covenants.

23 MR. LYLES: Your Honor, I'd like to move to
24 admit that as Plaintiff's Exhibit 4.

25 THE COURT: Any objection? Without objection

1 Plaintiff's Exhibit Number 4 is admitted.

2 (WHEREUPON, Plaintiff's Exhibit Number 4 was
3 admitted into evidence.)

4 Q. Now, Ms. Furnari, does exhibit 4, the declarations
5 and the covenants, contain within it the obligations of
6 the homeowners association to effect repairs to the
7 building envelope?

8 A. Yes, it does.

9 Q. And where does it say that?

10 A. Article 7, Exterior Maintenance.

11 Q. And does it simply call out the obligations of the
12 H.O.A. to make repairs to the building envelope?

13 A. Yes, it does.

14 Q. And do you understand that to be the porches and
15 decks?

16 A. Yes.

17 Q. And windows?

18 A. Yes.

19 Q. Siding?

20 A. Uh-huh (affirmative).

21 Q. Roofs?

22 A. Yes.

23 (WHEREUPON, Plaintiff's Exhibit Number 5 was marked
24 for identification only.)

25 Q. Donna, I'm going to show you what we've marked as

- 1 exhibit 5 and ask if you recognize that.
- 2 A. Yes.
- 3 Q. And what is that?
- 4 A. This is an action that we at the board started to
- 5 call the resolution. We refer to it that way. It was
- 6 taken by unanimous written consent of the board at that
- 7 time. And it was put out to clarify what we felt were
- 8 some areas in the covenants regarding exterior
- 9 maintenance that weren't spelled out as clearly as they
- 10 needed to be. So we thought it needed to be clarified a
- 11 little bit more as to which components were actually the
- 12 responsibility of the H.O.A. and which were the
- 13 responsibility of the homeowner.
- 14 Q. And when was that done?
- 15 A. It was done -- it was filed in 2010, I believe. I
- 16 know that we actually approved it and then didn't
- 17 actually get it filed for a few months just because we're
- 18 all volunteers, and we just didn't get to it.
- 19 Q. Okay. Thank you, ma'am. You mentioned a moment ago
- 20 that one of the things that the board does is it sets the
- 21 budget or proposes a budget which is then voted on by the
- 22 homeowners?
- 23 A. Yes.
- 24 Q. And does it take money to fund the operation of the
- 25 H.O.A.?

- 1 A. Absolutely.
- 2 Q. And who supplies the money that makes up the budget
- 3 for the H.O.A.?
- 4 A. The owners.
- 5 Q. Is there any other source of revenue for an H.O.A.?
- 6 A. No. It's a non-profit organization. It runs purely
- 7 on the money that the owners put into it.
- 8 Q. And how do the owners contribute money to the H.O.A.
- 9 from the budget?
- 10 A. They're invoiced monthly. And I am also the
- 11 bookkeeper for the association, so I send them an
- 12 invoice. And then they're responsible to send their
- 13 monthly dues in to the treasurer.
- 14 Q. And if there are extraordinary expenses, what
- 15 happens?
- 16 A. We have to do an additional assessment.
- 17 Q. If a repair is made at Stoneledge, who pays for it?
- 18 A. The association.
- 19 Q. An exterior repair?
- 20 A. The association.
- 21 Q. And the association gets the money to pay for that
- 22 repair by or from?
- 23 A. From the owners.
- 24 Q. Since you purchased your unit at Stoneledge, have
- 25 you become aware of defects? Problems?

- 1 A. Yes.
- 2 Q. And what unit, by the way, did you purchase?
- 3 A. It's known as unit 26. The address is 227 Hidden
- 4 Shores.
- 5 Q. And is that in phase one?
- 6 A. It is.
- 7 Q. And describe for me, if you will, what sort of
- 8 problems you've learned about.
- 9 A. Well, we've got all sorts of water spots on the
- 10 ceilings coming from roof leaks. There was even one
- 11 incident which doesn't -- seems very trivial compared to
- 12 this. But my husband decided -- because we're very funny
- 13 about making things work properly and everything --
- 14 decided that he should fill up the bathtub and run the
- 15 jets occasionally just to make sure -- because we don't
- 16 use it that often -- just to make sure that they were
- 17 working properly. Well, he forgot. He turned the water
- 18 on and walked away. And all of a sudden we had water
- 19 everywhere because the overflow that's supposed to take
- 20 care of that isn't connected to anything.
- 21 Recently, we started to notice that where the
- 22 windows and doors are along the lake side of the unit,
- 23 the floor was actually sinking there. And my husband
- 24 went underneath. And because of the weight on all the
- 25 wet wood, it's just starting to compress the structure.

1 When we -- every time it rains, we have to pull all the
2 furniture from our screened-in porch because water just
3 flows into it.

4 Q. And at any point in time after you got on the board
5 after the owners took over the association, did you
6 become aware of problems that existed throughout phase
7 one?

8 A. Yes.

9 Q. And when did that occur?

10 A. It was early in 2009. Probably spring of 2009. And
11 we had been in a drought before that. You know, 2008 was
12 a very dry year. And 2007 as well were really dry years
13 here. And it started to rain in the spring of 2009. And
14 all of a sudden, as a board member, I was informed via
15 email by our president at the time, Steve Taylor, that he
16 had started to receive numerous phone calls from owners.
17 And so he walked the property and noticed that many of
18 the lower level decks were getting water.

19 Q. And that was when?

20 A. That was in the spring of 2009.

21 Q. And how much involvement did you have in that
22 investigation process?

23 A. Not a whole lot. Steve Taylor mostly took care of
24 that being the on-site guy.

25 Q. What can you recall, if anything, being personally

1 involved in in the summer of 2009 relative to these
2 pervasive problems that you'd learned about?

3 A. Well, being a board member, we were responsible for
4 addressing these problems that these owners were having.
5 So we had many conference calls and decided that we
6 needed to hire some sort of expert to figure out what we
7 needed to do.

8 Q. And who was that expert?

9 A. We retained an attorney, Jim Logan, who is a
10 resident there, owns a unit there as well. And he
11 suggested an engineering company called the Warren Group.

12 Q. And where were they from? Do you know?

13 A. I don't know exactly. Fairly local, I believe.

14 Q. Did you meet with the Warren Group?

15 A. I didn't meet with them personally.

16 Q. Was the Warren Group retained by the board?

17 A. Yes.

18 Q. And what was the Warren Group asked to do?

19 A. They were asked to inspect the property and give us
20 -- let us know if our units were safe or not.

21 Q. And as a result of the communication that the board
22 had with the Warren Group, what did the H.O.A. do?

23 A. Well, the Warren Group gave us this -- issued a
24 statement that said that our decks were unsafe and that
25 we needed to brace them so that they were safe for people

1 to be out on them.

2 Q. And did the association do that?

3 A. Yes.

4 Q. Followed the recommendations of the Warren Group?

5 A. Yes.

6 Q. At any time did the association try to get relief

7 from the developer or the contractor who built ---

8 A. Yes, we did.

9 Q. And when was that?

10 A. That was in 2009 when we retained Jim Logan.

11 Besides getting the Warren Group out there, Jim wrote to

12 the developers, wrote a letter, telling them that we were

13 having substantial problems evident throughout the

14 community and asked if they would come and address those

15 problems for us.

16 Q. And did the developers or contractors ever come and

17 address those problems?

18 A. Nope. No, sir.

19 Q. Did you feel as though you were going to get any

20 relief by writing letters to the developers and

21 contractors?

22 A. No, we didn't.

23 Q. When did you become familiar with this lawsuit?

24 A. In summer of 2009 while that was going on, another

25 resident hired Mr. Lyles and decided to sue the

1 developers on his own. So we had our annual meeting in
2 September 2009. There were a lot of owners there. We
3 had Jim Logan, the attorney that the board was using at
4 the time, there. We had -- Mr. Lyles was there. Derek
5 Hodgkin was there of C.S.E. And we -- basically, both
6 attorneys came up, gave their advice about how they
7 thought we needed to proceed from here to get some
8 relief. And everyone -- it was just a lot of -- everyone
9 voiced an opinion.

10 Q. And ultimately did your association decide to join
11 the lawsuit that had been filed?

12 A. Yes, we did.

13 Q. And did you feel as though you had any other
14 recourse against the developers and contractors other
15 than that?

