

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY

Court of Common Pleas

Michael G. Nettles, Circuit Judge

Appellate Court Case No. 2015-002618

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SC Court of Appeals

Patricia Doller.....Respondent,

v.

Lohr Plumbing, Inc.....Appellant.

**RECORD ON APPEAL
VOLUME II**

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INDEX

ORDERS

Order – dated November 22, 2015.....	1

PLEADINGS

Amended Complaint.....	3
Answer to Amended Complaint.....	11
Plaintiff's Post Trial Motion: JNOV, 13 th juror, New Trial Absolute.....	26
Defendant's Memorandum in Opposition to Motion for New Trial.....	31

TRANSCRIPTS

Transcript of Trial.....	38
Opening statement by Mr. Robinson.....	48
Opening statement by Ms. Canaday.....	55
Testimony of Allen D. Lieberman, M.D.....	59
(The Court Reporter did not transcribe the video deposition testimony of the witness. The deposition transcript is included below at page 586.)	
Court's instruction to the jury regarding Dr. Lieberman's expert qualifications.....	60-63
Testimony of Ernest Paul Chiodo	
Direct Examination by Mr. Robinson.....	78
Vior Dire Examination by Mr. Tupper.....	95
Direct Examination continued by Mr. Robinson.....	110
Cross Examination by Mr. Tupper.....	120
Redirect Examination by Mr. Robinson.....	132
Testimony of Michael M. Gibson	
Direct Examination by Mr. Robinson.....	135

Cross Examination by Mr. Tupper.....	153
Redirect Examination by Mr. Robinson.....	163
Testimony of James Doller	
Direct Examination by Mr. Robinson.....	166
Cross Examination by Ms. Canaday.....	171
Testimony of Richard Forest Guffey	
Direct Examination by Mr. Robinson.....	175
Cross Examination by Ms. Canaday.....	204
Redirect Examination by Mr. Robinson.....	210
Testimony of Brett Doran	
Direct Examination by Mr. Robinson.....	218
Cross Examination by Ms. Canaday.....	243
Redirect Examination by Mr. Robinson.....	246
Testimony of Patricia Doller	
Direct Examination by Mr. Robinson.....	249
Cross Examination by Ms. Canaday.....	290
Redirect Examination by Mr. Robinson.....	348
Directed Verdict Motions	
Arguments by Mr. Tupper.....	352
Arguments by Mr. Robinson.....	362
Testimony of Phillip Cusumano, M.D.	
Direct Examination by Ms. Canaday.....	377
Cross Examination by Mr. Robinson.....	397

Redirect Examination by Ms. Canaday.....	405
Testimony of Kenneth Warren	
Direct Examination by Ms. Canaday.....	407
Cross Examination by Mr. Robinson.....	415
Redirect Examination by Ms. Canaday.....	436
Testimony of Leith Webb	
Direct Examination by Ms. Canaday.....	439
Voir Dire Examination by Mr. Robinson.....	440
Direct Examination continued by Ms. Canaday.....	441
Cross Examination by Mr. Robinson.....	444
Testimony of Brett Doran	
Direct Examination by Mr. Tupper.....	452
Cross Examination by Mr. Robinson.....	453
Redirect Examination by Mr. Tupper.....	453
Testimony of David Amrol	
Direct Examination by Ms. Canaday.....	462
Cross Examination by Mr. Robinson.....	477
Redirect Examination by Ms. Canaday.....	481
Directed Verdict Motions	
Arguments by Mr. Barnes.....	487
Arguments by Mr. Tupper.....	488
Charge Conference.....	490
Closing argument by Mr. Robinson.....	506

Closing argument by Ms. Canaday.....	525
Rebuttal closing by Mr. Robinson.....	539
Jury Charge.....	546
Rendering of the Verdict.....	574
Post-trial Motion.....	577
Video Deposition Transcript of Allen D. Lieberman, M.D. for use at trial.....	586
Transcript of Hearing November 19, 2015.....	691

EXHIBITS

Plaintiff's Trial Exhibits

1.....	704
2.....	705
3a.....	706
8.....	707
12.....	727

Defendant's Trial Exhibit

1.....	728

OTHER MATERIALS OR DOCUMENTS

Jury Verdict Form.....	730
Certificate of Counsel.....	732

CONTD TESTIMONY OF PATRICIA DOLLER

1 MS. CANADAY: In looking at it, it looks as if
2 I did -- and I apologize, I didn't mean to
3 misrepresent to the Court -- but it looks like I
4 did submit a comparative negligence charge. And
5 that's with regards to -- again, I guess that would
6 really more go towards her damages if she were
7 claiming, you know, injury --

8 THE COURT: I think that the appropriate way
9 to look at it is what did she do wrong to cause the
10 leak, and I don't think that she did anything
11 wrong, as a matter of law. However, what you're
12 talking about is should she have allowed him to fix
13 it and should she have taken more affirmative
14 actions with regard to remediation. And the law's
15 clear on that, and I'm going to charge it.

16 MS. CANADAY: Yes, sir.

17 Moving on to superseding negligence. May I
18 ask, we're talking about just with regards to the
19 negligence, or are we taking both negligence and
20 negligent misrepresentation? There were other
21 parties involved in this matter that have since
22 settled. And so, you know, particularly the seller
23 of the home. And, obviously, we wouldn't be here
24 but for the agreement between Mr. Doran the seller
25 of the home and the scope of work she required him

CONTD TESTIMONY OF PATRICIA DOLLER

1 to do.

2 So that was why I had included negligence of
3 another, superseding negligence. And that would
4 really go more towards the negligent
5 misrepresentation cause of action.

6 THE COURT: What do you have to say about
7 that?

8 MR. ROBINSON: First of all, that Plaintiff --
9 excuse me, that Defendant has been settled out.
10 And they've -- they had a cross claim and they've
11 released that cross claim. So I don't see where
12 that's going.

13 But further, it may well be that there are two
14 people who are the cause of this problem, at least
15 her purchasing the house. But she can bring her
16 case against either one of them. On top of that,
17 the moving party in this case was the letter.
18 Without the letter, we don't close. Without
19 closing, we don't get insurance.

20 THE COURT: All right. Explain exactly how
21 you want me to -- superseding negligence of a third
22 party, who are you maintaining was negligent in
23 this representation?

24 MS. CANADAY: Well, first of all, I don't
25 believe that the misrepresentation was made

CONTD TESTIMONY OF PATRICIA DOLLER

1 directly to Ms. Doller. It was requested -- the
2 letter was requested.

3 THE COURT: But she did rely on it.

4 MS. CANADAY: Well, I don't know that
5 Ms. Doller actually relied on it. If we look back
6 at testimony, I think she said that it was an
7 insurance company and a closing attorney who wanted
8 that. Not so much Mrs. Doller. I don't think
9 Ms. Doller, she cared one way or another. She was
10 going to buy this house. And it was the insurance
11 company that wanted that letter. So not --

12 THE COURT: Okay. Well, that really goes to
13 whether or not they're guilty of negligent
14 misrepresentation. My question is with regard to
15 the third person, who is the third person and what
16 did they do wrong?

17 MS. CANADAY: The third person would be the
18 seller and the --

19 THE COURT: And did you name them as a part of
20 this action as a cross --

21 MS. CANADAY: They were a party, Your Honor,
22 and they have settled. And we did have cross
23 claims -- cross claims, we settled our cross claims
24 with the seller of the home. This is simply more
25 of an empty chair defense.

CONTD TESTIMONY OF PATRICIA DOLLER

1 And, again, the seller hired Mr. Doran to
2 perform a specific scope of work which he
3 performed. And then Mrs. Richey, her agent,
4 presumably, someone requested a letter on her
5 behalf. And so to be technical about it, it's an
6 agent-servant type scenario. He's performing on
7 behalf of Mrs. Richey because that's who he was
8 working for.

9 MR. ROBINSON: If we're going to go there,
10 Judge, we've got to get Ms. Richey back in here,
11 because she testified in her deposition she thought
12 all the polybutylene was out of the house. She
13 never had any conversations with Doller -- excuse
14 me, with Doran about leaving parts in. So, I mean,
15 I don't know where you're going to go with this
16 thing, but if we're going to open that can of worms
17 up, we got to get Ms. Richey back in here or get
18 her in here, I guess, to start with.

19 But the point is, the negligent
20 misrepresentation wasn't made by Mrs. Richey. The
21 negligent misrepresentation was made by Lohr
22 Plumbing, and it was made to Ms. Doller's agent,
23 not directly to her, but it was made to her agent.

24 THE COURT: I agree. And I'm not inclined --
25 I'm going to think about -- I'm not inclined to

CONTD TESTIMONY OF PATRICIA DOLLER

1 charge superseding negligence to a third person.

2 MS. CANADAY: All right.

3 THE COURT: Okay.

4 MS. CANADAY: I've also included lack of
5 notice, and that sort of goes hand in hand with
6 SC Code Section 40-59-840, the requirement of a
7 homeowner to give a contractor notice of a problem
8 and permit that contractor an opportunity to cure
9 the problem.

10 And in this case it was heard that he was
11 notified of an issue, but then not given the
12 opportunity to repair it.

13 THE COURT: What do you say about that?

14 MR. ROBINSON: What the statute says, Your
15 Honor, is that you have give them a opportunity to
16 repair or the Court will stay the case until they
17 do. They haven't asked for a stay. Didn't ask for
18 a stay. Here we are at trial, it's too late to
19 bring that up.

20 THE COURT: What do you say about that?

21 MS. CANADAY: Well, I don't disagree with how
22 the statute reads. I still believe that a charge
23 can be made that she had a duty to permit -- to
24 notify a problem and a duty to permit inspection
25 and to repair and that wasn't done.

CONTD TESTIMONY OF PATRICIA DOLLER

1 THE COURT: What do you think about the fact
2 there's a statute and you have to strictly comply
3 with such a statute, and you haven't done so?

4 MS. CANADAY: Well, I don't necessarily
5 disagree with the nature of the statute, but I also
6 don't think the statute has any teeth so . . .

7 THE COURT: Has any what?

8 MS. CANADAY: Has no teeth to it.

9 THE COURT: All right. Okay. I think -- I'm
10 not inclined to charge that.

11 MS. CANADAY: Okay.

12 MR. ROBINSON: Your Honor, I'm slightly
13 confused. Are we having a charge conference?

14 THE COURT: Well, I was -- she was talking
15 about her -- we're not talking about a charge
16 conference. I was asking about her affirmative
17 defenses.

18 MR. ROBINSON: All right. Because I've got
19 some charges but --

20 THE COURT: That's fine. I was just wanting,
21 you know, there's so many of them. The ones
22 particularly I was interested in was the statute of
23 limitations and latches.

24 MS. CANADAY: Oh, okay. Especially with
25 regard to those. I do believe I have those.

1 Your Honor, I think that the fact that this
2 house was sitting for so long -- and I think that
3 we've established the delay, unreasonable delay and
4 the prejudice. And she's filed suit, it's not that
5 she's not filed suit within the statute of
6 limitations. Arguably, even if we went from the
7 date of the poly replacement, it would still be
8 within the statute of limitations, the three years.

9 THE COURT: So you aren't even asserting
10 affirmative defense for statute of limitations?

11 MS. CANADAY: Well, if -- Your Honor, it
12 probably is in my answers, and I'll be candid with
13 the Court, I assert every affirmative defense I
14 possibly can.

15 THE COURT: And that's one of the reasons why
16 we're having this conference right here, to figure
17 out what we're doing with them.

18 MS. CANADAY: I understand.

19 But at the same time, I don't think that
20 there's a statute of limitations issue. I don't
21 think that that's the case. I do think there's a
22 latches issue. And again, the prejudice being the
23 nature of the damages, the extent of the damages.

24 THE COURT: All right. Well, those are really
25 the ones that I was particularly interested in.

CONTD TESTIMONY OF PATRICIA DOLLER

1 And I think that we're going to go ahead and move
2 forward. We will, indeed, have a comprehensive
3 charge conference at the conclusion of the
4 defense's case.

5 Anything further?

6 MR. ROBINSON: No, Your Honor.

7 THE COURT: All right. We're ready to
8 proceed.

9 (The jury is entering the courtroom.)

10 THE COURT: You are recognized Ms. Canaday.

11 MS. CANADAY: Thank you, Your Honor, may it
12 please the Court.

13 The Defense calls Dr. Cusumano.

14 THE COURT: Dr. Cusumano. Could you please
15 come forward. Come around through this door right
16 here. I'm going to ask, if you could, to come
17 forward and place your left hand on the Bible and
18 raise your right hand while the clerk administers
19 the oath.

20 Thereupon,

21 PHILIP CUSUMANO, M.D.

22 was called as a witness, having been first duly sworn,
23 was examined and testified as follows:

24 THE COURT: Go around and have a seat in the
25 witness chair. I'm going to ask, if you could,

Phillip Cusumano, M.D. - Direct Examination by Ms. Canaday

1 pull up real close to that microphone. Speak
2 loudly, clearly and slowly in order that we can
3 hear everything that you have to say. Let's start
4 with your full name, and I'm going to ask you to
5 spell that last one.

6 THE WITNESS: Phillip Anthony Cusumano,
7 C-U-S-U-M-A-N-O.

8 THE COURT: Thank you, Dr. Cusumano.
9 Ms. Canaday.

10 DIRECT EXAMINATION

11 BY MS. CANADAY:

12 Q Good afternoon, Dr. Cusumano. How are you?

13 A Good.

14 Q Good. Good.

15 All right. Can you please tell us about
16 your medical education?

17 A I did my undergraduate degree in pharmacy at
18 Ohio Northern, and went back to medical school at Wright
19 State in Dayton. Finished my residency in internal
20 medicine at Cleveland Metropolitan General.

21 Q Okay. And at what point in time did you
22 finish your residency?

23 A It was in 1986.

24 Q 1986, okay.

25 A Uh-huh. (Indicating affirmatively.)

TESTIMONY OF PHILIP CUSUMANO, M.D.

1 Q And are you board certified?

2 A Correct.

3 Q And what are you board certified in?

4 A Internal medicine, general adult medicine.

5 Q Okay. And how long have you been practicing
6 in that field?

7 A I think we're talking 28 years.

8 Q Okay.

9 MS. CANADAY: Your Honor, I'd move to tender
10 Dr. Cusumano as an expert in internal medicine and
11 he is -- let me back up.

12 BY MS. CANADAY:

13 Q Dr. Cusumano -- before we get there, Your
14 Honor -- do you treat Mrs. Patricia Doller?

15 A Yes.

16 Q Okay.

17 MS. CANADAY: Your Honor, I would like to
18 tender this witness as an expert in internal
19 medicine, and he's also Mrs. Doller's current
20 treating physician.

21 THE COURT: Mr. Robinson, do you have any
22 query with regard to his qualifications?

23 MR. ROBINSON: None at all, Your Honor.

24 THE COURT: Fine. He is, indeed, qualified to
25 testify in the field of internal medicine.

TESTIMONY OF PHILIP CUSUMANO, M.D.

1 And I've told you about the fact that expert
2 witnesses can render opinions in their field of
3 expertise. I'll charge you the law with regard to
4 how to evaluate expert testimony in greater detail
5 at the conclusion of the case.

6 Ms. Canaday.

7 MS. CANADAY: Thank you, Judge.

8 BY MS. CANADAY:

9 Q Dr. Cusumano, you told us that you are indeed
10 Mrs. Doller's treating physician. When did you have the
11 first opportunity to treat Mrs. Doller, if you recall?

12 A I think it was November 2011 --

13 Q Okay.

14 A -- the first visit.

15 Q All right.

16 MS. CANADAY: May I approach, Your Honor?

17 THE COURT: Yes.

18 BY MS. CANADAY:

19 Q Dr. Cusumano, I'm going to show you -- I'll
20 represent to you this is the medical file that I
21 received from your office, and it starts from -- that is
22 the first date and it moves from there. Okay. So I'll
23 hand these to you.

24 Would reviewing these help refresh your
25 recollection about certain details?

TESTIMONY OF PHILIP CUSUMANO, M.D.

1 A Sure.

2 Q Okay. Doctor, if we could please turn to the
3 first treatment with Mrs. Doller, and that date was what
4 again?

5 A November 22nd, 2011.

6 Q Okay. And what did she present to you for?

7 A With a rash.

8 Q Okay. And did she tell you what kind of rash
9 it was?

10 A It was being investigated by her dermatologist
11 at the time, and there were several different theories
12 based on a biopsy.

13 Q Okay. And what was -- what was the theory
14 being asserted by her dermatologist?

15 A The biopsy, I believe, said that it was a type
16 of psoriasis versus a drug eruption versus some kind of
17 contact dermatitis or possibly a connective tissue
18 disease.

19 Q Okay. And if we look at the very first
20 paragraph of your note there, it reads, "She was in her
21 usual state of good health until nine weeks ago when
22 exposed to, quote, unquote, poison sumac.

23 Did that come from Mrs. Doller, that
24 statement?

25 A Uh-huh, I believe so.

TESTIMONY OF PHILIP CUSUMANO, M.D.

1 Q Okay. So nine weeks ago. We're in November,
2 so nine weeks ago was, roughly, two months? If we're
3 backing up from then, that would be about September?

4 A Uh-huh. (Indicating affirmatively.)

5 Q Okay. All right. And so the biopsy appeared
6 to show guttate psoriasis; is that correct?

7 A Versus other potential possibilities.

8 Q Versus other possibilities. So guttate more
9 probably than the other possibilities, correct?

10 A I would think so.

11 Q Okay. And at this point in time when you saw
12 her, I'm looking at the review of symptoms, it says, if
13 you could read with me down at the bottom, the first
14 one, "General, not present."

15 Does that mean that the complaint is not
16 present?

17 A Correct.

18 Q Okay. And what does that read there?

19 A "Weight loss greater than five to 10 pounds in
20 the last year. Night sweats or weakness."

21 Q Okay. All right. And the next one was skin?

22 A Correct.

23 Q And how does that read?

24 A "Not present. Change in moles, hair loss or
25 sores."

TESTIMONY OF PHILIP CUSUMANO, M.D.

1 Q Okay. So no hair loss there.

2 Okay. And then the respiratory reads?

3 A "Not present at the time. Cough, shortness of
4 breath or hemoptysis (phonetic)."

5 Q Okay. And if I look to the second page, she
6 weighed how much that day?

7 A Ninety-six pounds.

8 Q Okay. And with regard to the actual physical
9 exam, which is also on the second page of that -- of
10 your treatment note, what did she present to you with?
11 How did she look that day?

12 A She was, you know, cooperative and oriented
13 and -- but had a, you know, significant rash. But
14 wasn't -- didn't appear to be in any major acute
15 distress. Do you want more specifics?

16 Q Well, if you look under integumentary global
17 assessment, and we look at the second paragraph, which
18 is just the one sentence paragraph.

19 A Also -- I'm quoting, "Also has some involvement
20 in her palms and severe hyperkeratotic areas on the soles
21 of her feet. Feet are somewhat edematous, mildly tender
22 and red."

23 Q Okay. What is hyperkeratotic areas?

24 A It means thickened, toughened skin.

25 Q Okay. And that's on the palms of her hands

TESTIMONY OF PHILIP CUSUMANO, M.D.

1 and soles of her feet?

2 A Yes.

3 Q Okay. And her feet were?

4 A Were swollen, edematous, mildly tender and red.

5 Q Okay. And that's on November 22nd, correct?

6 A Yes.

7 Q Okay. And you then next saw her when?

8 A December 6th.

9 Q Okay. And in between the first visit and the
10 second visit, between 11/22/2011 and December 6th, 2011,
11 had you spoken with Dr. Bundy at all?

12 A I don't think I -- I don't remember speaking to
13 him.

14 Q Okay. Had you ever spoken with Dr. Bundy
15 about this patient?

16 A I think I spoke with his nurse --

17 Q Okay.

18 A -- as I recall.

19 Q Okay. All right.

20 A With my concerns about her.

21 Q Okay. And if you look under -- the first
22 paragraph on the date of this visit, what was she back
23 here with you for?

24 A She was back with -- the apparent diagnosis at
25 the time, then, was psoriasis from Dr. Bundy who was

TESTIMONY OF PHILIP CUSUMANO, M.D.

1 treating her as such.

2 Q Okay. And was she on some steroid cream?

3 A Yes.

4 Q Okay. And how was she doing on the cream?

5 A She had -- it was helping. She had cleared up
6 quite a bit.

7 Q Okay. Did it look like she was being
8 consistent with her use of that cream?

9 A I think she was, but he may have told her if it
10 clears up and you don't feel that you need it, back off
11 of it.

12 Q Okay.

13 A Which is reasonable.

14 Q Okay. And is that what --

15 A And I think she did, and now she had -- then
16 she had a flare-up of the rash after stopping the cream.

17 Q Okay. And did she ask you for a second
18 opinion?

19 A I put it there that she would like a second
20 opinion. These are, you know, obviously, this is four
21 years ago.

22 Q Sure.

23 A I'm doing the best I can to remember what I
24 clearly can.

25 Q Oh, sure. But that's there in your notes?

TESTIMONY OF PHILIP CUSUMANO, M.D.

1 A It's there, she would like a second opinion.

2 Q Okay. All right. You see her again on
3 December 16th, 2011. And let me ask you, did you speak
4 to Dr. Bundy or anybody in between the December 6th,
5 2011 and the December 16th, 2011. And I say "anybody,"
6 did you speak to Dr. Bundy or any other physicians?

7 A I don't recall doing that.

8 Q Okay. That's okay. All right. And what did
9 she present to you for that day?

10 A With a cough.

11 Q Okay. And was she still -- did she still have
12 a rash?

13 A Had some sore throat. Seen up at USC
14 Dermatology. She was continuing the steroid creams.

15 Q Okay. And how did she look that day?

16 A She didn't really talk much about -- I didn't
17 record that she talked much about the rash.

18 Q And back towards the bottom to the physical
19 exam, how does that read there?

20 A No lymph nodes. Lungs are clear. She
21 continues to smoke. Recent chest x-ray was negative. No
22 overt signs of malignancy at the time.

23 Q Okay. And directly under exam, that first
24 paragraph?

25 A "Patient's alert and oriented. Looks

TESTIMONY OF PHILIP CUSUMANO, M.D.

1 clinically well relative to how she has been in the past.
2 Her rash is about 50 to 60 percent improved on the cream.
3 Feet are much less now and much less erythematous with
4 resolving hyperkeratosis."

5 Q So it looks she's getting -- the rash is
6 clearing up?

7 A Getting better.

8 Q Okay. All right. The next time you see her,
9 Doctor, is on December 29th, is that right?

10 A Yes.

11 Q Okay. And what did you see her for there?

12 A For the psoriasis.

13 Q Okay. And had she already seen somebody at
14 MUSC?

15 A I think -- I forget the date. I don't remember
16 what the date that she was seen at MUSC.

17 Q Okay. Had you spoken with anybody --

18 A Here it is (indicating), I have it here. She
19 was seen at MUSC and was given creams. So when I saw her
20 on December 29th, 2011, she had been seen by MUSC.

21 Q Okay. All right. And if you look down at the
22 bottom under physical exam, how did she present that
23 day?

24 A "Whole body erythematous. Psoriatic rash feet
25 and soles, especially palm of her hands. Could not

TESTIMONY OF PHILIP CUSUMANO, M.D.

1 appreciate any positive signs of infection."

2 Q Okay. And going on to the next page, the
3 impression, what was your the impression for that day?

4 A Guttate psoriasis.

5 Q Because that had been -- that had been -- did
6 you perform that biopsy?

7 A No, and I didn't make that diagnosis. And I
8 think I'm -- I was assuming that diagnosis from
9 Dr. Bundy's note.

10 Q Well, did they perform the --

11 A And there was another biopsy performed at MUSC.

12 Q Right. And --

13 A I don't think I -- I don't remember getting
14 that report, but I got their note.

15 Q Okay. And let me take a look at that note.

16 Do you know what that note was?

17 A I'm sorry, do I know what the note was? I
18 remember seeing it in this packet (indicating).

19 Q That's okay. Was it December 30th, or was it
20 December 14th?

21 A I thought it was December 30th.

22 Q Okay. It should be in your packet, but I'll
23 go ahead and show you this copy, Doctor.

24 A Okay.

25 Q Is that the note to which you're referring?

TESTIMONY OF PHILIP CUSUMANO, M.D.

1 A December 30th, yes.

2 Q And does that note indicate that she has had a
3 biopsy-proven guttate psoriasis?

4 A The first line of the note says, "This woman
5 with biopsy-proven psoriasis covering 80 percent of her
6 body at the time, and assessment was extensive
7 psoriasis." So they were planning on using some kind of
8 more aggressive treatments.

9 Q Okay. And what kind of more aggressive
10 treatment?

11 A Soriatane, which is a medicine that I'm not
12 familiar with. I think that it's a Vitamin A analogue.

13 Q Okay. Is it a biologic agent, do you know?

14 A And I was -- as I remember, I was just
15 concerned about how severe the rash was, that she could
16 get a secondary infection. So I think -- I believe I did
17 call the resident or the fellow in dermatology and talk
18 to him about it, because the creams just weren't taking
19 care of this. Every time she'd stop it would tend to
20 come back.

21 Q Okay. Now, after this December 30th -- or
22 excuse me, December 29th visit with you, when was the
23 next time you saw her?

24 A January 10th, 2012.

25 Q Okay. And tell me about that visit.

TESTIMONY OF PHILIP CUSUMANO, M.D.

1 A I could just read my -- read my note, but
2 "Patient seen at MUSC December 30th. They are
3 considering beginning biologic agents for her severe
4 psoriasis. She came in for a PBD -- or TB skin test, but
5 went Friday to the hospital with chest discomfort, cough
6 and elevated white count. She was released with a
7 diagnosis of bronchitis and on an antibiotic called
8 Azithromycin."

9 Q Okay. And what's the next part of your note
10 there?

11 A At the time the CT of the chest was negative,
12 by the way.

13 Q Okay.

14 A And I'm sorry, what?

15 Q And so she went to the hospital in January for
16 chest pain and was diagnosed with bronchitis?

17 A Uh-huh. (Indicating affirmatively.)

18 Q Okay. And then what's the next part of your
19 note?

20 A She -- she's convinced that beginning the
21 Azithromycin has dramatically helped the psoriasis. And
22 in conversation with her dermatologist at USC two days
23 ago they apparently agreed and told her to stay on the
24 Azithromycin for up to six months. She's here for a
25 refill and had been -- was very happy with her current

TESTIMONY OF PHILIP CUSUMANO, M.D.

1 results.

2 Q Did she look cleared up?

3 A It was -- it was dramatic. I mean, I think
4 that it was -- we would say in medicine this is like a
5 reportable case. It was reportable to a medical journal
6 it was so dramatic how much better she had gotten so
7 quickly, either it was a coincidence or it was the
8 antibiotic.

9 Q Okay. And it was less than two weeks since
10 your last visit with her?

11 A Yes.

12 Q Okay. Looking at the next page of the --
13 January 10th, 2012 note --

14 A My February 16th note?

15 Q No, sir, the January 10th, 2012.

16 A Okay, uh-huh. (Indicating affirmatively.)

17 Q Second page.

18 A Yes.

19 Q And if we look at the top under assessment and
20 plan --

21 A Uh-huh. (Indicating affirmatively.)

22 Q -- and how does that read?

23 A Interestingly, she is convinced that
24 Azithromycin, which she was put on for bronchitis, has
25 dramatically helped psoriasis. Dermatology at MUSC

TESTIMONY OF PHILIP CUSUMANO, M.D.

1 evidently agrees and wants her to continue this for up to
2 six months. There is some association between chronic
3 streptococci skin infections and guttate psoriasis.

4 Q Okay. And did you learn that, the association
5 between streptococci skin infections/guttate psoriasis,
6 on your own?

7 A I -- I learned it then.

8 Q Okay.

9 A And it was fascinating, so I looked it up.

10 Q Okay. And what did you look it up on?

11 A A reference called UpToDate that we use. It's
12 a national -- nationally known reference with some of the
13 top experts in all areas of medicine.

14 Q Okay. And what did you find?

15 A It supported that, that this particular kind of
16 psoriasis can be associated with not just strep
17 infections of the throat but also chronic colonization of
18 strep on the skin --

19 Q Okay.

20 A -- as well.

21 Q Okay. And people carry that kind of fungus on
22 their skin?

23 A Yes.

24 MR. ROBINSON: Your Honor --

25 THE WITNESS: Well, it's not a fungus --

TESTIMONY OF PHILIP CUSUMANO, M.D.

1 MR. ROBINSON: Your Honor --

2 THE WITNESS: -- it's a bacteria.

3 THE COURT: Excuse me. It's probably best to
4 start off --

5 MR. ROBINSON: I don't mind a little leading,
6 Judge, but --

7 THE COURT: It's best to start off "I
8 object," so everybody stops.

9 MR. ROBINSON: Thank you, Your Honor.

10 THE COURT: When he says "object," you stop
11 and you stop, period.

12 MR. ROBINSON: I don't mind a little leading
13 in the interest of --

14 THE COURT: I assume your objection has to do
15 with leading?

16 MR. ROBINSON: Yes, Your Honor.

17 THE COURT: All right. Then I sustain the
18 objection.

19 BY MS. CANADAY:

20 Q Doctor, what did you find from your research?

21 A That, in fact, what, you know, what the
22 dermatologist said was, in fact, in the medical
23 literature fairly well-established that strep can cause
24 psoriasis to worsen.

25 Q Okay. All right. If you could turn to your

TESTIMONY OF PHILIP CUSUMANO, M.D.

1 February 16th, 2012. Is that your next visit with
2 Mrs. Doller?

3 A Correct.

4 Q Okay. And what was the basis for that visit?

5 A I think I wanted to follow her up and see how
6 she's doing. It's been, you know, almost a month and --
7 a little bit more than a month, and see how she was doing
8 on the medicine, and wanted to make sure that she wasn't
9 having any problems with the Azithromycin.

10 Q Uh-huh.

11 A And she'd made a dramatic remarkable recovery,
12 99 percent of her psoriasis on two short courses of
13 Azithromycin.

14 Q Okay. And what is her -- did she want to
15 continue with the Azithromycin for the next six months?

16 A Yeah. I think, as I remember, more than
17 willing to because she was just so miserable. I felt
18 badly for her how miserable she felt.

19 Q Okay. If you look in the middle portion of
20 your history of present illness, the second full
21 paragraph.

22 A Okay.

23 Q How does that read?

24 A "She stopped the Azithromycin about two weeks
25 ago. She was doing well and no longer wants to continue

TESTIMONY OF PHILIP CUSUMANO, M.D.

1 on the medicine unless it's absolutely necessary. I told
2 her if she is continuing to use it, we would need to
3 check liver functions and an EKG, et cetera, not to
4 mention the risk of antibiotic associated diarrhea."

5 Q Okay. But it sounded like she was -- she
6 stops the Z-pak herself two weeks prior to you seeing
7 her?

8 A Right. So she used it for less than a month it
9 looks like.

10 Q Okay. And by the time that you saw her on
11 February 16th, two weeks prior, she had stopped it. And
12 when you saw her, she looked 99 percent better?

13 A I had thought -- I must have misreclected
14 that, I thought she had taken it longer than that.

15 Q Okay. Did she indicate whether she was going
16 to start taking the Z-pak again?

17 A I don't recall.

18 Q Okay.

19 A I think if things would have recurred the way
20 they were before, she would have.

21 Q Okay. All right. And the last paragraph of
22 your history of present illness, how does that read?

23 A "She's happy with closely observing herself and
24 starting the medicine as needed. She confirmed this with
25 her dermatologist at Hilton Head, Dr. Bundy. She's still

1 concerned about black mold in her home as possibly
2 causing this, however, I do not think that black molds
3 would have responded to Azithromycin."

4 Q Okay. And why would you think that, quote,
5 unquote, black mold wouldn't have responded to
6 Azithromycin?

7 A Azithromycin is effective against a variety of
8 bacterial agents. Fungus is in a whole different class
9 of microorganisms.

10 Q Okay.

11 A So it's not used for fungus.

12 Q Okay. And you did research of your own; is
13 that right?

14 A About the drug?

15 Q About the drug and about guttate psoriasis; is
16 that right?

17 A Yeah, uh-huh.

18 Q Okay.

19 A As much as what a primary care doctor would do.

20 Q Right.

21 A Right.

22 Q And did you use the UpToDate service for that?

23 A Yes.

24 Q Okay.

25 MS. CANADAY: Hold on one second, please, Your

TESTIMONY OF PHILIP CUSUMANO, M.D.

1 Honor.

2 (Pause.)

3 MS. CANADAY:

4 Q Doctor, do you have any knowledge whether the
5 visits Mrs. Doller had in January to Beaufort Memorial
6 Hospital was in any way related to her skin condition?

7 A I don't think so.

8 MR. ROBINSON: Objection; no foundation.

9 THE COURT: Sustained.

10 BY MR. ROBINSON:

11 Q Did she tell you why she went to the hospital?

12 A I -- I think it was in there.

13 Q Okay. Look at your January 10th note.

14 A Yeah, she came in for the TB skin test, and she
15 mentioned to me that she was admitted Friday for cough
16 and chest discomfort, in the ER.

17 Q Okay. And she didn't mention that she was
18 going in for a skin condition?

19 A No, I don't think so, no.

20 MS. CANADAY: Doctor, thank you. That's all
21 that I have for you at this time.

22 THE WITNESS: Okay.

23 THE COURT: Cross examination?

24 MR. ROBINSON: Thank you, Your Honor.

25 CROSS EXAMINATION

Phillip Cusumano, M.D. - Cross Examination by Mr. Robinson

1 BY MS. CANADAY:

2 Q Dr. Cusumano, I'm Brian Robinson. How are
3 you?

4 A Good.

5 Q Would you look at -- if you look down at the
6 bottom of these -- this document that you have, there
7 are some numbers down there. One says LOHR and then
8 there's a number behind that.

9 Do you see that?

10 A Uh-huh. (Indicating affirmatively.)

11 Q Would look at LORH140, please, it's near the
12 back.

13 A 140?

14 Q That is the 12/6/11 note.

15 A I don't believe LOHR 40, I have 139.

16 Q Yeah, keep going.

17 A Oh, here we go. Okay.

18 Q Do you have that?

19 A Twelve -- December 6th, 2011.'

20 Q Right.

21 You testified earlier that you treated
22 Ms. Doller on November the 22nd for psoriasis; is that
23 right?

24 A I was involved in it. I think the
25 dermatologist was in charge of really treating it. But,

TESTIMONY OF PHILIP CUSUMANO, M.D.

1 you know, I got involved because she just wasn't doing
2 better. She was pretty miserable.

3 Q Okay. Did you think that on December 6th that
4 what you were seeing on December 6th is the same thing
5 that you saw on December 22nd?

6 A I do, uh-huh, same rash.

7 Q Okay. So rash is a rash to you?

8 A Well, not quite that simple. But it, you know,
9 how looked -- it looked like psoriasis I think initially.

10 Q Did she tell you that her hand -- that she had
11 been handling mold? I see you have a note down here,
12 she says that is mold in her house. Do you see that
13 note?

14 A Which date?

15 Q I'm still on Page 140.

16 A Okay.

17 Q Second paragraph down, top line.

18 A Okay. "She says it's -- said there's mold in
19 her house, quote, unquote. She wonders if it's something
20 else could be causing this."

21 Q Now, did she tell you or do you recall her or
22 her husband telling you that she picked up moldy boards
23 and within ten minutes her hands broke out?

24 A I don't remember hearing that.

25 Q Okay. As you said it's sometime ago, right?

TESTIMONY OF PHILIP CUSUMANO, M.D.

1 A Okay.

2 Q If somebody told you, that's a hypothetical
3 question. If somebody told you I picked up mold and
4 within ten minutes my hands turned -- were burning and
5 turned red, would you think that was allergic reaction?

6 A Sure could be. First thing I would think of.

7 Q That would be the first thing you would think
8 of?

9 A Uh-huh. (Indicating affirmatively.)

10 Q Would you look with me at your note on 12/29,
11 that'd be Lohr136.

12 A Okay.

13 Q And that one says, down at the bottom under
14 phys exam, no pus or other signs of infection. Do you
15 see that?

16 A Yes.

17 Q Did you think on 12/29 that she had an
18 infection of some sort?

19 A I was -- I was very worried that she could get
20 a secondary infection because the skin was so thickened
21 and cracked, and she just didn't look well clinically to
22 me. And I was worried, you know, I was looking for
23 infection.

24 Q So this is a note --

25 A Secondary infection.

TESTIMONY OF PHILIP CUSUMANO, M.D.

1 Q Well, this is a note where you're saying, I'm
2 looking for an infection; I don't see one?

3 A At that time.

4 Q At that time.

5 A Right.

6 Q Right. Infections happen pretty quick, don't
7 they?

8 A Yeah.

9 Q Okay. Allergic reactions happen pretty quick
10 too, don't they?

11 A Sometimes.

12 Q If somebody has -- I don't know whether to
13 call it quiet psoriasis or dimming psoriasis or what the
14 right medical word is, but if somebody has psoriasis and
15 they're poking along through life and they're having a
16 flare and it goes away and they're having a flare and it
17 goes away, if they have an allergic reaction to
18 something, can that trigger that psoriasis?

19 A I can't really answer that. I think a
20 dermatologist can answer that. I don't have enough
21 experience with treating psoriasis to know whether
22 routine allergies trigger psoriasis.

23 Q Okay. Would you look on 1/10/2012, that's
24 LOHR134. And you were reading a note here where it
25 says, "She is convinced that beginning the Azithromycin

1 has dramatically helped the psoriasis." Do you see
2 that?

3 A Yes.

4 Q Psoriasis isn't treated with antibiotics, is
5 it?

6 A Not usually, no.

7 Q Okay. And she's not a doctor, is she?

8 A No.

9 Q Okay. So what she's convinced of and what's
10 medically correct or possible really doesn't make any
11 difference, does it?

12 A Right. But I guess --

13 Q Did you take any tests on her to test and see
14 if she had strep?

15 A Did not.

16 Q Okay. On 2/16/2012, which is 132 -- which I
17 may never find it at the rate that I'm going.

18 A I've got it.

19 Q You're doing better than I am.

20 She brought up black mold again, right?

21 A Yes.

22 Q And you said black mold does not respond to
23 Azithromycin?

24 A Azithromycin.

25 Q Thank you, I'm sorry. All right. I've got

TESTIMONY OF PHILIP CUSUMANO, M.D.

1 some other questions. I'm done with these, but let me
2 ask you some other questions.

3 A Okay.

4 Q Have you treated anybody for allergic mold
5 reaction before?

6 A Not skin-wise like this, no.

7 Q Okay.

8 A No experience.

9 Q Have you seen Dr. Chiodo's report on
10 Ms. Doller?

11 A I have not. Is that the MUSC dermatologist?

12 Q No, sir. Dr. Chiodo is a consulting physician
13 that we had on the stand here, and he wrote a report on
14 Ms. Doller and what he thought caused her problem. I
15 just wondered if anybody bothered to show that to you.

16 A I haven't seen it.

17 Q Okay. At one point in time, did you think
18 that Ms. Doller was dying?

19 A I didn't think that she was dying, but I was
20 concerned. She wasn't the most robust lady, a smoker,
21 and I was concerned that if she got a serious
22 infection -- and when your immune system is affected by
23 the psoriasis, if you get secondary bacterial infection
24 you can get very sick quick and you can get septic.

25 Q Did you at one point in time tell her you

TESTIMONY OF PHILIP CUSUMANO, M.D.

1 thought you'd never see her again?

2 A I don't remember that.

3 Q Let me back up and rephrase my question so
4 maybe it'll help.

5 So on the 10th you saw her, 10th of
6 December -- of January when you saw her, 2012, did you
7 tell her then that you thought you'd never see her again?

8 A Oh, I sure don't remember that.

9 Q Okay.

10 A I don't think I'd want to panic her, to tell
11 somebody something like that.

12 Q Well, let me -- I don't think I made myself
13 clear. She was so much better when you saw her on the
14 10th that you told her, I didn't think I was going to
15 see you again.

16 Do you remember saying that?

17 A I'm sorry, I don't.

18 Q Okay.

19 A I could have, but I don't.

20 Q People don't die from psoriasis, do they?

21 A Not generally. Not unless they get infected
22 secondarily.

23 Q Okay. I know that you have told me that you
24 are not a dermatologist. I'm not sure if you can answer
25 this question or not, but I'll ask it. If somebody has

TESTIMONY OF PHILIP CUSUMANO, M.D.

1 an allergic reaction to something, that allergic
2 reaction is going to continue to get worse until that
3 something gets out of their body. Would you agree with
4 that?

5 A Generally true, makes sense.

6 Q Okay. If someone has an allergic reaction
7 would you agree with me that that can trigger a -- an
8 attack or a flare, whatever you want to call it, of
9 psoriasis?

10 A I don't know. I think you asked me that
11 before. I don't -- I don't feel comfortable answering
12 that, because I don't know. I don't know if anybody
13 really understands psoriasis. I think it's some kind of
14 autoimmune disease, but I've never heard that it was
15 triggered by allergies to dust and molds and whatever.

16 Q You don't know what it's triggered by?

17 A I don't know if people really understand it
18 completely.

19 Q All right.

20 A Even the experts.

21 MR. ROBINSON: Thank you. I think I'm
22 finished, let me check. Just a second. That's all
23 I have, Doctor. Thank you.

24 THE COURT: Any redirect?

25 MS. CANADAY: Yes, sir.

Phillip Cusumano, M.D. - Redirect Examination by Ms. Canaday

1 REDIRECT EXAMINATION

2 BY MS. CANADAY:

3 Q Doctor, with regards to a patient's history,
4 that's important, isn't it? A patient history is
5 important?

6 A Very much so.

7 Q And it's important to get an accurate history?

8 A Very much.

9 Q And if she had mentioned -- you had put in
10 quotes mold in her house. If she had mentioned moldy
11 wood, that's something you probably would have included
12 in your notes?

13 MR. ROBINSON: Objection, Your Honor, leading.

14 THE COURT: Sustained.

15 BY MS. CANADAY:

16 Q Is that something you would have included in
17 your notes?

18 A Possibly.

19 Q Okay. You told us that you performed some
20 research on the UpToDate service, correct?

21 A Yes.

22 Q And is it your opinion within a reasonable
23 degree of medical certainty that the psoriasis flare
24 Ms. Doller's experiencing was not related to the mold?

25 MR. ROBINSON: Objection, Your Honor. I

TESTIMONY OF PHILIP CUSUMANO, M.D.

1 didn't ask him about that.

2 THE COURT: Sustained.

3 BY MS. CANADAY:

4 Q Is it your opinion within a reasonable degree
5 of medical certainty that her psoriasis was cleared up
6 by the Z-pak?

7 A Yes.

8 MS. CANADAY: That's all I have.

9 THE WITNESS: And I think what -- what
10 confirmed it for me, also, as a primary care doctor
11 is the specialists at USC seemed to definitely
12 concur with that. He told me to keep her on the
13 antibiotic for six months.

14 BY MS. CANADAY:

15 Q And she came off of it by herself?

16 A She came off of it a little early, yes.

17 Q Because she was feeling better?

18 A Uh-huh.

19 MS. CANADAY: That's all I have for you.

20 Thank you, Doctor.

21 THE COURT: Any objection to this witness
22 being excused?

23 MR. ROBINSON: None from us, Judge.

24 THE COURT: You're free to leave.

25 You may call your next witness.

Kenneth Warren - Direct Examination by Ms. Canaday

1 MS. CANADAY: Thank you, Judge.

2 May it please the Court. We call Ken Warren
3 to the stand.

4 Thereupon,

5 KENNETH WARREN

6 was called as a witness, having been first duly sworn,
7 was examined and testified as follows:

8 WITNESS: Kenneth R. Warren.

9 THE COURT: Thank you, Mr. Warren.

10 DIRECT EXAMINATION

11 BY MS. CANADAY:

12 Q Good afternoon, Mr. Warren.

13 THE COURT: Ms. Canaday.

14 MS. CANADAY: Thank you, Judge.

15 BY MS. CANADAY:

16 Q Mr. Warren, could you please tell us your
17 education background, please.

18 A I have a bachelor of science degree in biology
19 from the Citadel in Charleston, South Carolina. And
20 that's the extent of my college. And --

21 Q Do you have any additional certificates or
22 training after college?

23 A I am a board certified industrial hygienist by
24 the American Board of Industrial Hygiene.

25 Q Okay. And where do you work?

TESTIMONY OF KENNETH WARREN

1 A I work for a company called S&ME, Incorporated.

2 Q Okay. And what do you do there?

3 A I am an industrial hygienist, and I perform
4 various types of assessments for both occupational
5 diseases or exposures as well as indoor air quality
6 investigations, mold assessments, various types of work
7 along that line.

8 Q Okay.

9 MS. CANADAY: Your Honor, I'll move to tender
10 this witness as an expert in industrial hygiene.

11 THE COURT: Any query with regard to his
12 qualifications?

13 MR. ROBINSON: None at all, Judge.

14 THE COURT: All right. He's so qualified in
15 this area, and I'll allow him to render his
16 opinions.

17 Once again, I'll charge you in greater detail
18 at the conclusion of the case on how to evaluate
19 expert testimony.

20 Ms. Canaday.

21 MS. CANADAY: Thank you, Judge.

22 BY MS. CANADAY:

23 Q Mr. Warren, did you have -- well, first of
24 all, I contacted you, correct?

25 A Correct.

TESTIMONY OF KENNETH WARREN

1 Q And what were you asked to do in this case?

2 A In June of 2014 you contacted me to come and
3 look at the residence at 55 James F. Byrnes Road, and to
4 look at the area that was impacted by a water loss.

