

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM HORRY COUNTY
Court of Common Pleas
Benjamin H. Culbertson, Circuit Court Judge**

Case No. 2007-CP-26-7459

**Clint A. Chestnut, Rebatt
Frankie Jefford, Mary Lou
Nance, Margaret Ramsey,
Nicholas Ramsey, Harold
Cushman, Julia Edwards,
Don Emery, Eula Cooke,
and Glenda Rabon
Harper,
Individually and as Class
Representatives**

Appellants,

v.

AVX Corporation,

Respondent.

**RECORD ON APPEAL
VOLUME III**

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SC Court of Appeals

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1

2

Q. Number 6?

3

A. No. Is that correct? No.

4

Q. Number 7, sir?

5

A. No.

6

Q. Number 8?

7

A. No.

8

Q. Okay. Number 9?

9

A. No.

10

Q. Okay, Number 10?

11

A. No.

12

Q. Number 11?

13

A. No.

14

Q. Number 12?

15

A. No.

16

Q. Number -- when you're ready.

17

A. Okay.

18

Q. Number 13?

19

A. No.

20

Q. Number 15?

21

A. No.

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Q. Number -- did I skip 14? I'm

23

sorry. On 13, what was your response to 14?

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A. No.

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Q. Okay. Number 15? Was that a no as

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well?

A. No.

Q. Number 16?

A. No.

Q. 17?

A. No.

Q. 18?

A. No.

Q. 19?

A. No.

Q. 20?

A. No.

Q. 21?

A. No.

Q. 22?

A. No.

Q. 23?

A. No.

Q. And 24?

A. No.

Q. Okay. You see following this

because if you answered yes to any of the

above, please use the following space for an

explanation?

1
2 A. Uh-huh (yes).

3 Q. And by my count, and correct me if
4 I'm wrong, you checked them all no. So that
5 wouldn't be applicable?

6 A. That's right.

7 Q. Okay. All right. Thank you, sir.
8 All right. Fair market value, would you
9 agree with me that's set by, among other
10 things, an arms-length transaction? Two
11 interested parties and they arrive on a
12 price?

13 A. Uh-huh (yes).

14 Q. Okay. You sold your business and
15 the land, the McDowell business and land at
16 fair market value; is that correct?

17 A. Uh-huh (yes).

18 Q. Okay.

19 A. Well, I didn't get it appraised now.
20 I just set a price and he said I'll pay it.

21 Q. Well, that's what I mean. You had
22 two businessmen sitting in a room --

23 A. Correct.

24 Q. They arrived at a price and then
25 they did a deal?

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A. That's right.

Q. Okay. And similarly, the other properties, the dry cleaning properties that you had owned and sold, would it be fair to say you sold those for fair market value? Again, you reached a price with somebody?

A. I'd like to think so, yes.

Q. Okay. We all have regrets. Okay. And likewise with your other properties, I mean you seem like a pretty sharp guy about buying real estate and dealing with it, so you feel comfortable that you haven't been skinned?

A. That's right.

Q. Okay.

A. No.

Q. Would you agree with me it's possible that someone maybe willing to buy your property on Rogers Drive for fair market value? It's possible?

A. Yeah, if you got somebody like me out of town and came in and says, hey, I'll take that and not knowing the --

Q. Right. But it's possible?

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A. Yeah.

Q. If by any chance you were awarded some damages in this case, let's take for example, you've said what you'd like to get is two hundred thousand dollars; is that fair?

A. Uh-huh (yes).

Q. And let's say that you got that. All right. Would you expect to have to give AVX your property since they've paid for it?

A. Oh, yeah.

Q. Okay.

A. You can have it.

Q. So you think it's fair that nobody should be entitled to double dip, that is get them dollars and keep the property; is that correct?

A. I'm -- I'm very honest. I don't hoo'do people.

MR. DEVORE: Okay. That's all I have folks. Thank you very much for your time.

CROSS EXAMINATION

BY-MR. CONNOR:

F. JEFFORDS

1 Q. Let me make one follow-up. Because
2 for my own clarification. On the Exhibit-6,
3 Mr. Jeffords, is this the first time you've
4 read over this document?

5 A. Yes.

6 Q. Okay. You've never executed one of
7 these before is my understanding?

8 A. No, not --

9 Q. Even on your house you just sold
10 down there in Manning?

11 A. No, it's between him and I and with
12 no real estate. When I bought that house, I
13 used the same lawyer in Lake City, South
14 Carolina. And I said hey, I know this guy
15 in Lake City. So we went back to him and,
16 you know, set up an appointment and went
17 back to him. And they had to pay for it.

18 Q. I just want to make sure for my own
19 benefit that you -- when you just now read
20 over the deposition that you read it
21 carefully. On Page 3 it says at the top
22 regarding the property herein identified.
23 That would be the questions you were asked,
24 just pretend you were selling your house in
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this area --

A. On Rogers.

Q. On Rogers. Including the lot, other improvements and fixtures located thereon, do you have any knowledge of any, and then Number 14 says environmental hazards, substances, materials or products, including asbestos, formaldehyde, radon, methane, lead base paint, underground storage tank, toxic mold or other hazards or toxic material, whether buried or covered, contaminated soil or water or other environmental contaminations. My understanding is you said your answer would be no.

A. But you're saying it should be yes?

Q. I'm not saying it should be yes or no. I'm asking trying to clarify your answer.

A. Yeah, you because -- you're right. I mean it should be yes.

Q. When you say you're right, I don't mean to imply one thing or the other. Because I don't know what your answer was.

A. No, I know, I know. Just words out

1
2 of my mouth. But --

3 Q. Does it make a difference that I
4 read that out loud to you?

5 A. Yeah, it does now.

6 Q. Tell me what difference it makes?

7 A. Well, it means that -- that it
8 wasn't where it was. I mean now we're
9 saying that there's a very hazardous material
10 and product. You know, I mean, it's means
11 that -- that under the building there is all
12 this going on that we know of, I mean that
13 we don't know of. We do know of or
14 something like that.

15 Q. Let me ask you this, Mr. Jeffords.
16 If you were selling this house on that
17 street and you had to fill out this form,
18 first of all, do you have any evidence that
19 there is in fact any TCE within your
20 property lines in the ground at any point?

21 A. Well, I don't know this, but I'm
22 assuming this that it is.

23 Q. Okay, now why would you assume that?

24 A. Because they've told me that?

25 Q. Who's they?

1
2 A. Not necessarily AVX, but the City of
3 Myrtle Beach.

4 Q. Have any wells been drilled on your
5 property?

6 A. I think so. I think there actually
7 is --

8 Q. Have you seen any maps of wells
9 showing a well having been drilled on your
10 property?

11 A. No.

12 Q. But you think a well was drilled on
13 your property out near the road, or where?
14 Not in your yard somewhere was it?

15 A. Well, if it was drilled, it would
16 have to be in the yard. I mean, you know,
17 behind the house or in front of the house.
18 I have no idea.

19 Q. Okay. When you say you have no
20 idea, I don't either.

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

22 Q. So tell me, I need to find out what
23 do you know of any situation ever where
24 someone has come into your yard on that
25 street and drilled a well, because I don't

1 know of it.

2 A. No, I don't know.

3 Q. Okay. So that's why, you know, I
4 don't know your response to this question
5 because the question. Because the question
6 says do you know of any environmental hazards
7 or products or other hazardous stock material
8 contaminated soil or water or other
9 environmental contamination. Then I assume
10 that means on your property. So do you know
11 of any of these hazards on your property?
12

13 A. No, I don't know that.

14 Q. Okay. My question is, I want to be
15 clear, would you say yes or no or no
16 representation if you had to fill this out
17 and give it to a potential purchaser of your
18 property?

19 A. Well, I don't know.

20 Q. Or do you know?

21 A. I don't know.

22 Q. Now, that's a fair response. Okay.

23 A. I don't know.

24 REDIRECT EXAMINATION

25 BY-MR.DEVORE:

1
2 Q. Mr. Jeffords, and I'll come at it a
3 slightly different way because I think you've
4 said it repeatedly in this deposition. You
5 do not yourself know whether there is any
6 contamination on or under your property at
7 Rogers Drive; is that correct?

8 A. I don't know that specifically.

9 Q. Specifically?

10 A. Yeah.

11 Q. Okay. I understand you may have
12 some concerns. I understand you may have
13 heard different things, but you do not know
14 that there's any contamination at or under
15 your property on Rogers Drive; is that
16 correct?

17 A. That's correct.

18 Q. Okay. So let's go back to Exhibit
19 Number-6 and Number 14; okay?

20 A. Okay.

21 Q. Now, as your counsel has
22 appropriately pointed out, at the top of that
23 page it refers to regarding the property
24 herein identified. And for purposes of my
25 question to you, the property will be your

1
2 property on Roger Drive; all right? Is that
3 agreeable?

4 A. Uh-huh (yes).

5 Q. Okay. Now, go ahead and read 14
6 and tell me if you're aware of any of those
7 environmental hazards in the balance of
8 what's stated there on or under your property
9 at Roger Drive. If you're aware of any,
10 please tell me what they are. If you're not
11 aware of any, tell me that.

12 A. Excuse me, I'm not aware of it as I
13 don't know it.

14 Q. Okay. So you initially told me when
15 you read through it that you would have
16 checked the box no, because you don't know;
17 correct?

18 A. Uh-huh (yes).

19 Q. And nothing's changed since I asked
20 it the first time; isn't that correct?

21 A. Yes. No, but yes. I read it since
22 I said no, I told you I had read it, but I
23 really hadn't read it. Not that particular
24 14 there I'm talking about.

25 Q. But what hasn't changed is you don't

F. JEFFORDS

1
2 have any knowledge of any contamination or
3 any of the rest of the things listed under
4 Sub-part 14, actually on or at or under your
5 property; is that correct?

6 A. The only knowledge I have is what I
7 was told by the City of Myrtle Beach, DHECs
8 and, you know. But to me, do I know it?
9 I do not know it. I mean if my life
10 depended on it, I don't know.

11 Q. Okay. So you don't know there is
12 any of the things listed in 14 at or under
13 your property; is that correct?

14 A. But I don't know that there's not.

15 Q. I understand that. Okay. So since
16 you don't know and since this form asks you
17 ---

18 A. I didn't sign that, did I?

19 Q. No. Since this asks you do you
20 have knowledge of any problem, malfunction or
21 defect with any of the following, the first
22 of it at the top it says knowledge. Do you
23 have any knowledge of these things? As in
24 regarding the property herein identified and
25 for all purposes that's Roger Drive. Isn't

1
2 it correct you would check that Number 14 as
3 no?

4 A. Yeah, I guess.

5 Q. I don't want you to guess.

6 A. Well, I mean I don't -- you know, I
7 do not know this personally like I'm not a,
8 you know, a person going around digging holes
9 to find out if there's anything in the
10 ground.

11 Q. Right.

12 A. But I would have to say I don't
13 know and that's all.

14 Q. All right. And you don't have any
15 -- and I think we've established, you don't
16 have any information for me today to suggest
17 there actually is contamination on your
18 property that is from any other source? Any
19 other person or document; isn't that correct?

20 A. That's correct.

21 MR. DEVORE: Okay. Thank you sir.

22 (Whereupon, the Deposition of FRANCIS
23 MCLEOD JEFFORDS concluded.)
24
25

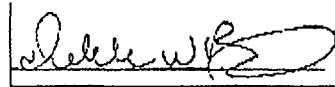
F. JEFFORDS

CERTIFICATE

I, Debbie Rayl, Professional Verbatim Reporter and Notary Public for the State of South Carolina, certify that I did have FRANCIS M. JEFFORDS to appear before me at 10:02 a.m. on the 1st day of July, 2010, in the office of Kelaher, Connell and Connor, Surfside Beach, South Carolina; that the witness was duly sworn to tell the truth, the whole truth and nothing but the truth; that the foregoing pages constitute a true and accurate transcript of the testimony given at that time and place.

I further certify that I am not of counsel or kin to any of the parties to this cause of action, nor am I interested in any manner in its outcome.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 8th day of July, 2010.



Debbie Rayl,
Notary Public

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO.: 2007-CP-26-7459

Clint A. Chestnut, Rebatt Frankie Jefford,
Mary Lou Nance, Margaret Ramsey and
Nicholas Ramsey,
Individually and as Class Representatives,

Plaintiffs,

vs.

AVX Corporation,

Defendant.

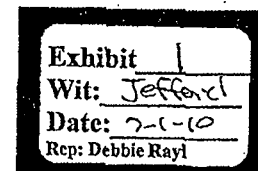
Class Action Pursuant
to SCRPC 23

COMPLAINT
(Negligence/Nuisance/
Trespass/Strict Liability)

JURY TRIAL DEMANDED

The Plaintiffs, complaining of the Defendant, respectfully allege unto this Court as follows:

1. The Plaintiff, Clint A. Chestnut, is a citizen and resident of Horry County, South Carolina and is the owner of a home/real property at 805 Rogers Drive, Myrtle Beach, South Carolina.
2. The Plaintiff, Rebatt Frankie Jefford, is a citizen and resident of Horry County, South Carolina and is the owner of a home/real property at 811 Rogers Drive, Myrtle Beach, South Carolina.
3. The Plaintiff, Mary Lou Nance, is a citizen and resident of Horry County, South Carolina and is the owner of a home/real property at 807 Rogers Drive, Myrtle Beach, South Carolina.
4. The Plaintiffs, Nicholas H. Ramsey and Margaret Ramsey, are citizens and residents of Horry County, South Carolina and are the owners of a home/real property at 815 Rogers Drive, Myrtle Beach, South Carolina.