16 A. No, we didn't.

17 Q. After you joined the lawsuit, what did you do in
18 terms of funding?

19 A. Well, the first thing that we had to do was figure
20 out -- you know, unfortunately it costs money if you want
21 to start a lawsuit, and you need to pay experts. So the
22 first thing we did was, well, we retained an expert. We
23 needed an expert to tell us what was wrong with our units
24 and what we needed to do to fix them. And we had to get
25 money to pay them.

1 Q And who was that expert?

2 A. C.S.E. Corporation, Derek Hodgkin.

3 Q. And, again, who funded the retention of C.S.E.?

4 A. The owners did.

5 Q. And did you form any committees?

6 A. We formed a litigation committee. It was comprised
7 of a couple of the owners that were already on the board
8 and a couple of other owners as well that expressed an
9 interest.

10 Q. And what was the purpose of the litigation
11 committee?

12 A. Well, the purpose of the litigation committee was to
13 hire and work with C.S.E. to gather any documents needed
14 for this litigation. We had to do a lot of gathering of
15 documents for discovery and everything like that.

16 Q. And you've been involved with the litigation
17 committee?

18 A. Yes.

19 Q. Tell me who all from homeowners' standpoint has been
20 involved with the litigation committee?

21 A. There have been various members throughout the time.
22 Currently the litigation is me, Robert White and Steven
23 Gosk. Paul Hund was on the committee for a while, Ruth
24 Isaac, Jeff Doller. That's who I recall right now.

25 Q. At any point in time, did you consider just letting

1 each homeowner go out and make whatever repairs they felt
2 like they needed to make?

3 A. Absolutely, no. We couldn't do that. The way our
4 units are constructed -- well, basically, my roof butts
5 up to my neighbor's siding. Everything goes together at
6 all sorts of angles. Not only that, but the association
7 is responsible for maintaining the exterior. So we
8 couldn't have owners maybe not doing the repairs properly
9 and then us being responsible for.

10 Q. When you retained C.S.E. or the board retained
11 C.S.E., is that a process that you were involved in
12 personally?

13 A. Yes.

14 Q. Donna, what did you ask C.S.E. to do for the
15 Stoneledge H.O.A.?

16 A. We asked them to investigate, to do whatever they
17 needed to do to figure out what was wrong with our units
18 and to give us a manual on how we need to repair them.

19 Q. What was your ultimate objective with C.S.E.?

20 A. Our ultimate objective was to get a home that was
21 built to the quality that we thought we'd purchased.

22 Q. Did you or anyone else with the homeowners
23 association direct the C.S.E. investigation?

24 A. No. We gave them absolute latitude.

25 Q. Did you put a limitation on what they could do?

1 A. No.

2 Q. Did you rely on Mr. Hodgkin and C.S.E. to provide you
3 services that was consistent with their professional
4 judgment?

5 A. Absolutely.

6 Q. And were you relying on C.S.E. to give you a repair
7 ---

8 A. Yes.

9 Q. --- that in their professional judgment was
10 necessary? Did you ask at any time for C.S.E. to require
11 a repair to give you something different or better than
12 what you bought?

13 A. No.

14 Q. Are you satisfied with the job that C.S.E. did?

15 A. Yes.

16 Q. Was it important to you and to your association that
17 the repair of your project be designed by a licensed
18 qualified South Carolina design professional?

19 A. Yes, absolutely.

20 Q. And why is that?

21 A. Well, we need to know that the repair was done
22 properly. We need to have somebody that we can hold
23 accountable for that. We need to provide our owners with
24 assurance that they're living in a home, a quality home,
25 that's not going to fall down around them and a home that

- 1 they can sell if they need to.
- 2 Q. Have you reviewed the C.S.E. scope of repair?
- 3 A. Yes.
- 4 Q. And have you reviewed the estimates that you've
- 5 heard about as part of the proceedings today?
- 6 A. Yes.
- 7 Q. Are you aware of whether or not any interior repairs
- 8 will be necessary to units as a result of the building
- 9 envelope repairs that are going to be made?
- 10 A. Absolutely.
- 11 Q. And is the association going to assume
- 12 responsibility for making those interior repairs ...
- 13 A. Yes.
- 14 Q. ... that are necessitated by the building envelope
- 15 repair?
- 16 A. Yes.
- 17 Q. Do you believe that that's an obligation of the
- 18 association?
- 19 A. Yes.
- 20 Q. And why is that?
- 21 A. The last paragraph in the resolution that I was
- 22 talking about earlier says that even though the owners
- 23 are responsible for their own interior repairs, if
- 24 they're caused by something that's an exterior component
- 25 that the association did not repair in a timely manner,

1 then they're the association's responsibility. And we
2 have not been able to do any repairs in a timely manner.

3 Q. And why is that?

4 A. We simply don't have the money to do it.

5 Q. Have you done some repairs?

6 A. We have.

7 Q. And tell me what sort of repairs you have done?

8 A. Most of the repairs that we have done are what we
9 call emergency repairs. And we only even touch anything
10 if somebody's actually getting water in their unit. At
11 that point, we just, I, guess put a band-aid on it, if
12 you will, just to stop the water from coming in for right
13 now.

14 Q. Until when?

15 A. Until we can get enough money to do the repair that
16 we need to do the right way and follow C.S.E.'s scope.

17 Q. What has C.S.E. actually done for you today, as
18 you're testifying today?

19 A. Well, they investigated for us. They provided us
20 with a repair scope. They have attended lots of days of
21 depositions. They have overseen our emergency repairs.
22 They've worked with defense experts. They've assisted
23 Mr. Lyles with this lawsuit.

24 Q. What sort of work do you think that they've done
25 with defense experts?

- 1 A. Well, they need to monitor -- they're there to
2 monitor -- when defense experts are on site, they're
3 there monitoring and overseeing what the defense experts
4 are looking at.
- 5 Q. And have there been defense experts on site?
- 6 A. Lots of them.
- 7 Q. You mentioned depositions a moment ago. What's a
8 deposition?
- 9 A. Basically, we've all undergone a lot of depositions.
10 The other side is able to call any person involved in a
11 lawsuit, experts or owners or homeowners association.
12 And you sit down in a room, and they ask you questions
13 all day long.
- 14 Q. And have you paid C.S.E. to attend depositions?
- 15 A. Yes, we have.
- 16 Q. Do you know how many days worth?
- 17 A. Like seven.
- 18 Q. How much has the association paid C.S.E. for the
19 work that it's done at Stoneledge?
- 20 A. A little over three hundred thousand dollars so far.
- 21 Q. And is that in excess of the budget that you got
22 from C.S.E. when they first started working for you?
- 23 A. Yes, it is.
- 24 Q. And do you know why they've gone over their budget?
- 25 A. Yes, I do.

1 Q. What's that? Why is that?

2 A. Well, primarily it's all the extra emergency repairs
3 we've had to make and then overseeing all those repairs.
4 Not knowing that they were going to have to be at seven
5 days of depositions, but, yeah. And overseeing a lot of
6 different defense experts coming over.

7 Q. Have you paid C.S.E. what you've been billed?

8 A. Yes.

9 Q. And, again, that money's been paid effectively by
10 the owners?

11 A. Exactly.

12 Q. How much time would you say, Donna, you have spent
13 in the last four years in efforts related to the defects
14 at Stoneledge?

15 A. I think -- my husband and I jokingly say it's our
16 part-time job, unpaid part-time job. And it truly is. I
17 live it, breathe it, think it every day. Work-wise, I
18 would say every day I do something. It's a rare day that
19 I don't do something related to it. It's probably an
20 average of a couple of hours a day.

21 Q. Has it affected how you are able to use your unit at
22 Stoneledge?

23 A. Absolutely.

24 Q. How so?

25 A. Every trip that we make down here that we thought

1 was going to be an enjoyable time is spent working. We
2 can't enjoy our screened-in porch, you know, all of the
3 time. If it's raining or anything, there's water pouring
4 in. When we meet with other neighbors and owners, it's
5 always the topic. We can never just enjoy each other's
6 company or -- you know, everybody's complaining that --
7 owners get mad at you, you know, because, you know,
8 things are not fixed in their units.

9 Q. Hang on just a second.

10 THE COURT: Let's take a short break, if you
11 would, please, at this time.

12 All right. Mr. Foreman, ladies and gentlemen of the
13 jury, if you would, retire to the jury room, and we'll
14 come back in a few minutes.

15 (WHEREUPON, the jury exited the open court at
16 approximately 2:34 p.m.)