5 Q And that area was in what area of that house?

6 A That was in, basically, the demising wall
7 between the master bedroom and the master bathroom.

8 Q Okay. And "demising wall," what does that
9 mean to a lay person?

10 A Well, basically, just the interior wall that's
11 not a perimeter --

12 Q Okay.

13 A -- exterior wall.

14 Q Okay. So that's the wall between the master
15 bedroom and the master bathroom?

16 A Separates the master bedroom and bath.

17 Q Okay. And to your understanding, there was
18 some sort of a leak in that area?

19 A Yeah. When I saw it there was basically a hole
20 cut in the wall where the plumbing was exposed behind the
21 valves for the shower insert, and -- so that was exposed.
22 And there were pieces of drywall that had been cut from
23 that area laying up against the side of the wall next to
24 the area, as well as some flooring had been -- engineered
25 wood flooring had been removed from that area.

TESTIMONY OF KENNETH WARREN

1 Q Okay. And then did you look in the bathroom?

2 A I did look in the bathroom.

3 Q Okay. And you also looked in the bedroom?

4 A I looked in the bedroom.

5 Q Did you look in other areas of the home?

6 A At that time, no. There was a curtain over the
7 door to the master bedroom, and most of my -- I was just
8 passing through the rest of the house to get to the
9 master bedroom at that time.

10 Q Okay. And did you perform -- well, you've
11 already told us that you performed an inspection.

12 Now, you were there in 2014. Do you have
13 an understanding as to when this leak was discovered?

14 A It is my understanding it was in 2011.

15 Q Okay.

16 A Obviously, I've heard quite a bit here today,
17 but I was aware that it happened in 2011.

18 Q Okay. Now, were you asked to prepare a repair
19 protocol?

20 A That was in November of 2014. I was requested
21 to put together a protocol for basically removing and
22 cleaning the area that was impacted by the water loss.

23 Q Okay. And the "area that was impacted by the
24 water loss" was where again?

25 A In the master bedroom. Between the master --

TESTIMONY OF KENNETH WARREN

1 on the wall between the master bedroom and master bath.

2 Q Okay. All right. And did you, in fact,
3 prepare that protocol?

4 A I did.

5 Q Okay. And what was -- what were you
6 recommending be repaired?

7 A Okay. First of all, I recommended that the
8 wall where the water loss occurred, in other words, that
9 demising wall between the bathroom and the bedroom, all
10 the drywall be removed from the bedroom as well as the
11 bathroom side, and the shower unit pulled away so that
12 that could be cleaned and assessed.

13 Then on the perimeter wall adjacent to
14 that wall, so that master bedroom wall that basically
15 forms that corner, removing approximately 8 feet of
16 drywall from floor to ceiling in that area as well.
17 And then removal of the flooring approximately 10 feet
18 from the wall that had experienced the water loss.

19 Q Okay. The whole floor or just a portion of
20 the floor?

21 A Ten feet away from that wall, so all of that
22 floor 10 -- up to the 10 feet away from the wall. So
23 that's going to take it pretty close to a closet, walk-in
24 closet, that's also in that bedroom.

25 Q Okay. And what else did you recommend for the

TESTIMONY OF KENNETH WARREN

1 residence?

2 A So, basically, that -- removing those materials
3 to expose those wall cavities, and then performing the
4 cleaning necessary -- as necessary based on any
5 indication of visual staining or -- or possible mold that
6 may have been there as a result of that.

7 Q Okay. Did you recommend wiping off any
8 surfaces?

9 A For the remaining -- in addition to what I just
10 described, in addition to that, removing the furniture,
11 taking it out of the room, cleaning the hard furniture.
12 Removing and discarding the soft linens, clothes -- bed
13 clothes, curtains. Anything in that room that was
14 basically noncleanable, removing those materials and
15 discarding.

16 Q Those materials could be washed?

17 A Possibly. I said in there commercially cleaned
18 or discarded. But, again, usually it's less expensive to
19 discard on something like that.

20 Q Oh, okay. All right. When you were present
21 in the home, that was three years after the fact?

22 A That was after, 2014.

23 Q Okay. Would the scope of repair possibly be
24 less had you seen it at the time of the damage?

25 A Well, certainly water damage if -- you know,

TESTIMONY OF KENNETH WARREN

1 the quicker you dry surfaces that have been impacted by
2 water release, obviously, less damage will occur there.
3 Water travels. So in other words, if you can -- water
4 travels through coarse materials such as drywall. And if
5 you can dry quickly enough, my understanding for things
6 such as microbial growth would be 24 to 48 hours. If you
7 can dry quicker than that you can prevent it from
8 happening. So, certainly, the quicker you respond, the
9 less materials are going to be impacted.

10 Q Okay. Do you know how large this house is?

11 A No. It looks to be about 2500 square feet to
12 me, just a guess.

13 Q Okay.

14 A Single story.

15 Q Slab home?

16 A Slab home.

17 Q And the amount of drywall that needed to be
18 removed, how did you --

19 A Well, I was feeling that I was being
20 conservative in saying 6 feet in one direction and 8 feet
21 in the other direction all the way up. So, you know,
22 it's probably about a hundred square feet.

23 Q Not a majority --

24 A Certainly not.

25 Q -- of it is drywall?

TESTIMONY OF KENNETH WARREN

1 A Certainly not. And only restricted to that
2 bedroom area and bath.

3 Q The bedroom and bath. Correct.

4 And what would you do in the bathroom?

5 A Simply, again, pull the shower, just remove the
6 shower stall away from the wall so that it can be cleaned
7 and assessed as necessary, as well as removing the
8 drywall, which is about 6 feet from that -- or excuse me,
9 4 feet from that edge of that shower stall to door frame,
10 so that the door going into that master bedroom/bathroom
11 or between the two rooms.

12 Q Okay. And you were recommending that these
13 repairs be performed withing the guidelines of --

14 A Recommended according to the guidelines of
15 EPA's guidance document called Mold Remediation in the
16 Schools and Commercial Buildings. That provided the
17 guidance protocol for handling various surfaces.

18 Q Okay.

19 MS. CANADAY: One moment please.

20 BY MS. CANADAY:

21 Q Mr. Warren, did you find it necessary to wear
22 any sort of Tyvek suit when you went into this
23 residence?

24 A No.

25 Q Any reason why not?

Kenneth Warren - Cross Examination by Mr. Robinson

1 A Well, there was no odor that I could detect,
2 and the amount of any staining that I saw in that area
3 was very minimal.

4 Q Okay. And you --

5 MS. CANADAY: I think that's all that I have
6 for you. Thank you. Please answer anything of
7 Plaintiff's counsel.

8 THE COURT: Cross examination?

9 MR. ROBINSON: Thank you, Your Honor.

10 CROSS EXAMINATION

11 BY MR. ROBINSON:

12 Q Good morning, Mr. Warren. I'm Brian Robinson.

13 I see you're from the Citadel?

14 A Yes, sir.

15 Q And you have a BS in biology from the Citadel?

16 A Correct.

17 Q Good. What were your instructions from
18 Mrs. Canaday?

19 A On -- I was there on two occasions. In the
20 first case she wanted me -- in June of 2014 she asked me
21 to look at the area that had been impacted by the water
22 loss, and provide any information I could to her as far
23 as my feelings about that.

24 Q Okay.

25 A And on the second situation, approximately,

TESTIMONY OF KENNETH WARREN

1 whatever difference is between June and November, she
2 called and asked me to come and put together -- do an
3 assessment, basically, of the entire residence and put
4 together a protocol for dealing with the water-impacted
5 area.

6 Q Okay. You testified that part of your
7 protocol was to take the personal property, the
8 furniture, the clothes, whatever's in that room and
9 clean them, or if they couldn't be cleaned, to discard
10 them.

11 A Correct. The upholstered-type --

12 Q Right.

13 A -- materials. Obviously, the wooden furniture
14 can be cleaned.

15 Q Okay.

16 A But they would need to be taken from the area
17 and cleaned.

18 Q Why would you have to clean those?

19 A Pardon?

20 Q Why would you have to clean those?

21 A Well, just to -- they had been in contact --
22 when I saw the area, bed clothes were hanging on the rug,
23 the rug was on the floor. And based on the fact that
24 there's contact, I felt that everything that had contact
25 there would be best to clean.

TESTIMONY OF KENNETH WARREN

1 Q The curtains didn't have contact, did they?

2 A Not that I was aware of.

3 Q But they need to be cleaned too, don't they?

4 A In my opinion, yes.

5 Q Okay.

6 A In the bedroom.

7 Q Let me ask you. Why would you stop at the
8 bedroom for cleaning those things?

9 A I didn't see any visual indication of a problem
10 of mold anywhere in the -- in the residence.

11 Q Okay. Did you take any samples or anything
12 like that when you were in the house?

13 A No.

14 Q Did you take any air samples?

15 A No, sir.

16 Q You mentioned that you take air samples,
17 right?

18 A I have. Yes, I have taken air samples.

19 Q You didn't take any in that house?

20 A No, sir.

21 Q Okay. And that's because you weren't asked
22 to, right?

23 A No. We -- typically on a mold assessment
24 when -- for a water loss situation if there's an
25 indication of possible material there, I see no reason to

TESTIMONY OF KENNETH WARREN

1 take air samples, because it's best to deal with the
2 material. Possibly do air samples later after the work
3 has been done in the area, but not necessarily before.

4 Q And you weren't concerned with mold spores
5 maybe being a little -- the type of mold we're talking
6 about, the mold that you could see, you weren't
7 concerned about those mold spores being all over the
8 rest of the house?

9 A I would think mold spores are all over the
10 house as they are in this courtroom. They're everywhere.
11 Mold is ubiquitous.

12 Q I'm aware of that, sir. Thank you very much.

13 My question was with regard to the mold
14 you could see, that mold, that infectious mold, were you
15 concerned about those spores being all over?

16 A Right. I saw dark staining. I'm not aware
17 that it was definitely mold as we didn't sample. We just
18 go ahead and assume since it's associated with a water
19 loss, it may be mold. However, I don't know what type of
20 mold that was, if it was mold. Yeah, I just see dark
21 staining and assume that it could possibly be. It's on
22 water-impacted materials, so we treat it as if it could
23 possibly be mold.

24 Q So not to worry about the rest of the house,
25 is that --

TESTIMONY OF KENNETH WARREN

1 A I don't see a need to, just because spores are
2 passing through, to be concerned about that. Spores,
3 again, are everywhere from indoors and out. And -- go
4 ahead, I'm sorry.

5 Q That's all right.

6 You'll agree with me that mold can be
7 present but can't be seen?

8 A Pardon?

9 Q You will agree with me that mold can be
10 present but not seen?

11 A Oh, absolutely. Mold spores.

12 Q And the spores can be airborne?

13 A Yeah.

14 Q Okay. Let's take a look at your scope of work
15 for a minute. You said, "a polyethylene curtain was
16 present at the time of the assessment."

17 That means that there was a piece of
18 plastic over the doorway?

19 A That's correct.

20 Q Okay. You said, "a discovery of visible mold
21 indoors warrants cleanup of noncoarse contaminated
22 materials and removal and disposal of porous
23 contaminated materials."

24 That's what we were just talking about,
25 wasn't it?

TESTIMONY OF KENNETH WARREN

1 A That's correct.

2 Q And you said, "The goal of remediation is to
3 remove or clean the contaminated materials or materials
4 suspected of being contaminated;" right?

5 A That's correct.

6 Q "The work should be performed by trained
7 workers using polyethylene critical barriers."

8 What's a "critical barrier"?

9 A Well, just as I described when I was -- arrived
10 there was a curtain of some type hanging, a critical
11 barrier may be something a little bit more secure than
12 that or tighter than that to overlapping flaps for egress
13 into the room. But basically just to seal off that area
14 from the remaining parts of the house.

15 Q So if I understood what you said correctly,
16 what you have to do is you have to set that thing up,
17 that barrier up, so you can go in and out of it without
18 letting the interior air go out into the rest of the
19 building; is that right?

20 A I have not seen that in this industry, no,
21 that's not typically done. It's -- it's a rough curtain.
22 It's not similar to an airlock chamber that you may see
23 in other types of contamination issues.

24 Q Do you have to keep a negative air pressure on
25 that room?

TESTIMONY OF KENNETH WARREN

1 A It depends on protocol used. We didn't -- or I
2 didn't recommend that. I recommended air scrubbing while
3 that work was going on. Sometimes a negative pressure
4 enclosure is used, but sometimes it's not. Mold
5 remediation work is not regulated or specified as to
6 whether that would be necessary or not.

7 Q You would -- what you're saying, I think, is
8 that what -- the extent of the work depends on who's
9 looking at it?

10 A No, the extent of the work is how much work has
11 to be done.

12 Q And that would depend on the particular
13 certified indoor air quality --

14 A The judgment of the individual doing that
15 assessment, correct.

16 Q So it depends on who's looking at it?

17 A Right.

18 Q You said -- and back where I was a moment ago.

19 You don't suspect that the rest of the
20 personal property in that house is contaminated; is that
21 correct?

22 A I definite -- not from that loss. Now, during
23 my assessment of the remainder of the house, I did find
24 another area in the front bedroom, which is adjacent to
25 an HVAC closet that had a water loss that appeared to be

TESTIMONY OF KENNETH WARREN

1 coming from that closet. There was water damaged floor
2 and a rug with staining on it that appeared to be mold.

3 Q Okay. It was a rug, not a carpet?

4 A A rug.

5 Q Okay. "The work should be performed by
6 trained workers using polyethylene critical barriers,
7 exhaust fans equipped with high efficiency particulate
8 air."

9 That's a HEPA filter?

10 A Right, that's correct.

11 Q "HEPA vacuums, wet vacuuming with fungicidal
12 cleaners, light sanding or light blasting on the wood
13 surfaces."

14 You're talking about the studs?

15 A The studs in the wall, correct.

16 Q Okay. "Application of biocide coatings and
17 use of personal protective equipment."

18 A Correct, while that work's going on.

19 Q Okay. And the personal protective equipment
20 is to keep the workers from what?

21 A To keep them from breathing dust or any
22 microorganisms that may be, if they are present.

23 Q So when they're tearing up this stuff that's
24 got mold on it, that -- does that release spores in the
25 air?

TESTIMONY OF KENNETH WARREN

1 A It releases dust that could have spores as
2 well, correct.

3 Q You don't want them on breathing that?

4 A Correct.

5 Q You don't want it on their body?

6 A Correct.

7 Q Okay. And this is -- I think that you
8 testified already. This is just to include the visible
9 mold and the water damage that you can see?

10 A That's correct.

11 Q Okay. "Rugs, draperies, bed clothes and
12 fabric from the master bedroom should be discarded or
13 commercially cleaned."

14 I think we covered that.

15 A Right.

16 Q "The scope of work should be performed at
17 minimum, at minimum, in general accordance with the
18 EPA's guidelines, Mold Remediation in Schools and
19 Commercial Buildings. This document is available at
20 www.epa.gov."

21 A Correct.

22 Q You wrote that?

23 A Yes.

24 Q Would you look in that -- there should be a
25 book up there, maybe there's not. Now there is.

TESTIMONY OF KENNETH WARREN

1 Would you look with me on Exhibit No. 20?

2 A Okay.

3 Q Is that the EPA guideline you're referring to?

4 A That is it.

5 Q And down at the bottom it says, www.epa.gov?

6 A Correct.

7 Q Okay. So that's the web site you referred to?

8 A Right.

9 Q Okay. On page 1 there's a thing called
10 introduction. You see that?

11 A Uh-huh.

12 Q It says, "Concern about indoor mold
13 exposure" -- excuse me, "indoor exposure to mold has
14 been increasing as the public becomes aware that
15 exposure to mold can cause a variety of health effects
16 and symptoms including allergic reactions."

17 Do you see that?

18 A Yes, sir.

19 Q Okay. You wouldn't disagree with that, would
20 you?

21 MS. CANADAY: Object to form.

22 THE WITNESS: I know that that's there, but
23 it's --

24 THE COURT: Okay. Hang on.

25 You have an objection?

TESTIMONY OF KENNETH WARREN

1 MS. CANADAY: Yes, sir. This -- a couple
2 objections, Your Honor. This witness is not
3 qualified to give medical testimony, and this
4 document hasn't been tendered as a learned
5 treatise.

6 THE COURT: I'll ask that you rephrase the
7 question.

8 MR. ROBINSON: Thank you, Your Honor.

9 BY MR. ROBINSON:

10 Q Did I read that accurately?

11 A You want to read it again? I wasn't paying
12 quite attention word for word, but it sounded like you
13 did.

14 Q All right. Well, then we'll skip it then if
15 it's close enough for you. Let's go to Page 4. The
16 center hole is on a paragraph and just below that is
17 another paragraph that says "in cases". Do you see
18 that?

19 A Yes.

20 Q Okay. "In cases in which a particularly toxic
21 mold species has been identified or suspected. When
22 extensive hidden mold is suspected," and I'm going to
23 skip the parenthetical, "when the chances of the mold
24 becoming airborne are estimated to be high or sensitive
25 individuals, i.e., those with severe allergies or asthma

TESTIMONY OF KENNETH WARREN

1 are present, a more cautious or conservative approach to
2 remediation is indicated."

3 Would you agree with me that if there's a
4 person who's going to occupy that house that is sensitive
5 to that mold, a more cautious approach should be
6 indicated?

7 A My impression of what that's saying is the more
8 cautious approach is using the contained critical
9 barriers that we referred to.

10 Q Well, the person who's going to be occupying
11 the house isn't going to be there when you're doing
12 that, are they?

13 A No, I wouldn't think. I mean, it depends.

14 Q All right. Down at the very --

15 A It happens.

16 Q All right. Down at the very bottom of the
17 page it says, "Whether dead or alive, mold is
18 allergenic, and some molds may be toxic."

19 Do you see that?

20 A Yes.

21 Q Okay. Let's go to Page 5. It says, Mold
22 remediations/cleanup and biocides.

23 Do you see that?

24 A Yes, sir.

25 Q "The purpose of mold remediation is to remove

TESTIMONY OF KENNETH WARREN

1 the mold to prevent human exposure and damage to
2 building materials and furnishings. It is necessary to
3 clean up mold contamination not just kill the mold.
4 Dead mold is still allergenic and some molds are
5 potentially toxic. The use of biocides such as chlorine
6 bleach is not recommended as a routine practice during
7 mold remediation, although there may be incidences where
8 professional judgment may indicate its use. For
9 example, when immune-compromised individuals are
10 present."

11 Did anybody tell you that the owner of the
12 this house is immune-compromised?

13 A No.

14 Q I'm going down to where it says personal
15 protective equipment, not the first line, not the first
16 full paragraph, but the second one. It says, "The
17 primary function of personal protective equipment is to
18 avoid inhaling mold and mold spores and to avoid mold
19 contact with the skin or eyes."

20 Read that correctly?

21 A Yes.

22 Q Is that -- there's a photograph on that page;
23 do you see it?

24 A Yes, sir.

25 Q Is that what you're talking about, the

TESTIMONY OF KENNETH WARREN

1 protection that they're supposed to have?

2 A The workers.

3 Q The workers are supposed to wear that?

4 A Yes.

5 Q Okay.

6 MR. ROBINSON: Your Honor, at this point in

7 time I move to admit Exhibit 21 into evidence.

8 THE COURT: Any objection?

9 MS. CANADAY: Your Honor I think discussed
10 this same exhibit the other day when he described
11 the exhibit --

12 THE COURT: I mean, do you object?

13 MS. CANADAY: I do object, yes, sir.

14 THE COURT: All right. Might counsel
15 approach?

16 (Off-the-record discussion held.)

17 THE COURT: It is in evidence over objection.

18 *(Whereupon, Plaintiff's Exhibit No(s). 21*

19 *marked for identification and received in*

20 *evidence.)*

21 BY MR. ROBINSON:

22 Q Mr. Warren, is that the photograph we just
23 referenced in that?

24 A Yes, that's the photograph.

25 Q Would you tell the jury what we're looking at

TESTIMONY OF KENNETH WARREN

1 here?

2 A That's a picture of what appears to be someone
3 wearing a respiratory protection and a disposable suit
4 and gloves doing something to a wall, I can't tell.

5 Q Okay. And do they have goggles on or some
6 sort of eye protection?

7 A I really can't tell --

8 Q All right.

9 A -- from the picture.

10 Q Does that look like a HEPA filter respirator?

11 A That more than likely is, based on the color.

12 Q Okay. And then they've gloves on to keep that
13 stuff off their hands, right?

14 A They have gloves on, yes.

15 Q And does the EPA also recommend that they wear
16 booties?

17 A I'm not aware of that. They may.

18 Q Okay. You said on Page 7 of your mold
19 remediation report, "Wear M95 respirator, protective
20 clothing covering head and shoes and gloves."

21 Is that -- when I say "booties," I mean is
22 that what you're talking about?

23 A Yeah, but I don't know if the EPA says that,
24 but I said that.

25 Q Okay. I'm sorry. Now, that critical barrier

TESTIMONY OF KENNETH WARREN

1 you have up, that's so that the mold won't contaminate
2 the rest of the house, right?

3 A Well, there's construction debris. If someone
4 is taking down any drywall, you would want to maintain
5 dust inside in the area that you're working, that you're
6 going to clean. So, yeah, that's to control anything
7 that would be generated during that construction work.

8 Q All right. Am I to understand that you're not
9 concerned about spores that may be circulating through
10 the house from this mold, you're concerned only, in this
11 particular report -- or excuse me, protocol, about dust
12 and debris that might be churned up when you're taking
13 out the bad stuff?

14 A That's correct.

15 Q Okay. Why does the EPA want you to avoid
16 contact with the skin, or do you know?

17 A I'm not a medical person, I can't really say.

18 Q I assume that your answer would be the same if
19 I asked you why the EPA wants you to avoid inhaling the
20 mold and the mold spores?

21 A That's correct. I mean, obviously, I read; but
22 it's not my specialty.

23 Q Tell me about cleaning the studs. What do we
24 do to clean the studs?

25 A Well, once you have --

TESTIMONY OF KENNETH WARREN

1 Q Let me stop you for a second. You and I are
2 familiar with that term. I'm not sure that everybody on
3 the jury is.

4 When we say "studs," what are we talking
5 about?

6 A We're talking about the wooden wall joists that
7 basically is the framing of the house. So when you
8 remove the drywall, you expose the wooden studs or
9 joists.

10 Q That's those vertical pieces of wood that you
11 put the drywall on?

12 A Vertical and horizontal, correct.

13 Q Great. Go ahead.

14 A Basically once you remove the area of drywall
15 that's specified you, basically, just clean whatever
16 material is on the studs. That falls into the category
17 of a semi-porous material I described.

18 Q So semi-porous, how do you clean them?

19 A Scrubbing with brushes and soap.

20 Q May have to sand them?

21 A Possibly.

22 Q Depends on whether that stuff's penetrated?

23 A Well, normally if you're sanding, it's mainly
24 for esthetics.

25 Q Okay.

TESTIMONY OF KENNETH WARREN

1 A Because it's -- the scrubbing removes anything
2 that would be there, and HEPA vacuumed as well.

3 Q If you scrub it and you HEPA vacuum and
4 there's still black stuff on there, what do you do then?

5 A Well, it may or may not -- I mean, older wood
6 is stained even prior to being installed. And it's, you
7 know, you can't make wood not have any stains on it. I
8 mean, again, all staining, I guess is what I'm saying,
9 wouldn't be necessarily associated with the event that
10 occurred.

11 Q Well, I would agree with you there. My
12 question, I guess, was, suppose you have a stud that's
13 got black stains on it, if you will, could we assume
14 that those come from this mold or that they are the
15 mold, you clean them up and they're still the same black
16 stains, what would you do then?

17 A I would think they would either come off or
18 they're not really stains.

19 Q Well, the wall's semi -- excuse me, the wood's
20 semi-porous.

21 A Yes.

22 Q Mold can grow into it?

23 A I wouldn't think that it would necessarily grow
24 into it. That's where it falls into the category of a
25 semi-porous material versus the linens and bed clothes

TESTIMONY OF KENNETH WARREN

1 that we described earlier. I think -- I think you can,
2 basically, scrub wood to remove those materials.

3 Q All right. When they take the furniture out,
4 where are they going to put it?

5 A It's up to them, but that -- I think I
6 testified that they could put it and store it -- clean it
7 and then store it inside the residence.

8 Q Do they have to take it somewhere else to
9 clean it?

10 A It's up to the company whether they would do
11 that or not, whoever does the remediation work. Some
12 would do that, some would do it inside the area there.
13 Some may build something on site to clean.

14 Q Correct me if I get this wrong, I thought we
15 were concerned that this personal property in that room
16 may have been contaminated by the mold.

17 Did I misunderstand that?

18 A I don't believe so, no.

19 Q Okay. So if I move it out in the living room,
20 let's say --

21 A It would have to be cleaned to move it into the
22 living room.

23 Q It's got to be cleaned before I move it into
24 the living room?

25 A Yes.

TESTIMONY OF KENNETH WARREN

1 Q Okay. I can take it somewhere else --

2 A I think I said cleaned and stored.

3 Q -- clean it and then bring it back --

4 A Correct.

5 Q -- is that right?

6 A Correct.

7 Q Okay. You're not cleaning any surfaces
8 outside of the master bedroom and the master bathroom?

9 A That's correct.

10 Q Okay. Was the air conditioner running when
11 you were there?

12 A It was.

13 Q It was.

14 Did anybody tell you that the air
15 conditioner's been running the whole time Ms. Doller's
16 owned that house?

17 A No.

18 Q Okay. Would -- if you assume that's the case,
19 assume with me for a moment, the air conditioner's been
20 running the whole time. At some point in time there was
21 a water leak, mold grows. We don't know how long that
22 was, because it was a little tiny drip in the wall and
23 it ended up putting two inches of water in one spot,
24 which was a depressed spot before at a doorway but
25 nonetheless, and mold grows.

TESTIMONY OF KENNETH WARREN

1 Would you be concerned that the spores
2 from that mold were transported around the house through
3 the air conditioning?

4 A No. No, I don't think that's a concern.

5 Q All right. Even if the person living there is
6 highly allergic to the mold?

7 A You know, again, my protocol is based on the
8 most conservative approach in my opinion.

9 Q Okay. All right. I might be finished, hang
10 with me for a minute.

11 When this sheetrock, flooring, whatever it
12 is gets taken out, do you have to put those in plastic
13 bags?

14 A Yes, you do.

15 Q And then it goes to the dumpster or whatever?

16 A It's not regulated, it can go anywhere.

17 MR. ROBINSON: All right, sir. Thank you very
18 much.

19 *(Whereupon, Plaintiff's Exhibit No(s). 23*
20 *marked for identification and received in*
21 *evidence.)*

22 THE WITNESS: Sure.

23 THE COURT: Mr. Foreman, ladies and gentlemen
24 of the jury, we're going to take a break and allow
25 you to return to the jury room and refresh

Kenneth Warren - Redirect Examination by Ms. Canaday

1 yourselves. Do not discuss the case at all.

2 Mr. Foreman, I ask that you enforce that rule.

3 (The jury exits the courtroom at 3:43 p.m.)

4 THE BAILIFF: The jury's clear, Your Honor.

5 THE COURT: All right. We're going to take a
6 brief recess and if you need to use the restroom,
7 you know, feel free to ask the bailiff and he'll
8 assist you in that regard. But under these
9 circumstances, you can't discuss the matter with
10 any of the parties. We will stand at ease for five
11 minutes.

12 (Brief recess.)

13 THE COURT: Anything from the Plaintiff before
14 we proceed?

15 MR. ROBINSON: No, Your Honor.

16 THE COURT: Anything from the Defense?

17 MS. CANADAY: No, Your Honor.

18 THE COURT: All right. We are ready for the
19 jury.

20 (The jury enters the courtroom at 4:05 p.m.)

21 THE COURT: Redirect?

22 MS. CANADAY: Thank you, Your Honor.

23 REDIRECT EXAMINATION

24 BY MS. CANADAY:

25 Q Mr. Warren, you were asked some questions

TESTIMONY OF KENNETH WARREN

1 about those EPA guidelines --

2 A Yes.

3 Q -- and the reference was that spores won't
4 grow if moisture is resolved; is that right?

5 A Yeah. I mean, spores are everywhere and they
6 have to have wet surfaces to land on to grow.

7 Q Okay. And the quicker that's dried up, the
8 moisture's resolved --

9 A It prevents that from happening.

10 Q Okay. So it's important to get the source of
11 the moisture resolved as quickly as possible.

12 A Absolutely.

13 MR. ROBINSON: Objection, Your Honor. I
14 didn't go into that with him.

15 THE COURT: Leading too. I think you did.
16 But it's leading.

17 MR. ROBINSON: Objection; leading.

18 THE COURT: The objection is sustained.

19 MS. CANADAY: Thank you, judge.

20 THE COURT: It's your witness, direct
21 questions.

22 MS. CANADAY: Thank you, judge.

23 BY MS. CANADAY:

24 Q You mentioned a potential source of water in
25 an HVAC closet?

TESTIMONY OF KENNETH WARREN

1 A Yes. When I looked at -- or did the assessment
2 in November of 2014, not only looked at the area of the
3 master bedroom and master bath but also looked at other
4 areas of the house, and there was a large area of water
5 damage on the front bedroom next to the foyer. And
6 there's an HVAC closet in the foyer, and there was water
7 on the floor in that bedroom, buckled wood and staining
8 on the wood as well as on the carpet or the rug that was
9 on that wood.

10 Q Okay. And that had nothing to do with the --

11 A Nothing to do --

12 Q -- plumbing issue?

13 A -- that I could see associated with the master
14 bedroom loss.

15 Q Okay.

16 MS. CANADAY: That's all I have. Thank you,
17 Judge.

18 THE COURT: Very good. Any objection to this
19 witness being excused?

20 MR. ROBINSON: None from the Plaintiff, Your
21 Honor.

22 THE COURT: Defense?

23 MS. CANADAY: No, Your Honor.

24 THE COURT: You're free to leave. Thank you,
25 sir.

Leith Webb - Direct Examination by Ms. Canaday

1 Okay. Call your next witness.

2 MS. CANADAY: May it please the Court, we call
3 Leith Webb.

4 Thereupon,

5 LEITH WEBB

6 was called as a witness, having been first duly sworn,
7 was examined and testified as follows:

8 THE WITNESS: Leith Youngblood Webb.

9 THE COURT: Very good. All right.

10 MS. CANADAY: Thank you, Judge. May it please
11 the Court.

12 DIRECT EXAMINATION

13 BY MS. CANADAY:

14 Q Good afternoon, Mr. Webb. Please give the
15 jury some of your -- benefit of your background, your
16 education and employment history, please.

17 A I've attended the College of Charleston and
18 University of South Carolina. Been in the general
19 contracting business for -- on my own for 20 years. I
20 worked with other people for about 20 years --

21 Q Okay. And you --

22 A -- in business.

23 Q And you have your own business here?

24 A I do, and my business is Beaufort Construction.
25 Been in business for 20 years.

Leith Webb - Voir Dire Examination by Mr. Robinson

1 Q Okay. And you -- are you from Beaufort?

2 A I am.

3 Q Okay. And still your company is an active
4 construction company; is that correct?

5 A That's correct.

6 Q Okay. And who holds the license in that
7 company?

8 A Merrick Patterson.

9 Q Okay.

10 MS. CANADAY: All right. And, Your Honor, I
11 tender this witness as a general contractor, expert
12 as a general contractor, repair estimator.

13 THE COURT: Any query with regard to his
14 qualifications?

15 MR. ROBINSON: Yes, Your Honor. Just a couple
16 if I may.

17 VOIR DIRE EXAMINATION

18 BY MR. ROBINSON:

19 Q Mr. Webb, do you make estimates for your
20 construction company?

21 A I do.

22 Q How many estimates do you make?

23 A I'm sorry?

24 Q How many estimates do you make, sir?

25 A I don't know the number, but I would say I make

Leith Webb - Direct Examination continued by Ms. Canaday

1 60 to 70 percent of the estimates my company turns out.

2 Q Thank you, sir.

3 MR. ROBINSON: No further questions. I don't
4 have any objection.

5 THE COURT: And you're tendering him as an
6 expert in the area of general contracting?

7 MS. CANADAY: Yes, sir.

8 THE COURT: He is so qualified and allowed to
9 render his opinion in that field.

10 MS. CANADAY: Thank you, Judge.

11 DIRECT EXAMINATION CONTINUED

12 BY MS. CANADAY:

13 Q Mr. Webb, were you asked to prepare an
14 estimate based upon a scope of work provided to you in
15 this particular case?

16 A I was.

17 Q Okay. And did you actually prepare that scope
18 of work?

19 A I did.

20 Q Okay. And tell us how you prepared that
21 scope -- or excuse me, that estimate? I called it
22 "scope", I meant the estimate.

23 A I was given a scope of work done by Mr. Warren,
24 and I prepared my estimate based on that.

25 Q Okay. And does Beaufort Construction perform

TESTIMONY OF LEITH WEBB

1 work in-house or do you often contact subcontractors?

2 A Both.

3 Q Both.

4 Okay. And for this particular estimate,
5 how did you price it?

6 A I would have done both.

7 Q Okay. And did you, in fact, do that, call --

8 A I did.

9 Q Okay. And tell me how much -- what was the
10 bottom line price for the scope of work?

11 A \$18,817.

12 Q Okay. And that covered the entire scope; is
13 that correct?

14 A That is correct.

15 Q All right. And now you -- did you contact
16 somebody -- well, tell me this.

17 Does Beaufort Construction do any sort of
18 remediation work?

19 A We do all types of work.

20 Q Okay. All right. We can go through your
21 estimate line by line. But, essentially, you were able
22 to price the entire scope of work as provided by
23 Mr. Warren, and that would include the removal of the
24 drywall, removal of floors and performing any mold
25 abatement necessary for the price of \$18,817; is that

TESTIMONY OF LEITH WEBB

1 accurate?

2 A That's correct.

3 Q Okay. And did that include moving out any
4 contents?

5 A Well, it moved contents in and out of the room.

6 Q Okay. Mr. Webb, I want to show you this
7 document.

8 A Uh-huh. (Indicating affirmatively.)

9 Q Do you recognize that document?

10 A Yes.

11 Q And what is it?

12 A That is the first page of my line item summary.

13 Q Okay. If you flip it over, the second page --

14 A Correct.

15 Q Trying to be green.

16 A Okay. I'm sorry, I didn't see that.

17 Q That's okay.

18 Do recognize this as the estimate that you
19 prepared?

20 A Yes.

21 MS. CANADAY: Your Honor, I'd like to move
22 this into evidence.

23 THE COURT: Any objection from the Plaintiff?

24 MR. ROBINSON: I object, Your Honor. This is
25 his report. I don't think that he can put it in.

Leith Webb - Cross Examination by Mr. Robinson

1 THE COURT: All right. I'm going to allow him
2 to do that. It's not like an opinion report. It
3 has to do with an estimate. Other estimates have
4 come in from the Plaintiff's standpoint, and I'm
5 going to allow.

6 MS. CANADAY: Thank you, Judge.

7 *(Whereupon, Defendant's Exhibit No(s). 1*
8 *marked for identification and received in*
9 *evidence.)*

10 MS. CANADAY:

11 Q Mr. Webb, is that an estimate for which the
12 work could be done?

13 A Yes.

14 Q For what you would do the work for --

15 A Yes.

16 Q -- is that correct? Okay.

17 MS. CANADAY: I don't think that I have any
18 questions for you. Please answer anything anybody
19 else asks.

20 THE COURT: Mr. Robinson, you are recognized.

21 MR. ROBINSON: Thank you, Your Honor.

22 CROSS EXAMINATION

23 BY MR. ROBINSON:

24 Q Mr. Webb, I'm Brian Robinson. How are you
25 today?

TESTIMONY OF LEITH WEBB

1 A Fine, how are you?

2 Q Your proposal is for the scope of work that
3 S&ME provided; is that right?

4 A That's correct.

5 Q And your proposal has one week of work in it;
6 is that right?

7 A That's correct.

8 Q And that work includes putting up the critical
9 barrier at the door?

10 A No, that does not. I have priced the mold
11 remediation as -- from a subcontractor's standpoint.

12 Q Well, does your subcontractor include putting
13 up the --

14 A I'm sure it does, yes.

15 Q -- barrier at the door?

16 Do you know that, or are you sure of that?

17 A I contacted a mold remediation contractor, and
18 he gave me a price to do this work based on Mr. Warner's
19 scope.

20 Q Who was that mold remediation contractor?

21 A Best Services of Beaufort.

22 Q Do you know how many mold remediation projects
23 they have undertaken?

24 A I have no idea, sir.

25 Q Okay. So you're not going to do the mold

TESTIMONY OF LEITH WEBB

1 remediation yourself?

2 A I'm not licensed to do it, no, I'm not.

3 Q And you don't know how many this other guy's
4 done?

5 A He's licensed to do it.

6 Q He's licensed to do what, sir?

7 A Mold remediation.

8 Q Okay. Is that a subspecialty? You're not the
9 license holder for your company, are you?

10 A No, I'm not.

11 Q Okay. Are you familiar with the licensing
12 laws in South Carolina?

13 A Somewhat.

14 Q Somewhat.

15 Is that a subspecialty in the licensing of
16 general contractors?

17 A I don't know about general contracting, but it
18 requires a license, I'm sure.

19 Q Okay. Did you talk to your mold remediation
20 contractor or did you, either one of you, price doing an
21 asbestos certification before you started this work?

22 A We did not.

23 Q You're going to remove all of the furniture
24 from the bedroom; is that correct?

25 A Yes.

TESTIMONY OF LEITH WEBB

1 Q And you're going to take the shower insert out
2 from --

3 A Yes.

4 Q -- in the bathroom?

5 A Yes.

6 Q Okay. And what are you going to do with the
7 shower insert?

8 A Set it to the side while the mold remediation
9 man gets in there and cleans the wood.

10 Q Does that mean that you have to take it out
11 into the rest of the house?

12 A No, you can leave it in the bathroom. It's not
13 that big.

14 Q You think there's room in the bathroom?

15 A Yes.

16 Q Okay. How about the furnishings in the
17 bedroom, what do you do with those?

18 A Take them out and put them in the living room.

19 Q Okay. And you're not planning on cleaning
20 those, are you?

21 A I am not. No, I'm not.

22 Q Okay. In fact, there's nothing in your
23 proposal to clean those, is there?

24 A The mold remediation subcontractor would do
25 that if that was in his scope of work.

TESTIMONY OF LEITH WEBB

1 Q Did he give you a written proposal?

2 A He did not.

3 Q Okay. Did you and he discuss what's in his
4 scope of work and what's not?

5 A I sent him the scope -- I sent him Mr. Warren's
6 report and asked him to price it based upon that.

7 Q Okay. And you know -- you've been in the
8 construction business for 40 years, right?

9 A Yes, sir.

10 Q And you know that there's oftentimes
11 controversies between the general contractor and the
12 subcontractors about what's in their scope of work and
13 what's not; isn't that true?

14 A Sometimes.

15 Q In fact, that's what keeps construction
16 lawyers busy, isn't it?

17 A Wouldn't know.

18 Q Okay. You've been lucky enough not to get
19 sued?

20 A You got it.

21 Q You are a rare find, sir.

22 So you don't know if that's in there or
23 not?

24 A I know this man well enough to know if I send
25 him the scope -- and I know the person. He has never

TESTIMONY OF LEITH WEBB

1 done any mold remediation for me. I don't how many he's
2 done. But I know the man; he'd do it for me.

3 Q He'd do it for you, but you don't know if it's
4 in his price or not?

5 A For the price he gave me, it better be.

6 Q And you're going to take this -- who's going
7 to remove the furnishings, you?

8 A I've got a few hundred dollars in there to pick
9 them up, take them out and put them in the living room.

10 Q In the living room.

11 So you're going to dump down or set them
12 down in the living room -- I shouldn't say "dump," you're
13 going to set them down in the living room, right?

14 A Correct.

15 Q And you were here for Mr. Warren's testimony,
16 weren't you?

17 A I was.

18 Q And Mr. Warren says that ain't exactly how
19 you're supposed to do it, didn't he?

20 A Well, I don't know.

21 Q Okay. Are you going to -- are you going to
22 clean the drapes, or is your subcontractor going to
23 clean the drapes?

24 A If it's in that report, then he -- he'll have
25 to.

TESTIMONY OF LEITH WEBB

1 Q Okay. Are your workers going to be wearing
2 protective clothing?

3 A No.

4 Q What are your workers going to do?

5 A What are my workers going to do?

6 Q What are -- the guys on your payroll, what are
7 they going to do?

8 A My guys will take the sheetrock down, remove
9 the shower stall, remove the wood floor, move the
10 contents in and out, do some miscellaneous carpentry
11 work, do a little bit of insulation there is to do, and
12 most of the rest of it gets subbed out, the drywall, wood
13 flooring and that kind of thing.

14 Q And your guys are going to do that without any
15 personal protective equipment?

16 A We do demolition all of the time.

17 Q Yes, sir.

18 A We -- we are never asked to do -- to check for
19 mold. Asbestos, yes; mold, no. We work in buildings and
20 I'm sure it's everywhere.

21 Q Have you ever done a mold remediation job?

22 A I have not.

23 Q Okay.

24 A Well, I -- let me say -- let me back up. I had
25 some mold remediated out of some ductwork here about two

TESTIMONY OF LEITH WEBB

1 years ago, yes.

2 Q And you hired a subcontractor to clean the
3 ductwork?

4 A I did.

5 Q Okay. But in this case you're planning on
6 doing the demolition of the mold in --

7 A No, sir, demolition of the sheetrock, not the
8 mold.

9 Q Demolition of the sheetrock and -- fine.

10 MR. ROBINSON: I don't have any further
11 questions, Your Honor.

12 THE COURT: Any redirect?

13 MS. CANADAY: No, Your Honor.

14 THE COURT: All right. You may step down.

15 Any objection to this witness being excused?

16 MR. ROBINSON: No, sir.

17 THE COURT: Okay. You're free to leave.

18 Thank you, sir.

19 THE WITNESS: Thank you.

20 THE COURT: You may call your next witness.

21 MS. CANADAY: Yes, Your Honor.

22 MR. TUPPER: We will call Brett Doran, please.

23 Thereupon,

24 BRETT DORAN

25 was called as a witness, having been first duly sworn,

Brett Doran - Direct Examination by Mr. Tupper

1 was examined and testified as follows.

2 THE WITNESS: Brett Doran.

3 THE COURT: Very good.

4 Mr. Tupper.

5 DIRECT EXAMINATION

6 BY MR. TUPPER:

7 Q Brett, you did the -- you took out the
8 polybutylene pipe in that house except for some in the
9 shower, correct?

10 A Correct.

11 Q Do you know how much it would cost -- how much
12 you would charge to take out and replace the
13 polybutylene that's still in the shower?

14 A It really wouldn't be all that much. It's --
15 basically I would change the shower fixture and that
16 would be the most cost right there, because it's the
17 valve and the trim and --

18 Q Can you give me an estimate rather than all
19 that much?

20 A If you replace both shower valves and went all
21 the way to the shower head and got rid of the poly, you'd
22 probably be looking at \$800.

23 Q Okay. So it's \$800 to --

24 A For both.

25 Q -- put the house in the position that you

1 represented to the real estate person it was in,
2 correct?

3 A Yes.

4 MR. TUPPER: Nothing further.

5 THE COURT: Cross examination?

6 CROSS EXAMINATION

7 BY MR. ROBINSON:

8 Q Did your \$800 include cutting out the
9 sheetrock to get to that valve and that pipe and putting
10 the new pipe in?

11 A No.

12 Q All right.

13 MR. ROBINSON: No further questions, Your
14 Honor.

15 THE COURT: Any redirect?

16 REDIRECT EXAMINATION

17 BY MR. TUPPER:

18 Q How much would that add to your \$800 estimate?

19 A Two or three hundred.

20 Q So about \$1100 to put the house in the
21 position that you said it was in at -- when you wrote
22 the letter to the realtor, correct?

23 A Correct.

24 MR. TUPPER: Nothing further.

25 THE COURT: All right. You may step down.

TESTIMONY OF BRETT DORAN

1 You may call your next witness.

2 MS. CANADAY: Your Honor, I have one
3 additional witness, that is the individual who will
4 be here in the morning.

5 THE COURT: Okay, very good. So you don't
6 have any more witnesses for us today?

7 MS. CANADAY: That's correct.

8 THE COURT: Very good. Well, that kind of
9 works out well. We have a legal matter on an
10 unrelated matter at 4:30, so that works out
11 perfect.

12 Mr. Foreman, ladies and gentlemen of the jury,
13 we have one more witness and then we will proceed
14 forward with closing arguments and the charge.
15 We're getting in the short track. Thank you so
16 much for your patience, and I anticipate we'll
17 probably -- you will probably have it for
18 deliberation sometime around lunch tomorrow.

19 I think the good news about that is we
20 probably will make the clerk buy y'all lunch
21 tomorrow. It's going to be something real good and
22 healthy. Something good and fried, I think.

23 But at any rate, y'all have a good night and
24 rest. Don't -- there's always the temptation to
25 stay up late when you know you don't have to work.

TESTIMONY OF BRETT DORAN

1 But you need to be alert and you need not stay up
2 and watch Jimmy Kimmel or one of those late night
3 shows. Get a good night's rest. Come back 9:30,
4 9:30 sharp. No independent investigation. Do not
5 discuss the case amongst yourselves or with anyone
6 else, and we will see you at 9:30 sharp.

7 (The jury exits the courtroom at 4:25 p.m.)

8 THE BAILIFF: The jury is clear, Your Honor.

9 THE COURT: Anything from the Plaintiff before
10 we recess for the evening?

11 MR. ROBINSON: None here, Your Honor.

12 THE COURT: Anything from the Defense?

13 MS. CANADAY: Nothing, Your Honor.

14 THE COURT: We will stand at ease until 9:30
15 in the morning. We're going to stay right here.
16 We have a matter from Dillon County right here at
17 4:30, so that works out just right. Y'all are free
18 to leave.