5. The Defendant, AVX Corporation (hereinafter "AVX"), upon information and belief, is a corporation organized and existing under the laws of the State of South Carolina and with its principal place of business in Myrtle Beach, South Carolina.

6. That during the years from 1980 to the present, the Defendant AVX Corporation, through its officers, agents and/or employees, used a chemical known as trichloroethylene, also known as "TCE", to clean machine tools and parts.

7. That TCE has been used by Defendant AVX Corporation as a degreaser at its manufacturing plant.

8. That on or about December 4, 1996, Defendant AVX entered into a Consent Order with the Department of Health and Environmental Control, an entity of the State of South Carolina.

9. In this Consent Order, (a copy of which is attached hereto as Exhibit A) Defendant AVX, through its officers, agents and/or employees, admitted that it had violated South Carolina Pollution Control Act, S.C. Code Ann. § 48-1-10, *et seq.* (Supp. 1995); the South Carolina Well Standards and Regulations, 25 S.C. Code Ann. Regs. 61-71 (Supp. 1995), promulgated pursuant to the South Carolina Safe Drinking Water Act, S.C. Code Ann. § 44-55-40; and the Underground Injection Control Regulations, 25A S.C. Code Ann. Regs. 61-87 (Supp. 1995), promulgated pursuant to the South Carolina Pollution Control Act.

10. That further the Defendant AVX was required to take certain action including implementing a work plan regarding the TCE found on AVX's site.

11. That in November 2007, environmental testing performed near the real property including the homes and businesses from 17th Avenue South where AVX is located in Myrtle

Beach to 7th Avenue South showed TCE levels many times greater than what is considered safe and appropriate.

12. That the Plaintiffs are individual property owners and homeowners who have learned that their property is contaminated by TCE.

13. That the Plaintiffs individually and as Class Representatives, bring this action as a class action under SCRCF 23, the class being defined as those homes, businesses and real property which are located within the area of Defendant's plant and which are contaminated with TCE.

14. That the class is limited to only South Carolina residents and citizens. The class excludes Horry Land Company which has filed its own lawsuit for damages to its property.

15. That Plaintiffs proceed pursuant to SCRCF 23 as a class action on behalf of themselves and all those similarly situated who have suffered from contamination to their real property as a result of the actions of the Defendant AVX.

16. There are numerous properties and numerous owners of those properties that have been affected by the contamination of TCE and the class is so numerous that joinder of all members is impracticable.

17. There are questions of law and fact common to the class.

18. The claims of the representative parties are typical of the claims of the class.

19. The class representatives will fairly and adequately protect the interests of the class.

20. The amount in controversy exceeds One Hundred Dollars (\$100) for each member of the class.

21. That further pursuant to South Carolina law, Plaintiffs are required if their property is sold to advise the prospective purchaser of any defects and/or dangerous conditions to the property and that pursuant to what Plaintiffs and each class member has or will learn there is contamination from TCE which makes the aforementioned property "a distressed property" and accordingly unable to be sold with disclosure.

FOR A FIRST CAUSE OF ACTION

(Negligence)

22. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

23. That the Defendant was negligent, reckless, willful and wanton in one or more of the following particulars:

- a. in failing to keep the TCE from spreading to Plaintiffs' property;
- b. in failing to use proper techniques to make sure the TCE did not leak into the ground water;
- c. in failing to warn Plaintiffs of the TCE;
- d. in failing to take quick action to keep the contaminate from leaking into the groundwater;
- e. in failing to supervise such that the TCE would not leak into the ground water;
- f. in failing to notify the proper authorities when it was discovered the TCE was leaking into the ground water;
- g. in failing to properly clean up the TCE such that it did not affect the Plaintiffs' property;

- h. in failing to immediately advise DHEC of the dangers of the TCE;
- i. in failing to warn Plaintiffs that TCE would be leaking into its ground water;
- j. in failing to order immediate testing and to take preventative measures to make sure the TCE did not leak in, on or near Plaintiffs' property;
- k. in violating the South Carolina Pollution Control Act and its various rules and regulations.

24. That as a direct and proximate result, Plaintiffs have suffered damages in that they are unable to sell their homes/real property and that their property has now become distressed property, and that their property is worthless and that their property has been damaged and devalued in that they must now disclose pursuant to South Carolina law that the property has chemicals on or about it which may be harmful or dangerous to prospective purchasers and their families.

25. That Plaintiffs bring this cause of action for actual damages, punitive damages and for the costs of this action.

FOR A SECOND CAUSE OF ACTION

(Nuisance)

26. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

27. The Plaintiffs bring this cause of action for nuisance.

28. That the Defendant has used its own land for business uses and as a result of those business uses, chemicals used by the Defendant and within the Defendant's control have migrated onto Plaintiffs' and Plaintiffs' class properties which have suffered injury.

29. That Defendant's use of the chemical TCE was injurious to Plaintiffs' property and now Plaintiffs are unable to sell and enjoy their property.

30. That under South Carolina's nuisance law, it does not matter that the Defendant may have used reasonable care in the use of the chemicals because Defendant is strictly liable for the use of its property in such a fashion so that others are not injured.

31. That Plaintiffs bring this cause of action for nuisance on behalf of themselves and all those similarly situated and request judgment as listed in the first cause of action for actual damages, punitive damages and the costs of the action.

FOR A THIRD CAUSE OF ACTION

(Trespass)

32. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

33. That the Plaintiffs bring this cause of action for trespass in that the Defendant, through its officers, agents and/or employees did intentionally trespass on Plaintiffs' land through the use of chemicals known as TCE.

34. That this is a continuing trespass which has occurred over the course of a number of years and that Defendant is unable to stop the migration of the chemicals onto Plaintiffs and Plaintiff's class properties.

35. That as a result of the trespass by the Defendant, Plaintiffs and all those similarly situated suffered damages to their home/real property to include devaluation of their property.

36. That Plaintiffs request damages as enumerated in the first two causes of action for actual damages and the costs of the action.

FOR A FOURTH CAUSE OF ACTION

(Strict Liability)

37. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

38. The Plaintiffs bring this cause of action for strict liability against the Defendant.

39. That the Defendant engaged in an ultra hazardous activity, to wit, using TCE, a dangerous chemical, at its plant.

40. The use of this chemical involves a substantial risk of serious harm to the Plaintiffs' property which is contiguous to the plant.

41. That the activity is one which cannot be performed with complete safety no matter how much care is taken.

42. That the use of TCE is not one of a common occurrence in the particular community and is known to be dangerous with dangerous consequences to person and property.

43. That Defendant had a duty to the Plaintiffs to make sure that the TCE did not come onto the property of Plaintiffs and Plaintiff Class.

44. That Plaintiffs bring this cause of action for themselves individually and all others similarly situated for damages for an ultra hazardous activity.

45. That Plaintiffs ask for judgment against Defendant for actual damages for strict liability for an ultra hazardous activity and for actual damages and the costs of the action.

WHEREFORE, Plaintiffs request as follows:

- A. That the Court certify a class pursuant to SCRCp 23.
- B. On the First Cause of Action individually and on behalf of all class members for actual damages, punitive damages, and the costs of the action.

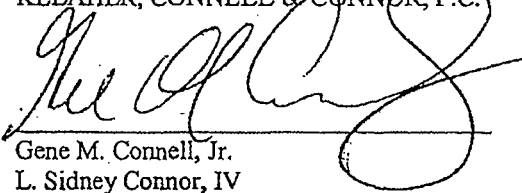
C. On the Second Cause of Action individually and on behalf of all class members for actual damages, punitive damages, and the costs of the action.

D. On the Third Cause of Action individually and on behalf of all class members for actual damages, punitive damages, and the costs of the action.

E. On the Fourth Cause of Action individually and on behalf of all class members for actual damages, punitive damages, and the costs of the action.

F. For such other and further relief as the Court may deem just, necessary and proper.

KELAHER, CONNELL & CONNOR, P.C.



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November 27, 2007
Surfside Beach, South Carolina.

THIS IS A TRUE COPY OF DEPARTMENT OF HEALTH
& ENVIRONMENTAL CONTROL RECORDS

Kenneth D. Brown

STATE OF SOUTH CAROLINA
BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL CONTROL

IN RE: AVX
SCD 062 690 557
HORRY COUNTY

CONSENT ORDER
96-43-HW, DWP
96-71-DWP, HW

AVX, a corporation which produces a variety of ceramic capacitors used in the aerospace industry; data processing; telecommunications; and military applications, has been in operation at its Myrtle Beach location since 1953. Samples collected from soil and groundwater over the past fifteen years have indicated that a release of trichloroethene (TCE) and other volatile organic compounds (VOCs) has occurred and that groundwater at the site has been impacted.

This Consent Order is entered into between the South Carolina Department of Health and Environmental Control and AVX with respect to the company's continued efforts to implement a more aggressive investigation and remediation of groundwater at its Myrtle Beach facility.

FINDINGS OF FACT

1. On June 22, 1995, representatives of AVX visited the Waccamaw EQC District Office and informed Department personnel that groundwater contamination had been discovered at the company's Myrtle Beach facility.

2. During the visit, AVX submitted a report to the Department entitled "Site Environmental Summary Report for AVX" by Geraghty and Miller. The report confirmed the presence of VOCs in the groundwater and soil in two (2) areas of the facility - an area west of the main building and an area in the southeast corner of the property.

3. Data from routine sampling events performed since 1981 was compiled in the report and confirmed that trichloroethene (TCE), 1,1,1-trichloroethane (1,1,1-TCA), 1,2-dichloroethane, and related chlorinated VOCs were the major constituents of concern at the site; although benzene, toluene, ethylbenzene, and xylene (BTEX) non-chlorinated compounds were also detected along AVX's property boundary with Myrtle Beach Air Force Base. The report also indicated that AVX had conducted extensive assessment, removal, and remedial activities of contaminated soil and groundwater at the site during the past fifteen years without notifying the Department.

4. AVX stored virgin and spent TCE and 1,1,1-TCA in underground storage tanks (USTs) until 1983, when the tanks were removed without approval from the Department. The TCE and 1,1,1-TCA were subsequently stored in above-ground storage tanks until their usage was eliminated in 1993. While investigations performed by AVX in the mid-1980's indicated that there were no ongoing releases of TCE or 1,1,1-TCA in the area where the former USTs were located, the investigations did suggest that past material handling practices and/or leaks from the former USTs and its associated piping could have been responsible for the

contamination. There are no known underground chemical storage tanks currently at the site.

5. In addition to the USTs, TCE and related VOCs may have been released in 1992 during the excavation of footings for a building addition in the west area of the site, as two abandoned underground pipes thought to contain TCE, methylene chloride, and/or toluene were ruptured. Discolored soils in the area were excavated, stockpiled, analyzed, and sent for proper treatment or disposal.

6. In an effort to evaluate and remediate VOCs found in onsite soils, AVX carried out a number of soil remedial actions during the mid-1980's without notifying the Department. Typically, as noted in one instance in the mid-1980's, soils contaminated with VOCs would be excavated and landspread onsite to expedite VOC volatilization. The open trenches would be left exposed until VOC levels were acceptable for back-filling of soils.

7. In May 1981, AVX installed four shallow groundwater monitoring wells without approval from the Department. Analysis from these wells indicated elevated VOC levels and initiated the installation of additional monitoring wells throughout the 1980's. Samples were collected and analyzed from these wells at least twice a year until 1992. To date, AVX has installed a total of 19 monitoring wells without approval from the Department, with 5 of these wells being abandoned and 14 remaining in place.

8. In 1985, AVX began installing pumping wells or converting existing wells into pumping wells without approval from the Department in an effort to pump

contaminated groundwater into onsite cooling towers as noncontact cooling water. After exiting the cooling towers, the contaminated water was (and is currently) discharged, along with facility wastewater, to the municipal sewer. Originally, a total of nine pumping and/or production wells were installed from 1985 to 1987 for these purposes. In July 1991, AVX installed an additional Production Well, followed in May 1992 with the installation of a Pumping Well to ensure that groundwater contamination along the western border was contained onsite. A Production Well was also installed in the southeast corner of the property. Prior to discovery of its contaminated groundwater, AVX had used an uncontaminated aquifer to supply the cooling towers with water since 1967.

9. In 1989, AVX attempted to stimulate natural bioremediation by injecting nutrients and lime into the contaminated area west of the building. As a result, AVX installed and operated a TYPE V.A. Injection Well without a permit, as defined in the Underground Injection Control Regulations, 25A SC Code Ann. Regs. 61-87.11. The efforts at in-situ bioremediation were judged to be only marginally effective and were quickly discontinued.

10. On December 6, 1995, representatives of AVX met with the Department in a second meeting. On behalf of AVX, Geraghty and Miller proposed to the Department a more aggressive remedial approach through the submittal of a workplan requiring AVX to conduct additional assessments at the site, to perform a feasibility study for soil remediation, and to upgrade the groundwater recovery system to prevent offsite migration of the VOCs. During the meeting, AVX expressed an

interest in signing a formal document with the Department under which the company could proceed with the additional assessment and remedial activities as approved by the Department.