17 THE COURT: How much longer you think you might
18 be, Mr. Lyles?

19 MR. LYLES: May ten minutes.

20 THE COURT: Very good.

21 If you need to take a break too, you may step down.
22 But remember, you're under oath. So you can't talk ---

23 THE WITNESS: Thank you, Your Honor.

24 THE COURT: Very good. Thank you.

25 All right. Let's stand at ease for a few minutes.

1 MR. BELCHER: Your Honor, we have a matter we
2 need to address with you before the jury comes back in.

3 THE COURT: Certainly.

4 MR. BELCHER: The testimony ---

5 THE COURT: Just a moment. Let's -- sit down.

6 Yes, sir?

7 MR. BELCHER: The testimony of this witness has
8 caused an issue that was heretofore already addressed
9 among the parties by consent. And that was that we're
10 not going to reference phase two. She has now testified
11 to this jury that the three hundred thousand dollar bill
12 as well as seven days of depositions are a result of
13 phase one in this litigation. And that's not the case.
14 I asked Derek Hodgins about two or three hours of
15 questions. I'm not going to be on the hook for seven
16 days of depositions and three hundred thousand dollars
17 worth of fees. Her testimony should have been related
18 only to phase one. And I'm not going to trot all over
19 phase two, but I'm just telling the Court now that if he
20 has an objection, I'm going to start talking about phase
21 two and how that bill gets split up.

22 THE COURT: What do you say, Mr. Lyles?

23 MR. LYLES: Well, on the bill ---

24 THE COURT: Wait a minute. Let me do this
25 first. Both parties have talked in their opening

1 statements about phase one and phase two, so I knew that
2 was going to be a problem. I didn't know it was going to
3 come up in this, but I didn't realize that the
4 depositions she was talking about dealt with both phase
5 one and phase two.

6 MR. LYLES: I didn't even think about that,
7 Judge. And we did talk yesterday about how to allocate
8 Derek Hodgins' costs, C.S.E.'s costs. Because they've
9 not been broken out by phase one and phase two, nor the
10 depositions. I don't know how we'd break those out by
11 phase one and phase two either.

12 THE COURT: Well, as I understand it, phase one
13 involved, for example, the Bostic Brothers. Phase two
14 didn't.

15 MR. LYLES: Everybody was at every deposition.

16 THE COURT: Well, I can't say -- we've got some
17 attorneys here who are involved only in phase two.
18 They're here because they think it'll be of interest.
19 It's not -- what is it? -- it does not have anything to
20 do with their part of the case. I mean, I don't know.
21 I'm not sure if that's the excuse. I see what the
22 confusion -- what it might be.

23 MR. BELCHER: The jury can draw an inference
24 now that there's three hundred thousand dollars worth of
25 forensic work on phase one and seven days of testimony

1 and a hundred experts trotting all over phase one. That
2 wasn't the case. My expert was on phase one, and I think
3 I'm the only one who hired an expert. So to the extent
4 that C.S.E. was on site thirty days out of a two-year
5 process or whatever, that's not on phase one. Because I
6 had Rick Moore out there for two days and Steve Watkins
7 was there with them at the same time.

8 MR. LYLES: And Marshall Clark was out there
9 for several days as well.

10 MR. BELCHER: That's not my expert, though.

11 MR. LYLES: Well, it's not yours, but it's a
12 phase-one expert.

13 MR. BELCHER: Okay. Well, I don't want --
14 that's not -- Marshall Clark is not what she's testifying
15 about right now. She's talking about Construction
16 Science Engineering being out there. And I don't think
17 that that goes on phase one. I just don't know how I can
18 get around not saying on cross-examination that not all
19 of those costs are associated with phase one. Y'all did
20 a lot of work on phase two. I don't want to. I wanted
21 to keep it out. But now that the door's open, I think we
22 ---

23 THE COURT: Well, as I said, I had a problem
24 with it on your opening statements that both of you
25 mentioned phase two.

1 MR. LYLES: Well, just that there were two
2 phases, not that phase two ---

3 THE COURT: Well, that's what you mean when you
4 say, "open the door." That's what happens when you let
5 the animal out.

6 MR. IMHOFF: Your Honor, may I?

7 THE COURT: Yes, sir, please.

8 MR. IMHOFF: This is all about me. This was my
9 argument a year ago, months ago, that they were so
10 interrelated that it would be difficult to bifurcate the
11 case. But we bifurcated the case. So I filed a motion
12 in limine specifically on this issue so that phase two
13 wouldn't come up so that it wouldn't be prejudicial --
14 because the case is bifurcated -- to use phase two to
15 paint my client in a bad light. And the example that I
16 used yesterday was that Derek Hodgin's bill was three
17 hundred and fourteen thousand dollars, but it was two
18 phases. And that's the exact example I used. And it is
19 now in evidence. Now these two gentlemen who don't
20 particularly care whether my client is painted in a bad
21 light by an entirely different phase, which isn't being
22 tried here, are talking about phase two.

23 THE COURT: Well, let me ask you. Was the
24 expert's bill distinguishable between the two phases or
25 just collectively?

1 MR. IMHOFF: It's not, Your Honor. And I
2 suggested yesterday that we just split the difference and
3 say a hundred and fifty thousand dollars in phase one, if
4 you recall. That was my suggestion yesterday. I filed a
5 motion. You granted the motion. We talked about it, and
6 now it's out. And this is exactly what I was worried
7 about when I filed that.

8 MR. BELCHER: And another issue too is that the
9 testimony is completely irrelevant in this case. It's
10 not an element of recoverable damages in this trial.
11 What they spent on the investigation of these units is
12 not a recoverable damage in trial. But now that it's out
13 there, the jury's going to draw an inference that all of
14 that money -- maybe they are entitled to it, number one.
15 And number two, if Marick walks on whatever we do in
16 joint and several liability later in the case or
17 otherwise, Bostic is left with the jury having that
18 number in its head. And it's not even a fair number
19 because it's not cut in half. We've got to ---

20 MR. LYLES: Cut it in half.

21 THE COURT: Mr. Lyles, he makes an excellent
22 point there. Obviously, trial preparation is not -- what
23 is it? -- recoverable in damages. So what would be the
24 relevance of the cost of experts?

25 MR. LYLES: Well, I would candidly tell you

1 that my supposition is that the defendants would want to
2 ask Derek Hodgkin what he's been paid.

3 THE COURT: Well, yes, of course. But that
4 goes to credibility.

5 MR. LYLES: Yes, sir.

6 THE COURT: It doesn't go to -- what is it? --
7 admissibility.

8 MR. LYLES: And which is why I raised it in my
9 case so we could establish what has been paid and who
10 paid it. And that's not a damage that I'm seeking to
11 recover. It's not a damage I ---

12 THE COURT: Well, why don't you make that clear
13 to the jury.

14 MR. LYLES: Sir?

15 THE COURT: Why don't you make that clear to
16 the jury.

17 MR. LYLES: I'll be glad to. And I'll also be
18 glad to make it clear to the jury that only a hundred and
19 -- half of it should be considered phase ---

20 THE COURT: Well, I think that -- what is it?
21 -- no -- gentlemen -- obviously, the ladies are being
22 quiet right now. The only thing that I'm concerned about
23 is they might get confused with figures that are
24 irrelevant.

25 MR. LYLES: Yes, sir.

1 THE COURT: Normally, as you say, when you talk
2 about how much a witness is being paid, that goes to the
3 credibility or how many people you work for or who you
4 work for. It does not go to the issue of damages. And I
5 think that -- what is it? -- it might be, well, since you
6 brought it up, that -- what is it? -- through this
7 witness you say, well, this is not your damage -- this
8 is solely to show that you did -- what is it? -- make the
9 inspection, but it's not a part of your damages that
10 you're seeking.

11 MR. LYLES: Yes, sir.

12 THE COURT: Is that -- or do you want -- I can
13 give them an instruction myself. I would rather that
14 they not see the Court -- what is it? -- interfering here
15 because then it reflects on the -- not so much a witness
16 as upon the presentation.

17 MR. BELCHER: Well, I think that they have
18 heard that number, and that's well and good for them to
19 not consider it.

20 THE COURT: I don't find that that's exactly --
21 what is it? -- controlling. Because, as I say, we've all
22 tried cases, and we know that that's how you attack the
23 credibility of a witness is to bring up how much he's
24 been paid or she's been paid or something like that.
25 It's not necessarily the same when you talk about, oh, I

1 spent so much investigation. Well, you could have stated
2 the same thing as travel or something like that in your
3 depositions. Or I spent so much in going to depositions.
4 Of course, you could have either stayed at -- what is it?
5 -- a Days Inn or a Marriott or something. I don't know.
6 What I'm saying is, I'll either do it -- Mr. Lyles, I'll
7 give you an opportunity to repair the damage which is to
8 make sure that through this witness where that testimony
9 was brought out that it's clear that -- what is it? --
10 that's not the damages that you're seeking and that it
11 has nothing to do with what you're asking the jury to
12 determine.