19 (Proceeding adjourned for the day.)
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TESTIMONY OF BRETT DORAN

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CERTIFICATE

STATE OF SOUTH CAROLINA:

COUNTY OF BEAUFORT:

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this June day of 24th, 2016.

Mona L. Manley /s/
MONA L. MANLEY
Official South Carolina Court Reporter
Circuit Reporter for the 14th Circuit
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APPEARANCE PAGE

1
2
3
4
5
6
7
8
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APPEARANCE PAGE

INDEX

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

WITNESS:

PAGE:

DAVID AMROL

Direct Examination By Ms. Canaday	427
Cross Examination By Mr. Robinson	442
Redirect Examination By Ms. Canaday	446
Closing argument by Mr. Robinson	471
Closing argument by Ms. Canaday	490
Re-buttal closing by Mr. Robinson	505
Jury Charge	511
Jury deliberations	534

Ex No.	Description	Marked:	Received:
Defendant's Exhibits:			
2-4	articles	456	456
Court's Exhibits:			
1	jury question	534	534

INDEX

1 PROCEEDINGS

2 MR. TUPPER: Yesterday on the way out from
3 the court to my car, I stopped to talk to a deputy
4 who works in the courthouse. There was a juror
5 apparently behind me. When I stopped talking to
6 the officer, he said, Judge, I will see you
7 tomorrow. I am the municipal court judge and
8 magistrate. The lady said to me, Are you a judge
9 too? And I said, Yes, ma'am. And I think she may
10 have said, That keeps you busy. And I didn't say
11 anything else, but I did say that to her

12 THE COURT: Okay. Any additional query
13 requested from the Plaintiff's counsel?

14 (No audible response.)

15 THE COURT: I am not -- we are not asking --
16 if you have any problems whatsoever, I am going to
17 call her out and ask her what she said. Then I'll
18 make a determination as to whether or not she
19 should be removed. But my question to you is, it
20 sounds like, and I accept what he says as an
21 officer of the Court, there's no discussion about
22 the case. And I don't have a problem with that.
23 It doesn't appear that that will pose a problem at
24 all. But if you have some hesitation about it I
25 will call her out here and put her under oath and

INDEX

1 talk to her about it.

2 MR. BARNES: Your Honor, my only concern is
3 if there's a range in which the juror may expand,
4 the fact that he is a judge -- I will take Ned
5 Tupper's word for it. I'm sure that it's very
6 open. I have had similar experiences, but I don't
7 want it to influence a juror because he is a judge
8 in court.

9 THE COURT: All right.

10 MR. TUPPER: Your Honor, here is the problem,
11 I knew that she was a juror, but I can't tell you
12 where she was sitting. She was a black lady. And
13 maybe if they came out I could say, That is her.
14 But I really haven't paid that close attention to
15 who it was. I know that she was on the jury. If
16 you call her out, I could figure out where she
17 was. If you call them back in again. That is the
18 only way I can do it. I can't tell you her jury
19 number or who she was.

20 MR. ROBINSON: We are not going to worry
21 about it, Judge. Let's go.

22 THE COURT: Very good. Are we ready for the
23 jury?

24 (The jury enters the courtroom.)

25 THE COURT: We have, I anticipate, one more

INDEX

1 witness. Pay close attention.

2 Defense, you are recognized.

3 MS. CANADAY: Thank you, Judge, may it please
4 the Court. We call Dr. David Amrol to the stand.

5 THE COURT: Please come forward.

6 Thereupon,

7 DAVID AMROL

8 was called as a witness, having been first duly sworn,
9 was examined and testified as follows.

10 THE COURT: Dr. Amrol, come forward, watch
11 your step, have a seat in the witness chair. Pull
12 it real close to that microphone. Speak loudly,
13 clearly, and slowly in order to hear everything
14 that you have to say. And let's start with your
15 full name.

16 THE WITNESS: David Joseph Amrol..

17 DIRECT EXAMINATION

18 BY MS. CANADAY:

19 Q Good morning, Dr. Amrol, how are you?

20 A Fine.

21 Q Okay. If you could start and tell the jury a
22 little bit about your background, please.

23 A Okay. I am a physician with the University
24 of South Carolina School of Medicine, Columbia. I went
25 to medical school there. I did my internal medicine

TESTIMONY OF DAVID AMROL

1 training at Wake Forest University. My allergy and
2 immunology training at Vanderbilt. And then came back
3 to Columbia about 12 years ago. I now see patients and
4 teach full time.

5 Q Do you have a specific specialty?

6 A Allergy and clinical immunology, so I treat
7 and diagnose asthma, allergic rhinitis, skin diseases,
8 immune deficiency, kind of a whole spectrum of allergy
9 and immunology.

10 Q Where did you do your undergraduate degree?

11 A Notre Dame.

12 Q And there is a big game coming up?

13 A ACC.

14 Q Doctor, are you board certified?

15 A Yes, I'm board certified in internal medicine
16 and allergy and clinical immunology.

17 Q And do you belong to any associations?

18 A Yes, I am a fellow in the American Academy of
19 Allergy and Immunology and the American College of
20 Allergy and Immunology.

21 MS. CANADAY: Your Honor, I would like to
22 tender this witness as an expert in allergy and
23 clinical immunology.

24 MR. ROBINSON: No objection, Your Honor.

25 THE COURT: He is indeed qualified and

TESTIMONY OF DAVID AMROL

1 allowed to render his opinions in the area of
2 allergy and clinical immunology.

3 BY MS. CANADAY:

4 Q Doctor, I contacted you about this case, did
5 I not?

6 A Correct.

7 Q Okay. And what were you asked to do?

8 A I was asked to review the medical records and
9 give an opinion on the case and about what the
10 causation could have been, if mold could have caused
11 this injury.

12 Q Okay. And did you have an opportunity to
13 review some medical records?

14 A Yes, quite a few, from her primary care
15 physician, dermatologist, laboratory studies, and also
16 a lot of other medical sources.

17 Q Okay.

18 A So, I did a pretty thorough literature review
19 and looked at guidelines on both psoriasis and mold as
20 well.

21 Q Okay. And what sort of medical articles and
22 what sort of research did you do?

23 A So, it is called PubMed. It is kind of the
24 national database, a clearinghouse for all of the
25 articles out there for medical literature. And you can

1 type in subjects, and it gives you all of the hits
2 for -- like you can type in heart disease and smoking
3 and it will give you all of the articles written for
4 that topic. So you can type in, say, psoriasis and
5 mold or psoriasis, and all of these combinations, and
6 you get all of the evidence out there. And as well I
7 looked at the the national guidelines for The Academy
8 of Dermatology, the American Academy of Allergy, the
9 EPA guidelines, the C D.C., all of the big
10 organizations.

11 Q Okay. And did you -- is there any other sort
12 of, other than PubMed, are there any other sort of
13 services that are available to physicians?

14 A One good one Dr. Cusumano mentioned is
15 UpToDate, and that is a private service, it is a
16 for-profit service, whereas PubMed is a government
17 entity. And it is all of the experts, almost all
18 specialties these days across the world. They make the
19 topics up, so they have one for asthma, one for
20 allergic rhinitis, several. And they go through all of
21 the topics, from the world-known experts. And that is
22 a good source now.

23 Q And In doing your research, what did you find
24 as a result of your research?

25 A With both UpToDate, PubMed, all of the

TESTIMONY OF DAVID AMROL

1 national guidelines and original articles, there's
2 never been a report of a mold that is associated with
3 indoor dampness either causing or exacerbating
4 psoriasis.

5 Q Okay. And you had, again, an opportunity to
6 review Ms. Doller's medical records; is that correct?

7 A Yes.

8 Q Okay. And tell us what you found in
9 reviewing those records.

10 A So, it is -- there is a lot of records of a
11 history of psoriasis that goes back several years. And
12 she had kind of a waxing and waning course, meaning it
13 came and went, very typical. Psoriasis can be good for
14 years, you can have a horrible flare, and then it can
15 get better. It could go away totally or it could come
16 back.

17 So, she had this kind of on and off courses,
18 pretty mild. And then she had a flare before moving
19 into the house and after moving into the house she had
20 another flare. At one point she was treated for poison
21 ivy. Most likely that was the initial flare of her
22 psoriasis, but it could have been poison ivy. It is
23 hard to know.

24 Q Okay.

25 A She had some Prednisone for that. It got

TESTIMONY OF DAVID AMROL

1 better but then had a flare afterwards. And since then
2 got a few off and on flares. Two times she received
3 oral antibiotics and each time got better after that.

4 Q Let me ask you about the oral Prednisone. Is
5 there any -- is psoriasis treatable by Prednisone?

6 A It can be. Usually we try not to because
7 Prednisone almost always helps, but when you stop you
8 get a flare afterwards. You get a rebound effect,
9 where you get better and then a week or more later you
10 get a terrible flare. So, we really try to avoid
11 Prednisone for psoriasis.

12 Q Okay. So, if she had gone to urgent care and
13 told them, I think it's poison ivy, I work in the yard,
14 and they gave her the Prednisone not knowing about the
15 existence of a psoriasis, could that have had an impact
16 on the existing psoriasis?

17 A So, Prednisone is a very appropriate
18 treatment for poison ivy, a week or two course, it gets
19 better, but it is not something that you would use if
20 you thought that it was psoriasis.

21 Q Okay. So, she's taken the Prednisone and she
22 has come off of the Prednisone and she's still
23 presenting with this problematic condition, correct?

24 A Correct.

25 Q And did you happen to see the biopsies? Were

TESTIMONY OF DAVID AMROL

1 you provided with the biopsy reports?

2 A Yes, I saw two biopsy reports. One was by
3 her first dermatologist, Dr. Gunnan, (phonetic) I
4 believe, and then one was performed at MUSC, Medical
5 College of South Carolina in Charleston

6 Q Okay. And what were those results?

7 A Both were consistent with guttate psoriasis.
8 And there's several forms of psoriasis. You can have
9 the plaque psoriasis. You may have seen this where you
10 get kind of scaly, salmon colored rash of the elbows
11 and knees. It can be mild or it can be terrible.

12 Guttate is a form that you can see at any
13 stage. You can present with guttate psoriasis, even
14 children can get this. You can present as an adult.
15 You can have plaque type psoriasis and then it turns to
16 guttate, nobody knows why. But it tends to be these
17 lesions that are small and discrete, but when it's bad
18 it can take over the body like she had.

19 Q Okay.

20 A So the first biopsy was consistent with it.
21 The second biopsy was even more diagnostic. And that
22 is common over time the biopsies look more like typical
23 psoriasis as time goes on.

24 Q Now, the causes, is there any known cause for
25 psoriasis?

TESTIMONY OF DAVID AMROL

1 A So, psoriasis really is thought to be an
2 autoimmune condition. So, it's when your own immune
3 system goes awry. So, as an immunologist I treat
4 immune deficiency, so if a child is born without an
5 immune system they get severe infections, like the boy
6 in the bubble type thing. But this is a situation
7 where your immune system is overreacting, so for some
8 reason your immune system is too active and it presents
9 in a rash.

10 Other examples of autoimmune disease are
11 rheumatoid arthritis and Lupus. These are all -- they
12 can be quite severe, all of these, but this is usually
13 a skin condition, but you can get what is called
14 psoriatic arthritis where you can get a severe
15 arthritis that goes along with the rash and psoriasis.

16 Q Okay. Did you see any evidence that she
17 could possibly have --

18 A I didn't see she had arthritis or joint pain.

19 Q Okay.

20 A And as mentioned, there are flares that are
21 thought or known to trigger it. So, one is Prednisone
22 withdrawal. With the guttate psoriasis, that is the
23 one that tends to be associated with infections, what
24 is called a streptococcal infection. So a lot of
25 children who have never had psoriasis, they will get a

TESTIMONY OF DAVID AMROL

1 strep throat and then they get the guttate psoriasis
2 afterwards. Or you can have guttate psoriasis and get
3 a streptococcal infection. That can be strep throat,
4 ear infection, bronchitis. Many times it is more
5 viral, but it could be -- it can develop after a
6 streptococcal infection.

7 So Prednisone withdrawal, streptococcal
8 infection. Smoking is a big risk factor. Alcohol use.
9 Stress, it's been shown, having a stressful time in
10 your life can make psoriasis worse. And then lastly,
11 it is a known remitting course, no one knows why. You
12 have a flare, it gets better, sometimes it goes away
13 totally with guttate psoriasis, and other times it
14 persists for life.

15 Q So it can -- you can have a flare and then
16 may never have another flare of guttate psoriasis.

17 A Especially in children. With adults, if you
18 get guttate psoriasis, it tends to persist more.

19 Q Did you see any history of smoking or
20 drinking in her medical records?

21 A Yes.

22 Q Did you see what kind of history that was?

23 A That was a 40 pack history, so smoking about
24 a pack a day for 40 years.

25 Q Okay.

TESTIMONY OF DAVID AMROL

1 A And I didn't see -- I know that when she saw
2 the dermatologist they talk about Methotrexate.
3 Methotrexate is an immune suppressant, which it'll
4 suppress your immune system so it will make the
5 psoriasis better, but if you drink with that it can
6 really damage your liver, so they wouldn't use that
7 because of the drinking, but I don't know how much.

8 Q OKay. Doctor, in reviewing the medical
9 records, you note that she has the two biopsies that
10 are -- the biopsies are guttate psoriasis; is that
11 correct?

12 A Correct. It is a clinical diagnosis though,
13 so you always take the appearance of the rash, the
14 history, the biopsy. You don't ever just say that one
15 biopsy is clinically diagnostic, 100 percent
16 diagnostic. It is more important for the clinical
17 presentation.

18 Q So, it was important that she had two
19 different biopsies?

20 A Yes, and also more important than that, she
21 saw two dermatologists, well-trained and who had seen a
22 lot of psoriasis.

23 Q Okay. Do you understand from her medical
24 records that in early January she was treated at
25 Beaufort Memorial Hospital initially for chest pains

TESTIMONY OF DAVID AMROL

1 and then ultimately for bronchitis; is that correct?

2 A Yes.

3 Q Do you understand that she was prescribed
4 Azythromycin?

5 A Yes.

6 Q What is Azithromycin?

7 A So, Azithromycin is a Z pack. Most of us has
8 had that at some point. Azithromycin is an antibiotic
9 that is good for things like ear infections,
10 pneumonias. It can treat strep throat. Penicillin is
11 the first line, but it can treat strep throat. So, it
12 is a pretrial good as far as streptococcal antibiotic.
13 So, if someone has asthma, a form of pneumonia, or if
14 they have COPD with exacerbation of COPD that would be
15 a good antibiotic to use, organisms that can affect
16 your ears, nose, throats, and lungs.

17 Q Do you know what happened to Mrs. Doller once
18 she was on that antibiotic?

19 A She had a dramatic improvement in her
20 psoriasis it sounds like.

21 Q In your research, did you come to the
22 conclusion as to why she may have improved so much on
23 that Z pack?

24 A So, it's possible that she had the guttate
25 psoriasis, with a flare from streptococcus and was

TESTIMONY OF DAVID AMROL

1 actually treated with the Z pack for the upper
2 respiratory infections, but also it would have treated
3 the other streptococcus that could have helped with the
4 guttate psoriasis.

5 Q Okay.

6 A And there are a lot of reports about it
7 getting better on antibiotics.

8 Q Okay.

9 A It's controversial about treating people with
10 antibiotics for guttate psoriasis, but she seemed to
11 get better.

12 Q It looks as if -- or you tell me, did it
13 appear, based on your review of her medical records,
14 from November to the end of December she had this
15 waxing and waning sort of event with this skin
16 disorder; is that correct?

17 A Yes, and you expect that. Hopefully, it'll
18 just fizzle out, not be a big problem, but it wouldn't
19 be unexpected if it does flare overtime. But hopefully
20 it won't.

21 Q Okay. Did it appear that Mrs. Doller's skin
22 got better at the end of December, or do you remember
23 one way or another?

24 A I saw -- I don't remember the dates, but
25 there's two times that it really seemed to get better.

TESTIMONY OF DAVID AMROL

1 I think one was she saw her first dermatologist and had
2 what is called Duracet, that is another antibiotic, and
3 was treated with steroid creams. For psoriasis, even
4 severe, the first-line of treatment would be topical
5 creams, you can use steroid creams, you can use others
6 that are specific for psoriasis. But she got better
7 with that first antibiotic. But also was treated with
8 steroid creams, that could have improved it. And then
9 she got markedly better a second time with the
10 hospitalization when she got the antibiotics.

11 Q Doctor, in forming a diagnosis on this
12 patient, if she were your patient, what would your
13 diagnosis be?

14 A As far as, psoriasis is first, and I am
15 basing that off of her medical records of her two
16 dermatologists and her biopsies. So, I'm again an
17 allergist, so I don't necessarily treat that much
18 psoriasis, that is more of a dermatology field, so I
19 would rely on their opinions. They both felt strong
20 that it was psoriasis. And both consistent with the
21 course and biopsies.

22 And then they felt that -- well, her primary
23 care physician and dermatologist felt that it could be
24 due to the streptococcus flaring and the bacteria caused
25 a flare in the guttate psoriasis. And it could have

TESTIMONY OF DAVID AMROL

1 been that it was precipitated by this Prednisone
2 withdrawal or it is also possible other things like the
3 stress of a move, alcohol, smoking play a part as well.
4 Or just bad luck, which it has that course naturally.

5 Q Is that your opinion within a reasonable
6 degree of medical certainty?

7 A Yes.

8 Q And do you have an opinion whether mold could
9 have caused any sort of flare?

10 A So again, there's never been a case with mold
11 that is associated with indoor environments causing or
12 exacerbating psoriasis.

13 And I looked at review articles in New
14 England Journal, probably the premier journal in the
15 world, the Academies of Dermatology who treat this
16 allergy, C.D.C., which is the Center for Disease
17 Control, the Environmental Protection Agency. So none
18 of their records or their recommendations ever support
19 mold. This -- mold's an indoor environment causing
20 psoriasis.

21 Q Okay. Did you see anything within her
22 records that suggested she was immuno suppressed?

23 A No. But with psoriasis, it's an auto immune
24 condition. And so you can always have -- and then some
25 of the medicines are used to treat psoriasis, immuno

TESTIMONY OF DAVID AMROL

1 suppressed Prednisone, but none of her labs at all
2 suggested she was immune suppressed.

3 BY MS. CANADAY:

4 Q Doctor, you told us that you reviewed her
5 medical records; is that right?

6 A Correct.

7 Q Okay. And did you review the Beaufort
8 Memorial Hospital record?

9 A That was the admission she had for
10 bronchitis?

11 Q Yes, that's correct.

12 A Yes.

13 Q And do you have an understanding based on
14 your review of that record, the reason for her visit to
15 that facility?

16 A She had some chest pain, went into the
17 hospital, was treated for bronchitis. I saw -- I think
18 that's when she had an x-ray and a CAT scan of her
19 chest. Those were read as emphysema or COPD. That's
20 really diagnosed as -- that's a clinical diagnosis that
21 you use a breathing test to diagnose. But you can see
22 changes on x-ray. So she may have had some underlying
23 COPD and was admitted with this bronchitis.

24 Q Okay. But no indication that the reason for
25 the admission or the visit to the ER as being

David Amrol - Cross Examination by Mr. Robinson

1 associated with psoriasis?

2 A What I saw was more respiratory and
3 bronchitis.

4 MS. CANADAY: Okay. I think that might be
5 all I have, sir. You can answer anything
6 Plaintiff's counsel might have. Thank you.

7 THE COURT: Mr. Robinson, you're recognized.

8 MR. ROBINSON: Thank you, Your Honor.

9 CROSS EXAMINATION

10 BY MR. ROBINSON:

11 Q Good morning, Dr. Amrol. I'm Brian Robinson.

12 A Good morning.

13 Q Good to see you here, sir.

14 Would you agree with me that mold, indoor
15 mold, can cause an allergic reaction?

16 A Yes.

17 Q Okay. And I think you said that stress can
18 cause psoriasis to flare; is that correct?

19 A It's one of the things that are thought.

20 Q Okay. You talked about a Prednisone flare.
21 Is there a study that shows a Prednisone flare?

22 A There's lots of case supports. I'm not
23 sure -- I don't think they've ever done a study. A
24 definitive study would be what's called a randomized
25 placebo trial. So what you would do, you would get a

TESTIMONY OF DAVID AMROL

1 hundred patients with psoriasis, you'd give 50 of them
2 Prednisone, the other 50 placebo, and you'd see what
3 happened. That really wouldn't be an ethical study.
4 So it's more case supports that we used that have
5 showed that with Prednisone you see these rebound
6 effects.

7 Q Are you familiar with a study that showed
8 148,000 Prednisone users in which 15 of them had a
9 rebound?

10 A I haven't seen it.

11 Q And so that's one in every 10,000, right?

12 A Yes.

13 Q Plus or minus. Okay.

14 You said that -- you said the Prednisone
15 rebound could be short or could take place over a month
16 or two?

17 A You would expect it would probably be within
18 a week or two after the Prednisone, most likely.

19 Q Okay. Would it be possible to have a double
20 Prednisone rebound?

21 A Well, psoriasis is so unpredictable. You
22 would think it'd just come on, but the nature of
23 psoriasis could just flare no matter what. But you
24 would think that it would probably be in that time.

25 Topical steroids can play a role, too, where

TESTIMONY OF DAVID AMROL

1 if you do a lot of topicals to it, it can get better.
2 And as you stop topical steroids, it's not necessarily
3 rebounding, but I think it's just kind of getting back
4 to it's usual form.

5 Q Okay. So if she took the Prednisone in
6 September, starting on September 25th, and ended 12
7 days later, which would be October the 6th about, and
8 she had a flare in late November, would that be a
9 Prednisone rebound?

10 A It could be. So the question would be, isn't
11 it kind of starting up and then treating with topical
12 medicines on and off, is it getting better and worse?
13 So, possible, but --

14 Q Oh, no, no, no. Okay.

15 And then if she had that flare in November
16 and she was getting much better by the 5th or 4th of
17 December, and then she handled this moldy wood -- are
18 you familiar with that story?

19 A I am.

20 Q Okay. And she handled the moldy wood and
21 then within five or ten minutes of the handling the
22 moldy wood, her hands turned bright red, would that be
23 an allergic reaction to the mold?

24 A So we know that mold can cause allergic
25 reactions. The most classic ones are people who have

TESTIMONY OF DAVID AMROL

1 asthma and allergic rhinitis. You can have wheezing,
2 coughing. I typically see like children who have
3 asthma and outdoor mold exposure can have
4 exacerbations.

5 So if those patients are allergic, so if you
6 have skin test positivity or a blood test, they could
7 have what's called a contact urticaria, where it's
8 called an IgE mediated reaction, where they have like
9 contact hives and redness afterwards, after exposing or
10 touching the mold.

11 Q Right.

12 A That's a usually fairly quick onset and short
13 lived.

14 Q Quick onset?

15 A Uh-huh. (Indicating affirmatively.)

16 Q Okay.

17 A And then lasts a matter of hours to a day or
18 two.

19 Q Isn't that sort of the mark of an allergy,
20 some allergic, after it gets on your body or within
21 your body and then very shortly thereafter you have
22 some sort of negative reaction?

23 A Well, I said, there are different types of
24 allergic reactions. So that sounds like what's called
25 an IgE mediated allergy. And that's like if you have a

David Amrol - Redirect Examination by Ms. Canaday

1 peanut allergy, and if you eat a peanut, within minutes
2 to an hour, you can have a dangerous allergic reaction.
3 And so if you took peanut butter and put it on their
4 skin, within minutes they could have skin rash.

5 So in theory, if you're allergic to mold, and
6 it was on your skin, within minutes, you have that skin
7 rash.

8 MR. ROBINSON: All right. Doctor, I don't
9 think I have any further questions. Thank you
10 very much.

11 THE COURT: Redirect?

12 MS. CANADAY: Yes, sir. Thank you, sir.

13 REDIRECT EXAMINATION

14 BY MS. CANADAY:

15 Q Doctor, Mr. Robinson was asking you about the
16 Prednisone rebound. And I'm going to show you a couple
17 of records that you've already looked at. But I'll ask
18 you to take a look at them again.

19 MR. ROBINSON: Go ahead and look at them.

20 MS. CANADAY: Okay. May I approach,
21 Your Honor?

22 THE COURT: Yes.

23 BY MS. CANADAY:

24 Q Okay. Doctor, I'm going to show you the
25 Hilton Head Dermatology record. Have you seen this

TESTIMONY OF DAVID AMROL

1 report -- or this record before?

2 A Yes.

3 Q Okay. And what is this?

4 A So this is Dr. Bundy's note, where he said
5 that she was diagnosed with poison oak, went to urgent
6 care, and was prescribed Prednisone to taper, and then
7 in treatment was seen in 48 hours, so had appropriate
8 response. Then the break out started again afterwards.
9 So now she's covered basically head to toe.

10 Q And what's -- I'm sorry, what's the date on
11 this?

12 A So the time, he wrote, timeline, and said,
13 Diagnosed 9/25/2011. Meds until 10/14/2011. And then
14 48 hours improved, and then on the -- it says 10/13,
15 had a flare -- wait, patient contact. Little improved.

16 Q Okay. So, she's still being treated within
17 the month of October. She's taking the Prednisone from
18 September --

19 MR. ROBINSON: Your Honor, I'm going to
20 object to leading.

21 THE COURT: Sustained. This is your -- this
22 is your witness, and it's redirect. You have to
23 ask direct questions.

24 MS. CANADAY: Thank you, Judge.

25 BY MS. CANADAY:

TESTIMONY OF DAVID AMROL

1 Q So she took prescribed, she was prescribed
2 Prednisone September 25th; is that correct?

3 A Correct.

4 Q And she took it for how long?

5 A She had a 14-day -- I mean, a 12-day course.

6 Q All right. So she -- does it appear that she
7 improved for a few days after taking it?

8 A Yes. He said improvement was seen for 48
9 hours, and then the break out started again.

10 Q Okay. And then did she return to Dr. Bundy?

11 A So I think that's when later she had the
12 biopsy, after this, I believe.

13 Q Okay. So the point being is that -- does it
14 appear that she took the Prednisone?

15 A Yes, she took the Prednisone, had improvement
16 for two days, and then it flared again.

17 Q And then flared back up. Okay.

18 So within a reasonable time frame of having
19 taken the Prednisone, she had a flare, a rebound flare,
20 correct?

21 A Yes. So he just said -- I guess rebound is
22 one of those terms where, you know, is it -- I would
23 just say she had a worsening again two days afterwards,
24 based on his notes.

25 Q Okay. All right. You were talking about an

TESTIMONY OF DAVID AMROL

1 allergic response. Did you see any evidence that she
2 was allergic to any sort of mold?

3 A No. She really never had a work-up to see if
4 she was allergic to mold.

5 Q Okay. So no evidence that you have seen in
6 her records or otherwise to indicate she had any sort
7 of allergy to mold?

8 A No. The two ways we test for any kind of
9 allergy, whether it be ragweed, dust mite, peanut,
10 mold, we either call it skin prick testing, where you
11 do a little prick on the skin and you look for what's
12 called a wheel and flare. It's a redness and a raised
13 hive. Or you can do a blood test called a specific IgE
14 level. And that is, they draw a tube of blood and they
15 run an assay to see if your body makes IgE, which is an
16 antibody involved in allergy to those specific things
17 like mold or peanut or ragweed.

18 Q Okay. And I believe you testified earlier
19 that common allergic reactions might be upper
20 respiratory; is that right?

21 MR. ROBINSON: Objection, Your Honor.

22 Leading.

23 THE COURT: Sustained.

24 MS. CANADAY: Did you testify earlier --

25 THE COURT: Well --

TESTIMONY OF DAVID AMROL

1 MS. CANADAY: Pardon?

2 THE COURT: Ask a leading question.

3 MS. CANADAY: Yes, sir.

4 THE COURT: I mean ask a direct question,
5 obviously.

6 MS. CANADAY: Yes, sir. Thank you.

7 BY MS. CANADAY:

8 Q Did you provide some testimony earlier that
9 common --

10 THE COURT: Typically that -- when you say
11 "did," that calls for a yes or no answer. Why
12 don't you ask what was asked in a direct way.

13 MS. CANADAY: Thank you, Judge.

14 BY MS. CANADAY:

15 Q What was your testimony earlier without
16 your -- regarding allergic reactions to mold?

17 A Okay. So to mold, the things we know that
18 mold can do allergy allergy wise, it can cause allergic
19 asthma or worsen allergic asthma. So cough, wheezing,
20 shortness of breath.

21 It can, if you're sensitized, it can worsen
22 allergic rhinitis, runny nose, congestion, itchy eyes.
23 It would be like hay fever in the spring for people.

24 Then there's more severe types called
25 allergic bronchopulmonary aspergillosis, and something

TESTIMONY OF DAVID AMROL

1 called hypersensitivity pneumonitis. Those aren't that
2 immediate onset, those are quite severe onsets. We
3 have a lot of chest findings, you got severe shortness
4 of breath, you may be hospitalized. And those are more
5 long-term reactions to mold.

6 So we know you can get this acute IgE related
7 wheezing, coughing, shortness of breath. And then we
8 know you can get the -- it's called ABPA. The allergic
9 bronchopulmonary aspergillosis, hypersensitivity
10 pneumonitis. Other things are more speculative, but
11 those are the things we know we can do.

12 Q And did you see any evidence within her
13 medical records that she had either of those
14 conditions?

15 A No. That would have been severe chest
16 symptoms, the x-ray, you would have seen something
17 abnormal on x-ray.

18 MS. CANADAY: Doctor, that's all -- I think
19 that's all I have for you. I appreciate your
20 time.

21 THE WITNESS: Okay. Thank you.

22 THE COURT: You may step down. Thanks.

23 Any objection to this witness being excused?

24 MR. ROBINSON: None from the Plaintiff, Your
25 Honor.

TESTIMONY OF DAVID AMROL

1 THE COURT: You are free to leave.

2 THE WITNESS: Thank you.

3 THE COURT: You may call your next witness.

4 MS. CANADAY: The Defense rests, Your Honor.

5 THE COURT: Mr. Foreman, ladies and gentlemen
6 of the jury, you have heard -- you have heard the
7 Defense's presentation of the case. I'm going to
8 ask you to retire to the jury room, but do not
9 discuss the case.

10 (Jury exits the courtroom at
11 10:00 a.m.)

12 THE BAILIFF: The jury's clear, Your Honor.

13 THE COURT: I'd be happy to entertain motions
14 at this time.

15 MR. BARNES: Your Honor, I move for directed
16 verdict on both negligence and negligent
17 misrepresentation. We have established from the
18 Defense itself that they had a duty and that they
19 breached that duty, and we have put up
20 uncontroverted evidence that we have suffered
21 damages from that.

22 So I think as far as evidences goes, we have
23 negligence, and we should have a directed verdict
24 on that.

25 As far as negligent misrepresentation goes --

MOTIONS

1 excuse me, I'm trying to make this thing go
2 away -- as far as negligent misrepresentation
3 goes, we have met all the elements we discussed
4 yesterday afternoon. They haven't done anything
5 today that changes what we did yesterday. So my
6 motion is we need a directed verdict on both
7 things.

8 MR. TUPPER: Your Honor, once again I make
9 our motions, but in response to his motion, on the
10 negligent misrepresentation, I think the one thing
11 that came out yesterday was the nature of the
12 damages with respect to the negligent
13 misrepresentation. And let's say you did the
14 direct a verdict on negligent misrepresentation,
15 then I think you should direct a verdict on the
16 damages because otherwise the two cross too much.

17 And looking at the damages, it appears to me
18 it says that the -- restated -- damages for
19 negligent misrepresentation are measured by the
20 difference of what a Plaintiff receives and what
21 he gives up.

22 I think that means what he received, or what
23 she received was a house with polybutylene -- with
24 some polybutylene. What he gave up is -- so what
25 he needed to do is remedy that. Sort of like the

MOTIONS

1 old first case in contract.

2 If the contract had been performed, you put
3 the party in position they would have been had the
4 contract been performed, and that is put the --
5 get rid of that polybutylene. The rest of the
6 arguments on the issue of damages and negligence
7 and so forth, I'll discuss in a minute. But I
8 don't disagree with his motion as long as the
9 damages is made clear to the jury.

10 And that damages would be -- I think it was
11 \$1,200 to take out the polybutylene that's in
12 there. And, again, there's no testimony,
13 Your Honor, to make it perfectly clear that the
14 polybutylene caused her damages. The polybutylene
15 was the reason he was in there, to replace it, and
16 made the mistake on the -- whatever that little
17 nut was to cause the drip, but it's not the
18 polybutylene.

19 MR. ROBINSON: Your Honor, what she gave up
20 was her health, and that's what her damages are.
21 What she gave up was the use of the property.
22 That's what her damages are.

23 THE COURT: I think they're all questions of
24 fact, and I'm denying all of the motions for a
25 directed verdict.

MOTIONS

1 MR. TUPPER: Just for the record, I'm
2 renewing mine, you're denying that, which is fine,
3 but I just want to make sure on the record that I
4 renewed my motions at this point in time.

5 THE COURT: You have.

6 MR. TUPPER: Thank you, sir.

7 THE COURT: You mean to reply?

8 MR. ROBINSON: No, Your Honor.

9 THE COURT: Okay. Very good.

10 Do y'all need any time before we proceed
11 forward with arguments?

12 MR. ROBINSON: I do not.

13 MR. TUPPER: Are we going to discuss the
14 charges, sir?

15 THE COURT: We could. And we'll go over
16 those right now.

17 MR. ROBINSON: May I pass up to the Court
18 these -- some charges?

19 MS. CANADAY: Your Honor, I have one matter
20 of housekeeping that I forgot to take up earlier.
21 There were exhibits that were introduced on
22 Dr. Lieberman's deposition that I don't think were
23 made exhibits today. They were introduced by
24 objection. I just wanted to make sure that they
25 were part of the record.

COLLOQUY

1 THE COURT: Okay. Show those to
2 Mr. Robinson.

3 MS. CANADAY: Yes. And there was one
4 objection to an exhibit that I'm not including
5 that was objected to, but three of them were not.

6 MR. ROBINSON: If it's one, two, and three,
7 you don't need to show them to me. If it's four,
8 I got a problem.

9 MS. CANADAY: No, no. Four is not.

10 MR. BARNES: Great.

11 THE COURT: All right. One, two, and three
12 are into evidence.

13 MR. BARNES: We're going to call these
14 Defendant's 2, 3, and 4. Okay.

15 *(Whereupon, Defendant's Exhibit No(s). 2-4*
16 *marked for identification and received in*
17 *evidence.)*

18 THE COURT: All right. I'm going to charge
19 the general law with regard to the roles of the
20 judge and the jury, charge the preponderance of
21 evidence, corporation is a person, direct and
22 circumstantial evidence. Credibility of
23 witnesses, charge the law with regard to how to
24 evaluate expert testimony. Charge the law with
25 regard to negligence. Charge the law with regard

1 to personal injuries and poison ivy what damages
2 are for personal injuries. Charge pre-existing
3 injury, pre-existing condition. Charge the
4 subsequent law with regard to negligent
5 misrepresentation.

6 Charge the law, the general law, defining
7 what actual damages are. Charge the law
8 concerning damage to real property and what the
9 damages are. And duty to mitigate property damage
10 and any -- any objections to what I'm going to
11 charge.

12 MR. ROBINSON: No objections to the subject
13 matter of the charges, no.

14 THE COURT: Okay. And obviously, y'all will
15 have an opportunity to object after I charge, but
16 any preliminary objections with regard to what I'm
17 charging?

18 MR. TUPPER: The only question I had,
19 Your Honor, I think I wrote it down, are you going
20 to charge the damage with respect to negligent
21 misrepresentation?

22 THE COURT: Yes.

23 MR. TUPPER: Okay. Could you tell us what
24 you're going to argue that charge is?

25 THE COURT: Yes, I will. What the law is,

COLLOQUY

1 I'll read it to you.

2 Fine line, the Plaintiff must prove that the
3 Plaintiff suffered a monetary loss as of a direct
4 and proximate result of the Plaintiff's reliance
5 on the Defendant's misrepresentation.

6 Anything else?

7 MR. BARNES: Your Honor, I'm looking at the
8 Defendant's request to charge.

9 THE COURT: Oh, we aren't on that yet.

10 MR. BARNES: Okay. All right.

11 THE COURT: All right. Whose are these that
12 starts off -- whose are these? Are those yours?

13 MR. ROBINSON: Those are mine, Your Honor.
14 It starts off mitigation damage?

15 THE COURT: That's right. I am going to
16 charge that the Plaintiff has the duty to
17 mitigate. And I am going to charge that she is
18 not required to exert an unreasonable effort or
19 substantial extents to accomplish mitigation.

20 MR. ROBINSON: Would the Court look at
21 Exhibit No. 7 -- excuse me, Charge No. 7. It goes
22 along with Charge No. 1. I just didn't put them
23 on the same page because I'm not that smart.

24 THE COURT: I will indeed. And, of course,
25 the No. 1 is sort of subsumed by No. 7. I'm just

COLLOQUY

1 going to charge No. 7.

2 MR. BARNES: That'd be fine.

3 THE COURT: Actually, in my charge, it's kind
4 of divided up into two different aspects of it. I
5 think I'm going to charge this word for word.

6 MS. CANADAY: That's the same as my request
7 for No. 15, Your Honor. No. 2 is incorporated in
8 my charge.

9 MR. ROBINSON: Thank you.

10 THE COURT: That's in the pre-existing
11 condition. You take the Plaintiff as you find
12 them.

13 MR. ROBINSON: You're talking about No. 3?

14 THE COURT: No. 3, yes. And that's -- I'm
15 not going to charge that directly.

16 Well, I will indeed charge the substance of
17 No. 3. It's not exactly in those words, but I
18 will charge pre-existing condition and taking the
19 Plaintiff as you find them. That's all in my
20 charge.

21 I'm going to charge -- my charge covers
22 damages, the definition of actual damages and
23 medical bills and reasonableness and charging pain
24 and suffering, and loss of enjoyment of life. All
25 those are in my -- everything in yours is covered.

COLLOQUY

1 MR. BARNES: Great.

2 THE COURT: All right. And I'll be happy to
3 entertain any that the Defense might.

4 MS. CANADAY: Obviously, Your Honor, you're
5 charging negligence. You said that.

6 THE COURT: Yes.

7 MS. CANADAY: I believe that was covered in
8 my charge No. 1.

9 THE COURT: If you want me to just go through
10 them, I'll do it.

11 MS. CANADAY: I think that you have covered
12 them all. But just to be sure --

13 THE COURT: Why don't you flip through them
14 and see if there's anything else that I did not.
15 Just flip through them and I'll entertain any
16 requests that you might have. Or if you want to
17 read them out loud, that will be fine, too.

18 MR. TUPPER: Your Honor, you do have a
19 proximate cause charge, correct?

20 THE COURT: About three or four different
21 ways. As it relates to expert testimony, as it
22 relates to negligence, and negligent
23 misrepresentation. That's always in there.

24 MR. TUPPER: I've always found, too, that the
25 jury thinks that means approximate, like 99 cents

COLLOQUY

1 is approximately a dollar.

2 THE COURT: I don't know. All I can do is
3 explain it to them.

4 MS. CANADAY: Your Honor, I'm sorry, did you
5 say that you are also charging preponderance of
6 the evidence?

7 THE COURT: Yes.

8 MS. CANADAY: Not just the negligence, but
9 also standard of care -- or the burden of proof?

10 THE COURT: Yes, ma'am. Yes, ma'am.

11 MS. CANADAY: Your Honor, could you turn to
12 my request for No. 14. Do you have it?

13 THE COURT: You gave it to me, but I'm not
14 sure that I can put my hands on it. Why don't
15 you --

16 MS. CANADAY: Okay. May I pass it up to you
17 so you can look at it?

18 THE COURT: Yes.

19 MS. CANADAY: And your damage charge might
20 include everything that's in here?

21 THE COURT: That's covered by my damages
22 charge. However, on one that you asked me about,
23 it includes future damages, which is not a part of
24 this case.

25 MS. CANADAY: Okay. I wanted to be clear

COLLOQUY

1 that you're not talking about future damages.

2 THE COURT: Well, I'm going to charge it with
3 my charge. It doesn't say anything about future
4 damages because that's not an issue.

5 MS. CANADAY: That's fine. Thank you.

6 THE COURT: Do you want me to charge future
7 damages?

8 MS. CANADAY: I do not.

9 MR. TUPPER: I thought that their No. 15, the
10 last thing, had future damages in it.

11 THE COURT: Whose? The only one of his that
12 I'm charging directly would be No. 7, and the rest
13 of them are part of my charge. In my charge,
14 there is no future damages. They conceded that.
15 They never asked for any.

16 MR. TUPPER: Okay. I was referring to their
17 No. 4, where it says recover for future medical
18 expenses, the Plaintiff must prove such expenses
19 as are reasonable in the future.

20 THE COURT: Well, I'm not charging anything
21 with regard to future damages.

22 MR. TUPPER: Okay. Thank you.

23 THE COURT: Okay. I want y'all to come
24 forward. Anything else with regard to the jury
25 charge?

COLLOQUY

1 MS. CANADAY: No, sir. I think it's fine.

2 MR. BARNES: Nothing currently, Judge.

3 THE COURT: Okay. I'm going to ask y'all to
4 come forward and take a look at the proposed
5 verdict form.

6 MR. BARNES: Looks good to me, Judge.

7 THE COURT: Defense, what's your position
8 with regard to the verdict form?

9 MS. CANADAY: Your Honor, my question is with
10 regard to the mitigation of damages. Should there
11 be -- we could ask for a couple of those verdict
12 forms for the jury to consider mitigation.

13 THE COURT: I'm not going to put mitigation,
14 that's -- I'm going to charge them the law. I
15 don't know how you would do that. How would you
16 do that?

17 MS. CANADAY: Well, I mean, we have some
18 Googles, but I don't know that they're
19 necessarily --

20 THE COURT: That's going to be your job to
21 talk about mitigation. I'm going to charge them
22 the law and you've got an obligation to convince
23 them that they didn't do what they were supposed
24 to do to mitigate.

25 MS. CANADAY: Right. I just wanted to make

COLLOQUY

1 sure that they understand, just because there is
2 a -- if you find, yes, they consider the fact that
3 the Plaintiff did not mitigate damages.

4 THE COURT: That's exactly what you need to
5 tell the jury. But the actual damages, there's no
6 other way to do it. We're going to set actual
7 damages, and you're required in your closing
8 arguments -- as a matter of fact, you can talk to
9 them about the verdict form and say actual damages
10 means what the Judge charged you, the elements you
11 need to consider, and you need to take into
12 consideration mitigation. But it's not going to
13 be on the verdict form.

14 MR. TUPPER: Your Honor, there's one other
15 point here. I guess now would be the time to
16 bring it up, is we are entitled to a set-off in
17 the amount of money paid by the co-defendants in
18 this case. So --

19 THE COURT: That's not even an issue for us
20 at this point in time.

21 MR. TUPPER: No, sir. I just want the Court
22 to be aware of it so at the conclusion, when the
23 verdict comes in, we will be entitled to a set-off
24 of the amount that they --

25 THE COURT: Are you presuming that there's

COLLOQUY

1 going to be a verdict?

2 MR. TUPPER: Always do.

3 THE COURT: There's nothing I can do that
4 now, but I understand. We'll address that
5 afterward, when and if it comes up.

6 MR. BARNES: And if the check clears. We
7 just got another one the other day that hasn't
8 cleared yet, Judge.

9 THE COURT: One of the things that I'm going
10 to charge, when I explain the verdict form to
11 them, I'm going to ask that they consider each of
12 these causes of action separately and distinctly,
13 just as if it was the only one for them. And not
14 to be concerned about any duplication, and I'll
15 resolve that.

16 And then afterwards, it very well could be,
17 if they find for the Plaintiff on both of them, it
18 very well could be a duplication of your
19 requirement to let, but we will -- that's the only
20 thing I can do. Because the damages, to some
21 extent, are going to be the same.

22 MR. BARNES: We're in agreement with that,
23 Your Honor.

24 THE COURT: Okay.

25 MS. CANADAY: Your Honor, I want to make sure

COLLOQUY

1 that the verdict form is clear, so in the event
2 that there is an appeal somewhere along the way,
3 that it's obvious that they're awarding certain
4 damages for certain causes of action. I don't
5 want it to be --

6 THE COURT: Well, you saw the verdict form.
7 There's one for neglect misrepresentation and one
8 for negligence.

9 MS. CANADAY: Yes, sir. But in your comments
10 about there possibly being duplication between the
11 two --

12 THE COURT: Well, the damages for the
13 negligent misrepresentation is monetary loss, and
14 it's all the same things that are the personal
15 injury poison ivy.

16 MR. TUPPER: We don't think that's the case,
17 Your Honor. That's why it was the argument on the
18 measure of damages is -- it's the difference
19 between what the Plaintiffs receives and what he
20 gives up, and that's replacing the polybutylene.

21 THE COURT: I don't believe so. I think
22 you're absolutely one hundred percent wrong on
23 that. And I might be wrong, but I doubt it. I
24 think I'm right on that.

25 What does the Plaintiff have to say about it?

COLLOQUY

1 MR. ROBINSON: Well, I think I've said
2 already, Your Honor, we believe that her loss is
3 all the damages that we put up on Exhibit No.
4 12 -- or 11.

5 THE COURT: That is exactly what the law is.
6 The law says that there's a monetary loss with
7 regard to negligent misrepresentation.

8 MS. CANADAY: But all the property damage,
9 Your Honor, stemmed from a leak. That was not
10 part of the poly. The leak did not come from the
11 polybutylene.

12 THE COURT: You can explain all that to the
13 jury however way you want to do it. But -- and
14 I'm going to be called upon at some point in time
15 to take a look at this and make a determination
16 whether or not there's going to be an election.
17 And that's the way it's going to be.

18 MR. BARNES: Thank you, sir.

19 MR. ROBINSON: One other -- one other
20 housekeeping, Your Honor, that I've asked the
21 court reporter to tell me which exhibits are in,
22 so I don't try to argue one that's not in there.