CONCLUSIONS OF LAW

Based on these findings, AVX has violated the South Carolina Pollution Control Act, S.C. Code Ann. §48-1-10 et seq. (Supp. 1995); the South Carolina Well Standards and Regulations, 25 S.C. Code Ann. Regs. 61-71 (Supp. 1995), promulgated pursuant to the South Carolina Safe Drinking Water Act, S.C. Code Ann. §44-55-40; and the Underground Injection Control Regulations, 25A S.C. Code Ann. Regs. 61-87 (Supp. 1995), promulgated pursuant to the South Carolina Pollution Control Act, S.C. Code Ann. §48-1-40 et seq. (Supp. 1995), as amended, for failure to comply with the following:

1. Section 48-1-90 of the South Carolina Pollution Control Act, in that it shall be unlawful for any person directly or indirectly to throw, drain, run, allow to seep, or otherwise discharge into the environment of the State, organic or inorganic matter, including sewage, industrial wastes or other wastes, except as in compliance with a permit issued by the Department;

2. R.61-71.11E(1) - South Carolina Well Standards and Regulations, in that prior to the construction of any monitoring well, the following information must be submitted to and approved by the Department: (a) Proposed location(s) on a scaled map or plat; (b) Proposed construction detail; and (c) Intended purpose of the monitoring well(s);

3. R.61-71.11.E(2) - South Carolina Well Standards and Regulations, in that a monitoring well record form or other form provided and/or approved by the Department shall be completed and submitted to the Department within thirty (30) days after completion of a monitoring well. The form shall contain the following information: (a) Name and address of facility/owner; (b) Location of monitoring well(s) on a scaled map or plat; (c) Driller and certification number; (d) Date drilled; (e) Driller's or Geologist's log; (f) Total depth; (g) Screened interval; (h) Diameter and construction details; (i) Depth to water table with date and time measured; and (j) Surveyed elevation of measuring point with respect to an established benchmark;

4. R.61-87.11E(2)(a) - South Carolina Underground Injection Control Regulations, in that no person shall construct, use or operate a well of this class for injection: (a) Except as authorized by a permit issued by the Department as provided by these regulations.

A "release" or "threat of release" of "hazardous substances" into the "environment" has occurred at the Site within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, P.L. 96-510, as amended (CERCLA).

The Department has the authority to implement and enforce CERCLA and related regulations pursuant to the South Carolina Hazardous Waste Management Act, S.C. Code Ann. § 44-56-200 (Supp. 1994). The Pollution Control Act, S.C. Code Ann. § 48-1-10 et seq. (Supp. 1995), and the South Carolina Hazardous Waste Management Act, S.C. Code Ann. § 44-56-10 et seq. (Supp. 1995), give the

Department the authority to hold hearings, issue orders, assess civil penalties and conduct studies, investigations, and research; to abate, control and prevent pollution; and to protect the health of persons or the environment.

NOW THEREFORE, IT IS ORDERED with the consent of AVX and pursuant to Sections 44-56-40 and 44-56-200 of the South Carolina Hazardous Waste Management Act; Section 48-1-50 and 48-1-330 of the South Carolina Pollution Control Act; and Section 44-55-90 of the South Carolina Safe Drinking Water Act, of the 1976 Code of Laws, as amended, that AVX shall perform the following:

1. Now and in the future, ensure that a workplan, letter requesting approval, or permit application (whichever is applicable) is submitted and approval has been granted in writing by the appropriate Department personnel prior to initiating any remedial or investigational activities; including but not limited to, installing additional groundwater monitoring wells, production or recovery wells, or underground injection wells.

2. Within twenty (20) business days of the execution date of this Consent Order, pay to the Department a civil penalty in the amount of seven thousand dollars (\$7,000.00). This penalty includes five thousand seven hundred dollars (\$5,700.00) for violations of the South Carolina Pollution Control Act enforced by the Bureau of Solid and Hazardous Waste Management and one thousand three hundred dollars (\$1,300.00) for violations of regulations enforced by the Bureau of Water.

3. Within twenty (20) business days of receipt of this fully executed Consent Order, submit to the Department's CERCLA Site Engineer for review and approval, a workplan for the upgrading of AVX's groundwater recovery and treatment system, including the installation of air stripping technology to treat the groundwater (hereinafter, Groundwater/Air Stripper Workplan). The Groundwater/Air Stripper Workplan shall be consistent with the technical intent of the National Contingency Plan and shall include, but may not be limited to: (1) A current conditions report on the status of the groundwater contamination; (2) A plan that outlines activities, technologies, and/or strategies AVX proposes to implement during its upgrade of its groundwater recovery system to add air stripping capabilities; (3) A time schedule for implementation of all major activities proposed within the Groundwater/Air Stripper Workplan; and (4) A Health and Safety Plan (HASP) that is consistent with the Occupational Safety and Health Act (OSHA) regulations and protocols.

4. Within thirty (30) business days of receipt of this fully executed Consent Order, submit to the Department's CERCLA Site Engineer for review and approval, a workplan for the additional investigation and remediation (hereinafter, Investigation Workplan) of the soil and groundwater contamination noted within the "Findings of Fact" of this Consent Order. The Workplan shall be consistent with the technical intent of the National Contingency Plan and shall include, but may not be limited to: (1) A plan that outlines activities and/or strategies AVX will implement to help identify and investigate all potential sources of its groundwater contamination; (2) A summary of all previous activities implemented by AVX to help remediate and/or contain the

contamination, including the effectiveness of each of these activities (attaching copies of all or parts of prior submittals which contain this information will be acceptable); (3) Provisions for conducting a feasibility study which outlines and evaluates alternative technologies and/or strategies for soil and groundwater remediation, including but not necessarily limited to, a pilot study on the effectiveness of a soil vapor extraction/air sparging system and/or a vacuum enhanced recovery system for soil and groundwater remediation; (4) A proposal which addresses the continued long-term monitoring of groundwater wells surrounding the Site; (5) A time schedule for implementation of all major investigational and remedial activities proposed within the Workplan; and (6) A HASP that is consistent with OSHA regulations and protocols.

The Department shall separately approve or disapprove the Groundwater/Airstripper and Investigation Workplan within a reasonable period of time of receipt. Any comments generated through the Department's review of the Workplans must be addressed in writing by AVX within thirty (30) days of receipt of said comments by AVX. Upon approval of each Workplan by the Department, the Workplan and schedules contained therein shall be incorporated herein and become an enforceable portion of this Consent Order.

5. Within sixty (60) days of receipt by AVX of the Department's written approval of each Workplan, AVX shall begin implementation of each Workplan as described therein.

6. AVX shall submit to the Department's Site Engineer written monthly progress reports which: (a) Describe the actions AVX has taken toward achieving compliance with this Consent Order during the previous month; (b) Include, in summary format, results of any sampling and tests, if any, received by AVX during the reporting period regarding investigational or remedial activities; (c) Include investigational or remedial activities completed under the approved Workplans during the previous month; (d) Describe all actions which are scheduled for the next month within the approved Workplans, and provide other information relating to the progress of the work as deemed necessary or requested by the Department; and (e) Include information regarding the percentage of work completed, any delays, encountered or anticipated, that may affect the future schedule for implementation of the Workplans, and a description of efforts made to mitigate delays or avoid anticipated delays. These progress reports are to be submitted in writing to the Department by the fifth day of every month following the execution date of this Consent Order.

7. Within forty-five (45) days after completion of the investigational activities described in Item 4 above, AVX shall submit a report to the Department's Site Engineer outlining and specifying the results of those activities performed pursuant to the Investigation Workplan. This report shall include, but not be limited to, the identification of all possible sources (if determined) and a feasibility study which evaluates the alternatives for remediation of those sources. The Department shall either approve or disapprove this report within a reasonable period of time. If the report, as submitted by AVX is not approved, AVX shall submit a revised report,

which addresses the comments in the Department's letter, within thirty (30) days after receipt of the Department's disapproval letter, or, within an additional period of time as agreed to in writing by the Department, in its discretion, upon written extension request by AVX.

8. The Department shall periodically review the effectiveness of AVX's investigative and remedial efforts as described above. In the event that additional work is deemed necessary, as determined by the Department after discussions with representatives of AVX, to further investigate or remediate the contamination or a potential source of contamination, AVX shall prepare and submit the appropriate plan for approval by the Department within the time schedule specified at that time. This/These plans shall be incorporated herein as an enforceable portion of this Consent Order.

9. If any event occurs which causes or may cause a delay in meeting any of the above-scheduled dates for completion of any specified activity pursuant to the approved Workplans, AVX shall notify the Department in writing at least five (5) days before the scheduled date if practicable, as determined by the Department. AVX shall describe in detail the anticipated length of the delay, the precise cause or causes of delay, if ascertainable, the measures taken or to be taken to prevent or minimize the delay, and the timetable by which AVX proposes that those measures will be implemented. The Department shall provide written notice to AVX as soon as practicable that a specific extension of time has been granted or that no extension has been granted. An extension shall be granted for any scheduled activity delayed by an

event of force majeure which shall mean any event arising from causes beyond the control of AVX that causes a delay in or prevents the performance of any of the conditions under this Consent Order including, but not limited to: a) acts of God, fire, war, insurrection, civil disturbance, explosion; b) adverse weather conditions that could not be reasonably anticipated causing unusual delay in transportation and/or field work activities; c) restraint by court order or order of public authority; d) inability to obtain, after exercise of reasonable diligence and timely submittal of all applicable applications, any necessary authorizations, approvals, permits, or licenses due to action or inaction of any governmental agency or authority; and e) delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence by AVX. Events which are not force majeure include by example, but are not limited to, unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure by AVX to exercise due diligence in obtaining governmental permits or performing any other requirement of this Order or any procedure necessary to provide performance pursuant to the provisions of this Order. Any extension shall be granted at the sole discretion of the Department, incorporated by reference as an enforceable part of this Consent Order, and, thereafter, be referred to as an attachment to the Consent Order.

10. In consideration of AVX's performance of the approved Workplans, the Department covenants not to sue or take any other civil or administrative action against AVX for "Covered Matters". "Covered Matters" shall be limited to those

matters specifically covered in the approved Workplans and in this Consent Order.

"Covered Matters" does not include: (a) claims based on the failure of AVX to meet the requirements of this Consent Order; (b) any liability for any claim related to or arising out of response actions taken, selected, or ordered by the Department that are designed in whole or in part to respond to a release or threatened release of hazardous substances or pollutants or contaminants into surface water or ground water at or near the Site; (c) any claim for recovery of response costs incurred by the Department; (d) criminal actions or liabilities; (e) claims for damages to natural resources; (f) any contamination or condition not previously known nor revealed by the results of the approved Workplans, but discovered by or made known to the Department after completion of the approved Workplans; and, (g) all other matters not specifically covered in the approved Workplans and this Consent Order.

With respect to future liability for Covered Matters, this covenant not to sue shall take effect upon the Department's written certification of approval of AVX's completion of all Covered Matters required by this Consent Order.

11. Nothing in this Consent Order is intended to be, or shall be construed as, a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or equity, which the Department may have against AVX for any matters not expressly included in "Covered Matters".

12. Nothing in this Consent Order is intended to be, or shall be construed as, a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or equity, which the Department may

have against any person, firm, corporation or other entity not a signatory to this Consent Order.

13. In consideration for the Department's covenant not to sue, AVX agrees not to assert any claims or causes of action against the Department arising out of response activities undertaken at the Site, if warranted in the future, or to seek any other costs, damages or attorney's fees from the Department arising out of response activities undertaken at the Site except for those claims or causes of action resulting from the intentional or grossly negligent acts or omissions of the Department. The State of South Carolina, the Department, or any agency representative shall not be a party to any contract involving AVX at or relating to the Site.

14. Subject to Items Ten (10) and Eleven (11) above, the Department agrees that, upon AVX's fulfillment of the terms of this Consent Order, as approved by the Department, any liability of AVX to the Department for "Covered Matters" will be deemed as resolved between AVX and the Department and that the Department shall make no claims against AVX for "Covered Matters". Nothing in this Consent Order shall prohibit the Department from bringing or taking future response or remedial actions that may be required at the Site and from seeking any relief in law or equity from any and all responsible parties.

15. The Department agrees that access to the Site will be restricted to representatives of AVX, its consultants, contractors and invited guests except as modified herein. Employees of the Department and the EPA and their respective consultants and contractors will not be denied access during normal business hours

or at any time work under the approved Workplans is being performed or during any environmental emergency or imminent threat situation, as determined by the Department (or as allowed by applicable law).

16. This Consent Order shall be binding upon and inure to the benefit of AVX and the Department and their respective successors and permitted assigns. AVX may not assign its rights or obligations under this Consent Order without the prior written consent of the Department.

17. AVX does not admit, accept or concede the Findings of Fact or Conclusions of Law set forth in this Consent Order and specifically reserves the right to contest any such Findings of Fact or Conclusions of Law in any subsequent proceeding regarding the Site. The Consent Order shall be admissible in any enforcement action brought by the Department but may not be utilized by third parties against AVX as proof of any allegations, findings or conclusions contained herein.

IT IS FURTHER ORDERED AND AGREED that failure to meet the deadlines established herein or any other violation of the provisions of this Order shall be deemed a violation of the South Carolina Hazardous Waste Management Act, the South Carolina Pollution Control Act, and/or the South Carolina Safe Drinking Water Act. Upon ascertaining any such violation, the Department shall initiate appropriate legal action to obtain compliance with both this Order and the aforementioned Act(s).

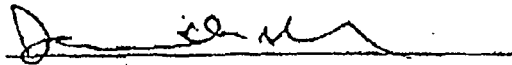
THE SOUTH CAROLINA DEPARTMENT OF
HEALTH AND ENVIRONMENTAL CONTROL

DATE: 12/19/96
Columbia, South Carolina

BY: Douglas E. Bryant
Douglas E. Bryant
Commissioner

WE CONSENT:

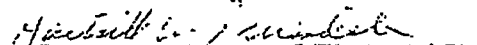
AVX



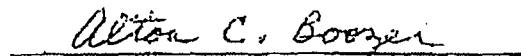
DATE: 3 DEC. 1996

DATE: _____

THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL


Hartsill W. Truesdale, P.E., Chief
Bureau of Solid and Hazardous Waste Management

DATE: 12/04/96


Alton C. Boozer, Chief
Bureau of Water

DATE: 12/10/96


Valerie A. Betterton, Director
Water Enforcement Division

DATE: 12/16/96


Approved by: Legal Office

DATE: 12/17/96

AVX CORPORATION
 RECEIVED
 KYOCERA GROUP COMPANY

AVX Corporation
 P.O. Box 867
 Myrtle Beach, S.C. 29578
 Tel: (803) 448-9411

January 10, 1997

JAN 13 1997
 S.C. Dept. of Health & Cr. ... Capital
 Confidential ...
 Myrtle Beach, S.C.