13 MR. BELCHER: And I would also ask -- you know,
14 I can't tell him how to question his witness. But I
15 would ask for something, some kind of question that says,
16 and a fraction of that is associated with phase one.
17 Since it's irrelevant anyways, we don't have to get into
18 numbers. But a fraction of it is associated with phase
19 one, but you're not asking for it for damages. Okay?
20 Because it's not fair to give them a number that they're
21 not going to forget that I may not mention when I impeach
22 Derek Hodgkin. Whether they consider it damages or not,
23 you know what they're going to do back there.

24 THE COURT: Well, what you're doing is you're
25 inviting them to say that the phase two's involved.

1 MR. BELCHER: I'm not asking ---

2 THE COURT: I know. But you're inviting it.

3 And that's why I'd say the less said about it, the better
4 it is. Otherwise -- well, excuse me, Mr. Belcher.

5 MR. BELCHER: Yes, sir.

6 THE COURT: I'll be glad to do it myself.

7 MR. BELCHER: Robert, do you want to do it?

8 MR. LYLES: I'll be glad to do it. I'm going
9 to ask ---

10 THE COURT: That'll be fine with me. But as I
11 say, I made the note in both of your opening statements,
12 and I don't think it was yours. I think it was one of
13 the defendant's opening statements. I said, "Oh, my
14 goodness. There it is. Phase two." You said it in
15 yours, just referring to something, but it put into issue
16 in the sense that -- what is it? -- into -- not evidence,
17 but in the fact that -- what is it? -- it was mentioned.
18 Contemplation. I'd say that.

19 MR. IMHOFF: Your Honor?

20 THE COURT: Yes, sir.

21 MR. IMHOFF: If I may again, I understand these
22 gentlemen are fighting about it. I don't know that
23 either of them particularly care because it doesn't
24 really affect them.

25 THE COURT: Well, I do.

1 MR. IMHOFF: It benefits both of them. It was
2 my motion in limine. It is clearly -- I would ask for a
3 finding that the motion in limine has been violated and
4 ---

5 THE COURT: Well, what would you want me to do?

6 MR. IMHOFF: Well, Your Honor, I don't know.
7 It's ---

8 THE COURT: Well, that's it. Give me -- if you
9 have -- what is it? -- a complaint, give me a remedy.

10 MR. IMHOFF: Well, I think first Mr. Lyles has
11 to fix it.

12 THE COURT: All right. This is what I've
13 suggested.

14 MR. IMHOFF: But I would also ask that you
15 direct the jury. And I would also ask, Your Honor,
16 respectfully, that you direct the rest of the witnesses
17 that are here, the parties that are here, that we're not
18 talking about phase one -- or phase two or three
19 consistent with your ruling yesterday.

20 THE COURT: Will you forgive me, Mr. Imhoff? I
21 tell you, it's some sort of responsibility that we have
22 as counsel or attorneys as well as the Court. If you
23 have witnesses, you're in control of those witnesses.

24 MR. IMHOFF: Yes, Your Honor.

25 THE COURT: If you present a witness, you

1 present a witness with the understanding that the witness
2 is not going to violate the very rules that -- what is
3 it? -- you have been successful in establishing.

4 MR. IMHOFF: Yes, Your Honor.

5 THE COURT: So, I mean, the fact that -- what
6 is it? -- y'all haven't done that, that -- what is it? --
7 maybe I will have to. And when I do, it will certainly
8 come down not only on the witness but on the attorney
9 that -- what is it? -- invites them. So I would suggest
10 to all of you it would be to your advantage that when you
11 proffer a witness, be sure they know what the limits are.

12 MR. IMHOFF: And, Your Honor, that's why -- and
13 I asked -- this was the example I used yesterday. I
14 couldn't have done ---

15 THE COURT: I'm so proud of you, Mr. Imhoff. I
16 tell you, I really am. I'm not going to sanction him,
17 but I'm going to give you a gold star. All right?

18 (Laughter)

19 THE COURT: Let's get back into the trial of
20 the case. I'll listen to Mr. Lyles' curative -- what is
21 it? -- examination. But if doesn't, it seems to leave
22 something to be desired, then I will on my own motion --
23 what is it? -- take it up.

24 MR. BELCHER: Okay. Thank you, Your Honor.
25 Thank you very much.

1 THE COURT: Anybody else? Anybody else want to
2 get in this fight?

3 MR. LYLES: Your Honor, if I may, can I advise
4 ---

5 THE COURT: Sir? All right. We'll give you
6 another five minutes just to take a break.

7 And as I say, ma'am, if you want to sit there, you
8 can, but do not discuss your testimony with anybody
9 unless you listen to their advice and not ...

10 THE WITNESS: Yes, sir.

11 THE COURT: All right. Let's stand at ease.

12 (WHEREUPON, court stood at recess for a short
13 break.)

14 THE COURT: All right. Back on the record.

15 All right. Mr. Lyles, you were addressing what
16 might be a curative matter as far as the mention of
17 investigations having to do with -- about cost of the
18 investigations that might have to do with -- which would
19 be irrelevant to begin with, but also the phase two part
20 of the project.

21 MR. LYLES: Yes, Your Honor. I said I was
22 happy to ask the witness to verify that she's not seeking
23 to recover that sum as a damage, which we had talked
24 about previously. But Mr. Belcher had also asked that I
25 ask the witness to confirm that not all of that was

1 incurred relative to phase one. And my concern about
2 that was that it implies that there is other work at the
3 project that's being done, which is what Mr. Imhoff was
4 trying to avoid.

5 THE COURT: I understand.

6 MR. LYLES: And so Mr. Belcher suggested that
7 the Court tell the jury to disregard Ms. Furnari's
8 testimony about the amount that she paid C.S.E., which
9 she's been billed by C.S.E., and I think you said the
10 number of days of depositions.

11 MR. BELCHER: (Nodded head up and down in the
12 affirmative)

13 THE COURT: All right. Is that correct? I
14 mean, do you have ---

15 MR. BELCHER: Just for the instruction that
16 it's not recoverable. It's not a trial ---

17 THE COURT: Well, it's not at issue, yeah. And
18 you said -- I mean, it's not recoverable. It's
19 irrelevant. All right.

20 Mr. Imhoff?

21 MR. IMHOFF: Yes, Your Honor. I agree with
22 that. And I would again request the Court, if nobody
23 hears it, that that was a violation of the motion in
24 limine.

25 THE COURT: You know what I'm going to do?

1 MR. IMHOFF: What, Your Honor.

2 THE COURT: You know, you have a position in
3 this courtroom like the rest of us. We each have jobs to
4 do.

5 MR. IMHOFF: Yes, Your Honor.

6 THE COURT: And one of your jobs as an
7 attorney, of course, is to object to any -- what is it?
8 -- testimony. And our rules provide the way you do that
9 is you note to the Court, "I have an objection, Your
10 Honor." And then I'll realize that you do -- you're a
11 sincere individual. You'll probably -- what is it? --
12 deserve some attention. And I'll either have a sidebar,
13 or I will send the jury out and I'll give you your
14 objection. Now, if you'd done that when it was first
~~15 mentioned --- even the depositions. How many depositions~~
16 and how much and the cost of the investigation, we
17 wouldn't be here now. We could have struck it right
18 then.

19 MR. IMHOFF: Well, Your Honor, it was going to
20 be Mr. Belcher's questioning that he was kind enough to
21 share with me that was the objectionable part.

22 THE COURT: Well, you want to blame him? He's
23 going to have an anticipatory objection? I mean, I don't
24 quite understand. Mr. Belcher hasn't addressed this
25 witness yet.

1 MR. IMHOFF: You're correct.

2 THE COURT: But you heard the witness and you
3 had an objection to what the witness was saying. You sat
4 there silently until I sent the jury out for a break.

5 MR. IMHOFF: Yes, Your Honor. That is what I
6 did. I chose that as a better course. Because
7 otherwise, we would have the objection on the record, I
8 felt, in front of that jury which would defeat the
9 purpose of the motion in limine.

10 THE COURT: No, it would not. You would have
11 it just as any other -- and you don't remember my
12 preliminary instructions, that one of the things that we
13 have in a courtroom is rules of evidence that we follow.
14 And we do this, and they have -- and if an attorney has
15 an objection to someone not following those rules, don't
16 hold it against their client. I mean, sometimes you do
17 have responsibilities. I'm sorry.