23 THE COURT: Okay. We normally do that after
24 the fact, but do you know which ones you want to
25 use?

COLLOQUY

1 MR. ROBINSON: I think I want to use one
2 through 12.

3 THE COURT: Those -- Madam Court Reporter,
4 you can just make sure that you have those.

5 You want to come and get those so you won't
6 have to shuffle around for them?

7 MR. BARNES: Well, they're on the books.

8 THE COURT: Oh, okay.

9 MR. BARNES: Well, we sent them back, we're
10 going to take the ones out of the book that are
11 not in. So ...

12 THE COURT: Okay.

13 MR. BARNES: Madam Court Reporter, was
14 Exhibit 17 in or not?

15 THE COURT REPORTER: I haven't seen it in so
16 far going through here. I have actually one
17 through 11 in so far.

18 MR. BARNES: I know 12 is in. And 13, 14,
19 and 15 are in, 16 is not in.

20 THE COURT REPORTER: I have 13 and 14 in.

21 MR. BARNES: No. 21 is in and 23 is in.
22 That's the only ones I'm sure of.

23 And, Your Honor, while she's checking that,
24 if it please the Court, I intend to use some of
25 these enlargements that I have here to show the

COLLOQUY

1 jury rather than do that then, if that suits the
2 Court.

3 THE COURT: Okay. I don't have a problem
4 with that.

5 Mr. Robinson, have you made a determination
6 as to what documents you need to refer to, are you
7 clear in your mind what's into evidence and what
8 isn't?

9 MR. BARNES: As soon as the court reporter
10 tells me. I know all I referred to -- I think I'm
11 going to refer to evidence that's -- only things
12 that are in evidence, but I want to make sure I
13 don't tell them to go look at some document
14 they're not going to have.

15 THE COURT: Which specific one are you
16 questioning?

17 MR. BARNES: I was questioning No. 17, Judge.

18 THE COURT: Is No. 17 into evidence, Madam
19 Court Reporter?

20 THE COURT REPORTER: I haven't seen it.

21 MR. BARNES: Tell you what, I'll just go
22 around the table and have a look.

23 THE COURT REPORTER: He wanted to mark his
24 own exhibits so far, and so I let him, assuming
25 that he was going to keep up with it. And that's

COLLOQUY

1 why I don't have it right here.

2 MR. BARNES: This is the Palmetto design
3 renovation. This is not in evidence.

4 THE COURT: Okay. Very good.

5 We're ready for the jury.

6 INSTRUCTIONS TO THE JURY

7 THE COURT: Mr. Foreman, ladies and gentlemen
8 of the jury, you've heard all the evidence that is
9 going to be presented in this case. Now, we're
10 going to proceed forward with closing arguments.

11 Closing arguments are very similar in form to
12 the opening statements that you heard at the very
13 beginning in this trial. However, these are truly
14 argumentative in nature because these lawyers are
15 going to be able to point to the evidence that
16 supports their relative position.

17 We have been sitting -- and you and I have
18 been sitting through this case for a couple or
19 three days now, but these lawyers have been living
20 with it for an extended period of time. So pay
21 very close attention to what they have to say.

22 What they have to say is not evidence, but it
23 will aid you immensely in assimilating the vast
24 amount of information that you've heard this week.
25 So pay very close attention.

JURY INSTRUCTIONS

1 The order of closing arguments will be the
2 Plaintiff will open in full, Defense will have an
3 opportunity to present their argument, and then
4 the Plaintiff will have an opportunity to reply.
5 Pay very close attention to Mr. Robinson.

6 CLOSING ARGUMENT BY MR. ROBINSON

7 MR. ROBINSON: Thank you, Your Honor.

8 Ladies and gentlemen, at the beginning of the
9 case, the Judge told you that we have the burden
10 of proof, we have to tip that scale. And that's
11 what this trial has been about.

12 We've been trying to give you evidence, that
13 is facts, that you can look at and judge and see
14 whether or not what Lohr Plumbing did caused
15 damage to Ms. Doller. That's what we're trying to
16 prove.

17 So let's think about the facts that we've
18 seen so far. Lohr Plumbing put the pipe in. No
19 question about that. Lohr Plumbing was supposed
20 to take the polybutylene pipe out. They didn't do
21 that. No question about that. Their
22 representative said so on the stand. Those two
23 elements were fixed. We know that.

24 Lohr Plumbing's pipe leaked. You heard that
25 on the stand. No question about that. He had a

CLOSING ARGUMENT BY MR ROBINSON

1 duty to put the pipe in so it didn't leak. No
2 question about that. He admitted that on the
3 stand.

4 The question comes down to damages. Did
5 Ms. Doller suffer damages because of the leak; and
6 if she did, what were they? And when I say, what
7 were they, how much money are we talking about?
8 That's what you have to decide. That's your job.

9 We seen the photographs of the leak. We seen
10 the photograph of the polybutylene pipe. We know
11 it's there. We seen the photographs of the wood
12 she picked up and put in the garage. We seen the
13 photographs taken two days later, on the 5th --
14 one day later, on the 5th, of her hands and feet.
15 That's one of them. I'm not going to go through
16 all of them. I don't like looking at them myself,
17 but they're in the book.

18 You'll get to take the book back with you.
19 You can look at these photographs, you can look at
20 the documents that are in evidence while you
21 ponder and talk about what really happened and
22 what you ought to do about it. Okay? That's your
23 purview.

24 We've seen the photographs of what happens
25 later on as this -- as this allergic reaction

CLOSING ARGUMENT BY MR ROBINSON

1 allergy created further problems for her, until
2 finally we get that one. And then she gets
3 better.

4 How did that all happen? She picks up the
5 wood, and she has an allergic reaction.

6 Dr. Chioda said she had an allergic reaction.
7 He's the only one we talked to who had a degree in
8 public health and occupational medicine. He was
9 board certified in both of them.

10 He's the only doctor we've seen that actually
11 has the training and experience to tell you what
12 caused the problem. The other doctors are fine
13 doctors, nothing wrong with those doctors, but
14 their job is to diagnose what they're looking at,
15 not what caused it.

16 Now, we heard this morning about psoriasis.
17 And there's no question at all Ms. Doller has
18 psoriasis. And it comes and it goes, it waxes and
19 waned. No question about that.

20 Psoriasis outbreaks can be caused by stress.
21 Every single doctor we've heard said that. And
22 Ms. Doller testified she got this rash on her
23 body, her hands were flaming red and burning, and
24 rash was spreading up her arms, and she's walking
25 and her feet are starting to hurt. And then

CLOSING ARGUMENT BY MR ROBINSON

1 either that rash got worse or she got an outbreak
2 of psoriasis because of the stress of that rash.
3 That's what happened. And there's no way to tell
4 whether the rash and the psoriasis were
5 intermixed.

6 Dr. Chioda says that the psoriasis was
7 secondary to the allergic reaction. But
8 there's -- no one can tell you when you got a rash
9 all over your body, and you've got psoriasis, how
10 much of the rash is psoriasis and how much is the
11 allergic reaction. There's just no way to tell.

12 The Defense has pounded on the fact that
13 there's diagnosis of guttate psoriasisguttate
14 psoriasis. Well, of course there is. Because the
15 stress of the rash caused guttate psoriasis. So
16 when you go testing for guttate psoriasis, what do
17 you find? You find guttate psoriasis.

18 Dr. Cusamano thought what he was looking at
19 on the 6th, remember. And they picked it up on
20 the 4th, they took pictures on the 5th, went to
21 see Dr. Cusamano on the 6th, he thinks he's
22 looking at what he saw back in November. And when
23 they tell him, Doctor, I picked up this wood and I
24 think I got some problem from the mold, he's
25 thinking psoriasis. And we all know that what

CLOSING ARGUMENT BY MR ROBINSON

1 you're thinking has a lot more to do with what
2 you're seeing than what's actually coming in your
3 eyeballs.

4 Because if you think you're seeing something,
5 your mind is going to make it that way. And when
6 Dr. Cusamano looks at her and she's got this rash
7 on her body, looks to him like psoriasis.

8 Remember, Dr. Cusamano testified he's not a
9 dermatologist. He doesn't know a whole lot about
10 psoriasis. In fact, he only knows what he read in
11 the literature after her treatment.

12 So he thinks he's looking at psoriasis. And
13 no doubt, there's some psoriasis there. But he
14 doesn't realize that he's looking at an allergic
15 reaction because he doesn't know that there's one
16 possible. He has no idea. He's not that kind of
17 a doctor. Nothing wrong with Dr. Cusamano, he's
18 just not that kind of doctor.

19 Time goes on. She moves out of her house on
20 the 14th, 15th, 16th, 17th -- I'm not sure when,
21 but right in that three or four days. And the
22 problem gets worse.

23 Why does the problem get worse? Or it's
24 worsening and it continues to get worse. You say,
25 wait a minute, if the mold's the problem, she

CLOSING ARGUMENT BY MR ROBINSON

1 moves out, why didn't it get better? Because
2 she's ingested the mold spores. And until they
3 work their way out of their body -- and we talked
4 to Dr. Cusamano about that yesterday -- until they
5 work -- the agents get out of the body, it's going
6 to continue to get worse. Once it gets out of her
7 body, she starts to recover.

8 And she recovers and then she goes -- then
9 she gets bronchitis, which Dr. Chioda told you is
10 secondary to the infection. She gets bronchitis.
11 She goes to the doctor, they give her an
12 antibiotic, the bronchitis clears up. Of course,
13 it does.

14 In the meantime, her rash is also clearing
15 up. And so on the 10th, when she goes to see
16 Dr. Cusamano, he says, I didn't expect to see you
17 again. He doesn't remember saying that, but
18 Ms. Doller testified that that's what he said.
19 She thought she was going to die. And if you look
20 at those photographs, you can see why. It was
21 awful stuff.

22 But she didn't clear up like that (snapping
23 fingers.) It wasn't like the bronchitis, you have
24 to think about this for a minute, it's not like
25 the bronchitis, which was cleared up by the

1 antibiotic.

2 Remember the photographs in Exhibit 9 and 10,
3 in early January and January 27th, 17 days later.
4 More than two weeks later, after she left the
5 hospital, she's still got the rash. It's not
6 until late February that she's down to 99 percent
7 clear. And why is that? Because that's the way
8 the rash clears up.

9 So Ms. Doller has moved out of her house, and
10 what did Dr. Chioda tell us about that?
11 Dr. Chioda -- in fact, Dr. Amrol told us today
12 that you can have really bad reactions from
13 allergic reactions. Dr. Chioda told us she could
14 have anaphylactic shock and die if she moved back
15 in the house before it gets cleaned, because that
16 mold, those mold spores were still there. They're
17 floating in the air, they're settling on the
18 furniture, they're on the rugs, on the walls, on
19 the ceiling, everywhere. And she's allergic to
20 some mold. No question about that.

21 So what does she have to do? She got to
22 clean the house. Remember, the South Carolina
23 residential disclosure form that she has to fill
24 out when she goes to sell the house, or if she
25 wants to move back into the house, she's got to

CLOSING ARGUMENT BY MR ROBINSON

1 have all that stuff out of there, because she
2 can't sell it if she doesn't. And she can't move
3 in if she doesn't.

4 In the meantime, she's out of the house and
5 she's still paying the mortgage. So she's paying
6 the money, but she's not getting the use. I don't
7 want to pay my mortgage and not get to live in my
8 house.

9 Why is she out of the house? Because the
10 mold drove her out. She's entitled to recover her
11 cost of paying her mortgage that she didn't get to
12 use. It's called loss of use.

13 She spent a bunch of money on doctors. We've
14 got it summarized. And the Defense has made this
15 argument that she shouldn't get paid for the money
16 she spent at the hospital because that was due to
17 her bronchitis. They forgot in that argument that
18 Dr. Cusamano works for the hospital, and all his
19 bills are in there, too. And we don't know how
20 much his bills are, and we don't know how much
21 that visit to the hospital was.

22 But Dr. Chioda tells us that bronchitis very
23 often follows these infections. So our position
24 is, going to the hospital for bronchitis is
25 because she got bronchitis because she has the

CLOSING ARGUMENT BY MR ROBINSON

1 mold. There's no record, we don't know anything
2 at all in any record about her having bronchitis
3 before this, only after.

4 And Ms. Doller told you, she thinks it's all
5 the same thing. It's all a part and parcel of the
6 same problem. You have to make up your mind about
7 that.

8 The problem they have is, they have the
9 burden of proof if they want to claim part of
10 those damages under the law. And there's no way
11 they can do that because they haven't segregated
12 out that doctor's visit from Dr. Cusamano's bills.
13 So when you go back in the jury room, think about
14 that. You might consider that.

15 Something else, too. They say she didn't
16 mitigate her damages. Mitigate your damages means
17 you didn't do what you should have done to make
18 these damages less. You just let them pile up and
19 get bad.

20 What she did was, what they think she should
21 have done was, she should have hired some service
22 to come in and put fans in and put dehumidifiers
23 in, and dry out the water.

24 What did we hear? She put two dehumidifiers
25 in and the water dried out in less than four days.

CLOSING ARGUMENT BY MR ROBINSON

1 No matter how fast it dried out, could have been
2 two days, could have been three, it was less than
3 four. Because four days later, they're tearing
4 the floor up, and it was dry.

5 So did she mitigate her damages? Yes. She
6 did mitigate her damage. She dried the floor out
7 right away.

8 And why didn't she call those people?
9 Because, number one, her testimony was she was
10 never told to. And number two, Mr. Doran never
11 told her he was going to pay for it. If he was
12 going to fix this thing, he should have called
13 those people if he wanted them in there, so they
14 knew they were supposed to bill him, and not her.

15 Then she wouldn't let him come in and
16 mitigate the damages. What does mitigate mean?
17 Mitigate means make it all go away.

18 What he was going to do is tear up some
19 sheetrock without any kind of protection
20 whatsoever, tear up the floors, take the furniture
21 out of the living room, set it down, drag the
22 stuff out of the house, throw it in a dumpster,
23 bring the stuff down, spray some Mold Be Gone on
24 it and they'd be done. You heard the protocol
25 from Mr. Warren yesterday, just to mitigate that

CLOSING ARGUMENT BY MR ROBINSON

1 room.

2 What Lohr was going to do wasn't even close.
3 You heard the protocol from Dr. Chioda what really
4 needs to be done to that house. And Dr. Chioda
5 and Mr. Warren are in agreement on the mitigation.
6 Their protocol -- which just means fancy word for
7 saying what you're supposed to do -- their
8 protocol is identical except Mr. Warren stops at
9 the door, and Dr. Chioda says not so, you got to
10 do the whole house.

11 Why? Because you got mold spores all over
12 the place. Why? Because she's allergic to the
13 mold and the mold spores themselves. If she goes
14 back in there before you get that stuff out, she's
15 going to be right back where she was.

16 So Dr. Chioda's protocol -- that's, by the
17 way, the identical protocol that Palmetto used to
18 price the mitigation, \$87,000, \$88,000, something
19 like that.

20 Why is that so expensive? Think about this.
21 You've got to be wearing spacesuits to do this
22 work. You saw a photo, Exhibit 21.

23 Why is that? You don't want that stuff on
24 your body because it can you cause an allergic
25 reaction. We heard that from the EPA. We heard

CLOSING ARGUMENT BY MR ROBINSON

1 that from Dr. Amrol this morning.

2 And by the way, Dr. Amrol said he thought
3 that her red hands was an allergic reaction. He
4 didn't know how long it was going to last, but he
5 said this morning, that's an allergic reaction.
6 So that's not in question either.

7 Protocol. You got to clean a house. You
8 have to clean every piece of furniture in that
9 house or throw it away. We don't know what's
10 going to get thrown away, so we haven't put
11 anything in the work-up of the money to replace it
12 because that would be speculation. We don't know
13 what's going to get thrown away, but we know what
14 it's going to cost to clean because it's in the
15 bill.

16 So that's already clean. Do you want to see
17 what has to be cleaned, look at Exhibit No. 12 --
18 excuse me, No. 8. And that's those photographs we
19 went through of what's in the house. She walked
20 out of that house with one suit of clothes and
21 what was on her back. I think she said a night
22 dress. That's it. Everything else is still in
23 that house, because it's all got mold spores on
24 it, and it all has to be cleaned.

25 They need to wipe the walls down, they need

CLOSING ARGUMENT BY MR ROBINSON

1 to scrub the walls down because they have to pass
2 an air quality test when they're done. You don't
3 want to do all of this work and then fail the air
4 quality test, because if you fail the air quality
5 test you don't know what you've missed. So you go
6 to do the whole thing all over again. So you have
7 to be pretty darn careful when you do the first
8 time because you don't want to miss. That's why
9 it's so expensive.

10 If you take that 18,000-dollar fix the
11 bathroom price and look at the description of the
12 house and how many rooms there are, you're going
13 to get a pretty big number anyway. If you're
14 going to do what you're supposed to do in the rest
15 of the house, those numbers are going to be close.

16 I don't think that there's anything wrong
17 with the 86- or 88,000-dollar price because that's
18 what it's going to take. Now, think about trying
19 to clean your house on a spaceship.

20 Ms. Doller left the utilities on in the
21 house. Had to, she got to preserve the house.
22 She's got to mitigate her damages. She can't turn
23 off the air conditioner and let the thing turn
24 into a mold factory. She's got to keep the air
25 conditioning on, and she has to keep the water on,

CLOSING ARGUMENT BY MR ROBINSON

1 so she can water the lawn so that doesn't turn
2 into, you know, a wreck.

3 So we're asking for you to pay for the cost
4 of damages, her utilities, from the time she moved
5 out of the house until today. We're not asking
6 you to speculate on how long it's going to be
7 before she gets back in, because we don't know.

8 What we do know is what she spent to-date.
9 Just like we know what she spent to-date on her
10 mortgage. Just like we know what she spent
11 to-date on her medical bills.

12 She also lost her job. She was working at a
13 high-end gift shop, looking like that. They
14 can't -- they just can't have that. And so they
15 asked her, when can you come back to work? She
16 said, I don't really know. And so we calculated
17 the amount of money that she lost between the time
18 that she stopped working and the time she started
19 working again, where she started working at
20 Publix. We're not asking for the difference in
21 wages. She makes a lot less at Publix than she
22 made at Rossignol's. What we're asking for is the
23 time she didn't get paid at all. And that's not a
24 whole lot of money, but it's money that's out of
25 her pocket. So we're asking for that.

CLOSING ARGUMENT BY MR ROBINSON

1 The other thing we're asking for is her
2 personal injury. I don't know how you put a price
3 on that. That's your decision to make, and I'm
4 not even going to suggest to you how to make that
5 decision. You've got to think about what she went
6 through, you have to think about her loss of
7 enjoyment of life, you have to think about her
8 pain. She described that, and her suffering, she
9 described that. And we didn't linger on it, we
10 didn't go into, you know, an hour and a half of
11 description of that. The pictures, I think, speak
12 for themselves. You know what the problem is.
13 Take a look at that and see what the compensation
14 ought to be, and put that on the jury, on your --
15 figure it out.

16 You're going to get a verdict form. A
17 verdict form has a couple things on it. One is
18 negligent misrepresentation, yes or no. If it's
19 yes, how much money?

20 The other is negligence, yes or no. If it's
21 yes, how much money?

22 And the judge is going to explain this form
23 to you. Okay? But I'm going to tell you this.
24 The dollar amounts for the hard damages, that's
25 how it's been calculated in Exhibit No. 12, are

1 basically the same. Don't worry about that,
2 there's not going to be double recovery. Okay?
3 There's a mechanism to take care of it.

4 So if you find that there's negligent
5 misrepresentation, after you listen to the jury
6 charge and what those damages can be, if you find
7 there's negligent misrepresentation, write in what
8 the damages are. And if you find that there's
9 negligence, which is the polybutylene pipe --
10 negligent misrepresentation goes to the
11 polybutylene pipe -- negligence was the leaky
12 pipe. And if you find that there's negligence,
13 write in the damages. Don't worry about trying to
14 parcel the part. We'll take care of that later.
15 Trust me, the Judge is going to take care of that
16 for you.

17 But figure out the negligence and what the
18 pain and suffering was, and add that in, whatever
19 that number is. That adds in on top of Exhibit 12
20 damages, how much of that you're allowed to give
21 it, assume you get ready to.

22 The Defense is going to talk about the
23 conservative mold remediation protocol of
24 Mr. Warren. Clean up the bedroom and the bath is
25 not conservative. The EPA says you got somebody

CLOSING ARGUMENT BY MR ROBINSON

1 to work with this stuff, you got to be
2 conservative. That's not conservative. That's
3 just a rabbit they want to put on the floor they
4 want you to chase. Don't chase that rabbit.

5 They will talk about -- well, maybe they
6 won't. They're going to tell you the cost of the
7 remediation is far too great. Well, you think
8 about what it costs to do what they said they were
9 going to do. And you make up your mind about
10 whether it's far too -- we got one price of a
11 little less than \$5,000 from Lohr. You know what
12 that was. We got one price of \$18,000 from their
13 contractor, who didn't know what he was doing. He
14 didn't know what the scope of the work was. He
15 just -- I hired this nobody, he's going to do it
16 all. And if he's not, I'm going to make him do it
17 all. They don't know what they're doing.

18 He's going to do the demolition without the
19 barrier and without the spacesuits. But you heard
20 Mr. Warren say that's when you need it, because
21 you can't be taking this stuff through the house.

22 In fact, with mold remediation, you have to
23 bag it up and take it out so they don't get that
24 the stuff spread out through the house.

25 And remember, they talked about that.

CLOSING ARGUMENT BY MR ROBINSON

1 Remember he talked about putting it in plastic
2 bags, taking it out to the dumpster? But that's
3 not what their guy is going to do. He's just
4 going to drag it through the house, throw it in
5 the dumpster. That's not going to work, folks.

6 And then they asked Dr. Chioda how much money
7 did you get paid? And Dr. Chioda said I got
8 \$30,000 to look at this, and \$20,000 to come talk
9 to you about it. Talk to you about it. That's a
10 lot of money. That's an awful lot of money.

11 There's five guys like him in the world.
12 He's one. They're expensive people. Why did we
13 spend that kind of money? Because we knew they
14 were going to make us carry our burden of proof.
15 And there's only five guys in the world who can do
16 that. There's only five guys in the world that
17 can tell you what the cause was and what the fix
18 is, so we hired one of them because we didn't have
19 any choice.

20 They put us to the test, we got to do what we
21 got to do to show you by a preponderance of the
22 evidence that this mold is what caused this
23 problem. That's why we paid him that kind of
24 money.

25 I didn't bother to ask these fellows what

CLOSING ARGUMENT BY MR ROBINSON

1 they got paid. I don't care. I don't think it's
2 relevant. But it came out, so I wanted to address
3 it. That's another rabbit they want to put on the
4 floor. Don't chase that rabbit.

5 He didn't come down here and testify because
6 we paid him a bunch of money. He told you, he
7 spends more of his time on defense work than he
8 does on Plaintiff's work. And if he didn't think
9 he was right, he wouldn't be here to testify. He
10 would have told us, I looked at this stuff, I'm
11 not going to testify, you guys go away. That's
12 not what he said. You can believe Dr. Chioda.

13 In the end, when you go back to the jury
14 room, you got the pictures, you can look at them.
15 All the photographs, you can see those. You have
16 the photographs of the house, you can see those.
17 You have the letter that Lohr Plumbing -- you'll
18 see that. You have the damages, they're all
19 listed, they're all broken out.

20 No one is arguing about the damages. Except
21 for that hospital charge, no questions about the
22 damages, no arguments about the damages. Those
23 are what it cost Ms. Doller because she got sick.
24 And she got sick because of that pipe leak. So I
25 ask you to go back to the jury room, consider what

CLOSING ARGUMENT BY MR ROBINSON

1 you've heard, consider what you've seen, consider
2 who's telling the truth and who's not, and reach a
3 verdict.

4 Thank you very much.

5 THE COURT: Ms. Canady, you're recognized.

6 CLOSING ARGUMENT BY MS. CANADAY

7 MS. CANADAY: May it please the Court.

8 Ladies and gentlemen of the jury,
9 Mr. Foreperson, I wanted to thank you for your
10 service. I know you think you've done all your
11 hard work by looking at us for the past three
12 days, but I'll submit to you you're getting into
13 the hardest work yet. You have to recall
14 testimony, weigh it, and come to your verdict.
15 And how do you do that? What do you have to do
16 that with?

17 You've got to, again, look at the testimony
18 and think about it. And it's the preponderance of
19 the evidence. Think of it as scales. Right now
20 everybody is equal. And you got to listen -- the
21 only evidence that proves to you is through the
22 witnesses, and you got to evaluate their
23 credibility.

24 Let's talk about their credibility. Let's
25 talk about what they said. We'll start off with

1 the Plaintiff's first.

2 Dr. Chioda. \$50,000. Wow. And what did he
3 provide? He didn't even go to the house, did not
4 see the Plaintiff, not one time. Didn't even
5 bring his file with him. What did they get for
6 \$50,000?

7 That's what they got for \$50,000. Somebody
8 who would tell the Plaintiff what she wanted to
9 hear. Mrs. Doller -- excuse me, Mr. Doller,
10 Mr. Doller couldn't necessarily tell the truth
11 about his -- whether he was married. We don't
12 know.

13 We saw Mr. Doran. They called him to the
14 stand, and what did Mr. Doran say? He said he
15 wanted to fix the problem. That's what he said.
16 Never one time did he ask the Plaintiff to pay for
17 anything. Not one time. They're going to try --
18 they'll try to tell you that, that Mr. Doran
19 wanted Ms. Doller to call and pay for all those
20 things, but not one time did that happen.

21 He said, call ServPro, get them in here. Not
22 pay for ServPro, pay for whatever the issues are
23 going on, please call them and get them in here so
24 we can start doing what we need to do to get this
25 repaired.

CLOSING ARGUMENT BY MS. CANADAY

1 And he's to remind that the area of the leak
2 has nothing to do with polybutylene piping in the
3 house. The leak occurred in the new pipe, not in
4 the polybutylene pipe.

5 Let's talk about Mrs. Doller herself. Now,
6 you've heard Mrs. Doller, you can consider when
7 you're evaluating these witnesses and part of
8 their credibility is their demeanor, and how did
9 they deliver their testimony.

10 Well, you heard her on the stand yesterday.
11 She pretty much admitted that she lied to me the
12 first time about her marriage. Of all things, the
13 marriage is of no consequence, but the fact that
14 she couldn't tell the truth about it. If you're
15 not telling the truth then, what else are you not
16 telling the truth about?

17 She also denied outright that she had taken
18 photographs in preparation for the litigation.
19 And I showed you that. The only reason these
20 photographs exist is because she took them less
21 than a week after Mr. Doran was at the house, less
22 than a week, and she's already preparing for
23 litigation. Think about that when you're
24 deliberating. How credible is that, somebody
25 who's already taking pictures of their alleged

CLOSING ARGUMENT BY MS. CANADAY

1 injury a week after they discover a leak in the
2 house, and they prevent that person who tried to
3 come in and fix it from coming back in the home.
4 Consider that.

5 You have to believe all things from the
6 witnesses, to let the scales tip. And you have to
7 believe that there was an injury present.

8 We heard from Ms. Doller's own treating
9 physician, who has really no dog in the fight
10 here, that what she was suffering from was a
11 pre-existing psoriasis. That's not an injury,
12 that's just a skin skin disease. These pictures
13 show you what happens with guttate psoriasis.
14 It's just what happens with it.

15 And you heard Dr. Amrol say that this
16 morning. There is no indication in any medical
17 literature, he said, over a hundred years of
18 medical literature research has there ever been a
19 case where mold, any kind of mold, causes or is
20 associated with psoriasis. It just doesn't
21 happen. That's is not an injury. That's not an
22 injury for which she needs to be compensated for.

23 Let's talk about Mr. Gibson. Mr. Gibson, if
24 you'll recall, is the repairman for the Plaintiff,
25 and he's given you an estimate for \$80,000. And

CLOSING ARGUMENT BY MS. CANADAY

1 if you recall correctly, Mrs. Doller told you that
2 she never had any intentions of getting this house
3 repaired. She wasn't going to do that. She
4 wasn't going to let my client do it, and she was
5 never going to do it herself either.

6 So Mr. Gibson's estimate wasn't even obtained
7 until after I took her deposition last year. And
8 that was three years after the leak. So what he
9 provided you is an estimate of the condition of
10 the home as it existed over three years
11 afterwards. And he told you that I've never been
12 in a situation where it's been sitting this long.

13 So his measure might be for the entire house,
14 to repair the entire house, because it's been
15 sitting for three years and she wouldn't let
16 anybody or didn't take any initiative on her own.
17 If she thought Mr. Doran wasn't going to repair
18 it, she didn't even attempt to do it.

19 What's there now, I submit to you, isn't what
20 was there in the beginning. The only estimate
21 that we have that shows you what was there at the
22 beginning is the one that Mr. Doran got.

23 Now, he told you that that may not have been
24 everything that he was going to do because he
25 hadn't seen behind any walls, he hadn't pulled up

CLOSING ARGUMENT BY MS. CANADAY

1 any floors yet. He wasn't allowed to do that.
2 She told you that. She wouldn't let him come back
3 and help her.

4 Now, what did we show you? We showed you,
5 again, Mr. Doran, who said there's a leak here, we
6 know we did the plumbing in the house, want to fix
7 it. Let me try to get in there, do what I can.
8 You, in the meantime, get the water out of the
9 house. Never one time asked her to pull up any
10 floors on her own, not one time. Suggested to
11 have a professional come in there and do it
12 professionally.

13 Did she do that? No. But what did she do?
14 One of the first things, not only did we take
15 pictures, was call a lawyer right away. Call the
16 lawyer, get the advice, and stop allowing anybody
17 to come in to help you.

18 And what else did those lawyers do? They
19 directed her to go to Dr. Lieberman, a fellow out
20 of Charleston. And what else did they tell her to
21 do? Oh, let's call Dr. Chioda, pay him \$50,000.
22 He's got 50,000 reasons to tell you that mold
23 caused an injury to her. 50,000 reasons.

24 Meanwhile, her own treating physician, the
25 dermatologist at MUSC, has no reason to not tell

CLOSING ARGUMENT BY MS. CANADAY

1 her the truth about her own health, has said, no,
2 this is guttate psoriasis, it's biopsy proven,
3 there's no overlay of any other issue going on
4 here, it's a guttate psoriasis.

5 Dr. Amrol told you psoriasis was not
6 aggravated and wasn't caused by any kind of mold.
7 Therefore, that's not an injury.

8 Mr. Warren, who was here, very clearly
9 provided a scope of work, protocol for repair.
10 The area of damage in this home is isolated to a
11 wall between a master bedroom and a bathroom.
12 Does not extend anywhere else in the house.

13 Now, we know there's another issue going on
14 in another bedroom that hasn't been addressed by
15 the Plaintiff. Probably won't be. But, there's
16 another issue going on causing who knows what kind
17 of damage. Well, that issue is not associated
18 with anything that Lohr Plumbing did, but she's
19 not taking care of that either.

20 Mr. Webb, Mr. Webb is with Beaufort
21 Construction, a well-respected construction
22 company here. Now, he's relying on subcontractors
23 to perform the client's scope of work. He's
24 absolutely permitted to do that. And he told you,
25 I don't do mold remediation, the company I have

CLOSING ARGUMENT BY MS. CANADAY

1 called does. And they're going to do the
2 appropriate scope. The end.

3 And he's told you how much that's going to
4 cost. That's going to cost \$18,000. That's more
5 than what Mr. Doran had originally estimated.

6 But again, that was an original estimate. An
7 initial, before he was stopped from coming back in
8 the house. So, Mr. Webb -- again, now coming back
9 in three and a half-years later, because nothing's
10 been done to the home, and he has provided an
11 estimate on the basis of how it looks today.

12 Now, of course, she's moved out of the home.
13 Nobody really told her she had to do that, and
14 she's been out of the home for this long. Had she
15 made any attempt to get the repairs performed, she
16 could have been back in there before the end of
17 December. Before the end of December.

18 Mr. Webb told you a week -- a week to repair
19 the home. That's not long, and she's out of the
20 house for a week. Okay.

21 How much is her mortgage, \$1,200 a month?
22 She's entitled to \$300, \$400 for that week when
23 she was out her home. That's her damage. That's
24 her lawsuit.

25 Mr. Warren also told you that you can

CLOSING ARGUMENT BY MS. CANADAY

1 commercially clean soft goods. He suggested to
2 have those commercially cleaned. Now, there are
3 some items that probably need to be thrown away,
4 but it is what it is. So throw those items away.
5 But do we need to leave her home and not go back,
6 and not make any effort to lessen our damage? No,
7 absolutely not. That's not what a rational,
8 reasonable person would do.

9 A rational, reasonable person would take
10 every step if they think that somebody is not
11 performing what they should be doing, okay, well,
12 I'll take the steps and we'll take care of this
13 later.

14 But, no, that's not what happened. We just
15 left it. We left it. We called a lawyer and we
16 left it.

17 The Plaintiff told you, Mrs. Doller told you,
18 well, I didn't know who to call. I didn't know
19 any doctors to call. Well, again, the doctors she
20 had been seeing were all telling her the same
21 thing. And I guess she didn't like what she was
22 hearing, and wanted somebody to tell her it's not
23 just psoriasis, that, oh, no, this is an injury.
24 You didn't just have an outbreak, this is a true
25 injury.

CLOSING ARGUMENT BY MS. CANADAY

1 So, again, get with her lawyer, and they
2 connect her with these doctors, they connect her
3 with -- well, they don't connect her, they make a
4 phone call to Palmetto Design. All these issues,
5 lawyer, her lawyers do it. Her lawyer is doing
6 it. Mr. Barnes, you heard her say, is the one who
7 told her not to let Mr. Doran back in the house.

8 Let's talk about her damages some more. We
9 got negligent misrepresentation and we got
10 negligence on the action. Negligent
11 misrepresentation with regard to polybutylene. I
12 can't make it clear enough, the leak did not occur
13 at the poly. There's 6 feet of poly piping left
14 in that house. Should it be there? No.

15 Mr. Doran told you how much it's going to
16 cost to replace that. \$1,200, max. \$1,200, and
17 that's gone, and then the poly is gone and then
18 she's gotten what she purchased.

19 The personal injury, that had nothing to do
20 with the poly pipe. Let's don't confuse that
21 issue, and neither is the damage to the bathroom
22 and master bedroom. That's got nothing to do with
23 poly. The leak occurred at a pex fitting. Pex
24 piping, that's not the same as polybutylene
25 piping. Don't confuse those issues.

CLOSING ARGUMENT BY MS. CANADAY

1 The personal injuries, you know, they're
2 talking about the amount of money at Beaufort
3 Memorial Hospital, \$19,000. On that summary,
4 you're going to see another line item for Beaufort
5 Physicians, and I'll submit to you that that's
6 Dr. Cusamano. He's not rolled up in one at
7 Beaufort Memorial Hospital.

8 So you heard her say that she went to the
9 hospital with bronchitis, chest pains. She was
10 diagnosed with bronchitis. She didn't go because
11 of her skin skin issue, she went because she was
12 having chest pains that was associated with
13 coughing. So the \$19,000 should be out, shouldn't
14 be considered.

15 As far as her other medical treatment, again,
16 she was having a flare of psoriasis. This is not
17 an jury. It is a natural progression of a
18 disease. It happens. You heard what Dr. Amrol
19 said about what causes flares of the disease --
20 alcohol, smoking, stress. We have all three of
21 these things. She told you she's stressed over
22 all of it. She's a smoker, she's a drinker, and
23 they want you to believe that it has nothing to do
24 with this disease.

25 Even though all the literature, including

CLOSING ARGUMENT BY MS. CANADAY

1 literature cited by Dr. Chioda himself, those are
2 the primary causes of flares, in addition to a
3 strep bacteria. Once you get on the antibiotics,
4 antibiotic it goes away.

5 Antibiotics, antibiotic as you've heard
6 doesn't treat mold. It doesn't treat fungus. She
7 would not have responded, her body would not have
8 responded if it were a mold associated issue.
9 And, no, it's not, because it can't be. Dr. Amrol
10 has told you that.

11 Dr. Amrol has no interest in the outcome of
12 the lawsuit either, neither does Dr. Cusamano.
13 He's her treating physician. He still treats her
14 today. No interest.

15 If you determine in your deliberations, I
16 know you're going to be deliberate about it, and I
17 know you're going to think carefully and take it
18 seriously as you have all week, if you determine
19 that Mrs. Doller is entitled to anything, I submit
20 to you the appropriate damage would be what
21 Mr. Warren and Mr. Webb have told you it cost to
22 repair the home. That's a fair -- a fair
23 assessment. There's damage there, it needs to be
24 addressed, it needs to be fixed. The damage is
25 isolated to that one room, and they want you to

CLOSING ARGUMENT BY MS. CANADAY

1 believe that it's everywhere. It's everywhere,
2 the entire house needs to be fixed. But the only
3 people who are going to relate or who are going to
4 suggest to you that there's -- she's either
5 allergic to mold or that it's anywhere in the
6 house are her highly paid experts. Only ones.
7 Not her treating physicians and not Dr. Amrol.
8 Only the paid lawyer retained experts. That's it.

9 Consider that when you consider their
10 credibility. And, again, I can't stress enough
11 that a pre-existing medical condition is not an
12 injury. Nothing was exacerbated by presence of
13 any mold in the home.

14 She's also only entitled, again, to maybe a
15 week's worth of mortgage payments. Or if you, you
16 know, feel so inclined and you consider that she
17 moved out, she was sick for the month of November,
18 the month of December, she's already out of the
19 house. She actually gets sick once she moves out
20 of the house, if you remember the time line.
21 Sicker when she's out of the house. Moves out
22 December 17th, she tells you well, it was even
23 worse, even when I was in the hospital in January,
24 it was even worse. After she moved out of the
25 house, not while she's in it. She was actually

CLOSING ARGUMENT BY MS. CANADAY

1 getting better when she was in the house. And
2 wanted to gloss over that. But she's taking her
3 steroids, she's taking her medication, she's
4 getting better. She gets worse when she moves
5 out.

6 Her utilities, again, she's listed mortgage
7 payments and utilities for three-plus years. She
8 could have absolutely gotten this taken care of.
9 And the fact that she's waited and not done
10 anything, anything at all to make her damages any
11 less, you need to consider that, if you determine
12 that she's entitled to anything at all.

13 As far as her lost wages, Mrs. Doller, you
14 heard her say was supposed to return to work in
15 early January, and we know that she was
16 hospitalized, but it sounded as if -- and I think
17 that she told you -- it was a mutual parting of
18 ways with Rossignol's. It wasn't we're sorry to
19 hear you're ill, it was okay, thank you very much.
20 And she didn't give you any indication that she
21 was even looking for work. She wasn't able to
22 work. It sounds like she took the month of
23 February off.

24 Dr. Cusamano saw her in mid February, and by
25 that time she had already tapered herself off of

CLOSING ARGUMENT BY MS. CANADAY

1 the Z pack. She was 99 percent better, according
2 to Dr. Cusamano, and he saw her two weeks after
3 she had taken herself off the Z pack. So I submit
4 to you she was probably better, completely better
5 by the end of January.

6 No indication as to why she wasn't working.
7 I don't know. Sounds like it might have been by
8 choice. Possibly at the direction, who knows, of
9 who. Who knows?

10 I think once you consider the credibility of
11 all the witnesses you've seen, and the interests,
12 those particular interests that the witnesses have
13 in this matter, I think you'll find there are some
14 credibility issues with a couple of those.

15 I'd ask you to again to be careful and
16 deliberate in your consideration, and considering
17 all of the evidence presented to you, and I
18 think -- I'm asking you to return a verdict that's
19 fair and reasonable and in favor of Lohr Plumbing.

20 Thank you for your time. I appreciate it.

21 THE COURT: Thank you, Ms. Canaday.

22 Mr. Robinson, you are recognized.

23 REBUTTAL CLOSING ARGUMENT BY MR. ROBINSON

24 MR. BARNES: Thank you, Your Honor.

25 That's a lot of smoke to try to clear up.

1 Let's see what we can do.

2 She says she didn't call ServPro. Ms. Doller
3 said she never heard of ServPro, but she did what
4 ServPro would have done. So what difference does
5 that make?

6 She said that the polybutylene has nothing to
7 do with the leak. Ms. Doller testified she never
8 would have moved in the house if she had known the
9 polybutylene was in there. So it has everything
10 to do with it, because she wouldn't have been
11 there and she wouldn't have got injured if she
12 hadn't moved in.

13 She said Dr. Cusamano -- excuse me,
14 Dr. Chioda never saw the patient. Dr. Chioda saw
15 the photographs. Guess who never saw the patient
16 or the photographs? Dr. Amrol. The guy you heard
17 this morning.

18 She said, and Dr. Amrol said, mold doesn't
19 cause psoriasis. There's no question about that.
20 No one's argued that it does. What they both said
21 was stress causes psoriasis to flare up, and when
22 you start having that burning sensation in your
23 hands and -- and -- and rash going up your arms
24 and your feet, you got stress, especially when the
25 doctors can't make it go away. So it wasn't mold

1 causing the psoriasis, it's the stress from the
2 mold that causes psoriasis. No question about
3 that. Dr. Chioda said that, Dr. Amrol said that.
4 They all said stress does it.

5 Mr. Gibson's estimate. The \$88,000 to clean.
6 The estimate was done three and half-years, two
7 and a half-years, whatever it was after she moved
8 out of the house. But the estimate is based on
9 exactly the protocol -- remember, you read that
10 date, February of 2012. The protocol was that he
11 based his price on what was written in February of
12 2012. Two months after the problem manifested
13 itself, not three and a half-years after the
14 problem manifested itself. Two months.

15 She said they needed the water to dry up, and
16 they wouldn't let Lohr Plumbing back in the house.
17 Lohr Plumbing testified he had a key to the house
18 for seven days. Did they do any remediation work?
19 No. Thank goodness, but no.

20 She said they called the lawyers right away.
21 That's not the testimony, folks. The testimony is
22 she took those pictures on the 5th of December,
23 before they ever thought about having a lawsuit.
24 They took the pictures because, what did
25 Mr. Guffey say, the doctors might need to see

1 them. So that's why they took the pictures.

2 Later on, when she moved out of the house,
3 when Mr. Guffey convinced her that the house is
4 killing you, later on she went to find a lawyer,
5 which is what people do when they have a personal
6 injury. But it wasn't the first thing they did,
7 and the pictures weren't taken because they went
8 to find a lawyer, the pictures were taken because
9 they thought the doctors might need to see them.

10 We have the lawyers told her what to do.
11 Guess what? That's what lawyers do. Lawyers tell
12 you what to do, that's why you have lawyers. And
13 did the lawyers tell her to go see Dr. Lieberman?
14 Yes, they did. Why did they tell her to go see
15 Dr. Lieberman? Because she didn't know what she
16 was allergic to, and they wanted to find out.
17 Dr. Lieberman, you saw his testimony, said she was
18 allergic to mold.

19 We don't just sue people because we want to,
20 or we like to. You got to find out who caused the
21 problem, or even if there is a problem before you
22 just file a lawsuit. You just don't go filing
23 lawsuits.

24 She said that the problem is restricted to
25 the wall between the bathroom (sic) and the master

1 bathroom. No. The problem with the Defense is,
2 they have narrowed the scope of the problem down
3 until it's just one board. They refused to
4 recognize the fact that that mold engulfed the
5 whole bedroom and eventually the whole house
6 because the air conditioner is running, because it
7 has to. But they want you to think it's just a
8 wall. It isn't just a wall.

9 She said she went to see Dr. Lieberman
10 because she didn't like what the doctors were
11 telling her. The doctors weren't fixing her. She
12 got fixed. She got eventually over it. But it
13 wasn't what the doctors did, it was the getting
14 out of the house and the passage of time.

15 She said psoriasis is not an injury.
16 Psoriasis is a condition. It's a condition caused
17 by the allergic reaction and the stress of the
18 mold. That flare, that stuff, that stuff was
19 caused by the mold. That stuff was caused by the
20 mold and the psoriasis, and there's no way to
21 parse that apart.

22 You're going to be told by the Judge that if
23 somebody has a pre-existing condition, and the
24 Defendant does something to make it worse,
25 Defendant is responsible for that. That's the

1 law, and that's exactly what happened here.

2 The doctors all assumed that this went away
3 because she took the antibiotic, antibiotic but
4 all the doctors have testified that antibiotics
5 don't do a thing antibiotic to psoriasis. So what
6 does that tell you?

7 Again, I told you she was going to talk about
8 money. Everybody who testified was a paid expert.
9 You know what, they're all paid experts. Every
10 one of them. Dr. Amrol didn't come down here out
11 of the goodness of his heart this morning.

12 And finally, she said she took herself off
13 the Z pack. Dr. Cusamano talked about the side
14 effects of those things, and it wasn't a bad thing
15 that she took herself off the Z pack. But, see,
16 they're still thinking the Z pack is making her
17 get better. The Z pack had nothing to do with it.
18 Dr. Chioda told you that, Dr. Lieberman told you
19 that.

20 What happened was she got a mold allergic
21 reaction, the doctors couldn't fix it. The stress
22 caused the psoriasis to come back. She moved out
23 of the house, she got better eventually, and here
24 we are today. When you go back to the jury room,
25 do you know what I want? I want justice. That's

REBUTTAL CLOSING ARGUMENT BY MR. ROBINSON

1 all I want. And that's your job, to give her
2 justice.

3 Thank you.

4 THE COURT: Mr. Foreman, ladies and gentlemen
5 of the jury, I'm going to ask you that you retire
6 to the jury room, refresh yourselves for a moment,
7 and when we come back, I'm going to charge you the
8 law.

9 Once again, do not discuss the case.
10 Mr. Foreman, I'm going to ask that you enforce the
11 rule.

12 (The Jury exits the Courtroom.)