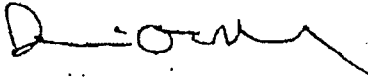
CERTIFIED MAIL NO. 7368 948 121

Mr. Kenneth D. Brown
 South Carolina Department of Health and Environmental Control
 Bureau of Solid and Hazardous Waste Management
 2600 Bull Street
 Columbia, South Carolina 29201

Dear Mr. Brown:

Enclosed is a check in the amount of \$7,000.00 in payment of the civil penalty related to
 Consent Order (96-43-HW, DWP; 96-71-DWP, HW).

Sincerely,



Dennis Oldland
 Corporate Safety/Environmental Manager

AVX CORPORATION
 CORPORATE ACCOUNT
 P.O. BOX 867, MYRTLE BEACH, S.C. 29578-0867

SOUTH CAROLINA NATIONAL BANK
 EDP SERVICES - A203, CONTROL CENTER
 101 GREYSTONE BOULEVARD
 COLUMBIA, SOUTH CAROLINA 29226
 (803) 448-7087

87-1
332

CHECK NO. 024145

REBURSEMENT NO.
 74145

VENDOR NO.
 SCDH&E

CHECK DATE
 01/06/97

PAY

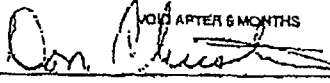
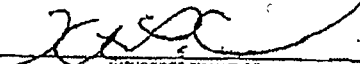
*****7,000.00

PAY
 EXACTLY

EXACTLY SEVEN THOUSAND AND NO/100TH *****

TO
 THE
 ORDER
 OF

S.C. DEPARTMENT OF HEALTH AND
 ENVIRONMENTAL CONTROL
 2600 BULL STREET
 COLUMBIA, S.C. 29201

VOID AFTER 6 MONTHS


 AUTHORIZED SIGNATURE

⑈0024145⑈ ⑈053200019⑈ ⑈01 95876⑈



MEMORANDUM

TO: Pam Helton
Management Services

FROM: Kenneth D. Brown *KDB*
Enforcement Section
Bureau of Solid and Hazardous Waste Management

SUBJECT: Civil Penalty Levied

DATE: January 14, 1997

A civil penalty has been levied against the violator named below. Total payment of the penalty is seven thousand dollars (\$7,000.00), included herein. Please properly record this revenue for control purposes.

Violator: AVX Corporation
801 17th Avenue South
P.O. Box 867
Myrtle Beach, SC 29578

Amount of Penalty Received: Seven Thousand Dollars
(\$7,000.00)

Consent Order: 96-43-HW,DWP; 96-71-DWP,HW
(Joint Order w/ BSHWM & BDWP)

Statute Violated: South Carolina Pollution Control Act;
South Carolina Safe Drinking Water Act

Disposition of Penalty: \$4,150.00 to General Fund
\$2,850.00 to Horry County

FYI

Joint Order Penalty Breakdown:
\$5,700.00 (BSHWM - PCA)
\$2,850.00 - General
\$2,850.00 - County

\$1,300.00 (BDWP - All to General)
\$1,000.00 (BDWP - Underground
Injection Control Regs)
\$300.00 (BDWP - South Carolina
Well Standards and Regs)

Payment Terms: The total penalty is \$7,000.00.
The penalty has been paid-in-full.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2007-CP-26-7459

Clint A. Chestnut, Rebatt Frankie Jefford,)
Mary Lou Nance, Margaret Ramsey,)
Nicholas Ramsey, Harold Cushman,)
Julia Todd Edwards, Don Emery,)
Eula Cooke and Glenda Rabon Harper,)
Individually and as Class Representatives,)

Plaintiffs,)

vs.)

AVX Corporation,)

Defendant.)

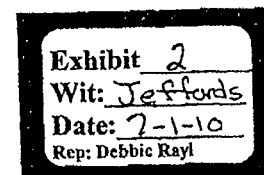
*Class Action Pursuant
to SCRCP 23*

AMENDED COMPLAINT
(Negligence/Nuisance/
Trespass/Strict Liability)

JURY TRIAL DEMANDED

The Plaintiffs, complaining of the Defendant, respectfully allege unto this Court as follows:

1. The Plaintiff, Clint A. Chestnut, is a citizen and resident of Horry County, South Carolina and is the owner of a home/real property at 805 Rogers Drive, Myrtle Beach, South Carolina.
2. The Plaintiff, Rebatt Frankie Jefford, is a citizen and resident of Horry County, South Carolina and is the owner of a home/real property at 811 Rogers Drive, Myrtle Beach, South Carolina.
3. The Plaintiff, Mary Lou Nance, is a citizen and resident of Horry County, South Carolina and is the owner of a home/real property at 807 Rogers Drive, Myrtle Beach, South Carolina.



4. The Plaintiffs, Nicholas H. Ramsey and Margaret Ramsey, are citizens and residents of Horry County, South Carolina and are the owners of a home/real property at 815 Rogers Drive, Myrtle Beach, South Carolina.

5. The Plaintiff, Harold Cushman, is a citizen and resident of Horry County, South Carolina and is the owner of real property which is contaminated by the Defendant.

6. The Plaintiff, Julia Todd Edwards is a citizen and resident of Horry County, South Carolina and is the owner of real property which is contaminated by the Defendant.

7. The Plaintiff, Don Emery, is a citizen and resident of Horry County, South Carolina and is the owner of a home which is contaminated by the Defendants.

8. The Plaintiff, Eula Cooke, is a citizen and resident of Horry County, South Carolina and is the owner of real property which is contaminated by the Defendants.

9. The Plaintiff, Glenda Rabon Harper, is a citizen and resident of Horry County, South Carolina and is the owner of real property which is contaminated by the Defendants.

10. The Defendant, AVX Corporation (hereinafter "AVX"), upon information and belief, is a corporation organized and existing under the laws of the State of South Carolina and with its principal place of business in Myrtle Beach, South Carolina.

11. That during the years from 1980 to the present, the Defendant AVX Corporation, through its officers, agents and/or employees, used a chemical known as trichloroethylene, also known as "TCE", to clean machine tools and parts.

12. That TCE has been used by Defendant AVX Corporation as a degreaser at its manufacturing plant.

13. That on or about December 4, 1996, Defendant AVX entered into a Consent Order with the Department of Health and Environmental Control, an entity of the State of South Carolina.

14. In this Consent Order, (a copy of which is attached hereto as Exhibit A) Defendant AVX, through its officers, agents and/or employees, admitted that it had violated South Carolina Pollution Control Act, S.C. Code Ann. § 48-1-10, *et seq.* (Supp. 1995); the South Carolina Well Standards and Regulations, 25 S.C. Code Ann. Regs. 61-71 (Supp. 1995), promulgated pursuant to the South Carolina Safe Drinking Water Act, S.C. Code Ann. § 44-55-40; and the Underground Injection Control Regulations, 25A S.C. Code Ann. Regs. 61-87 (Supp. 1995), promulgated pursuant to the South Carolina Pollution Control Act.

15. That further the Defendant AVX was required to take certain action including implementing a work plan regarding the TCE found on AVX's site.

16. That in November 2007, environmental testing performed near the real property including the homes and businesses from 17th Avenue South where AVX is located in Myrtle Beach to 7th Avenue South showed TCE levels many times greater than what is considered safe and appropriate.

17. That the Plaintiffs are individual property owners and homeowners who have learned that their property is contaminated by TCE.

18. That the Plaintiffs individually and as Class Representatives, bring this action as a class action under SCRCF 23, the class being defined as those homes, businesses and real property which are located within the area of Defendant's plant and which are contaminated with TCE.

19. The class excludes Horry Land Company which has filed its own lawsuit for damages to its property.

20. That Plaintiffs proceed pursuant to SCRCP 23 as a class action on behalf of themselves and all those similarly situated who have suffered from contamination or stigmatization to their real property as a result of the actions of the Defendant AVX. The Plaintiffs have divided this case into two separate classes defined as follows.

21. That the class is generally defined as all people who own real property in Horry County, South Carolina and located in the City of Myrtle Beach bounded on the west by Withers Swash, bounded on the east by Ocean Boulevard (S.C. 93) and located between 17th Avenue South and Sixth Avenue North in the City of Myrtle Beach.

22. That the Class is further subdivided into two subclasses within the general class definition as follows:

(A) Subclass "A" includes all persons, partnerships, corporations who own real property in the area defined in paragraph 15 and whose property is contaminated by chemicals which have escaped or been spilled and left the AVX plant property. Subclass "A" class representatives are Plaintiffs Harold Cushman, Don Emery, Julia Todd Edwards, Glenda Rabon Harper and Eula Cooke.

(B) Subclass "B" includes all persons, partnerships or corporations who own real property in the areas defined in paragraph 15 of the Complaint but are not contaminated; however, these properties adjoin the contaminated area and are in such close proximity that the real property value has been affected or devalued by the chemical release at the AVX plant. Subclass B representatives are Clint Chestnut, Rebatt Frankie Jefford, Mary Lou Nance, Margaret Ramsey and Nicholas.

23. There are numerous properties and numerous owners of those properties that have been affected by the contamination of TCE and the class is so numerous that joinder of all members is impracticable.

24. There are questions of law and fact common to the class.

25. The claims of the representative parties are typical of the claims of the class.

26. The class representatives will fairly and adequately protect the interests of the class.

27. The amount in controversy exceeds One Hundred Dollars (\$100) for each member of the class.

28. That further pursuant to South Carolina law, Plaintiffs are required if their property is sold to advise the prospective purchaser of any defects and/or dangerous conditions to the property and that pursuant to what Plaintiffs and each class member has or will learn there is contamination from TCE which makes the aforementioned property "a distressed property" and accordingly unable to be sold with disclosure.

FOR A FIRST CAUSE OF ACTION

(Negligence)

29. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

30. That the Defendant was negligent, reckless, willful and wanton in one or more of the following particulars:

- a. in failing to keep the TCE from spreading to Plaintiffs' property;
- b. in failing to use proper techniques to make sure the TCE did not leak into the ground water;

- c. in failing to warn Plaintiffs of the TCE;
- d. in failing to take quick action to keep the contaminate from leaking into the groundwater;
- e. in failing to supervise such that the TCE would not leak into the ground water;
- f. in failing to notify the proper authorities when it was discovered the TCE was leaking into the ground water;
- g. in failing to properly clean up the TCE such that it did not affect the Plaintiffs' property;
- h. in failing to immediately advise DHEC of the dangers of the TCE;
- i. in failing to warn Plaintiffs that TCE would be leaking into its ground water;
- j. in failing to order immediate testing and to take preventative measures to make sure the TCE did not leak in, on or near Plaintiffs' property;
- k. in violating the South Carolina Pollution Control Act and its various rules and regulations.

31. That as a direct and proximate result, Plaintiffs have suffered damages in that they are unable to sell their homes/real property and that their property has now become distressed property, and that their property is worthless and that their property has been damaged and devalued in that they must now disclose pursuant to South Carolina law that the property has chemicals on or about it which may be harmful or dangerous to prospective purchasers and their families.

32. That Plaintiffs bring this cause of action for actual damages, punitive damages and for the costs of this action.

FOR A SECOND CAUSE OF ACTION

(Nuisance)

33. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

34. The Plaintiffs bring this cause of action for nuisance.

35. That the Defendant has used its own land for business uses and as a result of those business uses, chemicals used by the Defendant and within the Defendant's control have migrated onto Plaintiffs' and Plaintiffs' class properties which have suffered injury.

36. That Defendant's use of the chemical TCE was injurious to Plaintiffs' property and now Plaintiffs are unable to sell and enjoy their property.

37. That under South Carolina's nuisance law, it does not matter that the Defendant may have used reasonable care in the use of the chemicals because Defendant is strictly liable for the use of its property in such a fashion so that others are not injured.

38. That Plaintiffs bring this cause of action for nuisance on behalf of themselves and all those similarly situated and request judgment as listed in the first cause of action for actual damages, punitive damages and the costs of the action.

FOR A THIRD CAUSE OF ACTION

(Trespass)

39. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

40. That the Plaintiffs bring this cause of action for trespass in that the Defendant, through its officers, agents and/or employees did intentionally trespass on Plaintiffs' land through the use of chemicals known as TCE.

41. That this is a continuing trespass which has occurred over the course of a number of years and that Defendant is unable to stop the migration of the chemicals onto Plaintiffs and Plaintiff's class properties.

42. That as a result of the trespass by the Defendant, Plaintiffs and all those similarly situated suffered damages to their home/real property to include devaluation of their property.

43. That Plaintiffs request damages as enumerated in the first two causes of action for actual damages and the costs of the action.

FOR A FOURTH CAUSE OF ACTION

(Strict Liability)

44. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

45. The Plaintiffs bring this cause of action for strict liability against the Defendant.

46. That the Defendant engaged in an ultra hazardous activity, to wit, using TCE, a dangerous chemical, at its plant.

47. The use of this chemical involves a substantial risk of serious harm to the Plaintiffs' property which is contiguous to the plant.