18 MR. IMHOFF: Your Honor ---

19 THE COURT: Well, now, first of all, I need to
20 clarify something. My Lyles, in your opening statements
21 you referred to, "oh, this is only phase one of the
22 project. We're not talking about phase two."

23 And, Mr. Belcher, in yours you put, "Phase one," I
24 think, "has plans for thirty-seven units, and phase two
25 is forty-seven units." So both -- and it is, you know,

1 we're all getting sort of tagged here with it. So now to
2 get back to the better course is that Mr. Lyles just
3 clarifies that we're not talking about cost preparation.
4 And you want what further -- who wants further
5 instruction from the Court?

6 MR. BELCHER: I just think if the Court tells
7 the jury to disregard any testimony with regard to costs
8 and with regard to days in deposition because they're not
9 at issue in this case.

10 THE COURT: All right.

11 MR. BYRHOLDT: And they're not part of
12 recoverable damages.

13 THE COURT: All right. I will probably say
14 this. Preparation is not -- what is it? -- a recoverable
~~15 matter or cost in this --- in litigation.~~

16 MR. BELCHER: And the jury should disregard ---

17 MR. LYLES: Yes, sir.

18 THE COURT: And to disregard anything ---

19 MR. IMHOFF: Perfect. Thank you, Your Honor.

20 THE COURT: --- in regard to how much
21 inconvenience or costs.

22 MR. LYLES: So you're going to give that?

23 THE COURT: No. I'm going to let you -- what
24 is it? -- clarify it since it came out with you. And
25 then -- what it is -- just reiterate it for the jury's

1 benefit that that is the law.

2 MR. LYLES: Okay.

3 THE COURT: That they're not to be concerned
4 with it. You're such a conscientious soul, you want to
5 be sure that that matter was ...

6 MR. LYLES: Yes, sir.

7 MR. BELCHER: Thank you, Your Honor.

8 THE COURT: All right. Anything else? Very
9 well. Will you ask the jury to join us, please?

10 (WHEREUPON, the jury entered the open court at
11 approximately 3:00 p.m.)

12 THE COURT: All right. Let the record reflect
13 the jury and alternate are in the jury box.

14 Mr. Lyles, you may proceed with your line of
15 questioning. But I do feel that there are some things if
16 you could clarify for the jury a little bit.

17 DIRECT EXAMINATION

18 CONTINUED BY MR. LYLES:

19 Q. Ms. Furnari, when you were testifying earlier, you
20 testified about some of the efforts that C.S.E. had
21 engaged on your behalf. You had mentioned deposition
22 time and you mentioned the total amount that they had
23 paid you; is that right?

24 A. That we had paid them, yes.

25 Q. Yeah, you had paid them. I'm sorry. You probably

1 wish they had paid you.

2 A. Yes, sir.

3 Q. Are you seeking to collect the money that you have
4 paid them in this lawsuit?

5 A. No.

6 THE COURT: All right. Just so that -- and
7 this is what Mr. Lyles and the other attorneys are always
8 concerned about is that you consider what you need to
9 consider. But there are certain things that are not
10 relevant to a lawsuit. One of those -- or some of those
11 matters are inconvenience and -- what is it? -- cost of
12 preparation. And, therefore, any matters having to do
13 with something that is not directly related to the damage
14 issue that you will be given as far as what is to be

~~15 considered when you get to that point, do not -- and, in~~
16 fact, I'm going to ask you to disregard it, and it will
17 be stricken from your consideration -- all right --
18 anything that had to do with the cost for preparation
19 such as depositions or investigations or anything of that
20 nature.

21 Very good. You may proceed.

22 MR. LYLES: Yes, sir.

23 THE COURT: Excuse me. Any questions from the
24 defendants?

25 MR. BELCHER: No, Your Honor. Thank you.

1 MR. IMHOFF: No, Your Honor. Thank you.

2 THE COURT: Very good. Thank you very much.

3 You may proceed.

4 Q. Donna ---

5 A. Yes, sir.

6 Q. --- along those same lines, if you would, tell the
7 jury what you do hope to recover and get out of this
8 lawsuit for the H.O.A.

9 A. What we would like to recover is the amounts that we
10 have spent on repairs to our units and the amount that it
11 is going to take us to repair our units to the quality
12 that they should be.

13 Q. And, Donna, are you looking to get something out of
14 this lawsuit that is different than what you bought
15 originally?

16 A. No. We just want the home that we thought we
17 bought.

18 Q. Without making those comprehensive repairs, is there
19 any way for the Stoneledge H.O.A. to continue to put
20 band-aid fixes on these units?

21 A. No, there's not. We just don't have the money.

22 MR. LYLES: I think that's all the questions
23 I've got for Ms. Furnari, Your Honor.

24 THE COURT: All right.

25 Mr. Anderson?

1 Oh, excuse me. Mr. Belcher? I almost forgot.

2 MR. BELCHER: Thank you, Your Honor.

3 THE COURT: Thank you, sir.

4 CROSS-EXAMINATION

5 BY MR. BELCHER:

6 Q. Thank you, Ms. Furnari. Alan Belcher again. We've
7 met a couple of times over the years.

8 A. Yes. How do you do?

9 Q. You live at unit 227?

10 A. Yes.

11 Q. And that's Hidden Shores Drive?

12 A. Hidden Shores Lane.

13 Q. Okay. Hidden Shores Lane. I lost you somewhere in
14 there. You purchased in 2008; correct?

15 A. Yes.

16 Q. Now, you talked about having an opportunity to buy
17 through the developer or to buy through a prior owner?

18 A. Yes.

19 Q. Which one did you buy? Did you buy directly from
20 one of the developers, or did you from a previous owner?

21 A. From a previous owner.

22 Q. Okay. Did you have a property condition disclosure
23 report form like what the realtor has to give you when
24 you're looking at a house?

25 A. Yes.

1 Q. All right. Did that list any deficiencies that you
2 saw?

3 A. No.

4 Q. No leaks or stains or anything?

5 A. No.

6 Q. And when did you understand that this unit had been
7 built? Did they provide that information to you?

8 A. I can't remember exactly. I believe it was about
9 2004 or '05. But I'm not sure exactly.

10 Q. Do you know who your builder was, whether it was
11 Bostic or Marick, who obtained the certificate of
12 occupancy?

13 A. I don't.

14 Q. Do you know what happened with your unit between
15 2003 and 2008?

16 A. No.

17 Q. Do you know if any repairs were made?

18 A. No.

19 Q. If there were any roof leaks?

20 A. I don't know that. I surmised that there was one.

21 Q. How so?

22 A. When my husband and I looked at the unit, there was
23 a repair to the ceiling that indicated that there had
24 been a leak that had been fixed. You could see the
25 repair because it wasn't done very well.

1 Q. And that was before you purchased?

2 A. Yes.

3 Q. Did you have your home inspected by a licensed home
4 inspector?

5 A. Yes.

6 Q. Did the inspector reveal any issues or deficiencies
7 or flashing or staining in locations or roof leaks or
8 anything?

9 A. They mentioned that there was some staining on one
10 window upstairs, that it was kind of dinged but it could
11 have just been a window that was left open or something.
12 It was never really an issue.

13 Q. Did you have any repairs made?

14 A. No.

15 Q. As a result of the inspection, did you have any
16 repairs made prior to purchase?

17 A. There was a heating and air condition line that was
18 crimped that was kind of fixed, but not really very well.

19 Q. Who made those repairs? Do you know?

20 A. I don't.

21 Q. When did you first observe roof leaks after you
22 purchased your unit?

23 A. Well, I'm trying to think. I guess we started to
24 notice in our particular unit probably the end of 2009,
25 was when several more spots started to appear on our

- 1 ceilings.
- 2 Q. Are those spots around skylights?
- 3 A. No.
- 4 Q. Are they spots that are associated with rain?
- 5 A. I assume so.
- 6 Q. Do you have air conditioning units in your attic?
- 7 A. In the attic? I'm not sure.
- 8 Q. Have you had to have your air conditioning unit ever
- 9 repaired because it overflowed the pan?
- 10 A. No.
- 11 Q. Have you ever had anyone investigate how this water
- 12 is coming into your house at the ceiling?
- 13 A. No.
- 14 Q. Is it near a roof-to-wall intersection?
- 15 A. I don't know.
- 16 Q. Has anyone been in your attic to determine where
- 17 those leaks are coming from on the inside?
- 18 A. No.
- 19 Q. Now, Mr. Hodgkin and his associate have been through
- 20 your unit before; correct?
- 21 A. I don't know if our unit was part of their
- 22 investigation process or not because it was kind of
- 23 random.
- 24 Q. Okay. In the last four years, have they ever been
- 25 in your house?