13 THE BAILIFF: The jury is clear, Your Honor.

14 THE COURT: We'll stand at ease for about
15 five minutes.

16 (Recess.)

17 THE COURT: Anything from the Plaintiff
18 before we bring the jury out?

19 MR. ROBINSON: None from the Plaintiff,
20 Your Honor.

21 THE COURT: Anything from the Defense?

22 MS. CANADAY: No, Your Honor.

23 JURY CHARGE

24 THE COURT: With that, we're ready for the
25 jury.

JURY CHARGE

1 Mr. Foreman, ladies and gentlemen of the
2 jury, you've heard all the testimony and all the
3 evidence that's been presented, and you've heard
4 to closing arguments. Now, it's my responsibility
5 to charge you the law.

6 I know we're getting sort of toward lunch,
7 probably a little bit tired. But I'm going to ask
8 that you perk up and pay very close attention
9 because throughout the trial of this case I've
10 noticed that when the lawyers ask questions, you
11 look at the lawyer, when the witnesses answer,
12 y'all look at the witness, you've been paying very
13 close attention. And you have all the wherewithal
14 to find the facts in this. But in order for you
15 to fulfill your duty as a juror, you're going to
16 understand what the law is. So your job's going
17 to be listen to the evidence, determine what the
18 truth is, and apply it to the law.

19 I wish there was an easy way to explain the
20 law, but sometimes it's sort of like taking
21 medicine. There's no easy way to do it. I'm
22 going to ask that you pay very close attention and
23 perk up as I charge you the law.

24 Mr. Foreman, ladies and gentlemen of the
25 jury, I'll remind you that during this trial you

JURY CHARGE

1 and I have certain duties to perform. As a trial
2 judge, it's my responsibility to preside over the
3 trial, and I also had the duty to rule on the
4 admissibility of evidence. You're to consider
5 only the evidence before you.

6 In this trial, there was testimony ordered
7 stricken from the record during this trial. You
8 must disregard that testimony. You're to consider
9 only the testimony which has been presented from
10 this witness stand, any exhibits which have been
11 made a part of the record, any stipulations of
12 counsel.

13 I have an additional duty to charge you the
14 law applicable to this case. It is your job as
15 jurors to accept and apply the law as I now state
16 it to you.

17 If you think you have an idea as to what the
18 law is or what the law ought to be that does not
19 agree with what I tell you the law is, you must
20 forget that idea because you're sworn to accept
21 the law and apply the law exactly as I state it to
22 you.

23 In every case tried before a jury, the jury
24 becomes the sole and exclusive judges of the
25 facts. A trial judge cannot comment on or make

JURY CHARGE

1 any statement about the facts in the case. Since
2 you are the sole judges of the facts, do not think
3 by anything I said during the trial that I have an
4 opinion about the facts. The law simply does not
5 allow me to have an opinion about the facts.

6 The burden of proof in this case is by a
7 preponderance of the evidence. The preponderance
8 of the evidence simply means the greater weight of
9 the evidence. It is evidence which as a whole
10 shows that the facts sought to be proved is more
11 likely true than not true. This can be
12 illustrated by imagining a set of scales.

13 When the case begins, the scales are even.
14 After all of the evidence has been presented, if
15 the scales remain even or if they tip even
16 slightly in favor of the Defendant, then the
17 Plaintiff has failed to meet the burden of proof
18 and would not be entitled to recover in this case.

19 If, on the other hand, the scales tip even
20 slightly in favor of the Plaintiff, the Plaintiff
21 will have met the burden of proof, then you should
22 return a verdict for the Plaintiff.

23 The preponderance of evidence is not
24 determined by the number of witnesses. Instead it
25 must be determined by the greater weight of all

JURY CHARGE

1 the evidence.

2 In our courts, no distinction is made between
3 corporations and individuals. A corporation is a
4 person in the eyes of the law. A corporation is
5 entitled to the same fair and impartial
6 consideration and is judged by the same legal
7 standards as an individual.

8 Ladies and gentlemen of the jury, there are
9 two types of evidence generally presented during a
10 trial, direct evidence and circumstantial
11 evidence. Direct evidence is the testimony of a
12 person that claims to have actual knowledge of a
13 fact, such as an eyewitness. It is evidence which
14 immediately establishes the main fact to be
15 proven.

16 Circumstantial evidence is proof of a chain
17 of facts and circumstances indicating the
18 existence of a fact. It is evidence which
19 immediately establishes collateral facts from
20 which the main fact may be inferred.

21 Circumstantial evidence is based on
22 inference, not on personal knowledge or
23 observation. It is proof that does not actually
24 establish the fact of the question, but that
25 asserts or describes something else from which you

JURY CHARGE

1 may either reasonably infer the truth of the fact
2 or at least reasonably infer an increase in the
3 probability of the fact is true.

4 For circumstantial evidence to be sufficient,
5 one, a finding of the fact, the circumstances must
6 lead to that fact with reasonable certainty. The
7 facts and circumstances should be considered in
8 light of ordinary experience and common sense.

9 The existence of a fact cannot be based on
10 speculations, surmise, or conjecture. The law
11 makes absolutely no distinction between the weight
12 or value to be given to either direct or
13 circumstantial evidence nor is a greater degree of
14 certainty required of circumstantial evidence than
15 of direct evidence.

16 Mr. Foreman, ladies and gentlemen of the
17 jury, necessarily, you must determine the
18 credibility of witnesses who have testified in
19 this case. Credibility simply means
20 believability. It becomes your duty as jurors to
21 evaluate the evidence and determine which evidence
22 convinces you of its truth.

23 To determine the believability of witnesses
24 that have testified in this case, you may believe
25 one witness over several witnesses or several

JURY CHARGE

1 witnesses over one witness. You may believe a
2 part of a testimony of a witness and reject the
3 remaining part of the testimony of that same
4 witness. You may believe the testimony of a
5 witness in its entirety, or reject the testimony
6 of a witness in its entirety. You may consider
7 whether the witness has an interest in the result
8 of the trial, whether the witness is prejudiced
9 towards either the Plaintiff or the Defendant, the
10 opportunity for the witness to have seen the
11 matters and things about which the witness may
12 testify, and the way the witness acts on the
13 witness stand, their demeanor.

14 Rules of Evidence ordinarily do not permit
15 witnesses to testify to opinions or conclusions.
16 Exception of this rule exists for witnesses we
17 call expert witnesses. A witness who by education
18 and experience has become an expert in some art,
19 science, or profession may give an opinion as to
20 the subject that witness claims to be an expert in
21 and may also give the reasons for the opinion.

22 You should consider any expert opinion given
23 by a witness, and like any other evidence give it
24 the weight you think it deserves. If you decide
25 that an expert witness' opinion is not based on

JURY CHARGE

1 sufficient education and experience, or if you
2 decide that the reasons given in support of the
3 opinion are not sound, or that the opinion is
4 outweighed by other evidence, you may disregard
5 that opinion entirely.

6 An expert witness' testimony should be given
7 no greater weight than that of other witnesses
8 simply because the witness is an expert. You do
9 not have to accept an expert's opinion even though
10 it's uncontradicted.

11 The Plaintiff claims the Defendant was
12 negligent and you should compensate the Plaintiff
13 for injuries the Plaintiff suffered as a result of
14 the Defendant's negligence. In order to prove
15 that the Defendant was negligent, the Plaintiff
16 must prove by a preponderance of a greater weight
17 of the evidence the following things: First, the
18 Plaintiff must prove by a preponderance of a
19 greater weight of the evidence that the Defendant
20 owed the Plaintiff the duty of care.

21 If you find that there was a duty of care,
22 you must then decide the remaining questions: The
23 first of these is whether the Plaintiff has proven
24 by a preponderance of a greater weight of the
25 evidence that the Defendant breached the duty of

JURY CHARGE

1 care by a negligent act or omission.

2 Negligence means that a person has done
3 something that a reasonable person would not have
4 done or has failed to do something that a
5 reasonable person would have done in the same
6 situation.

7 The Plaintiff must also prove by a
8 preponderance of greater weight of the evidence
9 that she suffered damages as a result of the
10 Defendant's breach of duty.

11 Finally, the Plaintiff must prove by a
12 preponderance of greater weight of the evidence
13 that the damages were proximately caused by the
14 Defendant's duty.

15 Proximate cause is something that produces a
16 natural chain of events, which in the end brings
17 about an injury is the direct cause of the injury.
18 To prove that the Defendant's negligence
19 proximately caused the Plaintiff's injury, the
20 Plaintiff must first prove causation and fact.
21 This is proven by showing that the injury would
22 not have occurred but for the Defendant's
23 negligence.

24 The Plaintiff must also prove legal cause.
25 Legal cause is proven by showing that the injury

JURY CHARGE

1 was foreseeable. This means that the injury
2 occurred as a natural and probable consequence of
3 the Defendant's negligence. The Plaintiff must
4 prove that some injury from the Defendant's
5 negligence was foreseeable and does not have to
6 prove that the particular injury that occurred was
7 foreseeable.

8 However, the Defendant cannot be held
9 responsible for things which could not be expected
10 to happen.

11 Proximate cause does not mean the only cause.
12 The Defendant's acts can be a proximate cause of
13 the Plaintiff's injury if it was at least one of
14 the direct concurring causes of the injury.

15 A person who makes repairs, which are the
16 kind of repairs that if not done correctly are
17 reasonably certain to cause damages, the repairman
18 in effecting the repair should exercise reasonable
19 care. And reasonable care is the degree of care
20 that a reasonably prudent repairman would use
21 under the same circumstances.

22 The Plaintiff must prove that expenses caused
23 by the injury were necessary and reasonable.
24 Actual damages for a Plaintiff who has been
25 physically injured include pain and suffering as

JURY CHARGE

1 well as mental anguish, impairment of health, a
2 physical condition, and disfigurement.

3 The Plaintiff may also claim lost wages due
4 to an absence from work.

5 In determining the amount of compensation for
6 personal injuries, it is proper to consider past
7 and present aspects of the injury. This would
8 include physical and mental pain and suffering;
9 expenses incurred were necessary medical
10 treatment; loss of time and income, which resulted
11 from an impairment from inability to work and earn
12 a livelihood; loss of enjoyment of life suffered
13 as a result of the injury; and any other losses
14 which are reflected by the character of the
15 injury.

16 The Defendant claims that the Plaintiff had a
17 pre-existing injury or condition prior to the date
18 that the Plaintiff claims the Defendant injured
19 her. If you find that the Plaintiff received an
20 injury as a result of the negligence of the
21 Defendant and is entitled to recover for that
22 injury, the fact that the Plaintiff had a
23 pre-existing injury or condition would not prevent
24 the Plaintiff from recovering. The Defendant is
25 responsible for all ill effects which, considering

JURY CHARGE

1 the Plaintiff's condition of health when the
2 Plaintiff was injured, naturally and necessarily
3 follow the injury.

4 The Defendant takes the Plaintiff as the
5 Plaintiff is found, whether the Plaintiff is in
6 perfect health, in poor health, or somewhere in
7 between. A Defendant's liabilities in no way
8 lessen or affect it because of the fact that the
9 injury would not have resulted or not have been as
10 serious or severe had the Plaintiff been in good
11 health, or that those injuries were aggravated or
12 rendered more difficult to cure by reason of the
13 fact that the Plaintiff was not in good health.

14 In other words, if the presence of a
15 pre-existing injury or condition aggravates and
16 prolongs the injury and increases the damages, the
17 Plaintiff should be compensated for the increase
18 or added damages.

19 A person with a pre-existing injury or
20 condition is not, however, entitled to any
21 compensation for the pre-existing injury or
22 condition. In addition, if the problems are the
23 result of a natural progression or the worsening
24 of a pre-existing injury or condition, then the
25 Plaintiff would not be entitled to be compensated

JURY CHARGE

1 for those problems.

2 The Plaintiff claims that a negligent
3 misrepresentation made by the Defendant caused the
4 Plaintiff to suffer a monetary loss. In order to
5 recover from negligent misrepresentation, the
6 Plaintiff must first prove by the preponderance or
7 greater weight of the evidence the Defendant made
8 a false representation to the Plaintiff.

9 Next, the Plaintiff must prove that the
10 Defendant had a monetary interest in making the
11 false statement. Proof that a statement was made
12 in the course of the Defendant's business,
13 professional employment, is enough to show a
14 monetary interest in making the statement, even if
15 no one receives anything in exchange for the
16 statement.

17 The Plaintiff must prove that the Defendant
18 owed the Plaintiff a duty to make sure that
19 truthful information was given to the Plaintiff
20 and that the Defendant breached that duty by
21 failing to use due care.

22 If the Defendant had a monetary interest in
23 making the statement and the Defendant possessed
24 expertise or special knowledge to ordinarily make
25 it reasonable for another person to rely on the

JURY CHARGE

1 Defendant's judgment, ability to careful inquiry,
2 then the Defendant had the duty of care with
3 respect to the representations made to the
4 Plaintiff.

5 The Plaintiff must also prove that she
6 justified or relied on the Defendant's
7 misrepresentation. The Plaintiff's reliance on
8 the Defendant's statement is justified only if the
9 Defendant is in a superior position to the
10 Plaintiff as to knowledge of the truth of the
11 statement.

12 The Plaintiff's reliance on the
13 misrepresentation must have been reasonable. If
14 the Plaintiff knew the truth, reliance on the
15 Defendant's misrepresentation is not reasonable.
16 The Defendant will not be responsible for
17 information which is given with the clear
18 understanding that the Defendant is not liable for
19 its accuracy.

20 The Defendant is not responsible for casual
21 statements, representations as to matters of law,
22 for matters which the Plaintiff could determine
23 the truth of by using due diligence.

24 Finally, the Plaintiff must prove that the
25 Plaintiff suffered a monetary loss as a direct and

JURY CHARGE

1 proximate result of the Plaintiff's reliance on
2 the Defendant's representation.

3 If you decide that the Plaintiff is entitled
4 to a verdict, your next step would be to decide
5 how much money the Defendant should be required to
6 pay. Actual damages are to compensate the
7 Plaintiff for the Plaintiff's injuries or loss, to
8 put the Plaintiff as near as possible in the same
9 position that the Plaintiff was in before the
10 incident occurred.

11 In other words, actual damages would be the
12 actual losses and expenses which the Plaintiff has
13 suffered because of the Defendant's negligence.

14 Mr. Foreman, ladies and gentlemen of the
15 jury, where real property has been damaged, the
16 measure of damages is the difference between the
17 value of the entire premises before and after the
18 injury. The Plaintiff is entitled to a judgment
19 for harm to real property resulting from a past
20 invasion and not amounting to a total destruction
21 of value.

22 The damages include compensations for the
23 difference between the value of the land before
24 the harm and the value after the harm. If the
25 Plaintiff chooses, if the Plaintiff chooses the

JURY CHARGE

1 cost and restoration that has been or may
2 reasonably be incurred; loss of use of the land;
3 any discomfort and annoyance to the Plaintiff as
4 an occupant.

5 When the Plaintiff is injured or damaged by
6 the wrongful act of another person, it is the duty
7 of the Plaintiff to reasonably try to avoid and
8 lessen the damages. Those damages which may be
9 avoided by use of reasonable efforts, care, and
10 prudence by the Plaintiff cannot be the proximate
11 result of the Defendant's wrongful act.

12 Therefore, the Plaintiff cannot recover for
13 damages which reasonably might have been avoided.
14 The efforts required by the Plaintiff must be
15 determined by the rules of common sense and fair
16 dealing and what a person of ordinary reason and
17 prudence would do under the same circumstances.
18 The Plaintiff is not required to use unreasonable
19 efforts or great expense to avoid and lessen the
20 damages. The Defendant has the burden of proving
21 a failure to lessen damages on the part of the
22 Plaintiff by a preponderance of greater weight of
23 the evidence.

24 I'll come forward and share with you the
25 verdict form.

JURY CHARGE

1 Mr. Foreman, I'm going to ask, if you could,
2 to stand up as I go over the verdict form with
3 you. It's a document, it's two pages long, and I
4 want to warn you we couldn't get the last part on
5 the first page. But it's two pages.

6 State of South Carolina, County of Beaufort,
7 it's got the caption on here, the case numbers,
8 entitled, Verdict Form. There are two cause of
9 actions: One is negligence. It said, Did the
10 Plaintiff prove by a preponderance of the evidence
11 that the Defendant, Lohr Plumbing, Inc. was
12 negligent, and the negligence was one of the
13 proximate causes of the alleged injury? Place yes
14 or no.

15 If you answer yes, then obviously you have to
16 calculate the actual damages that I've explained
17 to you, and I've got two spaces here. One is
18 numerical and one is cursive. Kind of like on the
19 check. I say "cursive," some of these young
20 people don't know what cursive is. I mean, write
21 it out in longhand. Do that.

22 And then regardless of what the disposition
23 of this one is, you need to address negligent
24 misrepresentation. It has a similar question and
25 a place for actual damages, and a place for you to

JURY CHARGE

1 write out numerically and in cursive.

2 One of the things -- and it's got a place for
3 you to sign. And it indicates that it must be
4 unanimous. It can't be a 11 to one, eight to
5 four, six to six. Everyone has to agree, it has
6 to be unanimous.

7 Notify the bailiff upon reaching a verdict.
8 I hear tell up in Pickens County, the jury stayed
9 back for three and a half-days, they didn't knock
10 on the door. We don't want that to happen.

11 When you reach a verdict, notify the bailiff,
12 sign it and date it. I'm going to ask if you
13 could have a seat and I'll let you hold onto the
14 verdict form.

15 There are two different causes of action, and
16 what I'm going to direct you to do, Mr. Foreman,
17 is to deal with each of those separately and
18 distinctly, just as if the other one did not
19 exist. And it might be such that you are
20 concerned that there might be a duplication of
21 damages. But I will tend to all that. But you
22 need to pay attention, decide the negligence just
23 as if that was the only cause of action.

24 And then you look at the negligent
25 misrepresentation and determine it just as if that

JURY CHARGE

1 was the only cause of action. Just disregard that
2 y'all have done that. So they need to stand by
3 themselves. And don't worry about any
4 duplication. It's a matter of law that I will
5 resolve.

6 I'm going to ask the alternates, thank y'all
7 for your service. When I release the jury to go
8 back to the jury room, I'm going to ask that you
9 stay here in the courtroom. We'll talk about
10 that. You still get your pizza, so hang in there,
11 we'll will get you some pizza.

12 And Mr. Foreman, I'm going to ask that you
13 reside over the deliberation process. And that
14 essentially means that you are to ensure that
15 everybody's voice is heard.

16 I'm also going to ask that in the
17 deliberation process, if someone gets up and uses
18 the restroom, stop deliberations because everybody
19 has to participate in all of the deliberation
20 process.

21 Sometimes there comes an occasion where
22 you're stumped and you have a question. If
23 there's a question that comes up, I'm going to ask
24 that you reduce it to writing, give it to the
25 bailiff, and he will present it to me. And if

JURY CHARGE

1 it's something I can help you with, I will.

2 I'll tell you from the very outset, the
3 difficult questions in this case, you're going to
4 have to resolve, the resolution of the factual
5 dispute in this case. If it's a legal question, I
6 can answer it, but if it has to do with the
7 factual determinations, you heard me state the
8 law. The law doesn't allow me to have an opinion
9 about the facts, that's your job.

10 Y'all have heard all of the evidence in this
11 case, and you've now got all the tools to resolve
12 those factual issues. If, in some -- some
13 question develops and you don't know whether it's
14 a question of law or a question of fact, write it
15 down and I'll let you know one way or the other.

16 I don't anticipate there are going to be
17 questions because y'all have paid attention to the
18 facts and listened to the law, you've got all the
19 equipment necessary to resolve this case.

20 Every time I release y'all to go out of the
21 courtroom, I tell y'all not to begin
22 deliberations. Once again, I'm going to do that
23 because I'm going to take an opportunity to talk
24 with these very fine lawyers and determine whether
25 or not I have charged the law in an inappropriate

JURY CHARGE

1 way, whether or not I've left something out or
2 charged something in an improper way. If it's
3 necessary for me to bring you back, we will do
4 that. If not, then we're going to gather up all
5 the documentary evidence, present that to you, and
6 give you maybe some paper and pens to help you in
7 your deliberation process, and then tell you to
8 begin deliberations. Do not begin deliberations
9 until you receive instructions from me or the
10 bailiff. Just do not begin deliberations.

11 I'm going to ask that the alternates remain
12 with us and ask that y'all return to the jury
13 room.

14 (Jury exits the courtroom at
15 12:12 p.m.)

16 THE COURT: I want to thank y'all for your
17 service. I know y'all sort of feel like y'all got
18 invited to a dance and didn't get to dance. But
19 you're welcome to stay here with us. I know y'all
20 got a lot invested in this case, and if you're
21 interested, it's a public forum, you can stay
22 here. You probably have other things that you'd
23 rather be doing, but if you're curious about how
24 the case resolves, you can call the clerk's office
25 and I'm sure they'll be happy to share the verdict

JURY CHARGE

1 with you.

2 I have some good news. You're going to be
3 paid handsomely for your service. It's not -- how
4 much is it now, Clerk?

5 THE CLERK: 12.50 a day.

6 THE COURT: 12.50 a day. How about miles?
7 No miles? All right. 12.50 a day, which is a
8 small token of our appreciation.

9 But the other good news is that if you're
10 subpoenaed to participate in this court within the
11 next three years, then you can exercise an
12 exemption if you elect not to serve. It doesn't
13 apply to federal court, magistrate's court or
14 municipal court. If you're subpoenaed to
15 participate in this court, you don't have to do
16 that. You can exercise the statutory exemption.

17 I always tell the jurors at the conclusion of
18 the case, if they have any questions, I'll be
19 happy to answer them. Do y'all have any
20 questions?

21 (The alternates indicate no.)

22 THE COURT: All right. Well, you're released
23 from the order not to discuss the case. You can
24 talk to anybody you want to about it. However, if
25 you don't want to talk to them about it, you don't

JURY CHARGE

1 have to. And if someone were to persist in their
2 efforts to discuss the matter with you after you
3 tell them not to, that you don't want to talk
4 about it, identify them as best as you can and
5 I'll deal with them accordingly. That's
6 inappropriate.

7 Thank you for your time and your service. I
8 will let you know, since we didn't -- you probably
9 feel like we wasted your time. Last week, we
10 tried a case and we had to exercise -- we had to
11 use two alternates. Conflicts developed with two
12 jurors, and we had to do that. And had we not
13 done that, we would have had to try the case all
14 over again. It was a very expensive trial to try.

15 As you've heard in this case, some of the
16 witnesses and the expenses that are involved in it
17 are sometimes almost prohibitive. So thank you
18 for your services, and you're free to leave at
19 this time. And you're welcome to wait on the
20 pizza if you'd like.

21 (Alternates dismissed.)

22 THE COURT: Is there any objection with
23 regards to the jury charge from the Plaintiff?

24 MR. ROBINSON: No objection from the
25 Plaintiff, Your Honor. Thought it was great.

JURY CHARGE

1 THE COURT: It was a particularly good
2 charge?

3 MR. ROBINSON: I thought it was.

4 THE COURT: And it was riveting.

5 MR. ROBINSON: Yes, it was riveting.

6 THE COURT: How about from the Defense?

7 MS. CANADAY: Yeah, I thought it was fine.
8 Thank you.

9 THE COURT: Very good. Fine. All right.

10 MS. CANADAY: Well, you know, I didn't want
11 to get carried away.

12 THE COURT: I'm going to ask, is everything
13 that's in this notebook into evidence?

14 MR. ROBINSON: Yes, Your Honor.

15 THE COURT: Is there anything in that
16 notebook that's not into evidence?

17 MR. ROBINSON: No, Your Honor.

18 THE COURT: Ms. Canaday, is everything in
19 that notebook in evidence?

20 MS. CANADAY: Yes, sir.

21 THE COURT: Is there anything in the book
22 that's not in evidence?

23 MS. CANADAY: No, sir.

24 THE COURT: All right. I'm going to ask that
25 we take the documents and evidence to the jury

JURY CHARGE

1 room and tell them to begin deliberations.

2 All right. We'll stand at ease.

3 (Jury deliberating.)

4 THE BAILIFF: The jury has a question.

5 *(Whereupon, Court Exhibit No(s). 1 marked for*
6 *identification and received in evidence.)*

7 (Whereupon, counsel review the question and an
8 off-the-record discussion is held.)

9 THE COURT: The question has to do with
10 negligence and negligent misrepresentation, and
11 that is an easy one.

12 (Pause.)

13 THE COURT: Bring the jury in.

14 (The jury enters the courtroom.)

15 THE COURT: Mr. Foreman, ladies and gentlemen
16 on the jury, pay very close attention as I explain
17 the law with regard to negligence. The Plaintiff
18 claims that the Defendant was negligent and should
19 compensate the Plaintiff for injuries the
20 Plaintiff suffered as a result of the Defendant's
21 negligence. In order to prove that the Defendant
22 was negligent, the Plaintiff must prove by a
23 preponderance of a greater weight of the evidence
24 the following things: First, the Plaintiff must
25 prove by a preponderance of a greater weight of

JURY BEGINS DELIBERATIONS

1 the evidence that the Defendant owed the Plaintiff
2 the duty of care.

3 If you find that there was a duty of care,
4 you must then decide the remaining questions: The
5 first of these is whether the Plaintiff has proven
6 by a preponderance of a greater weight of the
7 evidence that the Defendant breached the duty of
8 care by a negligent act or omission.

9 Negligence means that a person has done
10 something that a reasonable person would not have
11 done or has failed to do something that a
12 reasonable person would have done in the same
13 situation.

14 The Plaintiff must also prove by a
15 preponderance of greater weight of the evidence
16 that she suffered damages as a result of the
17 Defendant's breach of duty.

18 Finally, the Plaintiff must prove by a
19 preponderance of greater weight of the evidence
20 that the damages were proximately caused by the
21 Defendant's breach of duty.

22 Proximate cause is something that produces a
23 natural chain of events, which in the end brings
24 about an injury, is the direct cause of the
25 injury. To prove that the Defendant's negligence

JURY BEGINS DELIBERATIONS

1 proximately caused the Plaintiff's injury, the
2 Plaintiff must first prove causation and fact.
3 This is proven by showing that the injury would
4 not have occurred but for the Defendant's
5 negligence.

6 The Plaintiff must also prove legal cause.
7 Legal cause is proven by showing that the injury
8 was foreseeable. This means that the injury
9 occurred as a natural and probable consequence of
10 the Defendant's negligence. The Plaintiff must
11 prove that some injury from the Defendant's
12 negligence was foreseeable and does not have to
13 prove that the particular injury which occurred
14 was foreseeable.

15 However, the Defendant cannot be held
16 responsible for things which could not be expected
17 to happen. Proximate cause does not mean the only
18 cause. The Defendant's acts can be a proximate
19 cause of the Plaintiff's injury if it is at least
20 one of the direct concurring causes of the injury.

21 I will now explain to you the law, once
22 again, with regard to negligent misrepresentation.
23 The Plaintiff claims that a negligent
24 misrepresentation made by the Defendant caused the
25 Plaintiff to suffer a monetary loss. In order to

JURY BEGINS DELIBERATIONS

1 recover from negligent misrepresentation, the
2 Plaintiff must prove by the preponderance of
3 greater weight of the evidence that the Defendant
4 made a false representation to the Plaintiff.

5 Next, the Plaintiff must prove that the
6 Defendant had a monetary interest in making the
7 false statement. Proof that a statement was made
8 in the course of the Defendant's business,
9 professional employment, is enough to show a
10 monetary interest in making the statement, even if
11 no one received anything in exchange for the
12 statement.

13 The Plaintiff must prove that the Defendant
14 owed the Plaintiff a duty to make sure that
15 truthful information was given to the Plaintiff
16 and that the Defendant breached that duty by
17 failing to use due care.

18 If the Defendant had a monetary interest in
19 making the statement and the Defendant possessed
20 expertise or special knowledge to ordinarily make
21 it reasonable for another person to rely on the
22 Defendant's judgment or ability to careful
23 inquiry, then the Defendant has a duty of care
24 with respect to the representation made to the
25 Plaintiff.

JURY BEGINS DELIBERATIONS

1 The Plaintiff must also prove that she
2 justifiably relied on the Defendant's
3 misrepresentation. The Plaintiff's reliance on
4 the Defendant's statement is justified only if the
5 Defendant is in a superior position to the
6 Plaintiff as to the knowledge as to the truth of
7 the statement.

8 The Plaintiff's reliance on the
9 misrepresentation must have been reasonable. If
10 the Plaintiff knew the truth, reliance on the
11 Defendant's misrepresentation is not reasonable.
12 The Defendant will not be responsible for
13 information which is given with the clear
14 understanding that the Defendant is not liable for
15 its accuracy.

16 The Defendant is not responsible for casual
17 statements, representations as to matters of law,
18 for matters which the Plaintiff could determine
19 the truth of by using due diligence.

20 Finally, the Plaintiff must prove that the
21 Plaintiff suffered a monetary loss as a direct and
22 proximate result of the Plaintiff's reliance on
23 the Defendant's representation.

24 Please return to the jury room and resume
25 deliberation.

JURY BEGINS DELIBERATIONS

1 (The jury continues deliberations.)

2 THE BAILIFF: The jury has a verdict.

3 THE COURT: Mr. Foreman, have you reached a
4 verdict?

5 THE FOREPERSON: Yes, Your Honor.

6 THE COURT: Is it unanimous?

7 THE FOREPERSON: Yes, Your Honor.

8 THE COURT: I ask that you give the verdict
9 form to the bailiff.

10 (Bailiff receives verdict form.)

11 THE CLERK: The State of South Carolina,
12 County of Beaufort, in the Court of Common Pleas
13 for in the 14th Circuit. Patricia Doller versus
14 Lohr Plumbing, Inc. Number one, Negligence. Did
15 Plaintiff prove by preponderance of the evidence
16 that Defendant, Lohr Plumbing Inc., was negligent
17 and the negligence was one of the approximate
18 causes of the alleged injury? Answer, No.

19 Number two, Negligent misrepresentation. Did
20 the Plaintiff prove by a preponderance of the
21 evidence that the Defendant, Lohr Plumbing Inc.,
22 uttered a negligent misrepresentation and that the
23 negligent misrepresentation was one of the
24 proximate causes of the injury? Answer, No.

25 The verdict must be unanimous. And it is.

JURY BEGINS DELIBERATIONS

1 THE COURT: Thank you. Very good. Any
2 additional requests for polling from anyone?

3 MR. ROBINSON: Nothing from the Plaintiff,
4 Your Honor.

5 THE COURT: Very good. Thank you, ladies and
6 gentlemen of the jury. I want to thank you for
7 the time that you have put forward to this. You
8 have worked hard all week and it's clear that you
9 have taken your responsibility very seriously.

10 I have some good news for you. One of which
11 is I'm releasing you from your -- from the order
12 restraining y'all from talking to anybody. Y'all
13 can talk to anybody you want to about it.
14 However, if someone were to contact you and want
15 to talk about the case and you did not want to
16 discuss it with them, you don't have to. If they
17 insist on speaking with you about it, get their
18 name, identify them as best as you can, report it
19 to me and I'll deal with them accordingly. That
20 would be inappropriate for them to do that.

21 You have earned a three-year exemption by
22 your service here today. If you are subpoenaed to
23 participate in this court within the next three
24 years you can exercise an exemption and you will
25 not have to serve. It does not apply to Federal

JURY BEGINS DELIBERATIONS

1 court, magistrate court, or municipal court.

2 How many of you have not served on a jury
3 before?

4 (Raising of hands.)

5 THE COURT: How about that. I see more have
6 not than have. I hope it -- I know that it's been
7 an inconvenience for you, but hopefully it's been
8 a learning experience. I have been -- I have
9 practiced law for 20 years and been on the Bench
10 for about ten and there's not any case that's
11 tried that I don't learn something. I have
12 learned something about mold this time. Y'all
13 probably learned a little more about it than what
14 you desired to learn. But we do learn things.
15 And one thing that I hope that you receive some
16 appreciation for the fact that, you know, these
17 parties didn't choose to be here, and really and
18 truly we are only one breath away from litigation
19 ourselves, and I know that y'all probably didn't
20 want to come and serve on a jury on Monday
21 morning, had other things that you would rather be
22 doing, but you know we are one breath away from
23 litigation and when I lay my head down on my
24 pillow at night I thank the Lord that we have
25 juries to resolve these matters as opposed to a

JURY BEGINS DELIBERATIONS

1 judge or professional jury. And thank you for the
2 time that you brought to this matter.

3 Do you have any questions? I said that I
4 would answer any questions that you had, if you
5 had any.

6 (No audible response.)

7 THE COURT: Nobody ever asks me any
8 questions. I'll have to work on that. But at any
9 rate, thank you for your time. Y'all will be paid
10 handsomely for your services. I understand that
11 it's about \$12 a day. That's hardly enough to buy
12 a ham sandwich, but at any rate that is a small
13 token of our appreciation. Thank you so much.
14 And we will not be trying anything else for the
15 balance of the week. You are released. Thank you
16 so much.

17 Everyone remain seated as the jury exits the
18 courtroom.

19 (The Jury exits the courtroom.)

20 THE COURT: Very good. I'll be happy to
21 entertain motions at this time.

22 MR. ROBINSON: Your Honor, the Plaintiff
23 moves for judgement notwithstanding the verdict.
24 As to negligence, I think it's clear that there
25 was a duty and it's clear that there was a

JURY BEGINS DELIBERATIONS

1 violation of duty. The only question was how much
2 were the damages. We think that the jury should
3 have brought back a verdict for the Plaintiff on
4 negligence.

5 And two, in the event that -- at least as to
6 damages. As to negligent misrepresentation, we
7 think that all of the elements as to the negligent
8 misrepresentation were met. There were damages
9 flowing from the negligent misrepresentation, we
10 think that the jury made a mistake and we would
11 like you to fix it.

12 THE COURT: What does the Defense have to the
13 say about that?

14 MS. CANADAY: Your Honor, may it please the
15 Court. I think, at the directed verdict stage, we
16 each made motions for a directed verdict, and Your
17 Honor respectfully denied them. This was
18 information presented on either side and it was
19 presented to the jury as a question of fact and
20 the jury did its job and I think came to the
21 correct conclusion. I think that the motion
22 should be denied.

23 THE COURT: What do you think about the fact
24 that your client admitted that the leak was his
25 fault and has acknowledged that there at least

JURY BEGINS DELIBERATIONS

1 should be -- they are accepting responsibility for
2 the leak and fixing it. I mean, nobody denied
3 that.

4 MR. TUPPER: I would say, Your Honor, that,
5 again, it was up to the jury to listen to the
6 witnesses.

7 THE COURT: Well. I understand that you are
8 saying that. But obviously the -- I understand
9 your position is that it is a factual question,
10 but how about the fact that there was no dispute,
11 that there was indeed some liability there. Your
12 client said that I caused the leak and I was
13 accepting responsibility for it.

14 MS. CANADAY: I don't know what else to say
15 other than, again, the jury listened to everything
16 that we heard. He offered to fix it and I suspect
17 they determined that it was a mitigation issue and
18 there was no damage to provide to her. And you
19 know.

20 MR. TUPPER: Your Honor, the jury had to
21 judge the credibility of the testimony. With all
22 due respect I think --

23 THE COURT: As far as the credibility, you
24 would maintain that your client is credible and
25 that he did say that he caused the leak and he was

JURY BEGINS DELIBERATIONS

1 going to accept responsibility for it?

2 MR. TUPPER: Certainly. Correct. And it was
3 up to them to prove how much the leak was or how
4 much the repairs were, and they clearly didn't
5 believe it. You said it was -- when we renewed
6 our motion for directed verdict, your answer was
7 it is a question for the jury. You didn't direct
8 a verdict for it. You said that it is a question
9 for the jury. The jury considered it and decided
10 that there wasn't any --

11 THE COURT: Well, what do you have to say
12 about that, Mr. Robinson?

13 MR. ROBINSON: Your Honor, my understanding
14 was that the question to the jury was how much
15 were the damages, not whether or not there was
16 negligence.

17 THE COURT: That is not the case at all. As
18 a matter of fact, I gave you the opportunity to
19 review the verdict form and it is really whether
20 or not you had proved by a preponderance of the
21 evidence that you had proved the elements of
22 negligence and that it was a proximate cause -- or
23 one of the proximate causes of the injury.

24 MR. ROBINSON: The motion is that they
25 admitted that they had a duty and they admitted

JURY BEGINS DELIBERATIONS

1 that they breached a duty. And they admitted that
2 there was something that had to be done to fix it.
3 So, that is duty, breach and damages, and yet the
4 jury comes back with no negligence. And what I'm
5 saying to the Court is, I think that's wrong. The
6 Court heard, you know, the testimony and I'm
7 asking the Court to fix it under judgment not
8 withstanding verdict.

9 MR. TUPPER: Back to the point, they still
10 had to prove proximate cause, and the jury didn't
11 think that they had. That was the same point that
12 was at issue for the jury. You could have
13 directed a verdict after the close of the
14 evidence.

15 THE COURT: I can direct a verdict now if I
16 want to.

17 MR. TUPPER: I understand.

18 MR. ROBINSON: The other thing that hasn't
19 been mentioned yet is that the Defendant put in
20 his estimate of what it would cost to fix it.

21 THE COURT: Right.

22 (Pause.)

23 THE COURT: I have been on the Bench for
24 right at ten years and I have never once disturbed
25 a jury verdict. And I think that this probably

JURY BEGINS DELIBERATIONS

1 might be the one that needs to be done. Of
2 course, I did allow it to go to the jury. I think
3 as a practical matter it is generally a good idea
4 to do that. But I didn't think that the jury
5 would drop the ball in such a way. I'm not going
6 to make a ruling on it here today. I'm going to
7 reconvene at a later date and time. And I don't
8 know whether I'm going to -- I'm going to check
9 with court administration, I might come back down
10 here or I might have y'all -- invite y'all up to
11 Florence, but sometime in the next -- sometime
12 within the next month we are going to get together
13 and we are going to have a full hearing on the
14 motion for a new trial, the motion for a verdict
15 not withstanding the verdict.

16 And I'm going to ask that y'all, particularly
17 you Mr. Robinson, look at the concept of the 13th
18 juror and what I have the authority to do.

19 MR. ROBINSON: Yes, Your Honor, I was going
20 to move that if you didn't give us a verdict JNOV,
21 I was going to move that you give us a verdict as
22 the 13th juror. So I'll be happy to do that. And
23 if I have to, Judge, on the record, I also move
24 for a new trial.

25 THE COURT: All right. We will reconvene and

JURY BEGINS DELIBERATIONS

1 I'll be in touch with y'all and let you know when
2 and where the hearing is going to be. We will
3 stand at ease.

4 MR. TUPPER: Thank you, Your Honor. Your
5 Honor, I also make the same motions for negligent
6 misrepresentation. I want to put that on the
7 record to protect it.

8 THE COURT: All right. You are protected on
9 the record. As a matter of fact, I'm going to
10 hold all of the motions in abeyance, you know, you
11 can file probably -- I'll let you do whatever you
12 want to, as far as protecting the record. You
13 have ten days to move for a new trial and I'm not
14 certain, you know, as an abundance of caution, you
15 might want to file a written motion sometime
16 within the next ten days. But we are going to
17 hear it in full at some point in time. Anything
18 from the Defense?

19 MR. TUPPER: No, Your Honor.

20 THE COURT: All right. I'll encourage the
21 parties to try to resolve the thing before we get
22 together. I don't anticipate that will be the
23 case, but I'll encourage y'all to engage in
24 negotiations in that regard. All right. We will
25 stand at ease.

JURY BEGINS DELIBERATIONS

1 MR. TUPPER: Thank you, Your Honor.

2 MR. ROBINSON: Thank you, Your Honor.

3 THE COURT: All right.

4 (Court is adjourned.)

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JURY BEGINS DELIBERATIONS

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CERTIFICATE

STATE OF SOUTH CAROLINA:

COUNTY OF BEAUFORT:

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 24th day of June, 2016.

Mona L. Manley /s/
MONA L. MANLEY
Official South Carolina Court Reporter
Circuit Reporter for the 14th Circuit
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mmanley@sccourts.org

In The Matter Of:
Doller v.
Lohr Plumbing, et al.

Allen D. Lieberman, MD (Video)
August 24, 2015



Janice D. Hayward, RMR
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Original File 082415ALiebermanVideo.txt
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1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
2 COUNTY OF BEAUFORT) CASE NO. 2012-CP-07-1439

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4
5 PATRICIA DOLLER,) VIDEO
6 Plaintiff,) DEPOSITION OF
7 -versus-) ALLAN D.
8 LOHR PLUMBING, INC., REMAX) LIEBERMAN, MD
9 ISLAND REALTY AND CATHY LYNN)
RITCHIE,)
10 Defendants.)

11 -----
12
13
14

15 DATE: Monday, August 24, 2015
16 TIME: 11:50 a.m.
17 LOCATION: The Center for Occupational &
18 Environmental Medicine, PA
7510 North Forest Drive
North Charleston, South Carolina
19
20 REPORTED BY: Janice D. Hayward, RMR
NCRA Registered Merit Reporter
21 101 Dorchester Court
Charleston, South Carolina 29418
22 843.478.6756
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6

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7

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and
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Also Present

Kevin O'Quinn, Videographer

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Janice D. Hayward, RMR
843.478.6756

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INDEX TO EXAMINATIONS

Examination By Mr. Robinson:	5
Examination By Ms. Canaday:	47
Examination By Mr. Robinson:	89
Examination By Ms. Canaday:	95
Examination By Mr. Robinson:	103

INDEX TO EXHIBITS

Plaintiff's <u>Exhibit 1</u> , medical report	4
Defendants' <u>Exhibit 1</u> , 11-8-12 medical report	50
Defendants' <u>Exhibit 2</u> , position paper support	53
Defendants' <u>Exhibit 3</u> , mycotoxin article	56
Defendants' <u>Exhibit 4</u> , role of fungi	57

1 (Marked for identification was Plaintiff's
2 Exhibit 1.)

3 THE VIDEOGRAPHER: We're now on the
4 record, 11:50 a.m., on August 24th, 2015.
5 This is the video deposition of Doctor
6 Allan D. Lieberman taken by the plaintiff
7 in the matter of Patricia Doller versus
8 Lohr Plumbing, Incorporated, et al., in
9 the Court of Common Pleas, State of South
10 Carolina, County of Beaufort, Civil Action
11 Number 2012-CP-07-1439.

12 Video deposition is being held
13 at 7510 North Forest Drive in
14 North Charleston, South Carolina.

15 Today the court reporter is Jan
16 Hayward, office located in
17 North Charleston, South Carolina; and
18 currently speaking, my name is Kevin
19 O'Quinn, I'm legal videographer
20 representing Legal Media of Charleston,
21 office located in North Charleston, South
22 Carolina.

23 Counsel, please state your
24 appearances for the record.

25 MR. ROBINSON: Brian Robinson. I

Janice D. Hayward, RMR
843.478.6756

1 represent Patricia Doller.

2 MS. CANADAY: Stacey Canaday, I
3 represent Lohr Plumbing.

4 (Allan D. Lieberman, MD, after being
5 sworn, testified as follows:)

6 EXAMINATION

7 BY MR. ROBINSON:

8 Q Doctor Lieberman, where did you take your
9 medical training?

10 A I'm a graduate of the Chicago Medical
11 School in 1960. I did a rotating internship at the
12 Mount Sinai Hospital in Chicago, and then a
13 three-year training program in pediatrics and
14 pediatrics pathology at Northwestern University's
15 teaching hospital, the Children's Memorial Hospital
16 in Chicago.

17 Q After you left the Children's Memorial
18 Hospital, what year did you get your medical degree?

19 A 1960.

20 Q And when did you finally leave the
21 Children's Memorial Hospital?

22 A In 1966.

23 Q And then where did you go after that?

24 A I went into the Navy. And I served for
25 two active years on duty and then something like 18

1 years in the reserve program.

2 Q And were you -- were you at any particular
3 hospital in Charleston?

4 A We had privileges at almost all of the
5 hospitals in Charleston, from Saint Francis to Roper
6 to Baker.

7 Q Is there a United States Navy Hospital in
8 Charleston?

9 A Yes, there is.

10 Q Were you there?

11 A From 1964 to 1966.

12 Q And what did you do there?

13 A I was chief of pediatrics at the Navy
14 Hospital.

15 Q And according to your curriculum vitae you
16 left there in 1968, is that correct?

17 A Yes.

18 Q And where did you go in 1968?

19 A I went into the private practice -- excuse
20 me. I went in as the medical director at the Vince
21 Moseley Diagnostic and Evaluation Clinic, which is
22 part of the Medical University of South Carolina's
23 Department of Neurology, for the evaluation of
24 patients who were neurologically impaired.

25 Q All right. So were you working there at

1 the same time you were working at the Naval
2 Hospital?

3 A No.

4 Q Okay. And then where did you go from the
5 Vince Moseley Diagnostic and Evaluation Clinic?

6 A I became the overall medical director of
7 the state institution for the neurologically
8 handicapped and I did a sum total of five years with
9 that department; then went into the private practice
10 of pediatrics. And I practiced that until
11 approximately 1977.

12 In 1977 I became very interested
13 in the effects of the environment on the human body
14 as a result of the fact that Doctor Ben Feingold had
15 written his book, Why Your Child is Hyperactive and
16 having learning disabilities.

17 And I attended a conference
18 which he was a guest speaker at but it was a
19 conference of environmental physicians and I could
20 not believe what these doctors were saying or doing
21 and I couldn't beat them so I joined them.

22 So slowly over many years
23 through courses which I obtained through the
24 American Academy of Environmental Medicine and also
25 through the American College of Occupational and

Janice D. Hayward, RMR
843.478.6756

1 Environmental Medicine, I went into the specialty of
2 occupational and environmental medicine which I have
3 now practiced for 38 years.