48. That the activity is one which cannot be performed with complete safety no matter how much care is taken.

49. That the use of TCE is not one of a common occurrence in the particular community and is known to be dangerous with dangerous consequences to person and property.

50. That Defendant had a duty to the Plaintiffs to make sure that the TCE did not come onto the property of Plaintiffs and Plaintiff Class.

51. That Plaintiffs bring this cause of action for themselves individually and all others similarly situated for damages for an ultra hazardous activity.

52. That Plaintiffs ask for judgment against Defendant for actual damages for strict liability for an ultra hazardous activity and for actual damages and the costs of the action.

WHEREFORE, Plaintiffs request as follows:

A. That the Court certify a class pursuant to SCRCP 23 including Class A and Class B as heretofore defined in the Complaint.

B. On the First Cause of Action individually and on behalf of all class members for actual damages, punitive damages, and the costs of the action.

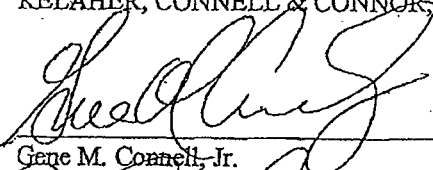
C. On the Second Cause of Action individually and on behalf of all class members for actual damages, punitive damages, and the costs of the action.

D. On the Third Cause of Action individually and on behalf of all class members for actual damages, punitive damages, and the costs of the action.

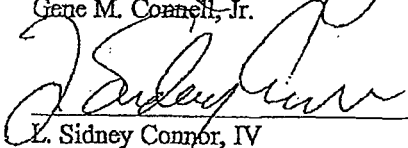
E. On the Fourth Cause of Action individually and on behalf of all class members for actual damages, punitive damages, and the costs of the action.

F. For such other and further relief as the Court may deem just, necessary and proper.

KELAHER, CONNELL & CONNOR, P.C.



Gene M. Connell, Jr.



L. Sidney Connor, IV

The Courtyard, Suite 209

1500 U. S. Highway 17 North

Post Office Drawer 14547

Surfside Beach, South Carolina 29587-4547

(843) 238-5648 (phone)

(843) 238-5050 (facsimile)

gconnell@classactlaw.net

Attorneys for Plaintiffs

May 7, 2010

Surfside Beach, South Carolina:

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2007-CP-26-7459

Clint A. Chestnut, Rebatt Frankie Jefford,)
Mary Lou Nance, Margaret Ramsey,)
Nicholas Ramsey, Harold Cushman,)
Julia Edwards, Don Emery, Eula Cooke,)
and Glenda Rabon Harper,)
Individually and as Class Representatives,)

Plaintiffs,)

vs.)

AVX Corporation,)

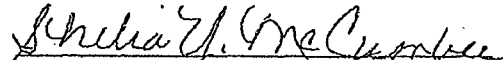
Defendant.)

AFFIDAVIT OF SERVICE

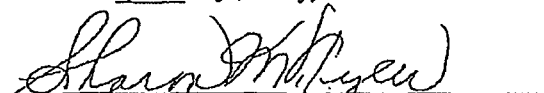
PERSONALLY appeared before me, Shelia Y. McCumbee, who being duly sworn, deposes and says that she is an employee of Kelaher, Connell & Connor, P. C., Attorneys at Law, and that she has served this 7th day of May, 2010, via U.S. Mail (with proper postage affixed thereto), a copy of the documents described below, in the above entitled action to the following:

Brad A. DeVore, Esq.
Richard E. Morton, Esq.
Samuel W. Outten, Esq.
Womble Carlyle Sandridge & Rice, PLLC
3500 One Wachovia Center
301 South College Street
Charlotte, NC 28202-6037

DOCUMENTS: Amended Civil Action Coversheet, Amended Summons, Amended Complaint


Shelia Y. McCumbee

SWORN AND SUBSCRIBED before me,
This 7th day of May, 2010.


Notary Public for South Carolina
My Commission Expires: 2-25-19

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2007-CP-26-7459

Clint A. Chestnut, Rebatt Frankie Jefford,)
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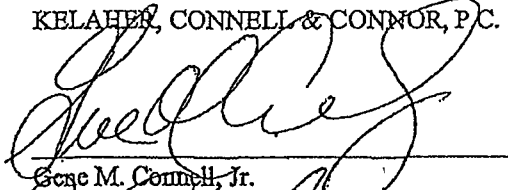
Defendant.)

AMENDED SUMMONS

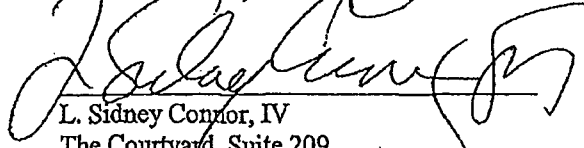
TO: THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Complaint on the subscriber or subscribers at his or their office at Suite 209, The Courtyard, 1500 U.S. Highway 17 North, Post Office Drawer 14547, Surfside Beach, South Carolina 29587 within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid; the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you for the relief demanded in the Complaint.

KELAHAN, CONNELL & CONNOR, P.C.



Gene M. Connell, Jr.



L. Sidney Connor, IV
The Courtyard, Suite 209
1500 U. S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorney for Plaintiffs

May 7, 2010
Surfside Beach, South Carolina.

FOR MANDATED ADR COUNTIES ONLY
Florence, Horry, Lexington, Richland, Greenville and Anderson

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Clint A. Chestnut, Rebatt Frankie Jefford, Mary Lou Nance, Margaret Ramsey, Nicholas Ramsey, Harold Cushman, Julia Todd Edwards, Don Emery, Eula Cooke, and Glenda Rabon Harper,
Individually and as Class Representatives,

Plaintiff(s)

vs.

AVX Corporation,

Defendant(s)

IN THE COURT OF COMMON PLEAS

AMENDED
CIVIL ACTION COVERSHEET

2007-CP-26-7459

Submitted By: Gene M. Connell, Jr./L. Sidney Connor, IV
Address: Kelaher, Connell & Connor, P.C.
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547

SC Bar #: 1358/1363
Telephone #: (843) 238-5648
Fax #: (843) 238-5050
E-mail: gconnell@classactlaw.net
sconnor@classactlaw.net

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

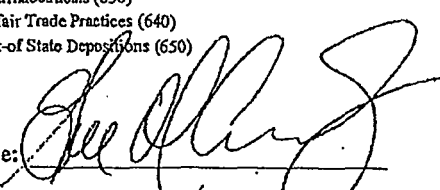
DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

☐ Contracts	☐ Torts - Professional Malpractice	☐ Torts - Personal Injury	☐ Real Property
☐ Constructions (100)	☐ Dental Malpractice (200)	☐ Assault/Slander/Libel (300)	☐ Claim & Delivery (400)
☐ Debt Collection (110)	☐ Legal Malpractice (210)	☐ Conversion (310)	☐ Condemnation (410)
☐ Employment (120)	☐ Medical Malpractice (220)	☐ Motor Vehicle Accident (320)	☐ Foreclosure (420)
☐ General (130)	☐ Notice/ File Med Mal (230)	☐ Premises Liability (330)	☐ Mechanic's Lien (430)
☐ Breach of Contract (140)	☐ Other (299)	☐ Products Liability (340)	☐ Partition (440)
☐ Other (199)		☐ Personal Injury (350)	☐ Possession (450)
		☐ Wrongful Death (360)	☐ Building Code Violation (460)
		☐ Other (399)	☐ Other (499)
-
☐ Inmate Petitions	☐ Judgments/Settlements	☐ Administrative Law/Relief	☐ Appeals
☐ PCR (500)	☐ Death Settlement (700)	☐ Reinstate Driver's License (800)	☐ Arbitration (900)
☐ Sexual Predator (510)	☐ Foreign Judgment (710)	☐ Judicial Review (810)	☐ Magistrate-Civil (910)
☐ Mandamus (520)	☐ Magistrate's Judgment (720)	☐ Relief (820)	☐ Magistrate-Criminal (920)
☐ Habeas Corpus (530)	☐ Minor Settlement (730)	☐ Permanent Injunction (830)	☐ Municipal (930)
☐ Other (599)	☐ Transcript Judgment (740)	☐ Forfeiture (840)	☐ Probate Court (940)
	☐ Lis Pendens (750)	☐ Other (899)	☐ SCOT (950)
	☐ Other (799)		☐ Worker's Comp (960)
			☐ Zoning Board (970)
			☐ Administrative Law Judge (980)
			☐ Public Service Commission (990)
			☐ Employment Security Comm (991)
			☐ Other (999)
-
☐ Special/Complex/Other	☐ Pharmaceuticals (630)
☐ Environmental (600)	☐ Unfair Trade Practices (640)
☐ Automobile Arb. (610)	☐ Out-of State Depositions (650)
☐ Medical (620)	
☐ Other (699)	

Submitting Party Signature: 

Date: May 7, 2010

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

KELAHIER, CONNELL & CONNOR, P.C.

ATTORNEYS AT LAW

SUITE 209

THE COURTYARD

1500 U.S. HIGHWAY 17 NORTH

P.O. DRAWER 14547

SURFSIDE BEACH, SOUTH CAROLINA 29587

EDWARD T. KELAHER*
GENE M. CONNELL, JR.
L. SIDNEY CONNOR, IV
LISA POE DAVIS

* OF COUNSEL

AREA CODE 843

238-5648

FAX: 238-5050

May 7, 2010

Melanie Huggins
Horry County Clerk of Court
Post Office Box 677
Conway, SC 29526

Re: Clint A. Chestnut, et al. v. AVX Corporation
C/A No. 2007-CP-26-7459
Our File No. 2007-0500C

Dear Ms. Huggins:

Enclosed please find an original and copy of an Amended Civil Action Coversheet, Amended Summons and Amended Complaint in the above captioned case. Please file the original documents and return clocked copies to me in the stamped, self-addressed envelope enclosed for your convenience.

By copy of this letter, I hereby serve counsel for Defendants with the above-stated documents.

Thank you for your kind assistance in this matter.

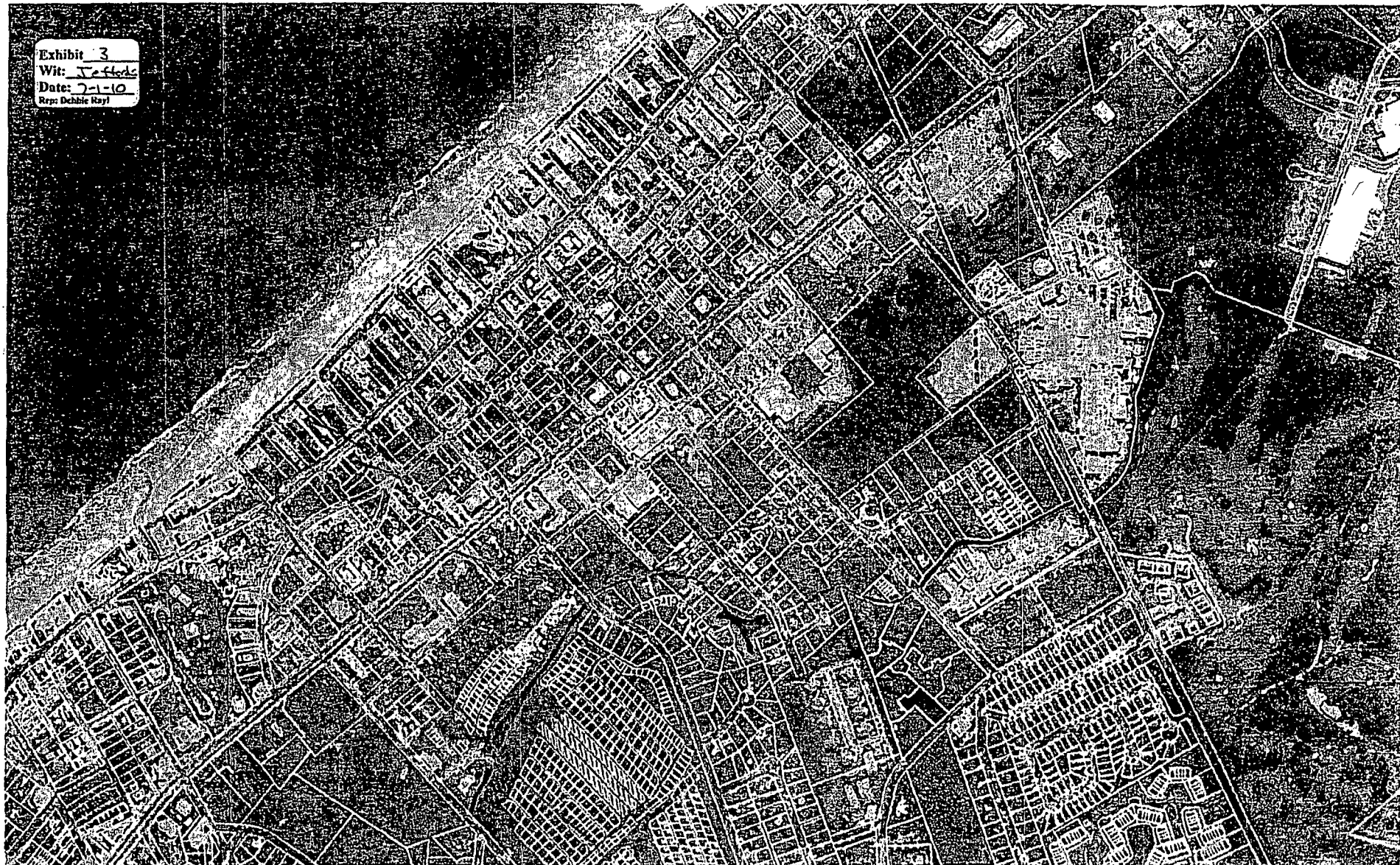
Sincerely yours,


Gene M. Connell, Jr.