- 1 A. Yes.
- 2 Q. Did you ever ask them to take a look at the water
- 3 stains on your ceilings and tell you what that's from?
- 4 A. No. We asked them to look underneath our unit in
- 5 the crawlspace. We have a -- our level -- our unit
- 6 doesn't have a basement. We have two levels, and we have
- 7 a crawlspace under our unit.
- 8 Q. Uh-huh (affirmative).
- 9 A. And when I talked before about when we saw the floor
- 10 started sinking, my husband asked them, Burgess, to come
- 11 out and go under the crawlspace and look at the supports
- 12 under there with him.
- 13 Q. Are there any issues there?
- 14 A. Yes.
- 15 Q. All right. Are they documented?
- 16 A. Yes.
- 17 Q. All right. Do you have the photographs with you to
- 18 show the jury what's going on on the back of your house?
- 19 A. I believe Burgess might.
- 20 Q. So we'd have to ask Mr. Hodgin or Mr. Burris [sic]
- 21 specifically?
- 22 A. Yes.
- 23 Q. All right. How about the stains to your ceiling?
- 24 A. I don't have pictures of them or anything.
- 25 Q. How long have they been there?

1 A. Like I said, we started noticing them probably
2 around 2009, 2010. And they just every -- they just sort
3 of grow.

4 Q. When was the last time you noticed them?

5 A. Today.

6 Q. When was the last time you noticed them growing?

7 A. Every time we come there, there's either a new one
8 or it's gotten bigger.

9 Q. Have you had a roofing contractor come up there and
10 look and see if the boots penetration needs sealed or
11 anything?

12 A. No, because we know the entire roof needs to be
13 fixed.

14 Q. You know the entire roof needs to be fixed?

15 A. Yes.

16 Q. Do you mean all the shingles have to come off of it?

17 A. Yes.

18 Q. And you think it's because of the way the shingles
19 are on there that your roof leaks?

20 A. I think there's various problems.

21 Q. And just so the jury's clear, one of the exhibits to
22 your testimony here today has been a brochure about
23 Stoneledge?

24 A. Yes.

25 Q. Do you know who produced that brochure?

- 1 A. No.
- 2 Q. Do you know who made all those representations to
- 3 you about maintenance-free life?
- 4 A. Well, the representations were made by Chip Albert
- 5 who worked for Marick at the time we bought our unit.
- 6 Q. So nobody at Bostic Construction ever told you you
- 7 have a maintenance-free building?
- 8 A. No.
- 9 Q. Have you ever lived in any residence that has been
- 10 maintenance-free?
- 11 A. No. I've never lived in a condo or townhome.
- 12 Q. Have you ever lived in a single family residence
- 13 that was maintenance-free?
- 14 A. No.
- 15 Q. And the other issue that you have is that your
- 16 bathtub overflowed one time?
- 17 A. Yes.
- 18 Q. All right. Did that cause water damage to the
- 19 interior of your home?
- 20 A. No. We caught it before it did that.
- 21 Q. Going back to some of your earlier testimony, you
- 22 were talking at some point about a meeting that the
- 23 H.O.A. had to address some of the issues at Stoneledge,
- 24 maybe one of the first meetings?
- 25 A. Okay.

1 Q. Do you recall your testimony there because I'm about
2 to ask you a couple of questions?

3 A. Yes.

4 Q. All right. I think at one point you said you
5 retained an attorney who lived out there. Is that Mr.
6 Logan?

7 A. Yes.

8 Q. And then did he call Marick on your behalf?

9 A. I'm not exactly sure who he called. I know he wrote
10 a letter to Bostic. That I remember seeing.

11 Q. Who did the letter go to at Bostic?

12 A. I can't remember specifically.

13 Q. Were you aware that Bostic had wound down and was
14 not a corporation at that time?

15 A. Yes.

16 Q. All right. So who did the letter go to?

17 A. I assume it went to the principles of Bostic, but I
18 don't know that for a fact.

19 Q. Did you ever see a letter addressed to Joe or Jeff
20 Bostic?

21 A. I can't tell you who the letter was addressed to. I
22 remember as a board member that the attorney was writing
23 a letter. And what I remember is that it was to Bostic.
24 I don't remember specifically who it went to.

25 Q. So can you testify to the jury that you have seen a

1 letter from your attorney that was mailed to Bostic
2 Construction somewhere in the world?

3 A. Yes.

4 Q. Okay. Would you be surprised to know that Joe
5 Bostic and Jeff Bostic never saw that letter?

6 A. Yes.

7 Q. Would you be surprised to know that they didn't know
8 anything about this lawsuit until they were served with
9 the papers from your attorney?

10 A. Yes.

11 Q. Did you ever get a response back from Bostic saying,
12 no, we're not fixing it?

13 A. No.

14 Q. Was there any followup letters to Bostic saying,
15 hey, we're serious? We need help.

16 A. There may have been, but I don't -- I can't say for
17 a fact that there were.

18 Q. Did you have any contact with anybody from Bostic
19 other than sending a letter off into space?

20 A. I don't know.

21 Q. So you don't know if Bostic would have been willing
22 to help you or not?

23 A. I know that we were following the advice of our
24 attorney. And at that time, we thought that he was doing
25 everything that he could, that he advised us to do to

1 remedy the situation without having to go through this.

2 Q. And then you ended up with Mr. Lyles; right?

3 A. Yes.

4 Q. All right. And you ended up with a different repair
5 contractor. You were using Warren Group, then you ended
6 up with C.S.E.?

7 A. Yes.

8 Q. And that was at Mr. Lyles' direction?

9 A. Yes.

10 Q. How in tune are you to the financial affairs of the
11 homeowners association since 2008, since you moved there?

12 A. Quite in tune.

13 Q. And I understand you've had to spend some money on
14 emergency repairs. And I know what that number is, and
15 the jury is going to know what that number is. Setting
16 that aside, do you all have reserves -- or as of 2008
17 when you looked at the books before this was all an
18 issue, did you have reserves on the books for things such
19 as a new roof?

20 A. In 2008 when we took over, we had about eighty
21 thousand dollars in all our bank accounts. Eighty or
22 eighty-five thousand, somewhere in that area. At that
23 time or shortly thereafter, sometime in 2009, several of
24 the board members got together. And we did a reserve
25 analysis. Basically, we took any components that we

1 thought would be like long-term repairs, roofs, painting,
2 roads, all that kind of stuff, and put it out on a
3 spreadsheet and decided how much money a month we needed
4 to set aside from homeowners' dues to put into a reserve
5 fund so that we wouldn't have to do a big assessment down
6 the road for people to pay for things.

7 Q. Okay. How long did you think that the paint would
8 last on these buildings from 2003 going forward?

9 A. Well, we put it in -- I believe we put it in at like
10 five-year intervals. So we planned on painting the
11 buildings. We started painting them. And we did, you
12 know, as many buildings as we could do. And then the
13 subsequent year the rest of the ones in that -- and kind
14 of went by, around and so that we could repeat the cycle
15 again.

16 Q. When was the last time the buildings out there were
17 painted?

18 A. I believe we painted them -- I believe it was 2009.

19 Q. Okay. When was the last time that they were
20 caulked? When the intersections were caulked?

21 A. When they were painted.

22 Q. When was the last time maintenance was done to the
23 porches as far as replacing silicon caulk and all of that
24 stuff?

25 A. When they were painted.

1 Q. Were the columns painted, the stone columns painted?

2 A. No.

3 Q. All right. When was the last time maintenance was
4 performed around those?

5 A. Well, there was maintenance performed around that
6 same time whereby we had a contractor just attach some of
7 the stones and put some cement and so forth. But you're
8 asking me when we maintained a building that -- you know,
9 you don't paint rotten wood.

10 Q. Is there ---

11 A. You don't spend money to do that when it's not
12 fixable like that.

13 Q. I understand. You painted the buildings five years
14 ago; correct?

15 A. Yes.

16 Q. Was there any rotten wood at that point?

17 A. Yes. There was a lot of wood that had to be
18 replaced. It was warped. It was coming out.

19 Q. Is that cedar siding?

20 A. Yes.

21 Q. Do you understand how long cedar siding lasts on a
22 building?

23 A. I don't. But our paint that we did five years ago
24 or four years ago, whenever it was now, is already all
25 peeling off.