4 Q Stepping back for a moment, did you do any
5 academic work for MUSC?

6 A Yes.

7 Q What did you do?

8 A Well, I was a lecturer in the department
9 of anatomy teaching neuroanatomy. And then I was a
10 consultant in the department of pediatrics teaching
11 pediatrics in specialty environmental medicine.

12 Q Have you been in private practice?

13 A I've been in private practice ever since
14 19 -- what did I say -- 68, I believe it is.

15 Q All right. And where do you practice
16 medicine today?

17 A I practice in the City of North Charleston
18 at the 7510 North Forest Drive and we've been in
19 this building now, as I say, for almost 38 years.

20 Q What's the name of your --

21 A The Center for Occupational and
22 Environmental Medicine.

23 Q And when did the Center for Occupational
24 and Environmental Medicine get founded?

25 A In 1966, I believe.

1 Q And who was the -- who was the founding
2 member?

3 A Me.

4 Q All right. Let me ask you this. Are you
5 board certified in any field of medicine?

6 A Yes.

7 Q What field of medicine --

8 A Well, I was board certified by the
9 American Board of Pediatrics. In 1988 I became
10 board certified by the American Board of
11 Environmental Medicine.

12 Q What is -- in the medical field what's a
13 fellow?

14 A A fellow is a higher state of achievement
15 in a particular specialty. And you achieve that
16 usually through examination. And that's what
17 happened in terms of the -- I'm a fellow of the
18 American Academy of Environmental Medicine.

19 Q In the medical field what's a diplomat?

20 A Oh, a diplomat is usually one with one of
21 the actual board -- it's the American Board of
22 Environmental Medicine is how I became a diplomat.

23 Q Well, let me ask you this. Are you a
24 diplomat in any medical field?

25 A Yes, environmental medicine.

1 Q All right. Thank you.

2 Have you earned any awards in
3 the medical field?

4 A Yes.

5 Q Tell me what awards you've earned.

6 A Well, I think the most prestigious award
7 that I received was just I think two years ago when
8 the State of South Carolina recognized me, signed by
9 the legislature, both houses, in Columbia, for my
10 contribution to the community of patients in South
11 Carolina.

12 Q And what particular contribution did they
13 give you that award for?

14 A Well --

15 MS. CANADAY: Objection.

16 A -- after you practice 50 some odd years,
17 and I sort of have a reputation, although most
18 people don't know it, in the fact that we're sort of
19 the last hope for a lot of patients. The approach
20 which we use which is a discipline which is unlike
21 ordinary medicine, we are especially looking for
22 causation.

23 And if you can identify a cause
24 and eliminate it, you have eliminated most of the
25 patient's problems and then you don't have to use so

1 many drugs, for example, to treat it.

2 BY MR. ROBINSON:

3 Q All right. What's a Herbert J. Rinkel
4 Award?

5 A Oh, I forgot about that. The academy
6 offers an award for excellence in teaching, for
7 example, and I won that award a couple years ago.

8 Q What were you teaching?

9 A I was teaching, well, number one, I was
10 the program director for the section on chemical
11 sensitivity and toxicology. And I taught that for
12 several years.

13 And so we're really talking
14 about one very important aspect of environmental
15 medicine. Environmental medicine is a hybridization
16 of several specialties, especially allergy,
17 immunology, toxicology and nutrition. And my area
18 of expertise was especially in the area of
19 toxicology, surprisingly.

20 Q Okay. Have you published any papers
21 during your career?

22 A Yes.

23 Q How many papers have you published?

24 A Well, I believe we went over that and we
25 said there was three, four.

1 Q How many total papers have you published?

2 A I'm sorry?

3 Q How many total papers have you published?

4 A Oh, let's count them up. One, two, three,
5 four, five, six, seven, eight, nine, ten, 11, 12,
6 13, 14, 15, 16 papers.

7 Q Are those published in medical journals?

8 A Yes.

9 Q Are any of those 16 published in some --
10 in something other than a medical journal?

11 A No.

12 Q Okay. Do you have any special interests
13 in the field of medicine?

14 A Yes, I do.

15 Q What are -- what's your special interests?

16 A Well, toxicology became one that was very
17 important, but really it was central nervous system
18 disease, especially neurotoxicology and especially
19 with --

20 Q Stop there for a minute. What's
21 neurotoxicology mean?

22 A That is a disease of the central nervous
23 system which is caused by injury from a toxic
24 chemical. And then, of course, the learning
25 disabilities and very much interested in immunology

1 and molecular biology because that's the direction
2 that medicine is going in nowadays. So those would
3 be my special areas of interest.

4 Q Okay. And what environmental factors or
5 agents do you commonly see in your practice?

6 A Well, allergy in general is about
7 50 percent of the practice in the specialty of
8 environmental medicine. But in my particular
9 practice it is an area of the allergic load, the
10 toxic load and the infectious load, and sometimes
11 the emotional load which constitutes the biggest
12 problems that our patients see.

13 So toxicology is very, very big
14 and we specifically about 10, 15 years ago began to
15 see more and more cases of moisture and mold as a
16 cause of many of patients' multisystemic disease.

17 Q Have you -- have you treated any patients
18 who have been adversely affected by mold in the
19 environment?

20 A At this point I guess it must be close to
21 a few hundred.

22 Q Okay. Have any of your patients been
23 embroiled in lawsuits?

24 A That question is often asked and we
25 estimated it was less than one percent.

1 Q Have you testified as an expert in any
2 depositions?

3 A Yes..

4 Q Do you have any question -- I mean, any
5 estimate of how many depositions you've testified
6 in?

7 A It averages on behalf, something like
8 sometimes as little as one, an average of maybe
9 three a year, and the most I've ever done is
10 probably ten in a year.

11 Q Okay.

12 A But we're dating 38 years.

13 Q Okay. Have you been qualified as an
14 expert in any courts in South Carolina?

15 A Yes, including the Supreme Court, the
16 highest court in South Carolina.

17 Q Have you actually testified in court in
18 South Carolina as an expert?

19 A Yes.

20 Q And that would be a medical expert?

21 A Yes.

22 Q Okay. In what field were you qualified as
23 a medical expert?

24 A Environmental medicine.

25 Q Did you get paid for testifying?

1 A In the beginning, no; but later, yes.

2 Q Okay. And why do you have to get paid for
3 testifying?

4 A Well, I think most physicians really frown
5 upon taking patients if they know they're involved
6 in litigation because it's so time consuming and a
7 tremendous amount of effort. And it's not a whole
8 lot of remuneration in it when you consider the
9 amount of time you put in in preparation for all of
10 this.

11 Q If you're testifying can you be taking
12 care of your patients?

13 A It's hard to. That's correct. That's why
14 I was a little bit worried because I have a patient
15 coming in at 1:15, so.

16 Q Do you get paid before you testify or
17 after you testify?

18 A Almost always before.

19 Q Okay.

20 MR. ROBINSON: I move to qualify
21 Doctor Lieberman as a medical expert in
22 the field of the effect of mold on humans.

23 BY MR. ROBINSON:

24 Q Have you -- have you heard of the American
25 College of Occupational and Environmental Medicine?

1 MS. CANADAY: I object to the
2 qualification of this witness.

3 MR. ROBINSON: All right.

4 BY MR. ROBINSON:

5 Q Have you -- have you heard of the American
6 College of Occupational and Environmental Medicine?

7 A Yes.

8 Q Have you heard that the American College
9 of Occupational and Environmental Medicine has
10 published a position paper on the adverse effects of
11 mold exposure?

12 A Yes.

13 Q Have you read that paper?

14 A Yes.

15 Q Have you formed an opinion about that
16 paper?

17 A Yes.

18 Q What is your opinion about that paper?

19 A Well, the opinion, the opinion was
20 fraudu -- not fraudulent, but it was not based on
21 scientific evidence; as a result of that, the
22 college has withdrawn that position paper.

23 Q Have you heard of the American College of
24 Occupa -- excuse me, the Journal of Allergy and --

25 A Immunology.

1 Q -- Immunology?

2 A Yes.

3 Q What is that journal?

4 A The journal, did you say?

5 Q Yes. What is that?

6 A That is the official publication for the
7 American Academy of Allergy and Immunology.

8 Q And have they published a position paper?

9 A They have.

10 Q On mold?

11 A Yes.

12 Q And what's your position on that?

13 MS. CANADAY: Objection. Relevance.

14 A I took a very special position against
15 that paper and I think as a part of that position
16 that many of us took, including a lot of their own
17 members, they withdrew that position paper. They're
18 no longer accepted as valid.

19 BY MR. ROBINSON:

20 Q All right. What is -- when we -- when we
21 talk about the College of Occupational and
22 Environmental Medicine, what is a college? What's
23 that mean?

24 A It's an organization of physicians who
25 band together usually in a particular area of

1 expertise. And the important thing in medicine is
2 what we call peer review, and that is that you are
3 accepted by your peers. That's what gives you a
4 reputation.

5 Q So is the American College of Occupational
6 and Environmental Medicine, is that like a college
7 like layman think about colleges?

8 A No. No. It's an organization.

9 Q Have you published any peer review
10 articles on the effect of mold, environmental mold
11 on people?

12 A Yes, I have.

13 Q Okay. And has that been in a peer review
14 magazine?

15 A Yes.

16 Q All right. Have you formed an opinion --
17 excuse me.

18 Have you reviewed the medical
19 records for Patricia Doller?

20 A I have.

21 Q Have you examined Patricia Doller?

22 A Yes.

23 Q Did you examine Patricia Doller with an
24 eye towards prescribing anything to her to help her
25 health?

1 A Yes.

2 Q Okay. Have you taken an oral history from
3 Patricia Doller?

4 A Yes.

5 Q Have you seen photographs of Patricia
6 Doller taken in 2011?

7 A Yes.

8 Q Have you formed an opinion regarding what
9 caused -- excuse me.

10 In those photographs what did
11 you notice?

12 A There couldn't be anything worse than
13 looking like Patricia Doller in terms of her skin,
14 just horrible in terms of the redness, the swelling,
15 the flaking like an exfoliated dermatitis, her skin
16 literally shedding off of her.

17 Q Have you formed an opinion regarding what
18 caused that skin condition?

19 A Yes.

20 Q All right. And have you put your
21 position -- your opinion in writing?

22 A I have.

23 Q All right. Let me hand you marked as
24 Exhibit 1 to your deposition.

25 MS. CANADAY: Object to the -- to --

1 yes. Objecting as to foundation and to
2 the admission of this report.

3 MR. ROBINSON: There's a copy for
4 you.

5 MS. CANADAY: To the expert report.

6 MR. ROBINSON: All right. And that
7 objection, I suppose, is based on your
8 objection to qualifying him as an expert
9 in the field of --

10 MS. CANADAY: The fact that he's an
11 expert.

12 BY MR. ROBINSON:

13 Q Okay. All right. Looking at your report,
14 what's the date on that report?

15 A November 8th of 2012.

16 Q Did you draft this report yourself?

17 A I did.

18 Q So this represents your opinion?

19 A Yes.

20 Q All right. Would you look at this report
21 for me and look specifically at item number 15 on
22 page two?

23 A Yes.

24 Q Tell -- tell jury what item number 15 --
25 well, first of all, what are these items?

1 A This is a summation of the patient's
2 history that was obtained when she came in July of
3 2011.

4 Q Okay. And what's item number 15?

5 A Number 15 states that on November 24th of
6 2011, notices the floor in the bathroom moves like
7 water underneath. Pulls up the floor in the bedroom
8 finding two inches of water with an overt black
9 mold. Plumber called. "Something not capped", is
10 what he said.

11 MS. CANADAY: Object to the response
12 as hearsay.

13 BY MR. ROBINSON:

14 Q Item number 16, what's that?

15 A Picks up wood from the floor and hands
16 became quickly inflamed and edematous.

17 MS. CANADAY: Same objection.

18 BY MR. ROBINSON:

19 Q What's edematous mean?

20 MS. CANADAY: Ongoing objection.

21 A It's swollen.

22 MR. ROBINSON: I'll stipulate that
23 you're objecting to all of his testimony,
24 if that's what you want to do.

25 MS. CANADAY: I am objecting to the

1 hearsay nature of this report, objecting
2 to the qualification of this witness as an
3 expert, and objecting to the entry of the
4 report in the event this witness is
5 qualified as an expert.

6 MR. ROBINSON: Okay.

7 BY MR. ROBINSON:

8 Q Doctor Lieberman, as a medical doctor, do
9 you commonly rely on what your patients tell you?

10 A All the time.

11 Q Okay. In fact, is there any other way for
12 you to get the patient's medical history?

13 A No.

14 Q And is it common in the medical field for
15 doctors who are examining a patient to rely on what
16 the patient tells them about their medical history?

17 A I think you have to. Who knows more about
18 their -- the patient than the patient?

19 Q All right. So back on 16, tell us what
20 happened there.

21 A She picks up the wood from the floor, and
22 her hands become quickly inflamed and edematous.

23 Q Okay. And what's edematous mean?

24 A Swollen.

25 Q You've done some tests on Miss Doller?

1 A I have.

2 Q Okay. And tell the -- tell the jury what
3 tests you've done on Miss Doller.

4 A Okay. Physicians who practice my
5 specialty look specifically for two pieces of
6 information. One we call biomarkers of exposure
7 which it tries to identify that which is
8 particularly aggravating to the patient or causing
9 the injury. And the other is what was the effect of
10 this exposure to the patient. So when we describe
11 her, for example, hands becoming quickly inflamed
12 and edematous, that's a biomarker of the effect of
13 the exposure.

14 And I'm glad you brought this up
15 because I forgot it in the first part of our
16 deposition this morning. This is a very nice piece
17 of information because it shows a cause and effect
18 relationship which is so dramatic.

19 Here is this woman who has this
20 terrific skin condition, for example. And I don't
21 doubt that the patient had psoriasis, but I believe
22 that what she was reporting, and looking at the
23 photographs and looking at the biopsy reports, that
24 something exacerbated, intensified, superimposed on
25 top of her psoriasis, for example, in terms of what

1 we were seeing.

2 And so here is such a perfect
3 temporality that I pick up a piece of wood which is
4 contaminated with -- with the mold and my hands
5 quickly turned red, swollen and inflamed.

6 Q Okay. And what is -- what's the
7 significance of this temporality?

8 A When we use the word temporality in
9 establishing causation, of all of the seven criteria
10 which we like to use to establish causation, the
11 single most important one is the concept of
12 temporality. In other words, did the injury occur
13 after the patient's alleged exposure and not before?

14 Now, in this case we knew that
15 the patient had the psoriasis, so now it brings in a
16 second principle of environmental and occupational
17 medicine which is that a hazardous agent can create
18 a brand-new disease or it can exacerbate a previous
19 condition. It can intensify it. It can bring to
20 light a latent condition. These are all very valid,
21 for example, axioms in terms of dealing with
22 causation.

23 Q Okay. Now, you did some lab studies?

24 A I did.

25 Q And what lab studies did you do?

1 A Well, again, looking for biomarkers of
2 exposure, we like to look at the immunoglobulin G
3 which is the specific correct test to do because the
4 immune system has memory. And what we're asking the
5 immune system is, can you tell me, was Miss Doller
6 ever exposed to mold.

7 Well, when I did that test and
8 it came back and everything was negative, I became
9 very suspicious because I also saw Doctor May's
10 report which is the environmental analysis, and she
11 was living in a very heavily contaminated house with
12 moisture and mold, so something didn't fit.

13 So we then decided to look and
14 see, could she be immunocompromised and why is that
15 important?

16 Q Well, wait a minute. What's
17 immunocompromised mean?

18 A Immunocompromised means that your body
19 fails to be able to respond in an appropriate manner
20 to something that's injuring you.

21 Q Does it have anything to do with your
22 immune system?

23 A It is the immune system.

24 Q Okay. So does that mean that the immune
25 system isn't working like it's supposed to?

1 A Correct. Yes.

2 Q All right. So you did -- you did these
3 lab studies. What did they tell you?

4 A Well, when the IgG antibodies all came
5 back completely negative, I was very suspicious that
6 the patient was compromised which means she was no
7 longer able to respond. And so we did a profile on
8 her, looking at the subclasses of immunoglobulin
9 which your body normally produces. And although
10 they were all normal, when you look at a laboratory
11 test, you break it up in your mind into the lower
12 third, middle third, upper third. In this case she
13 barely makes it onto the scoreboard. She makes it
14 onto the scoreboard barely.

15 All of those three in the
16 subclass one, two and three are just -- just edges
17 over, just with a few more points, which as far as
18 I'm concerned was proof positive to my initial
19 impression that she was immunocompromised and
20 therefore her IgGs were negative.

21 We then went on to look at the
22 second part of the biomarkers, and that is to look
23 at biomarkers of exposure from mycotoxins. You see
24 a lot of the injury --

25 Q Wait a minute. What's a mycotoxin?

1 A Well, let me explain by going back and
2 saying, how does mold injure patients? It injures
3 patients by infecting them. It can get into their
4 sinuses, for example, into their lungs and cause
5 literally an infection from an infectious agent
6 which is the fungi. It can sensitize the patient
7 which means it can induce an allergic type of
8 response. And the third way it injures is by means
9 of toxicity. It poisons the patients.

10 So we then like to look at was
11 the patient exposed and poisoned by the mold. And a
12 lot of the injury that you see the patients who are
13 exposed to mold come from mycotoxicity.

14 Q You were going to tell me what mycotoxins
15 were.

16 A Yes. A mycotoxin is a metabolite which is
17 produced by a mold. And the interesting thing is
18 from an evolutionary point of view, mycotoxins are
19 produced, it's like a poison gas, by a particular
20 mold in order to defend the mold against injury by
21 its own adversaries and enemies.

22 This particular metabolite which
23 we call mycotoxins is extremely toxic to the human
24 body, and you see that especially, for example, with
25 skin. So over the course, for example, of 38 years

1 of practicing in this field and seeing hundreds of
2 patients exposed to toxic mold, the thing that
3 always amazed me is the amount of bruising and
4 injury to the skin that you see with this population
5 of patients, so. And that's why when the immune
6 system is compromised, you often see, the natural
7 enemies now can take advantage of that compromised
8 immune system and take advantage and cause further
9 injury to the human body. So a mycotoxin is a
10 poison gas which is liberated and comes off of the
11 specific mold spore.

12 Q Can you identify -- excuse me.

13 Can you identify certain
14 mycotoxins as relating to certain molds?

15 A Yes.

16 Q All right.

17 A Yes.

18 Q And did you do that in the case of
19 Mrs. Doller?

20 A I did. We look for three particular types
21 of mycotoxins. And the one is called ochratoxin
22 which generally comes from Aspergillus and
23 Penicillium.

24 And then we look for aflatoxins
25 which is the more common mold that you see, for

Janice D. Hayward, RMR
843.478.6756

1 example, from food sources of contamination from
2 mold.

3 And the third one was that of
4 the trichothecenes. Now, the trichothecene is a
5 byproduct of very limited specific molds, either
6 Stachybotrys which people called the black -- the
7 black mold or the Fusarium. And sometimes there is
8 one more soil of mold which will produce
9 trichothecenes. But only those three particular
10 fungi are manufacturers of mycotoxins.

11 Q Did you find trichothecene in your
12 analysis of Miss Doller?

13 A Yes. I want to also emphasize the fact
14 that we saw this patient almost on, in the first day
15 of August of 2012. And this patient had moved out
16 of her exposure from the mold in December of 2011,
17 so it was at least eight months later.

18 What we found is the presence of
19 three times greater amount than the so-called normal
20 reference ranges for the trichothecene, but only the
21 trichothecene. The significance of this is that one
22 of the major molds that she was exposed to was that
23 of Stachybotrys.

24 Q Now, how do you know that?

25 A Well, the -- Patricia Doller's home was

1 evaluated by Doctor May from Massachusetts.

2 MS. CANADAY: Object to the response
3 of hearsay.

4 BY MR. ROBINSON:

5 Q Go ahead.

6 A And as I wrote in my report, I was never
7 so impressed with an evaluation. I've done hundreds
8 of these, or reviewed hundreds. This man was really
9 phenomenal.

10 And so when you say how do you
11 know. He went into the home and he identified the
12 presence of which molds and moisture was present in
13 the home, and that's what he found, Stachybotrys.

14 Q You in your business commonly rely upon
15 the reports from indoor air quality hygienists?

16 A All the time. It's extremely helpful.

17 Q Is that what the May indoor air quality
18 test report was?

19 A Yes.

20 Q Did you rely on it?

21 A Yes.

22 Q You have a discussion in your report?

23 A Yes.

24 Q Okay. Would you -- would you tell us what
25 the first paragraph says?

1 MS. CANADAY: Same objection.

2 A "This patient was unequivocally exposed to
3 very high levels of indoor molds but especially to
4 Aspergillus and Stachybotrys. The environmental
5 assessment performed in her home was one of the best
6 professional evaluations I've seen in 34 years of
7 practice."

8 MS. CANADAY: Move to strike.

9 A "My job then was to correlate these
10 findings with biomarkers of exposure and biomarkers
11 of the effect of exposures."

12 BY MR. ROBINSON:

13 Q All right. Did you do that?

14 A I did.

15 Q What did you conclude?

16 A I concluded that the trichothecenes which
17 can only come, for example, from what she was
18 exposed to which was the Stachybotrys was
19 documented.

20 Q Okay. And so have you formed an opinion
21 as to what caused the outbreak of rash as you
22 described it earlier on Miss Doller?

23 A Yes. Contrary to the opinions of our
24 internal medicine doctor who knows her reasonably
25 well, I believe that what we were seeing was not

1 specifically -- if it was guttate psoriasis, which
2 she's always had psoriasis, guttate is the most
3 severest form of psoriasis, and -- but the
4 temporality of its onset was very suspicious to me.

5 And the really crowning thorn of
6 this whole thing is that she picks up this
7 contaminated piece of wood with the mold and
8 immediately becomes edematous and inflamed showing a
9 very specific cause and effect relationship which
10 everybody is calling psoriasis.

11 Q Now, you talked a minute ago about a
12 suppressed immune system.

13 A Yes.

14 Q If there is no detection of antibodies in
15 the IgG, what's that mean?

16 A It means that the body has lost its
17 ability to respond in a normal way.

18 Q Could it mean something else?

19 A Well, there are many causes for suppressed
20 immune systems. In her history, for example, there
21 was some --

22 Q Well, that's not my question. My
23 question -- I guess I didn't ask it very well.

24 Does the failure to detect
25 antibodies in the IgG mean that she was not exposed?

1 A No, not at all.

2 Q Why not?

3 A Well, because we know she was exposed.
4 The way we know we're exposed is this unbelievable
5 environmental report.

6 Q Did you -- did you also find that she had
7 suffered other things besides this rash on her body?

8 A Yes.

9 Q What were the other things she suffered
10 from?

11 A The complaints that she had was that
12 neurocognitively she was compromised but
13 specifically in terms of her memory, for example, so
14 that was one.

15 Number two, she claimed that she
16 was more susceptible to respiratory infection,
17 especially with rhinitis, sinusitis, bronchitis.

18 By the way, the Mayo Clinic
19 published a paper, and it was absolutely reviewed by
20 many other centers, that showed that 96 percent of
21 all cases of chronic sinusitis are fungi induced.
22 So mold plays --

23 MS. CANADAY: Move to strike the
24 comment.

25 A -- a really important role in terms of

1 respiratory, and that's what she claimed that she
2 had. The third thing --

3 BY MR. ROBINSON:

4 Q Did you -- did you read that report from
5 the Mayo Clinic?

6 A Did I what?

7 Q Read the report from the Mayo Clinic?

8 A Yes.

9 Q And was that report peer reviewed?

10 A Indeed.

11 Q Okay.

12 A Yeah. It was Doctor Poniquie

13 P-o-n-i-q-u-i-e.

14 Q And is that something that you would rely
15 on as a medical doctor?

16 A Yes.

17 Q Okay. So the sinusitis is induced by
18 mold, is that what you said?

19 A Yes. When it's chronic.

20 Q Fungi, you said?

21 A When it's chronic, yes.

22 Q Fungi.

23 MS. CANADAY: Object to the
24 characterization.

25 BY MR. ROBINSON:

1 Q And tell me what mold is.

2 A Mold is sort of a living organism in the
3 plant family. It's hard to believe but something
4 like 50 percent of the core of the whole earth is
5 made up of mold, and its function is to break down
6 organic living tissue to be recycled in nature.
7 That's what it does.

8 And that's why, for example,
9 when it is infecting a house and it literally is
10 destroying a house like a termite, it's doing its
11 job, breaking it down.

12 Q Some people in the medical field assert
13 that there's no scientific literature linking
14 inhaled mycotoxins in the home and adverse health
15 effects. Do you have a position on that?

16 A Absolutely.

17 Q What's your position on that?

18 A Well, when the position papers of those
19 two colleges were published, for example, and the
20 people who wrote them -- and interestingly, one of
21 the authors was the same in both position papers,
22 Doctor Saxton. That was in 2004, I believe it was,
23 possibly 2005. Even then there were thousands of
24 medical papers indicating the effects of mold in the
25 human body and also in homes, for example.

1 So I don't know how he ever came
2 to the conclusions in terms of writing that paper,
3 but they're totally false. And I think that's why
4 those papers were withdrawn.

5 Q You talk in your report about the opinion
6 that her rash could have been a drug reaction.
7 What's your -- what's your position on that?

8 A What surprised me was that there were, I
9 think, two sets of biopsies that were taken, some at
10 the Medical University of South Carolina and some
11 which were done in Ohio. It must have been done by
12 a local dermatologist that she saw. In that, he
13 puts in the differential diagnosis of the
14 histopathology that this looks like a possible drug
15 reaction.

16 Now, when we talk about drug
17 reactions -- and by the way, if you've ever seen
18 these things, they are sometimes so exfoliating,
19 it's frightening to look at what a patient could
20 look like from a reaction like that.

21 I would ask you, though, to
22 consider the fact that it doesn't make any
23 difference to the human body what the environmental
24 trigger is. It could set off the exact same type of
25 a reaction to the skin.

Janice D. Hayward, RMR
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1 These adverse reactions, for
2 example, is -- the human body is responding -- I
3 always have to remind people when we get sick with
4 the flu, when we get a headache and we're achy and
5 fever, for example, that's your own body's reaction
6 to the germs. It's not the germ doing that. It's
7 your body responding to the germ. And that's what I
8 mean.

9 It doesn't make any difference
10 whether it was a drug, whether it was a mycotoxin,
11 whether it was any other environmental trigger, you
12 could get the exact same type of reaction.

13 Q Do you have an opinion as to what caused
14 the reaction in Miss Doller?

15 A I personally believe that she absolutely
16 had psoriasis, but this was now a superimposed
17 secondary thing which was, I think, triggered by the
18 exposure to the mold.

19 Q Do you -- is that -- do you hold that
20 opinion to a medical certainty?

21 A I do.

22 Q Or reasonable degree of medical certainty?

23 A I do. And I especially do that on the
24 basis of the line 15 which you asked me to read
25 which I had completely forgotten about earlier. If

1 you could pick up something and immediately break
2 out to it, that's what you're always looking for in
3 terms of establishing causation. It can't be
4 anything better than that.

5 In a matter of minutes to become
6 inflamed, red, swollen from that piece of wood which
7 is covered with the mold, that kind of tells you
8 that whatever was on that piece of wood is what
9 exacerbated and created the problem.

10 Q When you look at Miss Doller's -- did you
11 look at Miss Doller's medical record?

12 A I did and I had them.

13 Q And when you looked at Miss Doller's
14 medical record, did you find any indication of any
15 medicines that she took contemporaneous with her
16 breakout?

17 A Yes. But not necessarily in a particular
18 order because she was put on steroids earlier, for
19 example, which by the way has the ability to
20 suppress the immune system, so that's one. The
21 second point that I wanted to make -- would you mind
22 repeating your question?

23 Q Yeah. What I'm trying to find out is --
24 what you said a minute ago was that there are
25 certain drug reactions that could look the same as

Janice D. Hayward, RMR
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1 this mold reaction.

2 A Yes.

3 Q I asked you what your opinion was. You
4 told me your opinion was that the mold caused the
5 problem. But I want to talk about --

6 MS. CANADAY: Objection to the
7 characterization.

8 BY MR. ROBINSON:

9 Q -- that you told the jury that there's a
10 possibility that there could be a drug reaction. So
11 what I want to know is, were there any drugs that
12 you saw in her medical record that could have caused
13 this reaction?

14 A The patient was placed on steroids in
15 order to quiet down this terrific reaction in her
16 body. Whenever you take a steroid, what you do is
17 you compromise your immune system to being invaded
18 by everything that's out there. And that's why when
19 you listen to the commercials on television,
20 especially for the psoriatic drugs, it will warn you
21 about that. So that was a very important point.

22 The second thing they did is
23 they put her on an antibiotic. When you go on a
24 systemic antibiotic, you increase the body to an
25 overgrowth of candida albicans which is a common

1 yeast. Yeast in terms of candida is part of the
2 normal flora of the human body. It actually is
3 reservoired in the large colon.

4 But I said before, most women --
5 and I hate to pick on the women, because if a woman
6 goes on a broad-spectrum antibiotic, she often will
7 develop a yeast vaginitis. But what men don't
8 realize is that we develop a chronic prostatitis and
9 it's also caused by yeast.

10 Q When she went on -- do you know when she
11 went on those antibiotics?

12 A When she did?

13 Q Yeah.

14 A Well, it was after she broke out with
15 that, so she exacerbated. If you remember, she
16 became much, much worse. And so their thought was
17 that it was not just the psoriasis, it was something
18 which was superimposed on top of it.

19 Q All right. So would it be your opinion
20 that the antibiotics could have caused her reaction?

21 A I think the antibiotics only intensified
22 because of its overgrowth of yeast.

23 Q I want to make sure we get this clear on
24 the record. Did she suffer this outbreak on her
25 skin before or after she took the antibiotics?

1 A I believe it was after.

2 Q Okay.

3 A They gave the antibiotics as a method of
4 trying to control what they were looking at.

5 Q Do you have any opinion as to whether the
6 rash Miss Doller experienced was painful?

7 MS. CANADAY: Object. Relevance.

8 A That's subjective.

9 MS. CANADAY: Calls for hearsay.

10 A I think if anybody looks at the
11 photographs of this patient, you can't help but
12 wince.

13 BY MR. ROBINSON:

14 Q Let me ask the question another way.
15 Excuse me. Did Miss Doller tell you that it was
16 painful?

17 A She didn't have to tell me that.

18 Q Okay. You mentioned in your report that
19 psoriasis is an ID disease. What's an ID disease?

20 A The word ID suggests that the cause of the
21 rash, for example, the skin is -- it's not on the
22 skin or in the skin, it's coming from somewhere
23 else.

24 In the case of psoriasis, what
25 we've learned is that human body mold, specifically

1 Epidermophyton and Trichophyton are often the
2 triggering cause of psoriasis. And that's fungi,
3 again, for example. So that's an ID disease and
4 psoriasis is a classic example of that.

5 Q You mentioned in your report that
6 Miss Doller moved out of the house. Have you formed
7 an opinion as to whether she should have moved out
8 of the house?

9 A Oh, my gosh.

10 MS. CANADAY: Objection. Relevance.

11 A Yes.

12 BY MR. ROBINSON:

13 Q What is your opinion?

14 MS. CANADAY: Lack of foundation.

15 A The description of what is described, for
16 example, and looking at the -- Doctor May's report,
17 the environmental assessment, is the most important
18 thing for a person to do when they are exposed to an
19 environmentally trigger which can make them sick is
20 to avoid it, to get away from it. She did the right
21 thing.

22 And the other thing she did that
23 was right, she took nothing with her except the
24 clothes on her back.

25 BY MR. ROBINSON:

1 Q When you have patients who are exposed to
2 an indoor mold problem, have you ever advised them
3 to move out of their house?

4 A Always.

5 Q Always?

6 A Yes.

7 Q Every time?

8 A Yes.

9 Q Okay. And that would be why?

10 A You ask why?

11 Q Yes. Why?

12 A Well, I sort of learned the hard way on
13 this. What you find is that it's extremely
14 difficult to clean up a contaminated house for mold.
15 We do remediation and we have experts who do this,
16 for example, and there are people who are able to
17 move back into their homes.

18 If you look at the literature in
19 this particular area, what they show is that it is
20 almost impossible to clean up an environment, and
21 therefore I made that suggestion.

22 But I learned the other way. I
23 had a patient whose home was remediated. The bank
24 gave them \$250,000 to remediate the house. They
25 remediated the whole house and she still couldn't

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1 live in it.

2 Q Is there any question in your mind
3 regarding what happened to Miss Doller?

4 A No.

5 MS. CANADAY: Objection.

6 BY MR. ROBINSON:

7 Q And to a medical -- to a reasonable degree
8 of medical certainty, tell the jury what caused Miss
9 Doller's extreme outbreak.

10 A Well, when you use the word outbreak,
11 you're specifically talking about her exfoliated
12 dermatitis.

13 Q Yes.

14 A But I would like to group that together
15 with the other three manifestations that she had.
16 When we talk about an environmentally triggered
17 disease, we're talking about a multisystem disorder.
18 It affects usually more than one system in the body.

19 In her case everybody is looking
20 at the skin, and -- but I want to sum up by saying
21 my opinion is that Miss Doller was injured by the
22 exposure to the moisture and the mold because she
23 fulfills almost all of the seven criteria of --
24 which has been established in making a diagnosis.

25 And that is, the first thing,

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1 was the agent to which she exposed capable of
2 causing the injury? The answer is yes. Well, how
3 do you know? If you look at the medical literature
4 which I'm telling you is voluminous, you will see
5 that mold can cause tremendous injury to the human
6 body.

7 Number two, was she actually
8 exposed and was it documented? I think that this
9 volume over here shows unequivocally that she has
10 been exposed.

11 And the third was, was the dose
12 adequate to cause the injury? Again, if you look at
13 Doctor May's assessment, for example, it was
14 excessive amounts of mold to which she was exposed.

15 The fourth criteria is, are the
16 sequelae of this original injury still present?
17 Now, I saw this patient eight months, nine months
18 after she left the exposure. She was already
19 significantly better. And when I saw her two years
20 later in 2013 of July, she was considerably better.

21 But there's no doubt in my mind,
22 for example, that there still is some residual
23 degree which primarily was with the neurocognition
24 for her. Her skin was absolutely clear.

25 Q What's neurocognition mean?

1 A The ability to think and to use your
2 brain, executive function, perform.

3 Q Okay. So back to my question which was,
4 to a reasonable degree of medical certainty --

5 A So we went through --

6 Q -- what caused her problem?

7 A So we went through four of the criteria.
8 The fifth criteria which is considered the most
9 important one is what is the temporality that the
10 injury actually occurred after the exposure showing
11 a true cause and effect relationship?

12 Well, there isn't any doubt in
13 terms of looking at the chronology of events that
14 this all began after she was exposed in that home.

15 And the sixth one is, what is
16 the association? How strong is it? In other words,
17 was more than one person affected? In her case I
18 only know of one person who was exposed and that was
19 Miss Doller.

20 And the last one, extremely
21 important, and that is what we physicians do every
22 single day. What is the differential diagnosis?
23 When you see a problem, are there other reasonable
24 possibilities? Could something else have happened
25 to cause what we were looking at?

1 When I look at the established
2 criteria for establishing causation and I look at
3 the history, I look at all of the laboratory, it is
4 my opinion that it was the moisture and mold which
5 is the primary cause of this patient's injury.

6 Q All right. Thank you, Doctor.

7 One other question on causation.
8 Can mold cause these kinds of injuries?

9 A That was the first criteria, and the
10 answer is absolutely yes.

11 Q All right. And you base that on?

12 A Well, I always said, when I'm teaching the
13 students they say, well, how do you know. The way
14 you know is you look at the medical literature, and
15 the medical literature is voluminous, and I mean
16 tens of thousands of papers.

17 Q All right. Thank you.

18 MR. ROBINSON: I have no further
19 questions at this time.

20 EXAMINATION

21 BY MS. CANADAY:

22 Q Doctor, my name is Stacey Canaday. We've
23 met before.

24 How much are you being paid to
25 be here today?

1 A I know that my normal fee is \$1500 an
2 hour.

3 Q Okay.

4 A And I don't know that that's what I'm
5 being paid. Should be. But that's the answer to
6 your question.

7 Q Somewhere around there then?

8 A Yes.

9 Q \$1500 an hour for you to sit here and
10 provide your opinions, correct?

11 A Yes.

12 Q Okay. All right. Now, when you get a
13 history from a client, that's anecdotal history,
14 right?

15 A Well, you call it anecdotal, but it is the
16 only history, for example, that has any validity.

17 Q Okay. So, for example, if a patient or a
18 client is giving you information out of order and
19 not necessarily correct, if you have the opportunity
20 to look at other medical records, does that in any
21 way impact your review or treatment of a client?

22 A Well, one of the criteria that we talked
23 about was the fact it wasn't documented, for
24 example. So in terms of the environmental analysis,
25 it was documented.

1 In terms of the biomarkers of
2 the effect of the exposure which would be recorded
3 by physicians, for example, this -- half of this
4 book is medical records that deal with her
5 examination by other physicians, dermatologists and
6 internal medicine doctors.

7 So the answer to your question
8 is it's important, yes, but I think that the records
9 validate my opinion.

10 Q Okay. How did Mrs. Doller get to you?

11 A Was referred by Attorney Robinson.

12 Q By Attorney Robinson. Okay.

13 And your role in this litigation
14 was for you to perform a comprehensive medical
15 evaluation of injury resulting from exposure to mold
16 in her home, is that right?

17 A Yes.

18 Q Okay.

19 A The purpose of my seeing the patient was
20 to support the attorney in terms of the injury.

21 Q Okay. And so you're already assuming
22 there's an injury, is that right?

23 A Well, not necessarily. I've seen
24 patients, for example, where I disagreed.

25 Q Okay. But you were assuming in this case

1 that there's already an injury present?

2 A Yes.

3 Q Okay. And so your job then was to find
4 information to support the fact that an injury had
5 occurred?

6 A That's correct.

7 Q Okay. All right. You're looking for a
8 cause, find something to have caused or support your
9 theory that some -- that an injury actually
10 occurred, is that correct?

11 A Yes.

12 Q And you've testified that you rely on your
13 years of medical practice, your schooling, and
14 medical literature to support your theory that mold,
15 specifically the mold found in Mrs. Doller's home,
16 actually are able to cause -- to cause the issues
17 she came to you for, is that right?

18 A Yes.

19 Q Okay. Have you or are you familiar
20 with -- excuse me. Have this marked as an exhibit.

21 (Marked for identification was Defendants'
22 Exhibit 1.)

23 BY MS. CANADAY:

24 Q Doctor, are you familiar with Damp Indoor
25 Spaces and Health prepared by the Institute of

1 Medicine?

2 A I am.

3 Q You are? Okay.

4 MR. ROBINSON: May I see that,
5 please?

6 MS. CANADAY: Absolutely.

7 MR. ROBINSON: Thank you.

8 MS. CANADAY: I actually have a copy
9 for you. Actually I don't. Take a look
10 at that.

11 BY MS. CANADAY:

12 Q And have you read that document?

13 A I have. What edition is that, 2004?

14 MR. ROBINSON: I don't have any
15 objection to that.

16 MS. CANADAY: Move to enter into
17 evidence.

18 BY MS. CANADAY:

19 Q Have you look at that.

20 A Yes.

21 Q Okay. And if you look, Doctor, at that
22 second page, it appears to be a table, is that
23 accurate?

24 A Yes.

25 Q And it reads at the top essentially any

1 conditions that could be caused by mold. And what
2 does that tell us there?

3 A Well, what they have done is they have
4 broken it down into three categories. One is
5 sufficient evidence of causal relationship. The
6 second is sufficient evidence of an association.
7 The third was limited or suggested evidence of an
8 association. And the fourth was inadequate or
9 insufficient evidence to determine whether an
10 association exists.

11 And so the purpose of your
12 presenting this to me is to show that it talks about
13 skin symptoms, inadequate or insufficient evidence
14 to determine whether an association exists. Now,
15 this paper was written in 2004, the first one that
16 you're quoting over here. It is now 2015, 11 years
17 later.

18 And I have seen this because
19 the few depositions that I do, they seem to like to
20 present this particular thing to show the doctor you
21 don't know what you're talking about.

22 Q Okay. But, Doctor -- and I'll ask you the
23 questions, so if you could just provide me an answer
24 when I ask them.

25 But this is still being quoted

1 today, isn't it?

2 A Yes, it is being quoted.

3 Q Okay. All right. How about -- I'm going
4 to show you another document. It's American College
5 of Medical Toxicology. Have you heard of that?

6 A Yes.

7 Q Are you familiar with its report dated in
8 I believe it's June 2006?

9 A I don't know the specific one you're
10 addressing.

11 MS. CANADAY: May I mark this,
12 please?

13 (Marked for identification was Defendants'
14 Exhibit 2.)

15 MR. ROBINSON: I don't have any
16 objection to that.

17 BY MS. CANADAY:

18 Q Have you read that article before, Doctor?

19 A This was the support for the position
20 paper.

21 Q Correct.

22 A Yes.

23 Q You're familiar with this document?

24 A Yes.

25 Q Are you also familiar with it's -- with

1 the contents of that article?

2 A With the what?

3 Q The contents of this particular article?

4 A Yes.

5 Q Okay. And essentially the Institute of
6 Medical Toxicology supports the findings of the IOM
7 paper, correct, Institute of Medicine paper, is that
8 right?

9 A I want to just read for the record --

10 Q Well, I haven't asked you to read anything
11 for the record, so let me have that back.

12 A No, but I think it's important to answer
13 your question.

14 Q I haven't asked you a question.

15 A Well, it is important, okay?

16 Q Go ahead.

17 A It says, "The American Academy of Asthma,
18 Allergy, and Immunology has addressed some of these
19 issues in their recent position statement on health
20 effects from mold exposure." In 2015 they have
21 recalled the position paper because it was not
22 evidence based. It was prejudicial.

23 Q Are you reading that, Doctor?

24 A Right from here.

25 Q No, you're reading about the 2015 in that

1 paper?

2 A I'm saying that it's now 2015 and the
3 position paper's been recalled. It's recalled
4 because it was wrong.

5 Q We're talking about American College of
6 Medical Toxicology, and nowhere in here is there a
7 reference to the American Academy of Allergy and
8 Immunology about anything being recalled, is there?
9 So what you have just stated --

10 A It was written before.

11 Q Exactly. So that's not in this document,
12 is it?

13 A No.

14 Q But what is in this document are
15 statements indicating that there is no causal
16 relationship between mold and any of the symptoms
17 that you have diagnosed Miss Doller with, is there,
18 is that right?

19 A The only way I can answer that is I
20 appreciate it in the presidential debates, you know,
21 when the Governor of New Jersey said to Senator
22 Paul, you could bloviate all you want when you're
23 sitting in a committee, but I was out there in Sandy
24 Hook with all of these miserable sick patients who
25 were exposed to moisture and mold.

1 MS. CANADAY: Move to enter
2 Defendants' Exhibit 2 into evidence.

3 May I have another sticker,
4 please.

5 (Marked for identification was Defendants'
6 Exhibit 3.)

7 BY MS. CANADAY:

8 Q I show you Defendants' Exhibit 3.

9 A Yes.

10 Q And we discussed this document this
11 morning, didn't we?

12 A Yes.

13 Q And this document is a CDC article
14 regarding mycotoxin and its testing, right?

15 A Yes.

16 Q Okay.

17 MR. ROBINSON: May I see that,
18 please?

19 MS. CANADAY: Absolutely.

20 BY MS. CANADAY:

21 Q This particular article addresses the
22 validity of mycotoxin testings and the results, is
23 that correct?

24 A Yes.

25 Q And it says essentially that such testing

1 is not recommended and is of little validity, is
2 that right?

3 A That's what it says.

4 Q And you disagree with that?

5 A Totally.

6 Q Of course.

7 A But I want to go further because since you
8 brought it up, let's go over what I said to you this
9 morning.

10 Q Doctor, there's not a question pending,
11 and I haven't asked for anything at this point.
12 Thank you, though.

13 (Marked for identification was Defendants'
14 Exhibit 4.)

15 BY MS. CANADAY:

16 Q I show you what I have marked as
17 Defendants' Exhibit 4.

18 A I'm satisfied because you asked me the
19 question do I agree with this. The answer is no, I
20 do not agree with it.

21 Q Thank you.

22 A You just didn't give me an opportunity to
23 answer why.

24 MS. CANADAY: Move to strike as
25 nonresponsive.

1 BY MS. CANADAY:

2 Q Doctor, I'm showing you what's been marked
3 as Exhibit 4.

4 MR. ROBINSON: I'm going to object to
5 this. I don't know where it comes from.
6 It doesn't appear to be in a peer-reviewed
7 magazine. I don't see a reference to
8 anything like that, so at this point in
9 time I'm objecting to it.

10 BY MS. CANADAY:

11 Q Doctor, what I have shown you as
12 Defendants' Exhibit 4 --

13 A Yeah, this is the source that you talked
14 about before.

15 Q Yes, sir. If you review at the top, it
16 reads --

17 A June of 2015.

18 Q Yes, sir. And this is -- I'll represent
19 to you that this is a document from the UpToDate
20 source, and we talked about this this morning. It
21 is, again, UpToDate service that you -- I think you
22 said you were familiar with but you do not subscribe
23 to it, is that accurate?

24 A That's correct.

25 Q Okay. So it's fair to say that you

1 probably have not seen this particular document
2 since it comes from that source, is that right?

3 A Yes.

4 Q Okay. However, I'll represent to you that
5 this is an article written by the authors set forth
6 at the top discussing the impact of mold on human
7 health.

8 A And who is Robert Bush? He was part of
9 that position paper that was written by the American
10 College of Allergy and Immunology. Okay? I want to
11 point out that in my response to the journal in a
12 letter to the editor regarding that position paper
13 was -- is what papers did you review? I notice that
14 you had 91 references on your position paper, but my
15 paper had 171. So what references did you leave
16 out? Were you prejudicial in terms of the
17 references that you made?