GMC,Jr.:sm
Enclosures

cc w/enc.: Brad A. DeVore, Esq.

Exhibit 3
Wit: *Jeffery*
Date: 7-1-10
Re: Dechle Rayl



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2007-CP-26-7459

Clint A. Chestnut, Rebatt Frankie Jefford,
Mary Lou Nance, Margaret Ramsey and
Nicholas Ramsey, Individually and as
Class Representatives,

Plaintiffs,

vs.

AVX Corporation,

Defendant.

ANSWER TO FIRST SET OF
INTERROGATORIES AND
REQUESTS FOR PRODUCTION

TO: THE DEFENDANT, AVX CORPORATION, AND ITS ATTORNEYS:

The Plaintiff, Rebatt Frankie Jefford, answering Defendant AVX Corporation's First

Set of Interrogatories and Requests for Production of Documents, states:

INTERROGATORIES

1. Identify the location of your Property by street address, and describe when and how you acquired the Property as well as the nature of the use (i.e., residential or commercial) of the Property.

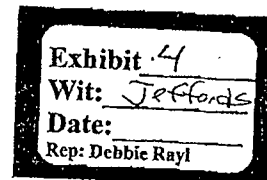
ANSWER:

811 Rogers Drive, Myrtle Beach, SC 29577; purchased; residential home.

2. Have you ever attempted to sell the Property? If yes, include in your response how many times you have attempted to sell the Property, the specific dates upon which you attempted to sell the Property, the names, addresses and telephone numbers of all individuals involved in each attempted sale, the outcome of each attempted sale and all documents generated related to an attempted sale.

ANSWER:

No.



3. Have you ever solicited the services of a realtor or broker to assist you with selling the Property? If yes, in your response, identify the realtor or broker by name, address and telephone number, and include the approximate date(s) upon which you retained or consulted with the realtor or broker and all documents provided to the realtor or broker or generated by the realtor or broker.

ANSWER:

No.

4. Have you ever received any offers to purchase the Property? If yes, provide the dates upon which you received each offer, the amount of the offer as well as the name, address and telephone number of each person or entity making the offer and all documents related to the offer.

ANSWER:

No.

5. Identify all appraisals of the Property for the last ten years including in your response the name, address and telephone number of all individuals and entities performing appraisals of the Property as well as the dates upon which all appraisals were performed, the results of the appraisals and all documents related to the appraisals.

ANSWER:

Plaintiff's appraisal was done by the bank when Plaintiff purchased the property. Plaintiff was not provided with the appraisal as it was done by the bank for purposes of loaning the funds to the Plaintiff.

6. Have you ever had your Property tested for Contamination? If yes, identify all individuals and entities involved in the testing including name, address and telephone number as well as the dates upon which the tests were performed, the types of tests performed, the results of all tests and all documents related to the testing.

ANSWER:

No, although Plaintiff is aware of various test wells placed in the area by South Carolina Department of Health and Environmental Control. Further, Plaintiff is aware Defendant's agents have set up various test wells through a company called Arcadis, Inc.

7. Itemize and describe all damages which you seek to recover in this lawsuit, including the nature of the damages, the dollar amount, the method by which you calculated the amount, and all evidence and documents that support your calculation.

ANSWER:

Plaintiff expects to argue that his property value has been diminished by the presence of chemicals in the area surrounding the AVX plant. Plaintiff will present an appraiser to offer an opinion of damages between 50%-60% of value of the property.

8. Identify all persons known to you or your attorneys to have personal knowledge of the allegations contained in the Complaint, including in your response the name, current address and telephone number of each person so identified, a summary of the facts known to or observed by each person so identified, and whether or not written or recorded statements have been taken from these persons and, if so, who possesses such statements.

ANSWER:

- (a) Clint Chestnut
805 Rogers Drive
Myrtle Beach, SC 29577

Will testify about the damages to his property and will testify under South Carolina law as to the value of his property and as to the diminution in value.

- (b) Rebatt Frankie Jefford
811 Rogers Drive
Myrtle Beach, SC 29577

Will testify about the damage to his property and will testify under South Carolina law as to the value of his property and as to the diminution in value.

- (c) Mary Lou Nance
807 Rogers Drive
Myrtle Beach, SC 29577

Will testify about the damage to her property and will testify under South Carolina law as to the value of her property and as to the diminution in value.

- (d) Margaret Ramsey
815 Ramsey Drive
Myrtle Beach, SC 29577

Will testify about the damage to her property and will testify under South Carolina law as to the value of her property and as to the diminution in value.

- (e) Nicholas Ramsey
815 Ramsey Drive
Myrtle Beach, SC 29577

Will testify about the damage to his property and will testify under South Carolina law as to the value of his property and as to the diminution in value.

- (f) Marvin Cooley
216 Castle Drive Unit 1395
Myrtle Beach, SC 29577

Will testify about his property in Owens Subdivision and that he was not able to sell his property because of the contamination by the AVX plant.

- (g) Mario Ducoudray
115 Montague Street 5B
Brooklyn, NY

Will testify as the owner of property at 815 Jensen Lane and that he believes that the value of his property is affected by the AVX contamination.

- (h) Audrey Dean Johnson
Address Unknown
Conway, SC
Phone: 365-4039

Will testify she is a former AVX employee and will further offer testimony as to working at the plant and as to the various spills that occurred at the plant.

- (i) Izzie Brown
5600 Pawley Swamp Road
Conway, SC

Will testify she owns property at 710 9th Avenue South, Myrtle Beach, SC and will further testify as to diminution of value to her property as a result of the spills at AVX.

- (j) Anne Maus
2010 English Oak Court
Waldorf, MD

Will testify she owns property (TMS 18113222076) near the AVX plant where the contamination occurred and will testify she believes the value is diminished.

- (k) Korey Kapla
1416 Beaver Road
Myrtle Beach, SC

Will offer testimony regarding the value of his property (TMS 181132208) and as to diminution as a result of the contamination.

- (l) William Johnston
Lorraine Johnston
806 Jensen Road
Myrtle Beach, SC

Will offer testimony regarding the value of their property (TMS 1811322045) and as to diminution as a result of the contamination.

- (m) Don Emory
612 13th Avenue South
Myrtle Beach, SC

Will offer testify regarding the value of his property at 13th Avenue South and as to diminution as a result of the contamination from the spills at AVX.

- (n) Dan Spariosu
United States EPA Region 4
Atlanta Federal Center
Atlanta, GA 30303

Will offer testimony as an expert in environmental activities which occurred at the old Myrtle Beach Air Force Base and will further testify that the spills are unrelated to the contamination spills at AVX.

- (o) Richard Haynes
Bureau of Land Management
South Carolina Department of Heath and Environmental Control
2600 Bull Street
Columbia, SC 29201

Will offer testimony as an expert in land reclamation with the State of South Carolina. He will offer testimony on the environmental issues at the old Myrtle Beach Air Force Base. He will further offer testimony that the old Myrtle Beach Air Force Base environmental spills are not related to the AVX contamination.

- (p) Tom Heath
City Manager
City of Myrtle Beach
Myrtle Beach, SC 29577

Will offer testimony regarding the City of Myrtle Beach's discussions with AVX regarding the AVX spills. He will also offer testimony of an historical nature as to the investigation by the City of Myrtle Beach into the AVX spills, to include meetings with AVX officials about the spills, how they occurred, when they occurred and when the City of Myrtle Beach became first aware of it.

- (q) Tony Tingle
Terek Ladaa
Shaw Environmental Services
312 Directors Drive
Knoxville, TN

Each will offer testimony about the environmental report that they authored in October 2008 and will further offer testimony regarding their investigation of the old Myrtle Beach environmental site and their findings therein.

- (r) Lynn Hancsak
Base Regional Area Cleanup Team (BRAC)
12 Phyllis Boulevard
Myrtle Beach, SC

Will testify he was the chairman of the BRAC team from 10/30/95 to date and further as to the findings regarding the environmental contamination at the old Myrtle Beach Air Force Base.

- (s) Billy Oliver
Superintendent of Water Plant
City of Myrtle Beach
P. O. Box 2468
Myrtle Beach, SC 29578

Will offer testimony regarding his involvement with the AVX spills to include the approved AVX discharges into the City of Myrtle Beach's water and sewer system. He will also offer historical testimony regarding when and how he learned that there had been additional groundwater contamination at the AVX plant.

- (t) Kenneth Richards
Consoer Townsend & Assoc.
404 James Robertson Parkway
Knoxville, TN

Will testify that he reviewed the proposed AVX discharges into the Myrtle Beach City Water and Sewer system in 1988. He will also testify as to chemical makeup

of those discharges and as to any investigation he might have done concerning spills at the AVX plant in the early 1980s and 1990s.

- (u) Fred Akel, PE
City of Myrtle Beach
P. O. Box 2468
Myrtle Beach, SC 29578

Will offer testimony as City Engineer as to his involvement with AVX including the discharges and spills by AVX. He will also offer historical testimony concerning his employment at the City of Myrtle Beach, how he learned about the spills, what action has been taken and what documents have been produced by AVX to the City regarding the spills.

- (v) Carol Minsk
South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

Will testify she is a DHEC hydrologist who is in charge of the cleanup at AVX and as to the level of contamination and as to the wells which are currently in the community that are measuring the contamination. She will further testify as to how the cleanup is going and as to how long it will take.

- (w) Lucas Berresford
South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

Will testify he is a DHEC employee and chemist who is involved in the cleanup and will further testify regarding various letters given by DHEC to certain property owners showing no contamination. He will further testify as to why letters were not given to other property owners because they were in the contaminated area.

- (x) Mark Harnish
Arcadis Environmental Services
600 Waterfront Drive
Pittsburgh, PA

Will testify about his investigation of the spill at AVX. He will also testify about his involvement in the investigation including his investigation of the plume and how far it is moved off site from the plant. He will further testify about various wells and cleanup procedures now in effect.

- (y) George Maalom, PE
Rogers and Callcott Engineers
P.O. Box 5655
Greenville, SC

Will testify that he was hired to sample drinking wells in Myrtle Beach at 17th Avenue South and to do various environmental assessments. He will testify about his investigation and what was done on or about January 10, 2008 concerning the drinking well samples.

- (z) Larry Blue
AVX
P.O. Box 867
Myrtle Beach, SC 29578

He will testify he is a former DHEC employee who currently works for AVX. He will further testify he has knowledge of all the spills from AVX and was a DHEC employee in the early 1980s when a DHEC Consent Order was signed regarding various contamination spills that occurred offsite.

- (aa) Ron Andrews, PE
City of Myrtle Beach
Myrtle Beach, SC

Will testify he is an engineer for the City of Myrtle Beach and Assistant City Manager. He will testify he was involved in testing of the City property and was involved in determining how the spills migrated offsite into the neighborhood in question. He will also testify as to various meetings he has had with AVX employees and/or contractors concerning this contamination. He is further the point man for the city of Myrtle Beach on all issues regarding AVX contamination.

- (bb) Gary Stewart, PE
South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, SC

Will testify as a professional engineer with the State who investigated the spill and is currently involved in the cleanup. He will also testify about how long the cleanup will take and as to what steps DHEC is requiring AVX to do at this time.

The Plaintiff reserves the right to name as witnesses any witnesses listed by the Defendant in answer to the Plaintiff's Interrogatories

9. Identify each witness you intend to call at the trial of this matter who will testify including a summary of the facts to which each witness will testify as well as any documents to which each witness will refer.

ANSWER:

Please see Answers to No. 8 above.

10. Identify each person whom you expect to call as an expert at the trial of this lawsuit, the professional qualifications and experience of each such person, the subject matter on which each such person is expected to testify, the substance of the facts and opinions to which each such person is expected to testify, a summary of the grounds for each opinion to be given by each such person, all documents prepared by the expert related to this action and all documents relied upon by the expert in forming any opinions related to this action.

ANSWER:

- (a) Henry Beckham
7901 N. Ocean Boulevard
Myrtle Beach, SC

He will testify as a certified appraiser about the damages suffered by the class plaintiffs because of the spill around the AVX plant. He will further offer expert testimony as to diminution of value of the Plaintiffs' properties.

- (b) Dr. C.W. Fetter
C.W. Fetter & Assoc.
11 Leamington Lane
Hilton Head, SC 29928

Dr. Fetter will testify as a hydrology expert who will offer testimony on the plume and the areas contamination by the Defendant. He will also offer testimony regarding the area involved to include the area outlying the plume and why it is involved in the case.

- (c) Gary Stewart, PE
South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, SC

Will testify as a DHEC employee who is an expert in regard to contamination and spills. Will further testify about the contamination and spills that occurred from the AVX site and that those spills were direct result of activities by AVX on its property.

- (d) Carol Minsk
South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

Will testify as a DHEC employee who is an expert in regard to contamination and spills, Will further testify about the contamination and spills that occurred from the AVX site and that those spills were direct result of activities by AVX on its property.

- (e) Lucas Berresford
South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

Will testify as a DHEC employee who is an expert in regard to contamination and spills, Will further testify about the contamination and spills that occurred from the AVX site and that those spills were direct result of activities by AVX on its property.

- (f) Mark Harnish
Arcadis Environmental Services
600 Waterfront Drive
Pittsburgh, PA

Will testify about his investigation regarding the spills and as to where they came from and how they came into the neighborhoods from AVX. He will further testify as to cleanup and what AVX is doing to try to clean up the spills in question.

All experts listed above will testify as to the cause of the spill, the cleanup efforts, the testing performed and the fact that the spills came from AVX.