- 1 Q. Uh-huh (affirmative).
- 2 A. And it's because -- well, I understand it's because,
3 in speaking with experts, that they weren't painted
4 quickly enough in the beginning and now the wood is too
5 weathered to hold the paint.
- 6 Q. Okay. You testified that you want the buildings
7 fixed; right?
- 8 A. Yes.
- 9 Q. All right. Have you looked at all at what Bostic's
10 forensic expert has proposed to be done to your units to
11 bring them up to code and beyond, to improve them to the
12 level that you expect?
- 13 A. I looked a little at it. And it just seemed like it
14 was just a fraction of what our experts had said that
15 needed to be done.
- 16 Q. Did you review the scope that he published?
- 17 A. That he?
- 18 Q. That Mr. Moore published?
- 19 A. I did. But I'll be honest with you. It was a while
20 ago.
- 21 Q. All right. Do you recall it to be a twenty-six-page
22 repair scope?
- 23 A. I don't.
- 24 Q. All right. Do you know how in-depth Mr. Hodgins's
25 repair scope is?

- 1 A. It's quite in-depth.
- 2 Q. - So you don't like what Mr. Moore has proposed needs
3 to be done?
- 4 A. I just know that I have to -- I put my faith in the
5 contractor and the person that we have hired or the
6 expert that we have hired. And I'm relying on him to
7 provide accountability when this whole thing is done. We
8 need him there to review the repair process and to make
9 sure that what's done is going to give us what we thought
10 we bought.
- 11 Q. All right. Mr. Hodgkin is an architect; correct?
- 12 A. Yes.
- 13 Q. All right.
- 14 A. Actually, I'm not sure. I know he's an engineer.
- 15 Q. Is he an engineer?
- 16 A. I'm not sure. He's an engineering corporation. I'm
17 really not sure what his title is.
- 18 Q. Mr. Burgess -- Mr. Metcalf is an architect; correct?
- 19 A. I don't know their titles.
- 20 Q. You don't know what they are?
- 21 A. No, I don't.
- 22 Q. Well, Mr. Moore is a registered physical engineer.
23 He's our expert. He's developed a scope that he's
24 willing to stand behind one hundred percent and put his
25 stamp and seal -- his state seal on. And he's willing to

1 tell you that that is going to fix your buildings in the
2 way that they need to be fixed. Are you willing to at
3 least consider his scope of repair as being adequate to
4 bring the buildings to code and beyond?

5 A. Sure.

6 Q. All right. Now, let's talk about Mr. Watkins, J.R.
7 Watkins. Have you met J.R.?

8 A. I have.

9 Q. Did you ever meet his daddy?

10 A. I did not.

11 Q. All right. Well, his daddy was only out there when
12 we were doing the destructive testing. J.R. has offered
13 -- or has prepared an estimate and will come here and
14 testify about it here in a few days -- that he's willing
15 to repair these buildings for a fraction of what your
16 cost estimator has said it's going to cost to repair
17 them. Are you aware of that?

18 A. No.

19 Q. Have you seen Mr. Watkins' most recent estimate?

20 A. Most recent estimate, no.

21 Q. Well, we have to wait until he testifies to where I
22 can get into real detail with it. But one was produced
23 about a week ago in conjunction with one that Mr. Folk
24 from Trehel produced. You haven't seen that most recent
25 one?

- 1 A. Not from Mr. Watkins.
- 2 Q. All right. Have you seen the most recent one from
- 3 Mr. Trehel -- or from Mr. Folk at Trehel?
- 4 A. Yes.
- 5 Q. All right. Have you ever used Trehel to do any work
- 6 out there?
- 7 A. Yes.
- 8 Q. Are you still using them?
- 9 A. No, although we did ask them to quote on both the
- 10 repair that we used Mr. Watkins for. And we asked them
- 11 to quote on roofs so that we can hopefully do that soon.
- 12 But they declined.
- 13 Q. They didn't want to do the work?
- 14 A. No. They said they're too busy.
- 15 Q. Uh-huh (affirmative). But they put together this
- 16 large estimate that we're going to see here in a couple
- 17 of days about what it's going to cost to fix the
- 18 buildings. And you've seen that estimate; correct?
- 19 A. Yes.
- 20 Q. All right. Now, J.R. and Watkins, they're out there
- 21 right now doing work, aren't they?
- 22 A. They were, yes.
- 23 Q. They're doing foundation work?
- 24 A. They were, yes.
- 25 Q. All right. Peeling off parts of the stone, digging

1 down a little bit and fixing some of the grading issues
2 that I talked about in my opening statement?

3 A. Among other things.

4 Q. Among other things. And they're doing is sort of a
5 surgical repair of what needs to be done. They haven't
6 ripped every stone off the side of the building to make
7 the repairs they're making?

8 A. No. They're doing a repair that is sort of a, part
9 of -- it's encompassed in Derek's repair, but it's not
10 Derek's complete repair. And we did this just primarily
11 to stop water from coming in right now.

12 Q. If J.R. testifies here later in this trial that the
13 repairs he's making are permanent repairs -- we're going
14 to stop intrusion where he's made them -- are you going
15 to take him for his word that the repairs he's making are
16 permanent and nothing else needs to be done?

17 A. Yes.

18 Q. All right.

19 A. I hope so.

20 Q. And if J.R. tells you that he can do the work --
21 that once more, a surgical repair guy that we hired, if
22 he tells you that he can do that work for a fraction of
23 the cost of what Mr. Folk and Trehel say they're going to
24 do, isn't that what you would want to have done as well?

25 A. If they're going to be accountable for it.

1 Q. Uh-huh (affirmative).

2 A. You know, down the road, we need to make sure that
3 we're not in this situation again.

4 Q. If Mr. Watkins is willing to sign what is called an
5 A.I.A. contract with you -- the Architect Institute of
6 America contract, which is a form contract, with you
7 guaranteeing this work at a certain price that is in his
8 estimate to make all the repairs that are necessary,
9 would you let him do that work?

10 A. Guaranteeing his work is a little different than
11 guaranteeing that the work that he performs is going to
12 be adequate to stop the water coming into our units.

13 Q. I understand where you're coming from. So let's say
14 that we have Mr. Moore who's prepared this protocol, this
15 surgical repair protocol, and he's willing to guarantee
16 the adequacy of that protocol on his license, and then
17 Mr. Watkins is willing to guarantee the price that he
18 provides to enact that protocol on his license and on his
19 work, if those guarantees are afforded to the homeowners
20 association, are you as a homeowner willing to proceed
21 with Watkins' services to effectuate the repairs that
22 need to be made to Stoneledge and get all of that
23 nastiness out of there that we've already seen?

24 A. If I felt assured that I was going to have a unit to
25 the quality that I thought I'd bought, yes.

1 Q. Okay. Thank you, ma'am. I don't have any other
2 questions.

3 A. Thank you.

4 THE COURT: Now, Mr. Anderson?

5 CROSS-EXAMINATION

6 BY MR. ANDERSON:

7 Q. Ms. Furnari?

8 A. Yes.

9 Q. My name is J.J. Anderson. I represent Jose Nino who
10 was one of the subcontractors that worked for Bostic.
11 You indicated that the original lawsuit was brought in
12 May of 2009; is that correct?

13 A. Yes.

14 Q. Okay. And then a little bit later the H.O.A. then
15 joined that lawsuit?

16 A. That's correct.

17 Q. Right. And then in October of 2011, that lawsuit
18 was amended, and my client was brought in in 2011; is
19 that correct?

20 A. I'm not sure. But if that's what the records show,
21 I would agree that would be the case.

22 Q. And -- now, you're in unit 26; is that correct?

23 A. Yes.

24 Q. And I think you indicated that the unit had been
25 certified or originally purchased in October of 2005; is

1 that correct?

2 A. I'm not sure. It was previously owned. We bought
3 it as a resale.

4 Q. All right. And there was not an indication from the
5 owner how long they had had that unit?

6 A. I don't know. There may have been, but I don't
7 remember it right now.

8 Q. All right. Thank you very much.

9 A. Uh-huh (affirmative).

10 THE COURT: Mr. Buckley?

11 MR. BUCKLEY: No questions, Your Honor.

12 THE COURT: Mr. Imhoff?

13 MR. IMHOFF: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. IMHOFF:

16 Q. Good afternoon, Ms. Furnari.

17 A. Good afternoon.

18 Q. Ms. Furnari -- I'm sorry. I flipped the page on
19 myself. Let me get a little bit organized here. Do you
20 understand that Marick Home Builders didn't build the
21 exterior of your townhome?