18 And I specifically said that,
19 and that was expected by the editors of the journal
20 to publish it and I still believe that. This is
21 prejudicial, and I don't understand why. You go to
22 a physician, you want an honest answer, not be
23 involved in some political thing because he said/she
24 said.

25 MS. CANADAY: Move to strike as

1 nonresponsive.

2 BY MS. CANADAY:

3 Q Doctor, you have opined for Mr. Robinson
4 today that you have an opinion regarding causation
5 of Mrs. Doller's alleged injuries which you assumed
6 she had when she came in the door. Have you
7 discounted --

8 MR. ROBINSON: Object to the form.

9 BY MS. CANADAY:

10 Q Have you considered -- have you considered
11 and discounted other causes of Mrs. Doller's
12 psoriasis?

13 A Well, we can go back to the medical
14 literature again and ask what is the cause of
15 psoriasis. But you heard me say a few minutes ago
16 to Attorney Robinson, I do not believe that what we
17 were seeing was just simple psoriasis. I think that
18 this was either exacerbated by the toxic mold, for
19 example, or it's another reaction. And my proof of
20 that is the fact that when you look at the biopsy
21 reports, the pathologist says, I cannot really rule
22 out a drug reaction, for example.

23 So when it comes to
24 histopathology, you're looking at a piece of tissue.
25 But you can't really always tell what's causing it

1 unless, for example, had he stained it for the
2 presence of certain things, he might be able to find
3 an organism. But even that doesn't prove that that
4 organism caused that reaction. It could have just
5 been secondarily infected, for example.

6 Q But we do have at least three biopsies
7 from MUSC?

8 A Yes.

9 Q As well as from Doctor Bundy. Did you
10 review records from Doctor Bundy?

11 A Yes. That's what that is.

12 Q And all -- all of these biopsies confirm
13 the presence of guttate psoriasis, correct? Is that
14 correct?

15 A Let me answer that a different way.

16 Q No, I just need a yes or no. Then you may
17 explain.

18 A Okay. Well, the answer is no. If you
19 look at this which is so interesting, the changes
20 identified in this biopsy are subtle. My God, if
21 you saw this lady, trust me, they weren't subtle.

22 MS. CANADAY: Move to strike as
23 nonresponsive.

24 A But may represent those of a subtle lesion
25 of guttate psoriasis, subtle. An unusual drug

1 eruption as one may see in acute generalized
2 erythematous pustulosis cannot be entirely ruled
3 out, so. And he says PSS stain is negative for
4 fungal elements because this is an ID reaction. We
5 agree. Okay? So --

6 BY MS. CANADAY:

7 Q What's the date of that?

8 A November of 2011.

9 Q And did you review the biopsies from
10 December of 2011?

11 A Yeah, I did.

12 Q Those essentially confirm that it's
13 guttate psoriasis, is that right?

14 A But my point to you is that it says
15 represents those of a subtle lesion.

16 MS. CANADAY: Move to strike as
17 nonresponsive.

18 A Now, when something is subtle, it means
19 you're sort of sitting on the fence. It looks like
20 this, but it's not unequivocal.

21 MR. ROBINSON: Doctor, you have to
22 answer her question first. Then you can
23 go ahead and explain. Okay?

24 A Okay. The answer is yes. In the
25 differential diagnosis of the histopathologist, the

1 answer is he couldn't be sure, so he believes that
2 it is psoriasis.

3 BY MS. CANADAY:

4 Q He believes it's psoriasis, and, in fact,
5 later doctors diagnosed it as guttate psoriasis, is
6 that right?

7 A Yes.

8 Q Okay. Do you -- so you -- well, strike
9 that.

10 Do you know what can flare,
11 cause flares for psoriasis?

12 A Any stress.

13 Q Stress?

14 A Yes.

15 Q Correct?

16 A Yes.

17 Q Strep, strep virus can cause it, right?

18 A Strep is not a virus, but it's --

19 Q Beg your pardon. Strep --

20 A No. What it is with the strep that you
21 react, for example, it's a superimposed secondary
22 infection onto the injured skin.

23 Q And, in fact, Mrs. Doller was prescribed a
24 Z-Pak and responded?

25 A Yes.

1 Q Correct?

2 A Yes.

3 Q Would a fungus respond to an antibiotic?

4 A Would a fungus -- no, not to an
5 antibiotic, it would not.

6 Q Yet you still hold the opinion that a
7 fungus is responsible for exacerbating this
8 condition?

9 A Well, the other point that I made, in
10 fairness, was the temporality which was that when
11 she is responding to the antibiotic, she's also away
12 from the source of the exposure. And that is the
13 single most important thing.

14 If you get away from it -- it's
15 like if you break out with hives from eating lobster
16 and you're no longer eating the lobster, you don't
17 break out with hives anymore. It's the same kind of
18 a relationship.

19 Q Doctor, let's talk about your board
20 certifications. You testified that you had once
21 been board certified as a pediatrician, is that
22 accurate?

23 A Yes.

24 Q Okay. You're not anymore?

25 A No.

1 Q Okay. And you are a member of the
2 American College of Environmental Medicine, is
3 that --

4 A Well, I'm a member and a fellow with the
5 American -- it's the American Academy of
6 Environmental Medicine.

7 Q Thank you for correcting me.

8 A Yes.

9 Q Yes. American Academy of Environmental
10 Medicine. Thank you.

11 The environmental medicine, not
12 a recognized specialty of the American Board of
13 Medical Specialties?

14 A To be accurate, that is correct.

15 Q Thank you.

16 A That's because occupational medicine has
17 assumed that part of the specialty.

18 Q And the American College of
19 Environmental -- excuse me, American College of
20 Occupational and Environmental Medicine, are you a
21 member of that organization?

22 A Yes.

23 Q But you are not board certified?

24 A No.

25 Q Okay. But you could be. You have chosen

1 not to be?

2 A Well, I couldn't at my age.

3 Q You aren't prohibited?

4 A Oh, no. No.

5 Q Okay. You just chose not to be?

6 A But it would have required me to take a
7 three- or four-year residency when I was over 50
8 years of age.

9 Q Okay. But you are not board certified in
10 occupational environmental medicine?

11 A But I am board certified by the American
12 Academy of Environmental Medicine.

13 Q Which is not a recognized --

14 A Well, when you say recognized, you asked
15 that question before, and --

16 Q I'm asking again.

17 A -- what I said is what is the purpose of
18 an academy, for example, is to be recognized by
19 one's peers.

20 MS. CANADAY: Move to strike as
21 nonresponsive.

22 BY MS. CANADAY:

23 Q Doctor, talking about being recognized by
24 your peers, you wanted two articles that you had
25 written -- you've written two articles with regard

1 to mold exposure on humans, is that right?

2 A Right.

3 Q Okay. Two articles. First one was
4 written in 2004, correct?

5 A Right.

6 Q Journal of Nutritional and Environmental
7 Medicine?

8 A Yes.

9 Q What's the impact rating of that journal,
10 do you know?

11 A I do not know.

12 Q Did you know at the time?

13 A No.

14 Q It's not in circulation anymore?

15 A But it's a peer-review journal and it's
16 still available, for example, at the Library of
17 Medicine.

18 Q But it's not in circulation?

19 A Yes.

20 Q Okay. And then your second article was
21 written in 2006, is that right?

22 A Yes.

23 Q Have you published since then?

24 A No.

25 Q Other than your own article, what other

1 evidence, medical, scientific, do you have to
2 support your theory that mold causes injury?

3 A You know, when I wrote this report, I left
4 out something which I normally put in with all of my
5 reports, and that is that based upon the literature,
6 and I cite five or six very important review papers
7 on mold, and as I pointed out earlier, the very
8 first reference that I put down is my own which was
9 written with Martha Stark, Will Rea and Curtis and
10 Vetter, for example. And I pointed out that there
11 were 171 references there.

12 So when you say, well, where is
13 the literature, well, I have 171 references. When
14 you look at Janette Hope who wrote a very nice paper
15 on mold, for example, she had two hundred and I
16 think seventy-three references; and then my friend
17 Neal Speight who wrote an excellent review paper on
18 mycotoxicity, for example, and he got's a hundred
19 and some odd.

20 Then one of the professors who
21 took issue with the position paper, the American
22 College of Allergy and Immunology's position paper
23 is a fellow from the University of Kansas, and he
24 wrote a scathing letter. And he had 81 references
25 that he cited in that one letter that he had

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1 written, for example.

2 So when you say where is the
3 evidence, the evidence is there if you choose to
4 read it and if you choose to choose those papers.
5 You know, everything in medicine -- we doctors are
6 so egotistical that unless, you know, I personally
7 have observed this, it's not valid. Trust me, a lot
8 of the medical literature are written by very
9 well-qualified people.

10 Q Okay. And I've shown you four articles,
11 one referenced by CDC, an article written from the
12 CDC dated 2015. I've shown you an article -- it's
13 actually, I think, a book.

14 A It's 2004.

15 Q Institute of Medicine that's still cited
16 today. American College of Medical Toxicology,
17 again, CDC, and an article that's contained in a
18 medical source entitled UpToDate, all of which
19 disputes and indicate that there is no evidence to
20 support your theories; however, you have cited to
21 your own article.

22 Other than your own article, do
23 you have any other treatises, any other
24 peer-reviewed articles you can point to?

25 A I just told you, I listed the first paper

1 when I put down support for my position on my review
2 paper on the adverse effects of indoor mold. This
3 was very nicely put together in an answer to a lot
4 of the questions, and there were 171 references in
5 there. Those 171 references were not written by
6 Allan Lieberman. They were written by scholars and
7 scientists in the community that were very well
8 recognized.

9 When you sum total all of the
10 papers that exist in the National Library of
11 Medicine concerning moisture and mold, it's
12 astronomic. Okay? It depends on -- every case
13 always has somebody who is for it and against it,
14 and you try to choose what you can in order to
15 support it.

16 The only thing I can say is
17 you'll have to leave it up to a jury to take a look
18 at our patient and take a look at the house from
19 Doctor May's report and you tell me if you could get
20 sick from living in a house like that.

21 MS. CANADAY: Move to strike as
22 nonresponsive.

23 BY MS. CANADAY:

24 Q Doctor, how did you -- tell me how you
25 were able to eliminate a strep infection as

1 exacerbater, to use your word, of Mrs. Doller's
2 psoriasis?

3 A Oh, I didn't.

4 Q Okay. You haven't?

5 A No, no, no. I haven't, no.

6 Q How about were you able to exclude stress
7 as a cause of her exacerbation?

8 A The only thing -- the only thing that was
9 doing was adding insult to injury.

10 Q Okay. How about the fact that this
11 particular flare started well before November of
12 2011?

13 MR. ROBINSON: Object to the form.
14 Object to the characterization of the
15 evidence.

16 BY MS. CANADAY:

17 Q Did you -- were you aware of that, Doctor?

18 A What?

19 Q That her flare had been an ongoing issue
20 for her?

21 A Yes. From when though? While she was
22 living in the house.

23 Q Do you know?

24 A Yes, in the house. I can tell you
25 exactly. February of 2011. Not '12. She moved

1 into that house in December of 2010. She
2 exacerbates in February of 2011 which was the fourth
3 month of moving into the house. And it begins with
4 arms, feet, and swelling, rashes of psoriasis, and
5 she sees her internist. In September of 2011, she
6 becomes much worse and is seen at the Medical
7 University of South Carolina.

8 By the summer of 2011, she's
9 exhausted. She now has, and they're making a
10 diagnosis of exfoliative dermatitis. In addition,
11 which we didn't talk about, was that her hair was
12 falling out in clumps. That's important. And also
13 memory and concentration and weight loss. All of
14 these are cardinal signs especially of Stachybotrys.
15 But hair loss was reported in my series of 48
16 patients in something like 20 -- 24 percent of the
17 patients was hair loss.

18 What we know about Stachybotrys
19 is that it inhibits the synthesis of proteins, and
20 the patients notoriously lose weight. She lost down
21 from 96 pounds to 80 pounds in October of 2011.

22 MS. CANADAY: Move to strike as
23 nonresponsive.

24 BY MS. CANADAY:

25 Q Doctor, this is anecdotal, correct?

1 A This is the medical history.

2 Q Her, her telling you that, is that right?

3 A Who should we ask?

4 Q Well, perhaps we could refer to her
5 medical records.

6 A Go ahead. I don't see anything that
7 refutes any of this.

8 Q Did you have -- did you notice any other
9 mention of hair loss to any other physician?

10 A No, I did not that I could recall.

11 Q Do you note any other mention of weight
12 loss to any other physician other than you?

13 A I don't recall that.

14 Q Okay. You talked about the tests that you
15 performed. They were all negative, weren't they?
16 The allergy test was negative. The IgG test, the
17 first one, was negative, and the third one was
18 negative too, right? All of them were negative?

19 A No, they're not negative. Mycotoxins were
20 positive.

21 Q I'm talking about the three. The allergy
22 skin prick test --

23 A Yes.

24 Q -- that was the provocative
25 neutralization.

1 A Yes.

2 Q Negative. For all the molds that you
3 thought she was exposed to, right?

4 A Except for the Chaetomium.

5 Q Okay. You didn't test for dog or pet --

6 A I did not.

7 Q -- nor pollen --

8 A No, I did not.

9 Q -- or any other dandruffs, something like
10 that?

11 A I only wanted to see if there was an
12 association with those molds to which she was
13 specifically exposed.

14 Q Okay. Because there could be another
15 source of -- if, in fact, what she had was an
16 injury, there could be another source for it,
17 couldn't it?

18 A It can be.

19 Q But we don't know because you didn't test
20 for it?

21 A It can be.

22 Q Okay.

23 A But I'm going to go back and rely again on
24 the seven criteria of Sir Bradford Hill because
25 that's what physicians trained in occupational

1 medicine and what the courts demand of us. As
2 somebody said when we were taught by attorneys like
3 you is the Court cannot wait for the definitive
4 science to prove a particular point. They want to
5 know what your opinion is, Lieberman, based upon
6 your education, training and experience. Okay?

7 And that's -- we only have to be
8 50.1 percent probable that this is our opinion. In
9 this particular case, I am much more than
10 50.1 percent probable that this is caused by her
11 exposure to moisture and mold.

12 Q Okay. Because you can say that over
13 50 percent, that you can exclude strep as having
14 caused this?

15 A Not excluding it. In other words, it's
16 part of it. Superimposed.

17 Q And, again, let's be clear that fungus
18 doesn't respond to antibiotics, is that right?

19 A No. But avoidance does.

20 Q Fungus doesn't respond to antibiotics,
21 right?

22 A I agreed with that.

23 Q Okay. And I've shown you multiple sources
24 that just do not corroborate your theory?

25 A But when she picks up wood from tearing up

1 the floor, for example, and she has an immediate
2 reaction, for example, there's nothing better than
3 that in terms of a cause and effect relationship to
4 establish the cause.

5 MS. CANADAY: Move to strike as
6 nonresponsive.

7 BY MS. CANADAY:

8 Q Again, anecdotal, correct, anecdotal to
9 you?

10 A Everything is anecdotal.

11 Q Do you practice more anecdotal than
12 evidence-based medicine?

13 A No. No. It's just that when a patient
14 comes to see me, I believe what the patient is
15 telling me.

16 Q But you also, when you have a negative
17 test, somehow, create it to be a positive test, is
18 that right?

19 A I explained to you this morning, I think
20 we should emphasize this again, if you would look at
21 the environmental assessment that was done on this
22 house and the description of two inches of water
23 underneath the bedroom floor where, because she was
24 so sick during that period of time, she's in bed a
25 whole lot, so being exposed especially to the

1 mycotoxins which are capable of permeating that
2 floor, for example, there is no way you can come to
3 any other conclusion, for example, than this patient
4 was exposed to adequate amounts of mold and
5 mycotoxins.

6 And the literature is clear,
7 they can cause all of those things despite what the
8 position of the National Academy of Medicine says.

9 MS. CANADAY: Move to strike as
10 non-responsible (sic).

11 BY MS. CANADAY:

12 Q So everybody but Doctor Lieberman is
13 wrong?

14 MR. ROBINSON: Object to the form.

15 A Well, don't just say Doctor Lieberman.
16 Would you like to look at all the people who agree
17 with me?

18 BY MS. CANADAY:

19 Q Well, at this point we haven't seen
20 anything, but we have seen respected bodies,
21 colleges, CDC, Institute of Medicine --

22 A I'm not -- I'm not disrespected. As a
23 matter of fact, I was recognized by the state of
24 South Carolina for 50 years of service to the state
25 of South Carolina as a physician providing services

1 to sick people here.

2 MS. CANADAY: Move to strike as
3 nonresponsive.

4 BY MS. CANADAY:

5 Q Doctor, talk about the mycotoxins. And
6 you reference them in these articles as well.
7 Mycotoxins, are they airborne?

8 A Well, they become airborne on the
9 particles which are breaking out of the spore. And
10 as I explained to you, the average spore contains
11 250 to 500 particles which are 0.03 microns in size
12 which means that they become easily airborne. They
13 are carrying the mycotoxin into your airway.

14 Q And we talked about this again earlier,
15 but let's talk about it again. First of all, only
16 certain types of fungus produce mycotoxins, right?

17 A We agreed that practically all molds
18 produce mycotoxins.

19 Q We didn't agree. But you said that, is
20 that right?

21 A Well, because we use the word mycotoxin,
22 there are metabolites. All molds are giving off
23 these metabolites, but not every single one of these
24 are considered toxic to the human body.

25 Q Fair enough. So, only certain funguses

1 create mycotoxins that are harmful to humans, is
2 that right?

3 A Yes.

4 Q Okay. And only certain strains of pen --
5 Penicillium, Aspergillus, Stachybotrys can produce
6 mycotoxins, correct? Is that right?

7 A Yes.

8 Q Okay. And we don't know that we had those
9 strains, do we?

10 A Well, the thing I know is that I have
11 measured and she's got three times the level of
12 mycotoxins which are trichothecenes which are
13 capable of causing all of the injuries.

14 Q Right. But to answer my question is that
15 we don't know that what was allegedly in the house
16 was capable --

17 A Well, where did it come from?

18 Q -- was capable -- let me finish my
19 question -- was capable of producing any sort of
20 mycotoxins, is that right?

21 A No, that's not true.

22 Q That's not true? We just established
23 that.

24 A No. We know that Stachybotrys is capable
25 as a group of producing primarily trichothecenes.

1 There are two other groups of mycotoxins,
2 ochratoxin, aflatoxin, and the third is
3 trichothecene. Only Stachybotrys, Fusarium, and
4 Trichoderma are capable of producing usually these
5 trichothecenes.

6 When you measure the
7 trichothecenes in her urine, they are in her urine.
8 Where did they come from? They came from here in
9 the house. That's where they came from.

10 Q You can -- despite all the literature --

11 A I don't care what the species argument
12 that you're talking about.

13 Q Okay. So it doesn't matter. So you're
14 telling me that scientific -- that scientific
15 literature is wrong but nobody should have to --

16 A No.

17 Q -- speciate the mold to determine what the
18 mycotoxin is?

19 MR. ROBINSON: Object to the
20 question.

21 BY MS. CANADAY:

22 Q Is that what you're telling me?

23 A You're drawing the wrong conclusion from
24 the information. It was not speciated. But the
25 mere fact is that it was in her urine as a

1 trichothecene, you know that it was the right kind
2 of mold to produce the trichothecene. It couldn't
3 have got there otherwise.

4 Q But you can ingest it, can't you? It
5 occurs naturally, doesn't it?

6 A Trichothecenes?

7 Q Right.

8 A Yes.

9 Q Okay. And we talked about that earlier.
10 Could be from beverages?

11 A From my experience when it comes to the
12 mycotoxicity of the foods, for example, ochratoxins
13 and aflatoxins are the primarily, the large group of
14 mycotoxins that produce contamination in food.
15 They're negative in her. They didn't come from
16 food.

17 Q We're not talking about that. I'm talking
18 about trichothecenes. And we talked about earlier,
19 they also occur in food?

20 A Well, if they do, not to the same degree
21 that they occur airborne in terms of its danger.

22 Q And we don't know how the Stachy -- or if
23 it became airborne, do we?

24 A You know, I told you before that I'm
25 basing my position on my education, training and

1 experience. So what is my experience? Once we got
2 to seeing mold cases, we always saw mold cases. We
3 just never saw the epidemic of mold cases that we
4 are seeing now, for example.

5 If you are doing these mycotoxin
6 panels, how often did you see these mycotoxins? Not
7 very, very often. They almost always correlated
8 with the environmental assessment that these
9 patients were literally exposed.

10 I could do your level, for
11 example, right now, and I would bet, not knowing
12 anything about your home or your office, that you
13 most likely do not have trichothecenes in your
14 urine.

15 MR. ROBINSON: We need to stop and
16 change the --

17 MS. CANADAY: Move to strike.

18 MR. ROBINSON: We need to stop and
19 change the tape.

20 THE VIDEOGRAPHER: This will conclude
21 media one of Doctor Allan Lieberman. Off
22 the record at 1309.

23 (Recess.)

24 THE VIDEOGRAPHER: This is the
25 beginning of media two of Doctor Allan

1 Lieberman. On the record 1309.

2 BY MS. CANADAY:

3 Q And, again, because we're talking about
4 mycotoxins, Doctor, they're not a recommended --
5 it's not recommended to perform that test, is that
6 right?

7 A By who?

8 Q By the CDC, by the toxicology college, by
9 generally accepted medical community, is that right?

10 A Okay. But I told you, Counselor, that
11 when you presented this CDC paper, you went into
12 very dangerous territory for the simple reason that
13 the second page of this report that you're quoting
14 says the CDC does not recommend biologic testing of
15 persons who work or live in water-damaged buildings
16 nor routine environmental sampling for mold.

17 Well, if you don't do these
18 things, then how do you know the patient has been
19 exposed. And they don't want to know that the
20 patient is exposed. This represents litigation of
21 monumental proportions.

22 (There was a phone interruption.)

23 THE REPORTER: This represents what?

24 This represents what?

25 THE VIDEOGRAPHER: Off the record,

1 1311.

2 THE VIDEOGRAPHER: Back on the record

3 1311.

4 BY MS. CANADAY:

5 Q Okay. Doctor, you have -- again, we
6 talked about your -- the negative tests, negative
7 test results for the first IgG test, the IgG
8 subclasses which were all within normal limits, and
9 the allergy skin prick tests that were negative.
10 And you said with the exception of the --

11 A Chaetomium.

12 Q -- Chaetomium. But we didn't test for pet
13 dander or any like outside pollens, anything like
14 that, is that right?

15 A That's right.

16 Q Okay. Even though they were found in her
17 home, right, didn't test for any of those?

18 A No.

19 Q Okay. So can't exclude those as potential
20 causes, right?

21 THE REPORTER: Can't exclude --

22 BY MS. CANADAY:

23 Q -- exclude them as potential causes,
24 right?

25 A Yes.

1 Q Okay. And your test for her alleged
2 neurological disorder consisted of taking a history
3 which you considered she wasn't able to provide to
4 you in a chronological order, is that right?

5 A Yes.

6 Q Okay. And the DSM test that you performed
7 with the allergy test also was actually, she
8 actually had a pretty good result because they were
9 all above her baseline, right?

10 A Yes.

11 Q Okay. And did you consider her smoking
12 when making your diagnosis? Did that exacerbate any
13 conditions?

14 A It certainly could have.

15 Q Okay. More likely than not that it would
16 have exacerbated her cause?

17 A Exacerbate her what, her psoriasis or it
18 exacerbated her respiratory distress?

19 Q You tell me.

20 A I think that this is valid. Every
21 attorney has a right to always bring that up, but
22 that's not the cause of this lady's problem.

23 Q And you're saying it's not the cause of
24 any respiratory issues or skin disorders or any
25 alleged neurocognitive loss, right, is that what

1 you're saying?

2 A Well, it certainly is a cause of
3 respiratory, yes.

4 Q I'm sorry. It is?

5 A It is, yes.

6 Q It is, okay. Primary cause?

7 A Well, it can be.

8 Q Well, is it here?

9 A I'm not sure.

10 Q Okay. But you were paid to determine
11 that, right?

12 A Yeah, but this is the lady who --

13 MR. ROBINSON: Object to the form of
14 the question.

15 A This is a lady historically who's scuba
16 diving, you know, and she's allegedly got COPD
17 secondary to smoking. I'm sorry.

18 BY MS. CANADAY:

19 Q Does she have COPD? Did you perform any
20 spirometry to determine that?

21 A There's a chest x-ray here which shows
22 something which suggests COPD.

23 Q Okay. So what -- I'm not sure what
24 you're --

25 A I'm just saying that anatomically what

1 you're looking at is one thing and functionally, for
2 example, she's scuba diving. So you tell me how
3 much respiratory distress she could possibly have.

4 Q Well, scuba diving apparently is, what,
5 years ago. But now she's a 40-plus-year smoker,
6 right?

7 A Yes.

8 Q So 40-plus-year smoker.

9 A Forty years.

10 Q And pack a day at least and with some
11 fudge factor thrown in, maybe more than that, right,
12 and that's not going to have an impact on her
13 respiratory issues?

14 A Yes, it will. But it's not germane
15 specifically to this particular patient's injuries.

16 Q Why is that?

17 A Well, because the things we're looking at
18 is neurocognition. We are looking at immune
19 suppression and we are looking at an exfoliative
20 dermatitis. Although I agree with you 100 percent.
21 People who smoke just do not realize what they're
22 doing to their bodies. You have an absolute right
23 to question it, and I agree with you 100 percent.

24 Q So she doesn't have any --

25 A But those are not the causes of her

1 particular injuries.

2 Q She doesn't have any -- so you're not
3 including among her injuries any sort of respiratory
4 issues?

5 A I put it down, it's in the medical
6 diagnoses historically, but the answer is no. Right
7 now the answer is no.

8 Q And right now because you saw her in July
9 of 2013 --

10 A And the patient is also --

11 Q Let me finish my question. Then you can
12 answer.

13 A -- so much better.

14 Q In July of 2013, in fact her memory was
15 back according to your record, right?

16 A That's correct.

17 Q So that neurocognitive issue --

18 A Is better.

19 Q Is much better?

20 A Yes.

21 Q Right. And the --

22 A So her avoidance of the mold.

23 Q But we can't really eliminate any other
24 causes for any -- because we don't even know what
25 kind of tests were performed to determine the

1 neurocognitive issues, right?

2 A So I will agree with everything you just
3 said.

4 Q Okay.

5 MS. CANADAY: Doctor, I think I
6 have -- that's all I have for you. If
7 there's anything Mr. Robinson has, I may
8 have to follow up. Thank you.

9 EXAMINATION

10 BY MR. ROBINSON:

11 Q I just have a few questions, Doctor. Did
12 you prescribe anything for Mrs. Doller when you saw
13 her?

14 A Yes.

15 Q What did you prescribe her?

16 A One was avoidance. Number two was a
17 compound called chlorophyllin which was to bind with
18 the mycotoxins and any of the toxic chemicals that
19 she's exposed to.

20 Q All right. Did you -- did you see some
21 photographs of Miss Doller?

22 A I did.

23 Q You testified that you already believed
24 there was an injury present. What was that
25 testimony based on?

1 A That there was injury present?

2 Q Yes.

3 A Well, one picture is worth a thousand
4 words. And so if you look at her, you can see that
5 something terrible had happened.

6 Q Did you ever talk to me before you
7 examined Miss Doller?

8 A Never.

9 Q Did you talk to me before today regarding
10 Miss Doller?

11 A Never.

12 Q Would you look at Exhibit Number --
13 Defendants' Exhibit Number 2 and read what it says
14 under the word disclaimer?

15 A "While individual practitioners may
16 differ, this is the position of the College at the
17 time written, after a review of the issue and
18 pertinent literature."

19 And that's why I specifically
20 said, "The American Academy of Asthmas, Allergy, and
21 Immunology has addressed some of these issues in
22 their recent position statement on health effects
23 from mold exposure." They withdrew that position
24 paper because they knew it was wrong.

25 Q Do you disagree with this paper?

1 MS. CANADAY: Object.

2 A Absolutely.

3 BY MR. ROBINSON:

4 Q Okay. Are you -- are you an individual
5 practitioner?

6 A Yes.

7 Q Okay. You don't subscribe to this just,
8 whatever it's called, news article clipping service
9 that Miss Canaday presented Exhibit Number 4 from,
10 are you?

11 MS. CANADAY: Object to the
12 characterization.

13 A I'm sure that some very valid --

14 BY MR. ROBINSON:

15 Q Have you -- have you read that?

16 A No, no. I never saw this before.

17 Q Okay.

18 A No.

19 Q Did you -- when Miss Canaday characterized
20 the finding there, did you agree with that?

21 A Well, I don't know what the finding is
22 because there's how many pages in here. It's a very
23 nice summation of the information on the topic, for
24 example. I just want to point out to you that the
25 main author is Robert Bush, and they took him to

1 task because he was the editor of the journal when
2 they published this position paper.

3 Q Who is they? Who took him to task?

4 A Oh, the members of the Academy themselves.
5 They wrote scathing critiques of that position
6 paper.

7 Q How many articles or papers --

8 MS. CANADAY: Object to relevance.

9 BY MR. ROBINSON:

10 Q Excuse me -- published papers does he
11 reference in there? I think they're numbered.

12 A Yeah. Let's see, 73.

13 Q And way back in 2004 when you published
14 your paper, how many did you reference?

15 A 171.

16 Q So would it be fair to conclude that he's
17 considered every published peer-reviewed paper on
18 this subject?

19 A He absolutely --

20 MS. CANADAY: Objection. Lack of
21 foundation.

22 A He absolutely did not, and this is the
23 point I was making. He's trying to support a
24 position. I'm not trying to support a position.
25 I'm trying to help patients.

1 BY MR. ROBINSON:

2 Q Miss Canaday asked you about the medical
3 history that Miss Doller gave you, and she asked you
4 if it was anecdotal. And you agreed with her it is
5 anecdotal. Is it also something that you rely upon?

6 A Absolutely.

7 Q And you have been the director of certain
8 medical facilities, is that right?

9 A Yes.

10 Q Do the doctors that were working under you
11 rely on what their patients tell them?

12 A They should and they do.

13 Q Is there a standard in the medical field
14 as to what doctors should do with the information
15 their patients give them?

16 A Well, unfortunately the modern doctor
17 today doesn't take a history, he doesn't do a
18 physical examination, he does a CAT scan and he does
19 blood work.

20 MS. CANADAY: Move to strike as
21 nonresponsive.

22 BY MR. ROBINSON:

23 Q Let's try that again. Doctors that
24 actually talk to their patients, do they rely upon
25 what their patients tell them?

1 A Yes.

2 Q Isn't it fair to say that there are
3 numerous causes of a lot -- a lot of diseases have
4 numerous causes?

5 A Yes.

6 Q And when the doctor looks at the patient
7 and tries to determine what this patient has, how
8 does he go about doing that?

9 A He has to go by his experience, for
10 example, and the data that he collects.

11 Q Okay. And does he try to eliminate
12 certain causes?

13 A Yes. That's part of the differential
14 diagnosis.

15 Q Okay. And when he goes to the
16 differential diagnosis, that means he separates out
17 the different potential causes?

18 A Yes.

19 Q And tries to reach one cause?

20 A Yes.

21 Q Is that sort of like Sherlock Holmes?

22 A Yes.

23 Q Okay. And that's what doctors do, isn't
24 it?

25 A Yeah.

1 Q All right. Did you do that in this case?

2 A I did. But the position of which I was
3 trying to fulfill was that you are asking for
4 purposes of litigation for an opinion, for example,
5 and the question is this: Is it more probable than
6 not that this lady was exposed to toxic mold in her
7 home than she was exposed to the many other things
8 elsewhere. And the answer is, it is more probable
9 than not that she was exposed to what this man
10 found.

11 Q Okay. Now, you said that I was asking you
12 for a report, but I've never talked to you before
13 today as far as Miss Doller goes, is that right?

14 A No, she had asked me for a report.

15 Q She had asked you for a report.

16 MR. ROBINSON: All right. Thank you.
17 I don't think I have any further
18 questions.

19 EXAMINATION

20 BY MS. CANADAY:

21 Q I have some followup. Now, Doctor, you
22 were -- tell me this: Is it your position that it's
23 quantity over quality as far as a number of
24 references in an article?

25 A No. But if you're going to do a review,

1 for example, and say that you have reviewed the
2 literature and there are thousands of papers, I want
3 to know which papers you excluded.

4 Q Which ones did you exclude in your
5 article?

6 A I didn't exclude anything.

7 Q So at the time there were only 171 items?

8 A Oh, no. That paper there were 171
9 references.

10 Q But there was more out there, right?

11 A That I specifically addressed in my letter
12 to the editor regarding the position paper is what
13 literature did you summarily dismiss, for example.
14 And I specifically mentioned the specific literature
15 which is so incredibly important to this area, for
16 example, and they just blew it off.

17 MS. CANADAY: Move to strike as
18 nonresponsive.

19 There were more than 171
20 papers --

21 A They made a decision.

22 BY MS. CANADAY:

23 Q Let me ask my question. There were more
24 than 171 papers in circulation at the time you wrote
25 your article, right?

1 A There were thousands of papers.

2 Q Okay. So you only referenced to 171
3 sources, and others may reference more or less.
4 It's quality really over quantity, isn't it?
5 Quality of the source, right?

6 A To a degree you're correct.

7 Q Okay. All right. You made a statement a
8 minute ago about the position that you were trying
9 to fill for Mr. Robinson in this case.

10 A Yes.

11 Q And it was to provide --

12 A To establish causation.

13 Q Causation of what?

14 A Of the patient's injuries.

15 Q Okay. So essentially your role, the way
16 you see it, correct me if I'm wrong, is that
17 somebody presented to you with a health condition,
18 and your job was to find something to back up for a
19 cause for litigation purposes?

20 MR. ROBINSON: Object to the
21 question. Lack of foundation.

22 BY MS. CANADAY:

23 Q Is that right?

24 A No. Excuse me. I don't apologize for the
25 fact that I practice occupational environmental

1 medicine in which there is a fair degree of
2 litigation involved. And attorneys come to me and
3 patients come to me to ask me to help them in
4 supporting their case which means can I establish
5 causation. That's what I do. But I establish
6 causation in every single patient whether it has
7 anything to do with litigation or not. That's what
8 I do for a living.

9 Q And we -- and you're telling me that even
10 though -- 'cause you want to find a cause for the
11 guttate psoriasis which we already know is an
12 autoimmune disease, right?

13 A But I feel that it was not just the
14 exfoliated dermatitis. It's was also the
15 combination of the two or three other complaints
16 that she had.

17 Q And she has psoriasis which is an
18 autoimmune disease, correct? Is that right?

19 A Yes.

20 Q Okay. And you're not an allergy or
21 immunologist, right?

22 A But I do it every day.

23 Q You're not an allergy or immunologist?

24 A I don't have to be board certified in the
25 field in order to practice that.

1 Q Just yes or no. You're not an allergy or
2 immunologist?

3 A I am not.

4 MR. ROBINSON: Object to form.

5 BY MS. CANADAY:

6 Q And you're not a board certified
7 toxicologist?

8 A No, but I practice toxicology every day.

9 Q And --

10 THE REPORTER: I need a break,
11 please.

12 MR. ROBINSON: Off the record.

13 THE VIDEOGRAPHER: Off the record,
14 1325.

15 (The deposition went off the record.)

16 THE VIDEOGRAPHER: Back on the
17 record, 1326.

18 BY MS. CANADAY:

19 Q So for determining that mold was the only
20 cause, could be the only cause of Mrs. Doller's --

21 MR. ROBINSON: Object to the form.

22 BY MS. CANADAY:

23 Q -- alleged injuries, because that's what
24 you're saying, isn't it?

25 A It doesn't have to be the only cause.

1 Q But there are others that you have to rule
2 out, right, to properly conduct the differential
3 diagnosis, is that right?

4 A No patient is usually injured by a single
5 cause. Usually it's a combination of allergic load,
6 toxic load, infectious load, emotional load.

7 Q Okay.

8 A And those are the things that we deal
9 with.

10 Q And looking at her -- specifically let's
11 start with her skin disorder. She is treated with
12 antibiotics which addresses the problems with the
13 skin, right?

14 A Right.

15 Q It's very simple?

16 A That's your conclusion. My --

17 Q It's not my conclusion. It's within her
18 medical records?

19 A That's correct.

20 Q Okay.

21 A But you're drawing the wrong conclusion.
22 Okay? The patient got better maybe with the use of
23 the antibiotics so she had a secondary infection,
24 but she also got better because we eliminated the
25 cause of the initial exacerbation.

1 Q Did she get better as soon as she left the
2 house?

3 A Well, the improvement was in 30 days to 60
4 days as I remember.

5 Q So the only way she improved, according to
6 your logic, is by leaving the home?

7 A No. That is not what I'm saying. She had
8 a secondary infection. There's no question about it
9 especially with the yeast, for example. And the
10 only point I'm making, for example, is the most
11 important thing in treating an environmentally
12 triggered disease is to get the cause away from the
13 patient and we did that.

14 Q Okay.

15 A So I'm giving credit to the use of the
16 antibiotic, to the steroids, to all of the things
17 that they gave her. But it's still my opinion that
18 the primary cause of the exfoliated dermatitis which
19 could be an exacerbation of a guttate psoriasis was
20 the moisture and mold. That's my opinion and I'll
21 stick to that opinion.

22 Q Okay. So nothing that you see within her
23 medical records, no documentation of any sort of
24 actual objective testing to confirm this guttate
25 psoriasis and it was likely the result of a strep

1 infection as opposed to mold exposure, you discount
2 that? Those doctors are incorrect, is that right?

3 A I don't discount it. I think that they
4 contributed, but they were not the primary cause.

5 Q With regard to her respiratory, you've
6 sort of said that smoking is probably the primary
7 issue with that, is that right? You said that
8 earlier?

9 A Smoking?

10 Q Was the primary source of her problems
11 with respiratory?

12 A I don't know that. I don't know that at
13 all. I know that she smoked. And I certainly don't
14 advocate that patients smoke, and I'll never argue
15 that smoking doesn't injure a patient's respiratory
16 tract. It certainly does.

17 Q But you think it's more likely --

18 A I don't know that it's relevant
19 specifically to this patient.

20 Q Okay. And we're also, of course,
21 discounting -- you're discounting the scientific
22 literature that was presented, the scientific
23 literature, right?

24 A Yes.

25 MS. CANADAY: That's all I have.

EXAMINATION

BY MR. ROBINSON:

Q Let me ask one question. When Miss Doller came to you and asked you to figure out what caused her exfoliated skin, did she tell you what cause you were supposed to find or did you go find that yourself?

A No. I found it myself.

MR. ROBINSON: Thank you. No further questions.

THE VIDEOGRAPHER: This will conclude the deposition of Doctor Allan Lieberman. Off the record, 1329, on August 24th, 2015.

(The deposition was concluded at 1:29 p.m.)

---oOo---

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF DORCHESTER) CERTIFICATE

3 I, Janice D. Hayward, Registered Merit
4 Reporter and Notary Public, certify that I was
5 authorized to and did stenographically report the
6 foregoing deposition, and that the transcript is
7 a true record of the testimony given by the witness.

8 I further certify that the witness was
9 duly sworn and cautioned by me to tell the truth,
10 the whole truth and nothing but the truth. I
11 certify that the same was reduced to typewritten
12 form from my original stenograph notes by
13 computer-aided transcription.

14 I further certify that I am not of
15 counsel or kin to any of the parties to this cause
16 of action, nor am I interested in any manner in
17 its outcome.

18 IN WITNESS WHEREOF I have hereunto set
19 my hand and seal this the 27th day of August, 2015.

20
21
22
23
24
25

Janice D. Hayward, RMR
Notary Public, South Carolina
My Comm. Expires 10-10-22

Janice D. Hayward, RMR
843.478.6756

STATE OF SOUTH CAROLINA) IN THE 14TH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT) IN THE COURT OF COMMON PLEAS
) 2012-CP-07-01439
PATRICIA DOLLER,)
))
PLAINTIFF,)
))
VERSUS)
))
LOHR PLUMBING, INC.,)
))
DEFENDANT.) DATE: NOVEMBER 19, 2015
PLACE: BEAUFORT, SOUTH CAROLINA

MOTIONS HEARING

B E F O R E:

THE HONORABLE MICHAEL G. NETTLES

A P P E A R A N C E S:

BRIAN ROBINSON, ESQUIRE
ATTORNEY FOR THE PLAINTIFF

STACEY P. CANADAY, ATTORNEY AT LAW
RALPH E. TUPPER, ESQUIRE
ATTORNEYS FOR THE DEFENDANT

PROVIDED FOR: STACEY P. CANADAY

COURT REPORTER: JO RICE
jrice@sccourts.org
OFFICIAL COURT REPORTER
SOUTH CAROLINA JUDICIAL DEPARTMENT

1 THE COURT: I'll be happy to hear from the moving party
2 and if you will put the caption on the record for the court
3 reporter.

4 MR. ROBINSON: Thank you, Your Honor. This is the case of
5 Patricia Doller, Plaintiff, versus Lohr Plumbing, Inc.,
6 Defendant. Civil Action Number 2012-07-1439. We have made
7 several motions in this case. This case was tried some time
8 ago. The jury brought back a defense verdict. We made
9 appropriate motions at the end after the jury had been
10 dismissed. The Court instructed us to put those in writing,
11 which we did. We are here to hear new motions.

12 The first motion is a motion for JNOV. If the Court may
13 recall, the defendant was on the stand and he testified that
14 he was an expert plumber and that he had a duty to do things
15 correctly and that they, apparently, did not do things
16 correctly because the plumbing leaked. The plaintiff, Ms.
17 Doller, placed on the record her damages, some of which were
18 disputed, but some which were not. Her loss of use damages
19 was not disputed and the defendant conceded that there were
20 damages.

21 THE COURT: I think he said the property damages were --
22 that he accepted responsibility, but he said it would take
23 \$18,000.00 to fix it. I think your expert said it would be
24 about \$85,000.00.

25 MR. ROBINSON: That's correct.

PATRICIA DOLLER V LOHR PLUMBING, INC.

1 THE COURT: Isn't that about a general, ballpark ---

2 MR. ROBINSON: Yes, sir. The dispute wasn't over whether
3 there were damages. The dispute was over how much.

4 THE COURT: Right. One of the things that causes me some
5 consternation is that the jury, obviously, didn't pay
6 attention to the evidence because for whatever reason, they
7 came back with a defense verdict when the defendant admitted
8 that he had some responsibility. I think that a reasonable
9 jury could have concluded, based on the evidence, that there
10 was no relation between the personal injuries and any
11 negligence. I just think that the way it came out, that would
12 be a reasonable outcome. My question is, because they came
13 back with a complete defense verdict, does that mean that
14 their judgment was so flawed that all of it needs to be
15 overturned? In my mind, your client was less than a pleasant
16 person. I think that she was somewhat offensive and I think
17 that maybe the fact that they came back with a defense
18 verdict might be an indication they just didn't like your
19 client. What do you think about whether or not I could grant
20 a new trial with regard to property damage and not on the
21 personal injury aspect of it?

22 MR. ROBINSON: I think if we are granted a new trial,
23 Your Honor, I think we'd have to get a new trial absolute. I
24 don't know how we can ---

25 THE COURT: Well, the Supreme Court does it all the time.

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1 First of all, I've never disturbed a jury verdict that I can
2 recall and I've been doing it a while and this is the only
3 case that I've ever given any real consideration.

4 MR. ROBINSON: I understand and I've made these motions
5 on a couple of occasions when I've lost a case and,
6 generally, the Court just said, "Sorry, the jury's right".
7 This case, however, I think is different.

8 THE COURT: Right.

9 MR. ROBINSON: Because we have a defendant who concedes
10 all the elements and the jury comes back with a defense
11 verdict, not a plaintiff's verdict with no damages, but a
12 defense verdict.

13 THE COURT: Right.

14 MR. ROBINSON: Which is just wrong.

15 THE COURT: Ms. Canaday, what do you think about
16 everything, in general, and what do you think about whether
17 or not I could grant a new trial with regard to property
18 damage or is the verdict so tainted that I would have to,
19 grant a new trial, altogether?

20 MS. CANADAY: Thank you. May it please The Court. Stacey
21 Canaday. I represent Lohr Plumbing in this matter.

22 First of all, Your Honor, just to back up a little bit
23 with regard to the testimony and evidence presented to the
24 jury. I disagree that the evidence indicated that my client
25 admitted that he was responsible for the damages. I think

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1 what was actually presented and what the jury heard,
2 certainly, was a factual issue. What I believe he said was,
3 "Yes, I believe there were damages there." He doesn't know
4 what caused it and being perfectly candid, he did admit that
5 yes, we did perform work in this house and within this wall,
6 but why it leaked, there was no evidence as to why it leaked
7 and that was the Plaintiff's burden. The jury heard
8 everything there and they were the triers of fact and, of
9 course, the tribunal instructs on the law, and so, the jury
10 did hear all the facts and I believe that is what they heard.
11 They heard a businessman saying, yes, there were damages. I
12 don't think that we can say there wasn't anything wrong with
13 the house. I think that the proximate cause of that damage
14 was actually in question.

15 I would also like to point out the jury form, the
16 verdict form. It was agreed upon by all the parties and so
17 proximate cause and legal cause were all consumed from the
18 one request and so we don't know what the jury was thinking
19 or why they decided what they did, but we do know they said
20 no and returned a defense verdict and so I think that, first,
21 the motion should be denied, respectfully. It should be
22 denied. I believe the jury did what they were supposed to do.
23 If there was a problem with the verdict form and if we wanted
24 a specific question answered, then the verdict form should
25 have been objected to and the special request should have

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1 been submitted, but it wasn't.