11. With respect to each and every enumerated request in the Requests for Admission to which your response was anything other than an unequivocal admission, state the basis for your response, specifying all facts and law on which you relied and how such facts and law support your response.

ANSWER:

Plaintiff would respectfully state that all Requests for Admissions have either been admitted or denied. Plaintiff craves reference to all documents listed in Response to Request for Production No. 1. Plaintiff further craves reference to all experts identified in Answer to Interrogatory No. 10. Plaintiff's denials are based upon the law that a property owner can testify regarding the value of his property and further upon testimony of all witnesses listed in these Answers to Interrogatories. Plaintiff will offer testimony

that his property is stigmatized as a result of the spills at AVX. Plaintiff will also offer testimony that the property is unable to be sold and will rely on experts and lay witnesses all previously identified for his denials of the Requests for Admission.

12. With respect to each and every enumerated request in the Requests for Admission to which your response was anything other than an unequivocal admission, identify all persons with knowledge of facts on which you relied in formulating your response or which otherwise support your response, specifying with respect to each such person the specific facts of which he or she has knowledge.

ANSWER:

Please see Answer to No. 11 above..

13. With respect to each and every enumerated request in the Requests for Admission to which your response was anything other than an unequivocal admission, identify each and every document on which you relied in formulating your response or which otherwise supports your response.

ANSWER:

Please see Answer to No. 11 above.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. All documents identified or referred to in responding to Defendant AVX Corporation's First Set of Interrogatories to Plaintiff Clint A. Chestnut, Individually.

RESPONSE:

The Plaintiff is in possession of the following documents which are available for inspection and/or copying by the Defendant.

- (a) South Carolina Department of Health and Environmental Control (DHEC) Administrative Record from 12/10/07 to date. Two volumes approximately 800 pages available from DHEC.
- (b) South Carolina Department of Health and Environmental Control (DHEC) Order re AVX spill dated 12/10/96.
- (c) City of Myrtle Beach records re AVX 12/10/96 to 12/29/08.
- (d) AVX City of Myrtle Beach Water and Sewer treatment records from 1991.
- (e) Arcadis reports and field notes authored by Mark Harnish from 2007 to 2010.
- (f) Horry County Aerial Map with TMS Numbers for the affected areas. (Previously provided).
- (g) BRAC cleanup minutes from MBAFB dated 10-30-95.
- (h) Shaw Environmental Report re groundwater testing (2008)

- (i) Horry County Gateway Public Records on all potential class members in the subject area (found on the Horry County website).
- (j) Contaminant Hydrology textbook authored by Dr. C.W. Fetter, 2nd Edition (approximately 800 pages).
- (k) CD prepared by C.W. Fetter regarding outlines of the contaminated area.
- (l) CD with contour maps of a portion of Myrtle Beach prepared by C.W. Fetter dated 11/20/08.
- (m) List of all tax map numbers (TMS numbers) previously provided to attorney Kevin Dunlap, 12/1/08.
- (n) Horry County aerial map of distribution of TCE.
- (o) Arcadis Groundwater Investigation Report 3/1/08 on file at DHEC (approximately 1,000 pages).
- (p) All documents listed on AVX privilege log in *AVX v. Horry Land Company* Case No. 4:07-cv-3299; said documents produced by U.S. District Court Order having documents No. 1-223 and request to produce documents No. 1-4.
- (q) Transcript of Motion to Remand Hearing U.S. District Court dated 3/4/07.
- (r) Arcadis report produced to DHEC on 5/21/07.

2. All photographs, diagrams or charts related to the allegations and claims contained in your Complaint.

RESPONSE:

Please see Response No. 1 above.

3. All documents that support or relate to the allegations and claims contained in your Complaint.

RESPONSE:

Please see Response No. 1 above.

4. All written or recorded statements related to the allegations and claims contained in your Complaint.

RESPONSE:

Please see Response No. 1 above.

5. A copy of the curriculum vitae or resume for each expert witness you intend to call to testify at the trial of this matter.

RESPONSE:

CV of C.W. Fetter can be found online at C.W. Fetter and Associates, Hilton Head, SC.

6. All documents provided to, referred to or relied on by your expert witness in forming his or her opinions in this action.

RESPONSE:

Please see Response No. 1 above.

7. The complete file of all expert witnesses you intend to call at the trial of this action including all documents provided to and generated by your expert witness including but not limited to opinions, reports, drafts of reports, correspondence, emails, notes, etc.

RESPONSE:

Plaintiff does not have the complete file of expert, but will produce at a convenient time.

8. All documents related to any attempted sale of your Property including but not limited to any formal or informal offers or counteroffers, correspondence, emails, notes, etc.

RESPONSE:

None.

9. All documents related to any appraisal of your Property including but not limited to any formal appraisal reports (including drafts), correspondence, emails, notes, etc.

RESPONSE:

N/A.

10. All documents related to any solicitation or consultation with a realtor or broker to sell your Property including but not limited to proposals, contracts, correspondence, emails, notes, etc.

RESPONSE:

N/A.

11. All documents related to any offer to purchase your Property including but not limited to offers, counteroffers, proposals, correspondence, emails, notes, drafts, etc.

RESPONSE:

N/A.

12. All documents related to any testing for Contamination on your Property including but not limited to analytical results, consultants' reports (including drafts), correspondence, emails, notes, etc.

RESPONSE:

None, other than DHEC testing documents and documents from Arcadis.

13. All documents that support or relate to your damages claims including your calculations.

RESPONSE:

Please see Response No. 1 above.

14. All documents that support or relate to your negligence claim.

RESPONSE:

Please see Response No. 1 above.

15. All documents that support or relate to your nuisance claim.

RESPONSE:

Please see Response No. 1 above.

16. All documents that support or relate to your trespass claim.

RESPONSE:

Please see Response No. 1 above.

17. All documents that support or relate to your strict liability claim.

RESPONSE:

Please see Response No. 1 above.

18. All documents that support or relate to your punitive damages claim.

RESPONSE:

South Carolina Department of Health and Environmental Control Order dated 12/10/96.

19. A copy of all exhibits, documents, photographs and other tangible items you may intend to use at any hearing or trial in this action.

RESPONSE:

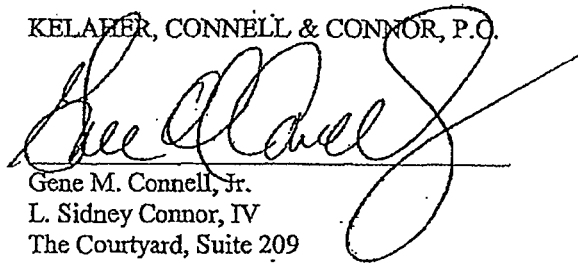
Please see Response No. 1 above.

20. All documents indicating a potential source of the Contamination other than AVX.

RESPONSE:

Please see Response No. 1 above.

KELAFER, CONNELL & CONNOR, P.C.



Gene M. Connell, Jr.
L. Sidney Connor, IV
The Courtyard, Suite 209
1500 U. S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorneys for Plaintiffs

April 5, 2010
Surfside Beach, South Carolina..

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2007-CP-26-7459

Clint A. Chestnut, Rebatt Frankie Jefford,)
Mary Lou Nance, Margaret Ramsey,)
Nicholas Ramsey, Harold Cushman,)
Julia Todd Edwards, Don Emery,)
Eula Cooke and Glenda Rabon Harper,)
Individually and as Class Representatives,)

Plaintiffs,)

vs.)

AVX Corporation,)

Defendant.)

PLAINTIFFS' FIRST SUPPLEMENTAL
ANSWERS TO INTERROGATORIES
AND REQUESTS FOR PRODUCTION

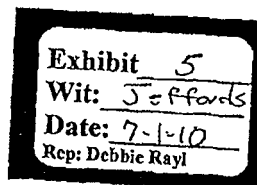
TO: THE DEFENDANT, AVX CORPORATION, AND ITS ATTORNEYS:

The Plaintiffs, Clint A. Chestnut, Rebatt Frankie Jefford, Mary Lou Nance, Margaret Ramsey and Nicholas Ramsey, supplement their Answers to Defendant AVX Corporation's Interrogatories as follows:

1. Identify the location of your Property by street address, and describe when and how you acquired the Property as well as the nature of the use (i.e., residential or commercial) of the Property.

ANSWER:

- Plaintiff Chestnut purchased property at 805 Rogers Drive, Myrtle Beach, SC 29577 in 1998 for residential use.
- Plaintiff Jefford purchased property at 811 Rogers Drive, Myrtle Beach, SC 29577 on or about October 12, 1985 for residential use.
- Plaintiff Nance purchased property at 807 Rogers Drive, Myrtle Beach, SC 29577 in 1996 for residential use.
- Plaintiffs Ramsey purchased property at 815 Rogers Drive, Myrtle Beach, SC 29577 on or about 2007 for residential use.



8. Identify all persons known to you or your attorneys to have personal knowledge of the allegations contained in the Complaint, including in your response the name, current address and telephone number of each person so identified, a summary of the facts known to or observed by each person so identified, and whether or not written or recorded statements have been taken from these persons and, if so, who possesses such statements.

ANSWER:

- (a) Dick Spivey
KOA Campground
Myrtle Beach, SC 29577

He will testify as to his knowledge and observations of pollution in Withers Swash including water discoloration, fish kills and unusual odors.

- (b) Ronald and Jan Camp
504 Beaver Road
Myrtle Beach, SC 29577

They will testify as to smell and discoloration in the ditches surrounding AVX dating to the mid 1970s. They will also testify that AVX dumped material on Horry Land's property.

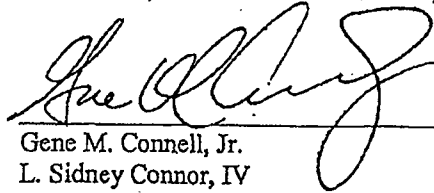
- (c) Allen L. Chestnut, P.E.
Heyward M. Key, P.E.
S&MB, Inc.
1330 Hwy 501 Business
Conway, SC 29527

The witnesses will testify that they performed various tests at the property and will testify as to their findings. They will also testify as to conversations they had with representatives and contractors of AVX.

DOCUMENTS:

The Plaintiffs crave reference to any and all records contained in that DHEC matter entitled In Re: AVX, SDC 062 690-557.

KELAHER, CONNELL & CONNOR, P.C.



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L. Sidney Connor, IV
The Courtyard, Suite 209
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(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorneys for Plaintiffs

June 9, 2010
Surfside Beach, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2007-CP-26-7459

Clint A. Chestnut, Rebatt Frankie Jefford,)
Mary Lou Nance, Margaret Ramsey,)
Nicholas Ramsey, Harold Cushman,)
Julia Edwards, Don Emery, Eula Cooke,)
and Glenda Rabon Harper,)
Individually and as Class Representatives,)

Plaintiffs,)

vs.)

AVX Corporation,)

Defendant.)

AFFIDAVIT OF SERVICE
BY MAIL

PERSONALLY appeared before me, Shelia Y. McCumbee, who being duly sworn, deposes and says that she is an employee of Kelaher, Connell & Connor, P. C., Attorneys at Law, and that she has served this 9th day of June, 2010, via U.S. Mail (with proper postage affixed thereto), a copy of the documents described below, in the above entitled action to the following:

Brad A. DeVore, Esq.
Richard E. Morton, Esq.
Samuel W. Outten, Esq.
Womble Carlyle Sandridge & Rice, PLLC
3500 One Wachovia Center
301 South College Street
Charlotte, NC 28202-6037

DOCUMENTS: Plaintiffs' First Supplemental Answers to Interrogatories and Requests for Production

Shelia Y. McCumbee
Shelia Y. McCumbee

SWORN AND SUBSCRIBED before me,
this 9th day of June, 2010.

Maria P. Freeman
Notary Public for South Carolina
My Commission Expires: 6/24/14



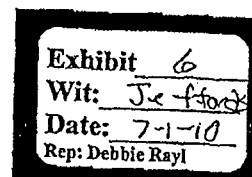
STATE OF SOUTH CAROLINA RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT

INSTRUCTIONS TO PROPERTY OWNERS

1. South Carolina Code of Laws Title 27 Chapter 50 Article I requires that beginning January 1, 2003, an owner of residential real estate (single-family homes and buildings with up to four dwelling units) shall provide to a purchaser this property condition disclosure statement which must be completed prior to signing a contract of sale. This disclosure statement must be provided in connection with the sale, exchange, option and sale under a lease with an option to purchase. This disclosure statement is not required for some transactions, including the first sale of a dwelling which has never been inhabited. A complete list of exemptions may be found in Section 27-50-30.
2. You must check one of the boxes for each of the 24 questions on pages 2 and 3 of this form.
 - a. If you check "Yes" for any question, you must explain the problem or attach a descriptive report from an engineer, contractor, pest control operator or other expert or public agency. If you attach a report, you will not be liable for any inaccurate or incomplete information contained in the report as long as you were not grossly negligent in obtaining or transmitting the information.
 - b. If you check "No" for any question, you are stating that you have no actual knowledge of any problem. If you check "No" and you know there is a problem, you may be liable for making an intentional misrepresentation.
 - c. If you check "No Representation" for any question, you are stating that you are making no representation regarding the conditions or characteristics of the property, but you may have a duty to disclose even if you know or should have known of them. Please consult with an attorney to determine any potential liability you may have for checking this answer.
 - d. If you check "Yes" or "No" for any question and subsequently something happens to the property to render your statement incorrect or inaccurate (for example, the roof begins to leak), you must promptly provide the purchaser a corrected statement or you may correct the problem.
3. If you are assisted in the sale of your property by a licensed real estate broker or salesperson, you remain solely responsible for completing and delivering this statement to the purchaser. The broker or salesperson must disclose any material facts about your property which he/she knows or reasonably should know, regardless of your responses on this statement. You are to complete this form yourself and answer all questions truthfully and as fully as possible. By signing below you acknowledge that the failure to disclose known material information about the property may result in liability.
4. You must provide the completed statement to the purchaser prior to the time you and the purchaser sign a contract to purchase your property or as otherwise agreed to in the contract. You should provide the purchaser a copy of this statement containing your signature and keep a copy signed by the purchaser for your records.