22 A. I understand, yes.

23 Q. All right. And Marick Home Builders did not sell
24 you your townhome?

25 A. That's correct.

- 1 Q. And Chip Albert didn't work for Marick Home
2 Builders, did he?
- 3 A. Chip Albert, you know, it's kind of confusing
4 because they all sort of blended in.
- 5 Q. You don't know that Chip Albert worked for Marick
6 Home Builders despite the fact that you testified to that
7 earlier; correct?
- 8 A. At least at one point, he represented himself as
9 working for Marick Home Builders.
- 10 Q. Okay. But Chip Albert didn't sell you your townhome
11 either, did he?
- 12 A. No.
- 13 Q. But you testified earlier that you relied on Chip
14 Albert and a marketing pamphlet to convince you that your
15 townhome would be maintenance-free. Is that your
16 testimony?
- 17 A. Yes.
- 18 Q. And you bought your townhome based partially on your
19 opinion, your understanding, that it would be
20 maintenance-free; is that right?
- 21 A. Yes.
- 22 Q. Okay. All right. And before you bought your
23 townhome, as Mr. Belcher has alluded to, you had it
24 inspected; is that right?
- 25 A. Yes.

1 Q. Okay. Did you hire a licensed inspector?

2 A. Yes.

3 Q. Did you hire what you believed to be a qualified
4 inspector?

5 A. Yes.

6 Q. And did that inspector spend some time at the home
7 prior to your purchasing it?

8 A. At the home?

9 Q. At the townhome. I'm sorry.

10 A. Yes.

11 Q. Okay. And did he provide you with a report?

12 A. Yes.

13 Q. You didn't go to that inspection; is that right?

14 A. We were there. I don't remember. I remember seeing
15 the report. I don't remember that we were there.

16 (WHEREUPON, Defendant Marick Home Builders Exhibit
17 M-1 was marked for identification only.)

18 MR. IMHOFF: May I approach, Your Honor?

19 THE COURT: Certainly.

20 Q. I'm going to hand you what I've marked as Defense
21 Exhibit Number 1. Well, actually, it's M-1, so that's
22 following along. Do you recognize that as a report that
23 you commissioned and paid for prior to buying your
24 townhome?

25 A. Yes.

- 1 Q. That's the report that you paid for?
- 2 A. Yes.
- 3 Q. Okay. And in that report, did your inspector tell
- 4 you that there were shakes loose on the building?
- 5 A. Yes.
- 6 Q. Do I have part of your report? I'm sorry. How many
- 7 pages do you have?
- 8 A. It ends in Marick eighteen twenty-seven.
- 9 Q. You understand that those Marick numbers are to help
- 10 us organize documents?
- 11 A. Sure. Oh, wait. No. Now there's thirty-nine,
- 12 forty. So I guess they are out of order.
- 13 Q. What's the last page number?
- 14 A. Forty, eighteen forty.
- 15 Q. Do you have five, six, seven, eight, nine, ten,
- 16 eleven, twelve?
- 17 A. Yes, I do.
- 18 Q. Okay. He told you that you had shakes loose, and
- 19 there was one missing and that you needed to reattach and
- 20 caulk a shake; is that right?
- 21 A. Yes.
- 22 Q. All right. He also told you that there was wood,
- 23 your siding was loose; is that right?
- 24 A. Yes.
- 25 Q. Okay. And he also told you that you need to caulk

1 and seal entry points where pipes and wire went through
2 the stone; is that right?

3 A. Yes.

4 Q. He told you all of those things; isn't that right?

5 A. Yes.

6 Q. Okay. Do you understand that there has been testing
7 done to determine if those penetrations where the pipes
8 and wires go through the stone are letting water get in
9 the basements?

10 A. Could you repeat that, please?

11 Q. Do you know of any inspection, any testing that's
12 been done out there, to determine if water is getting in
13 through those penetrations where pipes and wires are
14 going through stone?

15 A. I'm really not sure of the extent of the
16 investigation.

17 Q. Okay. All right. You didn't believe that unit was
18 maintenance-free when you bought it, did you, Ms.
19 Furnari?

20 A. I believed that the maintenance would be --
21 maintenance-free. I believed that it would be very
22 little maintenance.

23 Q. Okay. You actually wrote the owners of the unit and
24 sent them a copy of that report and required them to fix
25 ---

- 1 A. Yes.
- 2 Q. --- all of the things in that report; is that
- 3 correct?
- 4 A. Yes.
- 5 Q. That's not maintenance-free, is it, Ms. Furnari?
- 6 A. No.
- 7 Q. Okay. And you knew that before you bought the
- 8 house?
- 9 A. Yes.
- 10 Q. Despite your testimony earlier that you based your
- 11 decision on your belief that it was maintenance-free?
- 12 A. Yes.
- 13 Q. All right. Now, as you go through that inspection
- 14 on page number two, do you see where it says "roof?"
- 15 A. Yes.
- 16 Q. Do you see where your inspector stated, "There are
- 17 no major defects on the roof"?
- 18 A. Yes.
- 19 Q. On page three, foundation, do you see where your
- 20 inspector said, "There were no major visible defects
- 21 observable on the visible portions of the foundation"?
- 22 A. Yes, I see it.
- 23 Q. Did you read that when you got it?
- 24 A. Yes.
- 25 Q. Okay. All right. Next, crawlspace. Same page.

1 "There are no major visual defects observed in the
2 crawlspace."

3 A. Right.

4 Q. Okay. And he goes on. Flooring. Plumbing.
5 Windows. Doors. Is that right? Attic?

6 A. Yes.

7 Q. The attic, page seven, "there was no moisture" -- on
8 to page eight ---

9 A. Right.

10 Q. --- "visible in the attic space."

11 A. Uh-huh (affirmative).

12 Q. Is that right?

13 A. That is correct.

14 Q. Okay. All right. So at the time that inspector
15 looked at your home -- when was that? March 2008?

16 A. Yes.

17 Q. Okay. He couldn't observe any visible defects in
18 the foundation? In the roof? Right? In the crawlspace?
19 In the attic? Is this right?

20 A. That's correct. However, he wouldn't have taken off
21 shingles to see if there were problems. And as I
22 mentioned, we were in a drought.

23 Q. That's correct. That's right, Ms. Furnari. So at
24 that time, the only information that anyone would have
25 had whether or not your particular unit suffered from

1 widespread construction defects would require moisture in
2 the attic, water in the crawlspace; correct?

3 A. Actually, I'm not sure I understand the question.

4 Q. When you looked at your unit, your inspector
5 couldn't determine that there were construction defects;
6 isn't that correct?

7 A. Yes.

8 Q. And isn't that the same information that Rick
9 Thoennes would have had if he walked into your unit in
10 March of 2008?

11 A. Except that I think that he would have been there
12 while the unit was being constructed.

13 Q. You don't know ---

14 A. I don't know.

15 Q. --- that Rick Thoennes or Marick Home Builders or
16 his partners were there when the roof was put on;
17 correct?

18 A. Correct.

19 Q. Stone?

20 A. Correct.

21 Q. The siding?

22 A. Correct.

23 Q. The windows put in?

24 A. Correct.

25 Q. Foundation poured?

- 1 A. Correct.
- 2 Q. You don't know any of that?
- 3 A. I know somebody should have been there.
- 4 Q. So when he walked into your unit in 2008, he would
- 5 not have seen water in the crawlspace or water in the
- 6 attic; correct?
- 7 A. No. Correct.
- 8 Q. Did Steve Taylor talk to you before you purchased
- 9 your unit?
- 10 A. No.
- 11 Q. Did he assist you in purchasing your unit?
- 12 A. No. He represented the sellers, but we never spoke.
- 13 Q. I noticed in an earlier exhibit -- I don't remember
- 14 what you call it. It was the one where y'all came
- 15 together and decided that you were going to ---
- 16 A. We call it the resolution of unanimous consent.
- 17 Q. The resolution, exhibit number 5. Is that right?
- 18 A. Yes.
- 19 Q. I noticed in there that the H.O.A. isn't responsible
- 20 if the owner doesn't tell the homeowners association
- 21 through written notice of the problems.
- 22 A. That refers to interior damage.
- 23 Q. Right. The homeowners association is not
- 24 responsible for damage unless the owner puts the H.O.A.
- 25 on notice; correct?