2 THE COURT: Regardless of the verdict form, it's been a
3 long time and I don't have my notes before me right now, not
4 that I take exhaustive notes, but I recall him saying that he
5 accepted responsibility and admitted that he was there to
6 take out all the inferior piping. That he did so, but he did
7 not do so between the faucet and the shower and that he
8 conceded -- I thought he conceded on the record that he
9 accepted responsibility for that and actually tendered what
10 it would cost to fix. Was it him who said it was going to
11 cost \$18,000.00 or did y'all get an expert to say that?

12 MS. CANADAY: We had a repair estimator who provided a
13 repair estimate and then Mr. Durant, my client ---

14 THE COURT: Now, if you were legitimately contesting
15 liability, why did you put up an expert to say how much it
16 would cost to fix something that went wrong with it that
17 wasn't your client's fault?

18 MS. CANADAY: To put on, just to say -- well first, we
19 did contest liability and what I think the jury heard was a
20 businessman saying it's unfortunate that this happened and I
21 take care of my clients. He's not conceding that he did
22 anything wrong in any way, but this happened, it happened
23 within work that he was performing in the home ---

24 THE COURT: Didn't he say he should have replaced all of
25 the pipe, not just some of it?

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1 MS. CANADAY: No, sir. Actually, not. Without getting
2 into too many of the facts ---

3 THE COURT: Well, I want to hear the facts. That's what
4 we need to talk about.

5 MS. CANADAY: The owner of the home, the seller of the
6 home which was, at one point, a defendant in the matter that
7 settled prior to trial, hired my client to replace
8 polybutylene piping within the home. The seller of the home
9 said do not replace this certain section of piping. So, my
10 client does not want to replace that particular section of
11 piping. The leak did not occur within this section of piping
12 that remained in the home. It occurred in another area. And
13 again, we don't know if it was a problem with the materials,
14 we don't know if it was a problem with some work. There was
15 no evidence submitted by the plaintiff to suggest what the
16 actual problem was to cause the leak, so what you have is my
17 client saying, "This is unfortunate. I'm a businessman here
18 in the community. We did do work in your home and we want to
19 address the problem for you." I don't think that rises to the
20 level of saying, "I admit I did something wrong." I think
21 it's almost akin to saying, if you run into somebody or
22 perhaps you back into somebody, whatever the situation is, if
23 you jump out and apologize right away regardless of whether
24 it was your fault or not. I think that's what the jury heard.
25 I think that's the testimony that was put on and with

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1 regards, again, to the counter damages, the counter estimate,
2 it's not presumed to say, "Well, okay, we think that this is
3 really what they are entitled to." It's more of an, "Okay,
4 well, if we have to award something, this would be a more
5 reasonable award of damages if you intend to award damages at
6 all." That's just the nature of my defense of that.

7 THE COURT: All right. Yes, sir.

8 MR. ROBINSON: Your Honor, what happened was, Lohr
9 Plumbing installed new plumbing to replace the polybutylene
10 pipe. That new plumbing leaked. Mr. Durant, on the stand,
11 admitted that if the pipe leaked, it was his fault. We didn't
12 have to show why it leaked. He already admitted it was his
13 fault.

14 THE COURT: That's what I recall.

15 MR. ROBINSON: So, there's no question about whether or
16 not he put it in and there's no question about whether or not
17 it leaked. There's no question about whose fault it was. He
18 admitted all that. It was our burden to show the damages and
19 we did so. And while they dispute the amount of damages, they
20 didn't dispute that there were damages. So, all the elements
21 were proven at trial and there was no -- Mr. Durant never
22 said, "I didn't put the pipe in." He never said, "It wasn't
23 my fault that it leaked." He never said, "I'm not taking any
24 responsibility for it." He conceded that he had a duty to do
25 it right and he conceded at trial out of his own mouth that

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1 he breached that duty. So, we have a duty, a breach, and we
2 have damages. I think we have all the elements. Somehow the
3 jury just missed that. The question you asked us was, can you
4 order a new trial on damages...

5 THE COURT: On the property aspect of it.

6 MR. ROBINSON: On the property damages only. Frankly,
7 Your Honor, I don't know the answer to that question. I
8 didn't even think about that until you asked it.

9 THE COURT: Well, I think, given the evidence, I think a
10 reasonable juror could say that all her skin problems didn't
11 have anything to do with it. Whether that is what I thought
12 is one thing, but I think a reasonable juror could say that.

13 MR. ROBINSON: Well, you know, I think that would be an
14 unreasonable juror, but I understand what you're saying.

15 THE COURT: Right.

16 MR. ROBINSON: And the reason I say that, I'm not trying
17 to be facetious. Their expert says if you get a rash that
18 forms on your hands and crawls up your arms or is on your
19 legs and crawls up your legs, that's an allergic reaction.
20 That allergic reaction can trigger the psoriasis. That's what
21 their witness said. Our witness said that was the cause.
22 Their witness said that could be the cause. I don't think a
23 reasonable juror would have gone back in there if they had
24 found that they were lying or they said it wasn't a cause,
25 but I think it's a question of fact.

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1 THE COURT: Yes, ma'am.

2 MS. CANADAY: I think, and again, this is in my
3 memorandum, but what Mr. Robinson tends to rely on is almost
4 a negligence, per se, a res ipsa type argument, which I don't
5 think is recognized res ipsa. If anything, if we are going on
6 damages, per se, there was no instruction to the jury with
7 regard that.

8 THE COURT: I don't think he's saying negligence, per se.
9 He's just saying that they conceded all of that and to be
10 quite honest with you, I probably should have directed a
11 verdict with regard to liability concerning, at least,
12 property damage. I don't think he's saying that it's
13 negligence, per se. Plumbing is not negligence, per se, nor
14 is it res ipsa.

15 MS. CANADAY: No, sir, but I believe there may be a color
16 of a breach of warranty claim in there, as well, which also
17 was not charged to the jury and that was also an affirmative
18 defense ---

19 THE COURT: Maybe I messed that up, too. That may be
20 another reason for a new trial.

21 MS. CANADAY: No, sir. I just don't believe that the
22 negligence claim was proven.

23 MR. TUPPER: Your Honor, may I just say one thing?

24 THE COURT: You can say whatever you would like.

25 MR. TUPPER: It could very well be, too, that the jury,

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1 in looking at the credibility of the witnesses, is that maybe
2 his comment, whatever it was on negligence, they didn't
3 believe that and they clearly didn't believe the plaintiff
4 nor his expert, and so I think when we talk about a new trial
5 on those issues it's akin to proximate cause and maybe they
6 didn't believe, and frankly, I wasn't paying attention
7 whether he said it was my fault or no it wasn't my fault, but
8 if he did say that, a jury could certainly say well, I don't
9 believe that it is his fault on the issue of credibility, but
10 I think proximate cause, I guess, is always a jury issue.

11 THE COURT: Not always.

12 MR. ROBINSON: Your Honor, if I might, I will address the
13 proximate cause issue.

14 THE COURT: Yes.

15 MR. ROBINSON: We had a leak and we had water damage and
16 there is absolutely no suggestion from anywhere that the
17 water came from anywhere other than the leak and so I think
18 proximate cause is self-evident, if anyone thinks about it.

19 MS. CANADAY: They could also have considered a
20 mitigation factor within that, Your Honor, with regard to
21 property damage,.

22 MR. ROBINSON: Mitigation might reduce the amount of
23 damages, but it would not lead to a defense verdict.

24 MR. TUPPER: But, Your Honor, of course, there was also
25 the issue that she wouldn't let him back in the house. So, on

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1 the issue of mitigation ---

2 THE COURT: That has to do with mitigation, not
3 liability.

4 MR. TUPPER: That's what I was saying. The mitigation
5 issue could have nullified, not nullified, but it could have
6 been the reason for ---

7 THE COURT: It would have mitigated it.

8 MR. TUPPER: Pardon?

9 THE COURT: It would have done just that. It would have
10 been mitigation, but it would have warranted some damage.

11 MR. TUPPER: Yes, sir. I would think that would be the
12 jury's decision.

13 THE COURT: Well, I'm going to grant a new trial based on
14 the thirteenth juror doctrine and as I understand the law, a
15 trial judge may grant a new trial if the judge believes the
16 evidence does not justify the verdict. The rule of law says
17 that in ruling on a new trial motion as a thirteenth juror, a
18 trial judge may weigh evidence or rely on his or her view of
19 the circumstances. However, it says that it is not necessary
20 for me to justify the ruling with factual findings.

21 Basically, the circumstances are as though the judge, as the
22 thirteenth juror hangs the jury, and that's what I'm going to
23 do and grant a new trial on the doctrine of the thirteenth
24 juror principles. Good luck to you.

25 MR. ROBINSON: Thank you, Your Honor.

PATRICIA DOLLER V LOHR PLUMBING, INC.

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

CERTIFICATE

BE IT KNOWN THAT I, THE UNDERSIGNED JO RICE,
OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE
STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING
TRANSCRIPT REPRESENTS A TRUE, ACCURATE AND COMPLETE
TRANSCRIPT OF RECORD OF THE HEARING IN THE CAPTIONED CASE,
RELATIVE TO APPEAL, BEFORE THE CIRCUIT COURT FOR BEAUFORT
COUNTY, SOUTH CAROLINA, SO GIVEN ON NOVEMBER 19, 2015 TO THE
BEST OF MY SKILL AND ABILITY;

THAT I AM NOT RELATED TO NOR AN EMPLOYEE OF ANY OF
THE PARTIES HERETO, NOR A RELATIVE OR EMPLOYEE OF ANY
ATTORNEY OR COUNSEL EMPLOYED BY THE PARTIES HERETO, NOR
INTERESTED IN THE OUTCOME OF THIS ACTION.

IN WITNESS WHEREOF I HAVE HERE UNTO SET MY HAND AND
SEAL THIS 9TH DAY OF FEBRUARY, 2016.



JO RICE
OFFICIAL COURT REPORTER

PATRICIA DOLLER V LOHR PLUMBING, INC.

Lohr Plumbing, Inc.

2730 Depot Road
Beaufort, SC 29902
Phone: (843) 522-8600
Fax: (843) 522-3486
www.lohrplumbing.com

November 5, 2010

Eversole Law Firm
Attn: Allison Eversole
1509 King Street
Beaufort, SC 29902

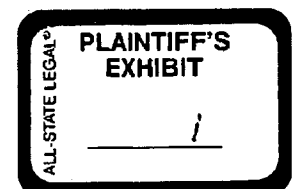
Re: 55 James F. Byrnes Street

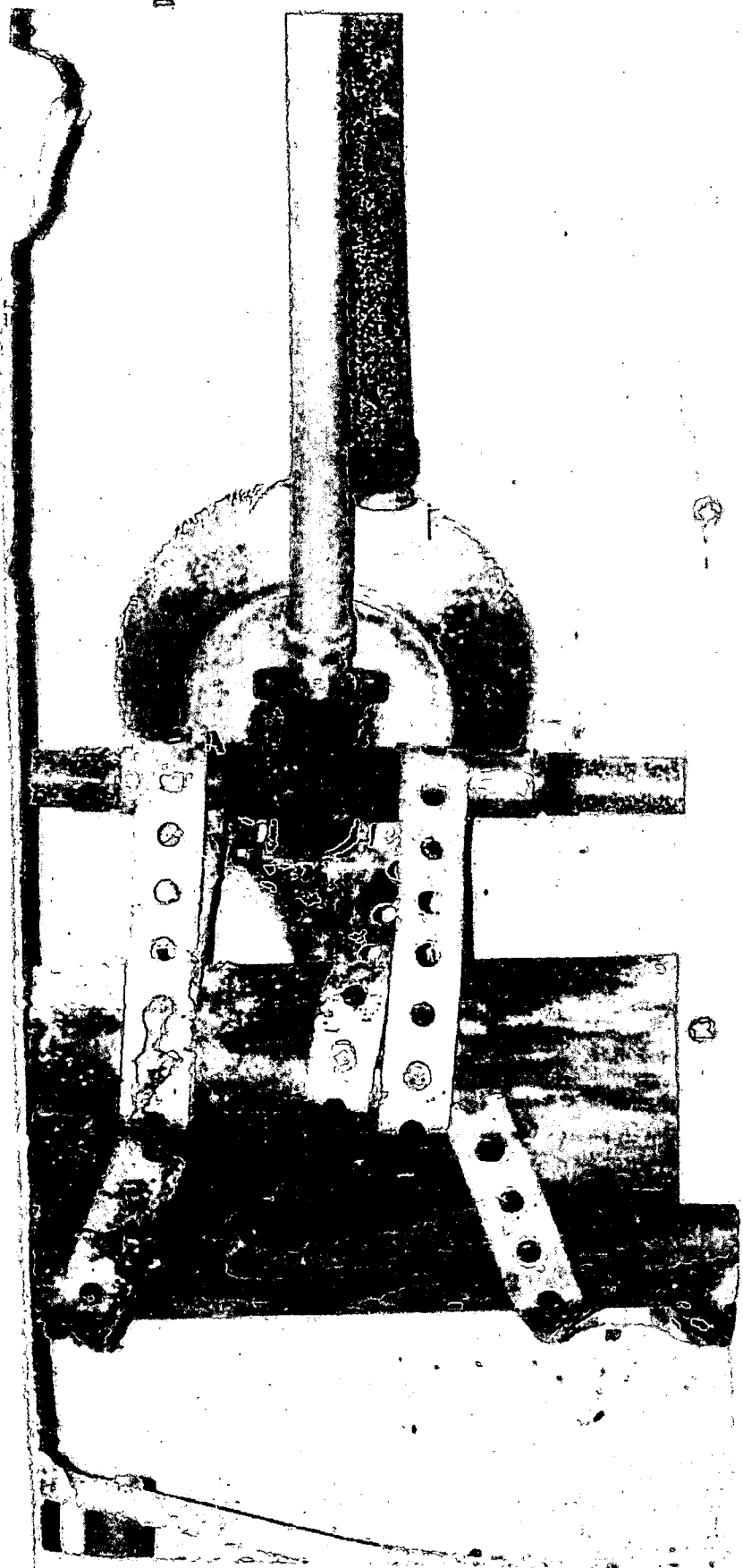
To Whom It May Concern:

On October 28, 2010 the existing polybutylene at the above referenced address has been removed and replaced with now pex piping throughout the residence. A new meter valve box, stops, supplies, and escutcheons were installed where necessary.

Thank you,

Gypsy Fletcher
Office Manager
Lohr Plumbing Inc.



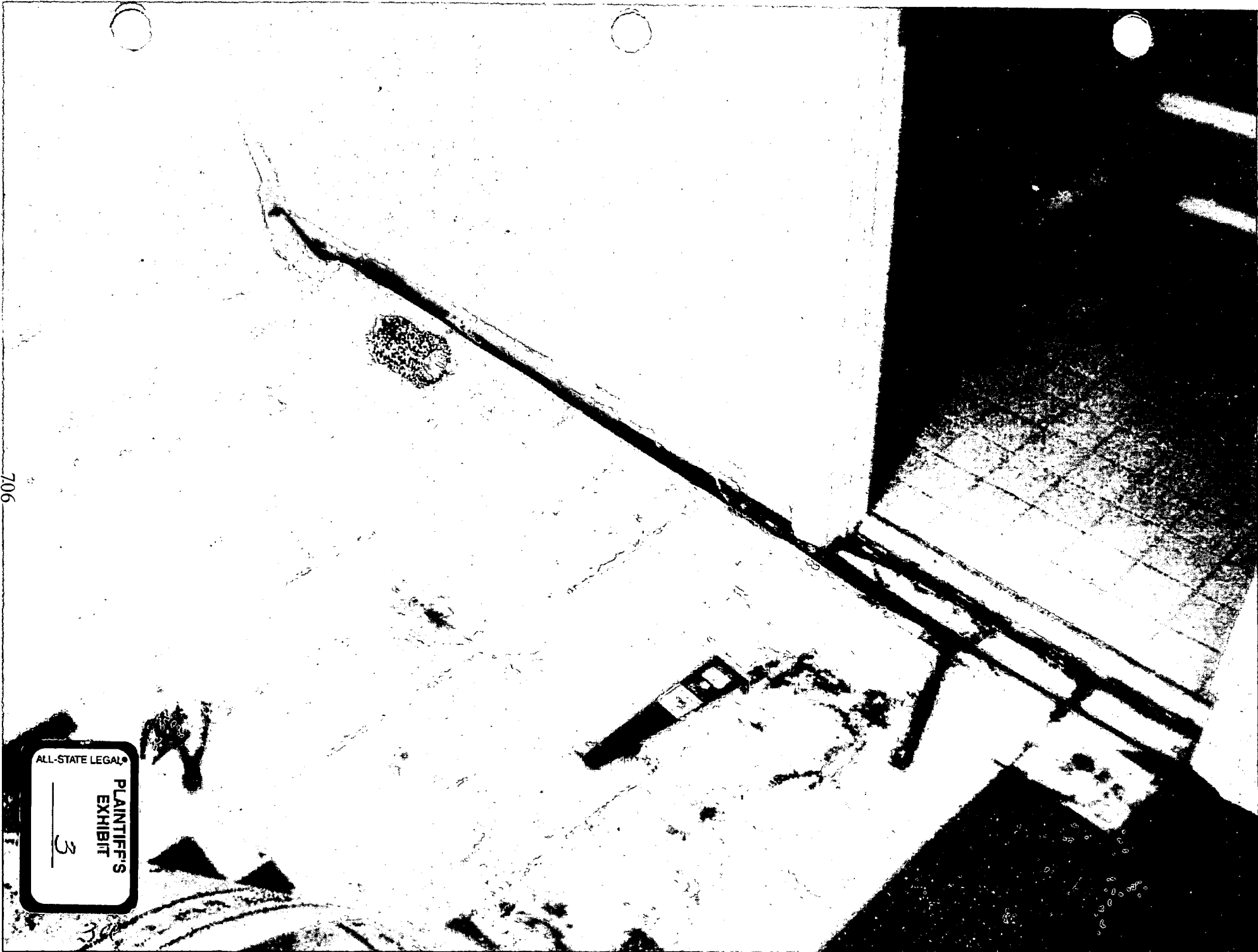


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PLAINTIFF'S
EXHIBIT

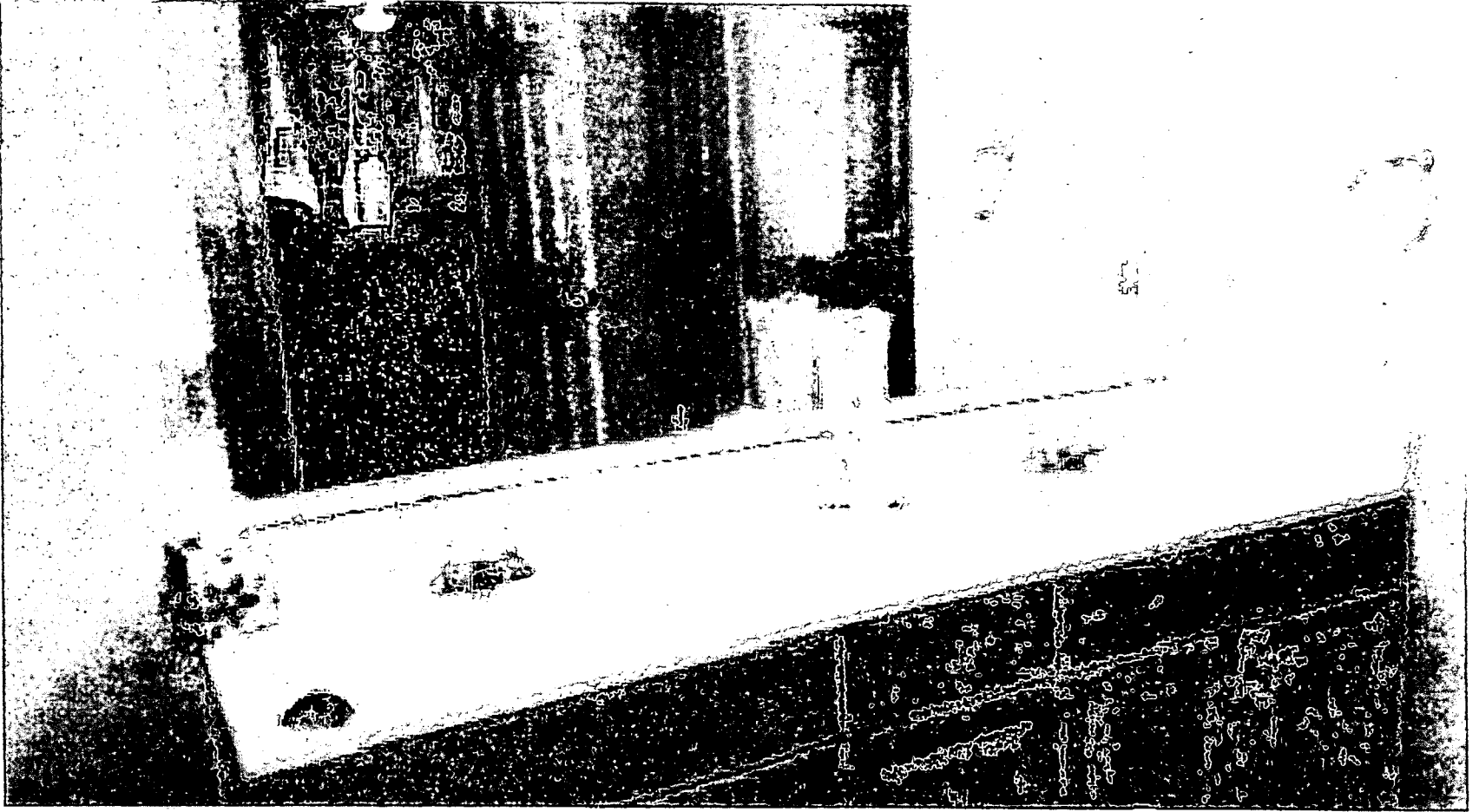
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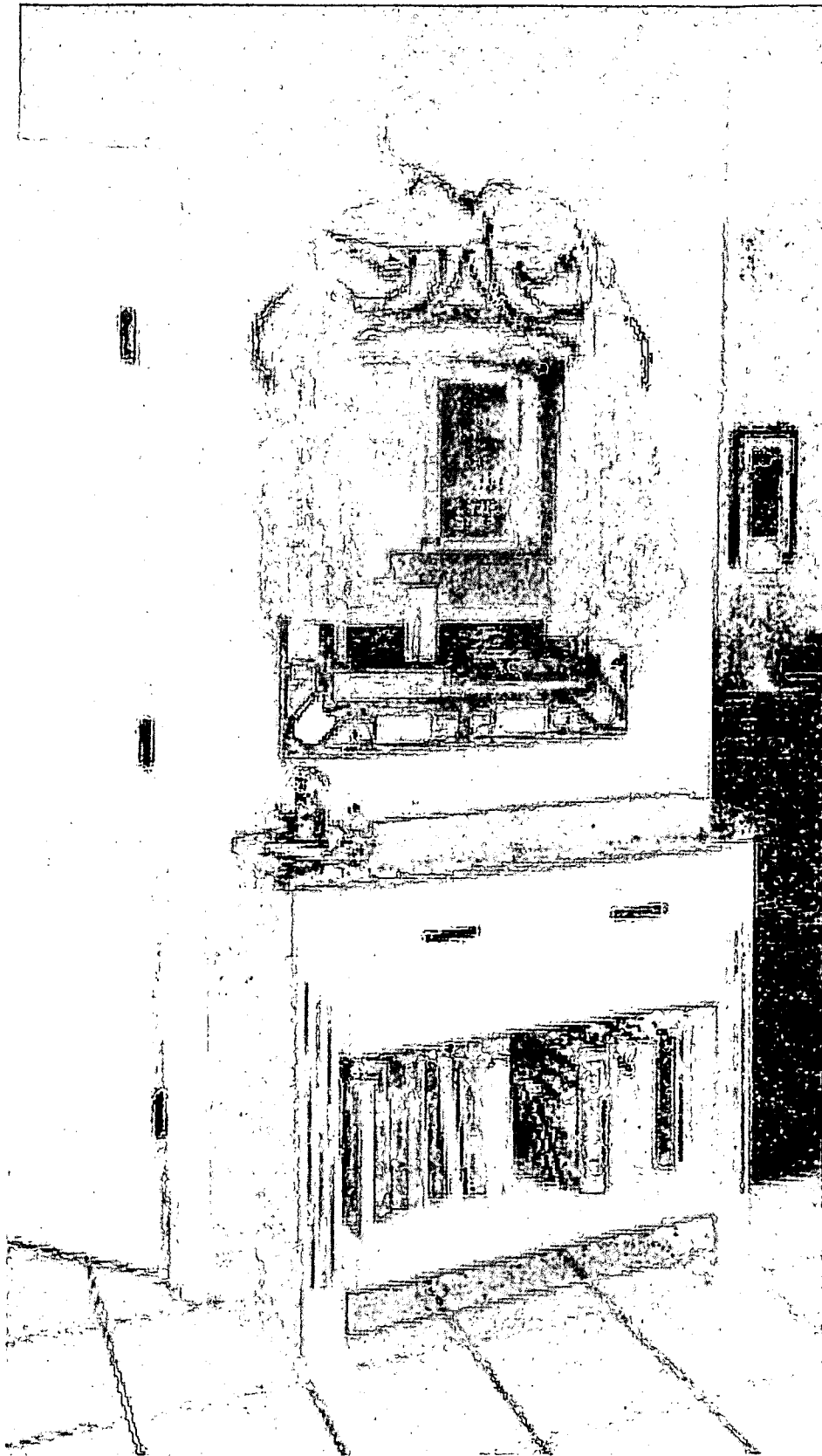
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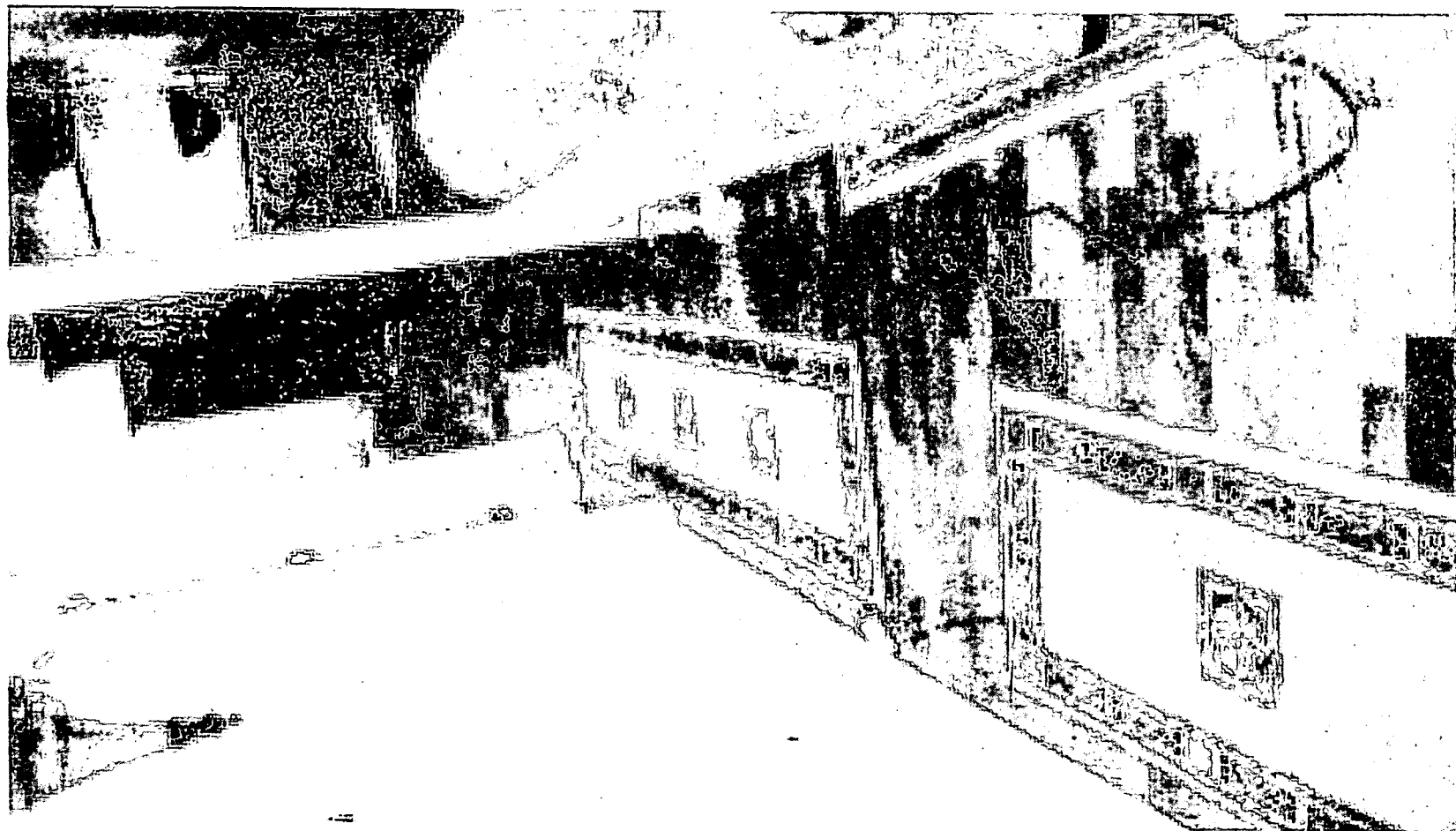


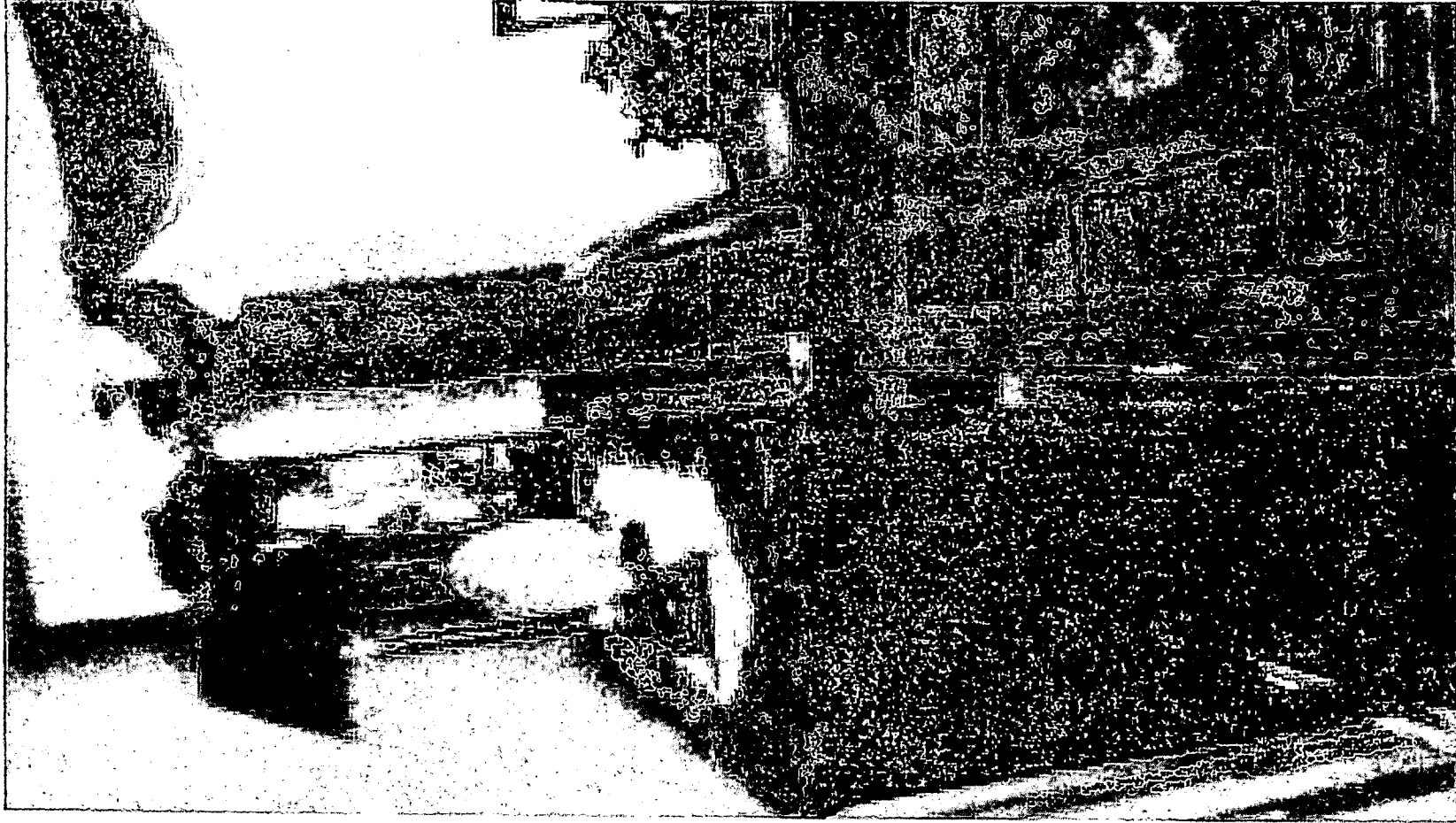


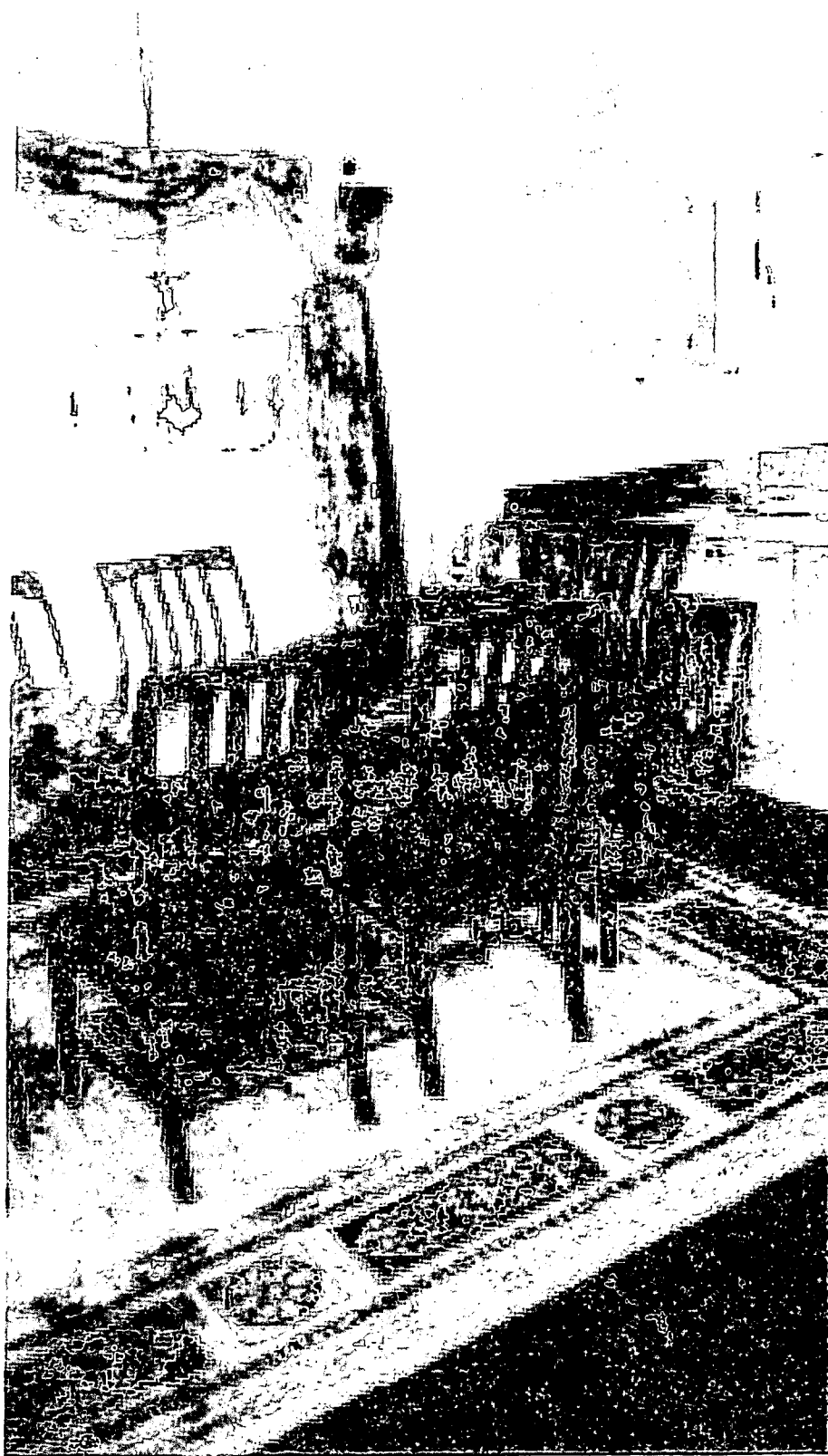
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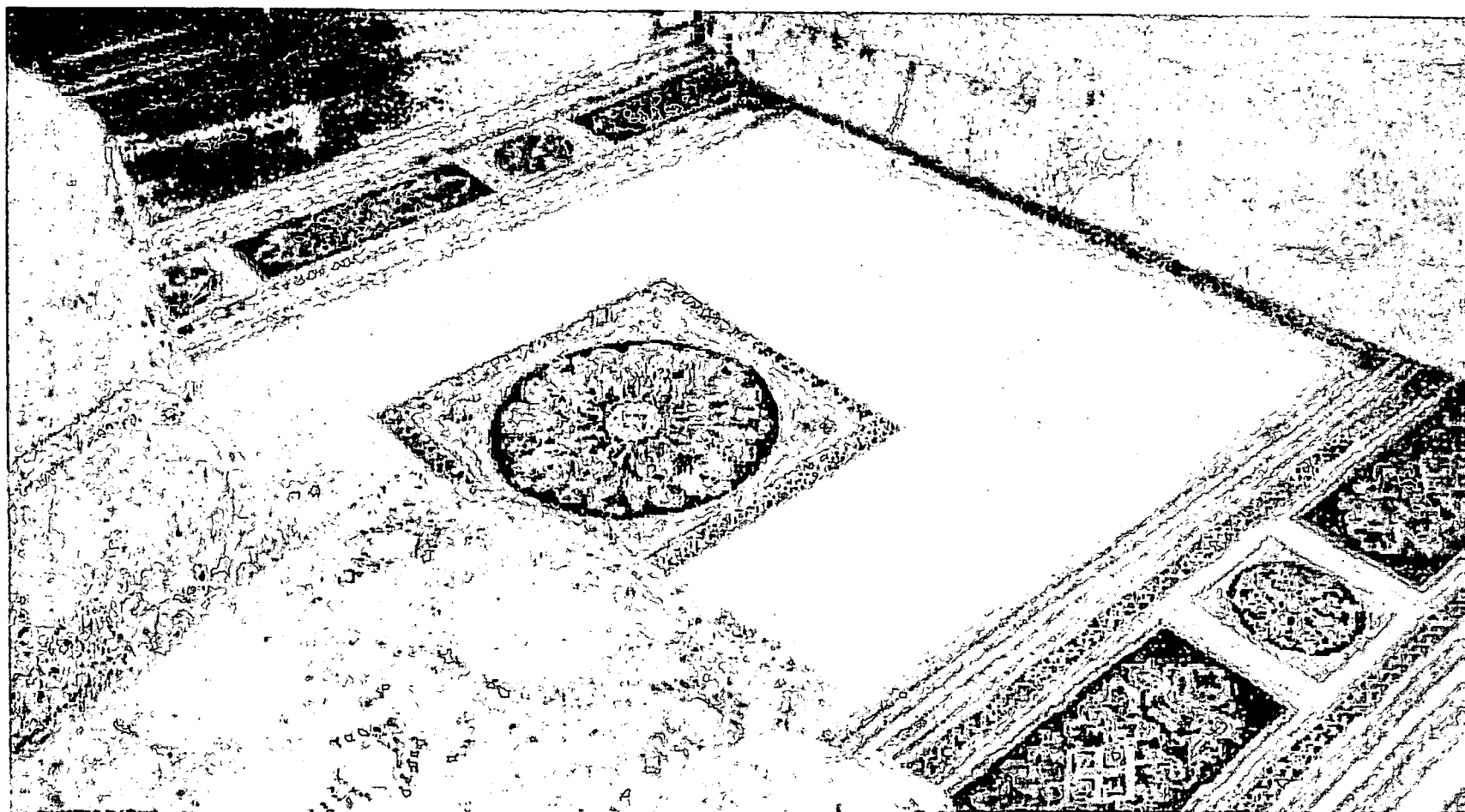








62



PATRICIA DOLLER

DAMAGES

Mortgage

2011 Nov	1200
Dec	1200
2012 Jan	1200
Feb	1200
March	1239
April	1239
May	1239
June	1239
July	1239
Aug.	1239
Sept	1239
Oct	1239
Nov	1239
Dec	1239
2013 Jan	1239
Feb	1239
March	1224
April	1224
May	1224
June	1224
July	1224
Aug.	1224
Sept	1224
Oct	1224
Nov	1224
Dec	1224
2014 Jan	1224
Feb	1224
March	1245
April	1245
May	1245
June	1245
July	1245
Aug.	1245
Sept	1245
Oct	1,245
Nov	1245
Dec	1245
Subtotal	\$ 46,806.00

Medical	
Beaufort Co. EMS	797.50
Beaufort Memorial Hospital	19,587.03
Beaufort Physicians	1,034.00
Dr. Lieberman	2,303.20
Hilton Head Dermatology	1,770.00
Lowcountry Urgent Care	762.00
MUSC	1,962.00
	<u>\$ 28,215.73</u>

HARD MONEY DAMAGES

Mortgage	\$ 56,766.00
Medical	28,215.73
Income	6,228.42
Utilities	4,489.97
Repair	87,942.00
TOTAL	<u>\$ 183,642.12</u>

Utilities

Power	3737.18
Water	257.56
	<u>\$ 3,994.74</u>

Mortgage total forward	46806
2015 Jan	1245
Feb	1245
March	1245
April	1245
May	1245
June	1245
July	1,245
August	1245
	<u>\$56,766</u>



LINE ITEM SUMMARY

Page 1 of 3 3/16/2015

Job No.

Line Item

For Doller Residence 55 James F Byrnes

CODE	DESCRIPTION	QTY	UNIT	UNIT MAT	MATERIAL	UNIT	LABOR	UNIT SUB	SUB CONT	TOTAL
1	project manager	1	week	10	10	450	450		-	460
	construction foreman	1	week		-	750	750		-	750
	dumpster del	1	ea	50	50		-		-	50
	pull charge	1	ea	250	250		-		-	250
	landfill charge	2	ton	46	92		-		-	92
	final cleanup	1	lump		-		-	500	500	500
	mobilize	1	lump	50	50	50	50		-	100
	small tools	1	lump	50	50		-		-	50
	trucks	1	week	67	67		-		-	67
	small rental equipment	1	lump	100	100		-		-	100
	gas	1	lump	25	25		-		-	25
	punch and warranty	1	lump	50	50	50	50		-	100
1	remove drywall	1	lump		-	112	112		-	112
	remove shower stall	1	lump		-	112	112		-	112
	remove wood floor	1	lump		-	140	140		-	140
	move room contents iout/in	1	lump		-	112	112		-	112
6	misc blocking	1	lump	20	20	32	32		-	52
	base	1	lump	16	16	8	8		-	24
7	insulation R-13	32	sf	0.6	19	0.5	16		-	35
	misc caulk and flash	1	lump	20	20	16	16		-	36
9	drywall	160	sf	0.39	62	0.52	83	2	320	466
	misc ceiling patch	1	lump		-		-	50	50	50
	wood floor	300	sf		-		-	9.5	2,850	2,850
	painting / bedroom and bathroom	1	lump		-		-	1200	1,200	1,200
15	plumbing	1	lump		-		-	500	500	500
16	misc electrical	1	lump		-		-	200	200	200
	mold remedation	1	lump		-		-	5800	5,800	5,800
					-		-		-	-
					-		-		-	-
					-		-		-	-
					-		-		-	-
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	Total this page				882		1,931		11,420	14,233

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH CIRCUIT

PATRICIA DOLLER,

Plaintiff,

vs.

LOHR PLUMBING, INC.,

Defendant.

C/A No. 2012-CP-07-1439

VERDICT FORM

2015 SEP -3 PM 3:33
JESSICA M. ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

I. Negligence

- (1) Did Plaintiff prove by a preponderance of the evidence that defendant, Lohr Plumbing, Inc., was negligent and the negligence was one of the proximate causes of the alleged injury?

_____ Yes

_____ ☒ No

- (2) If yes, determine actual damages.

\$ _____ Dollars (numerical)

\$ _____ Dollars (cursive)

II. Negligent Misrepresentation

- (1) Did Plaintiff prove by a preponderance of the evidence that the defendant, Lohr Plumbing, Inc., uttered a negligent misrepresentation and that the negligent misrepresentation was one of the proximate causes of the injury? *NO*

- (2) If yes, determine actual damages.

\$ _____ Dollars (numerical)

\$ _____ Dollars (cursive)

The verdict must be unanimous. Please notify Bailiff upon reaching a verdict.

Joseph T. Spingler

Joseph Spingler
Foreman Signature

3 Day of September, 2015

Beaufort, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Judge

Circuit Court Case No. 2012-CP-07-4139

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DEC 02 2016
SC Court of Appeals
SC Court of Appeals

Patricia Doller.....Respondent,

v.

Lohr Plumbing, Inc.....Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all
material proposed to be included by any of the parties and not any other material.

TUPPER/GRIMSLEY & DEAN, P.A.

Stacey P. Canaday (S.C. Bar No. 68805)
Ralph E. Tupper (S.C. Bar No. 5647)
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Post Office Box 2055
Beaufort, South Carolina 29901-2055
Phone: (843) 524-1116

November 11, 2016

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