Initials: _____ Seller _____ Date _____ Buyer _____ Date _____
Rev. 1/03

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AS SELLER OF THE PROPERTY HEREIN IDENTIFIED, DO YOU HAVE KNOWLEDGE OF ANY PROBLEM (MALFUNCTION OR DEFECT) WITH ANY OF THE FOLLOWING:

	Yes*	No	Representation
	☐	☐	☐
1. Foundation, slab, fireplaces/chimneys, floors, windows (including storm windows and screens), doors, ceilings, interior and exterior walls, attached garage, patio, deck or other structural components including any modifications? a. Siding: masonry ___ wood ___ composition/hardwood ___ vinyl ___ synthetic stucco ___ b. Approximate age of structure _____	☐	☐	☐
2. Roof (leakage or other problem)? a. Approximate age of roof covering _____	☐	☐	☐
3. Water seepage, leakage, dampness or standing water or water intrusion from any source in any area of the structure?	☐	☐	☐
4. Electrical system (outlets, wiring, panel, switches, fixtures, etc)?	☐	☐	☐
5. Plumbing system (pipes, fixtures, water heater, etc.)?	☐	☐	☐
6. Heating and/or air conditioning? a. Heat source: furnace ___ heat pump ___ baseboard ___ b. Cooling source: central ___ wall/window unit(s) ___ c. Fuel source: electricity ___ natural gas ___ propane ___ oil ___ d. Approximate age of heating unit ___/cooling unit _____	☐	☐	☐
7. Water supply (including water quality, quantity and water pressure)? a. water supply is: city/county ___ community system ___ private well ___ b. water pipes are: copper ___ galvanized ___ PVC/CPVC ___ polybutelene ___	☐	☐	☐
8. Septic system? a. Type system: septic tank ___ community system ___ connected to city/county system ___ city/county system available ___ b. Does the system require a pump? Yes ___ No ___ c. Has the septic system been serviced/pumped during your ownership?	☐	☐	☐
9. Appliances (range/oven, attached microwave, hood/fan, dishwasher, disposal, etc.)?	☐	☐	☐
10. Present infestation, or damage WHICH HAS NOT BEEN REPAIRED from past infestation of wood destroying insects or organisms? a. Is there a transferable termite bond? Yes ___ No ___	☐	☐	☐
11. Drainage, grading or stability of soil or retaining structure?	☐	☐	☐
12. Other built-in systems and fixtures? central vacuum ___ pool ___ hot tub ___ spa ___ attic fan ___ exhaust fan ___ ceiling fan ___ sump pump ___ irrigation system ___ cable tv wiring or satellite dish ___ security system ___ or other systems _____	☐	☐	☐

Initials: ___ Seller ___ Date ___ Buyer ___ Date ___
Rev. 1/03

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REGARDING THE PROPERTY HEREIN IDENTIFIED, INCLUDING THE LOT, OTHER IMPROVEMENTS, AND FIXTURES LOCATED THEREON, DO YOU HAVE KNOWLEDGE OF ANY:

	Yes*	No	No Representation
13. Room additions or other structural changes?	☐	☐	☐
14. Environmental hazards (substances, materials or products) including asbestos, formaldehyde, radon gas, methane gas, lead-based paint, underground storage tank, toxic mold or other hazardous or toxic material (whether buried or covered), contaminated soil or water, or other environmental contamination?	☐	☐	☐
15. Nuisances (noise, odor, smoke, etc.) affecting the property?	☐	☐	☐
16. Previous damage caused by fire?	☐	☐	☐
17. Violations or variances of building codes or zoning ordinances?	☐	☐	☐
18. Restrictions to property use? (covenants or deed)	☐	☐	☐
19. Utility or other easements, shared driveways, party walls or encroachments from or on adjacent property?	☐	☐	☐
20. Lawsuits, foreclosures, bankruptcy, tenancies, judgments, tax or other liens, proposed assessments or notice from any governmental agency that could affect title to the property?	☐	☐	☐
21. Owners' association fees or "common area" expenses or assessments?	☐	☐	☐
22. Flood hazards or that the property is in a federally-designated flood plain?	☐	☐	☐
23. Rental, rental management, vacation rental or other lease contracts in place on the property at the time of closing?	☐	☐	☐
24. Any outstanding charges owed by the tenant for gas, electric, water, sewerage, or garbage services provided to the property?	☐	☐	☐

***IF YOU ANSWERED "YES" TO ANY OF THE ABOVE QUESTIONS, PLEASE USE THE FOLLOWING SPACE FOR YOUR EXPLANATION AND ATTACH ANY RELEVANT PROFESSIONAL REPORTS.**

Initials: ____ Seller ____ Date ____ Buyer ____ Date

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STATE OF SOUTH CAROLINA - COUNTY OF HORRY

COURT OF COMMON PLEAS

CLINT A. CHESTNUT, REBATT
FRANKIE JEFFORD, MARY LOU
NANCE, MARGARET RAMSEY,
NICHOLAS RAMSEY, HAROLD
CUSHMAN, JULIA TODD EDWARDS,
DON EMERY, EULA COOKE AND
GLENDA RABON HARPER,
Individually and as Class
Representatives,

Plaintiffs,

vs.

Case No.: 07-CP-26-7459

AVX CORPORATION,

Defendant.

Deposition of MARY LOU NANCE, held on
July 2, 2010, at Suite 209 The Courtyard, 1500 U.S. Hwy
17 North, Surfside Beach, South Carolina, commencing at
9:30 a.m., before Debbie Rayl, Court Reporter and Notary
Public in and for the State of South Carolina.

APPEARANCES:

FOR THE PLAINTIFF:

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Charlotte, NC 28202

M. NANCE

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STIPULATIONS

Pursuant to Notice and/or consent of the parties, the deposition hereon captioned was conducted at the time and place mentioned before Debbie Rayl, a Verbatim Reporter and Notary Public in and for the State of South Carolina.

The deposition was taken for use in accordance with the South Carolina Rules of Civil Procedure unless herein stipulated and agreed to by the parties.

It is stipulated by and between counsel for the respective parties that all objections are reserved until the time of trial save as to the form of the question.

The reading and signing of the deposition by the deponent was expressly waived by the deponent.

M. NANCE

DEPOSITION OF MARY LOU NANCE

JULY 2, 2010

Thereupon,

MARY LOU NANCE,

having been duly sworn, testified as follows:

EXAMINATION**BY-MR. DEVORE:**

Q. Good morning, Ms. Nance.

A. Good morning.

Q. We've met already, but my name is Brad Devore. I'm one of the counsel for AVX in this case. You sat through the last couple of depositions of Messrs. Chestnut and Jeffords, so I think you know the basic rules of the game. But let me go ahead and go over some of them in any event.

I need to ask you questions verbally. Please respond to be verbally so that the court reporter can take everything down. Nods of the head or gestures are not captured. And as we discussed yesterday, neither are pauses. So take all the time you need to answer the question.

If I fail to communicate clearly

M. NANCE

1
2 with you, you don't understand the question,
3 you need additional information to respond to
4 it, just let me know and I'll be -- do my
5 best to rephrase the question so that you're
6 in a position to answer it; okay?

7 A. Okay.

8 Q. Are you -- do you take any
9 medications that would prevent you or limit
10 you from being able to testify fully and
11 truthfully today?

12 A. No.

13 Q. And the other reason, any medical
14 conditions, anything else that would prevent
15 you from testifying truthfully and fully
16 today?

17 A. No.

18 Q. Okay. What did you do, if anything,
19 to prepare for your deposition today?

20 A. Well, I went home and tried to --
21 I've been married more than once and tried
22 to remember dates because I have a tendency
23 to put things away.

24 Q. Okay.

25 A. And I picked up a couple of pictures

M. NANCE

and a couple of things that I brought.

Q. Okay. What kind of pictures? Did you look at them or -- okay, good, you brought them here today?

A. I've got them.

Q. Excellent. All right. May I see them?

A. Sure. You mentioned my mother yesterday. She was the one that -- that bought the house.

Q. Oh, okay. All right.

A. That's my mother in her pink curlers.

Q. Is she making fried chicken there?

A. It could be. That's her cooking in the kitchen.

Q. All right. Yes, ma'am.

A. This is the granddaughter that lived with me for eight years.

Q. All right. What's her name?

A. Madison.

Q. Madison; okay.

A. This is a picture of -- you can see three properties in that one picture. That

1
2 first house is Clint's.

3 Q. To the left, ma'am?

4 A. And the second house is my house.
5 It's got a little postage stamp yard, but my
6 mother wanted a tree. So we planted that
7 tree fifteen years ago about this big, that's
8 it today.

9 Q. All right.

10 A. Had to have a tree.

11 Q. And is to the right then Mr.
12 Jeffords' house?

13 A. And this is Mr. Jeffords. And this
14 is the house that I lived in for about nine
15 years.

16 Q. Okay. I'm sorry, counsel, I didn't
17 mean to deprive you of the opportunity to
18 look at it as well.

19 Do you have the ability to make
20 copies of those or -- well let me put it
21 this way, and I appreciate your bringing them
22 and showing them to me. Are you in any way
23 relying on them or otherwise ---

24 A. No -- no, I just ---

25 Q. Something you wanted to -- okay.

M. NANCE

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A. I just needed you to ---

Q. That's fine because then I'm not going to ask for copies and such of them at this point.

A. Okay, yeah. No, this is just something I picked up.

Q. All right. So it's safe to say -- and again, I don't want to engage in any intrusion on your communications with your counsel. All right, putting that to the side. Did you have any discussions with anybody?

A. No.

Q. All right. Have you looked at any documents?

A. I looked at something and made myself a couple of notes because I cannot remember the -- the names of the -- of chemicals and things. This TCE and stuff, so I just wrote down a couple.

Q. What did you recall looking at in order to pin those things down?

A. It was a -- it was something from the environmental thing from -- that was ---

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Q. From DHEC?

A. Yeah.

Q. Okay. Was it, if you recall, was it a report of some nature?

A. Yeah.

Q. Okay.

A. Yeah.

Q. All right. Did you look at anything else?

A. No.

Q. All right. And you didn't discuss anything with anyone else?

A. No.

Q. All right. Beginning back in November of 2007 ---

A. Right.

Q. Is that when you first became aware through the news media?

A. Yes.

Q. Okay. One other thing and you're being very responsive and I appreciate it. I need to get my question out, otherwise she records us kind of jumping over each other.

A. Okay.

1
2 Q. And that way my question will be
3 clear and your response will be clear.

4 A. Okay.

5 Q. Thank you, ma'am. So back November
6 of 2007, you first become aware of the AVX
7 situation through the ---

8 A. Yes.

9 Q. Okay. What did you do next?

10 A. Well, I thought about it and then I
11 talked with some of my neighbors about it.
12 I was pretty upset about it because it had
13 been my choice to move there and I brought
14 my family and the thought that maybe I
15 exposed my family to something hazardous
16 bothered me. So I talked with my neighbors
17 and about the situation that we were finding
18 ourselves involved in.

19 Q. Okay. And would those neighbors
20 have been Mr. Jeffords, Mr. Chestnut ---

21 A. Margaret.

22 Q. Margaret Ramsey?

23 A. Yes.

24 Q. All right. Anyone else, ma'am, you
25 recall?

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A. At a later time John, he's also somebody that lives on -- John Mazda that lives on our street. Just neighbors.

Q. Okay.

A. People that this would involve.

Q. And is John one of the fellows I think was mentioned in one of the other depositions had bought one of the units, but doesn't live there? He uses it for a vacation?

A. No, that would be Jim Davis and his son, Craig.

Q. Okay.

A. And they bought those -- they had been rental properties and they purchased those two properties for I think a hundred and twelve and a hundred and nine. But they were very -- they had been pretty much destroyed inside. And so they totally remodeled them. They're very nice places now.

Q. Okay.

A. Got wood floors in them. So they're really nice now.

1

2

Q. And you said the other gentleman's name was John Matson?

3

4

A. John Mazda, I think is his name.

5

Q. Mazda; okay.

6

A. He lives on that street also.

7

Q. All right. When you discussed the situation with your neighbors, what was the nature of the discussion? Were you ---

8

9

10

A. Well we were in such close proximity to the plant, because you can walk to the end of the street and look -- and you're looking at the driveway that we figured it would probably be, you know, affect us because of the proximity of it.

11

12

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16

Q. Okay. What did you do after discussing this with your neighbors?

17

18

A. Then we decided we probably should talk to someone in regards to that. And we made an appointment and ---

19

20

21

Q. And you're referring to your counsel?

22

A. Yes. And sought some counsel.

23

Q. Okay. Did you contact anyone at DHEC before you contacted your counsel?

24

25

A. No.

1
2 Q. Did you contact anyone at the City
3 of Myrtle Beach before you contacted your
4 counsel?

5 A. No.

6 Q. Okay. Is it safe to say then -- is
7 it fair to say that you had a discussion
8 with your neighbors, you expressed concerns
9 to each other, and then were you the one who
10 made the contact with the counsel initially?

11 A. I didn't make the appointment. I
12 think it was Margaret.

13 Q. Okay. All right.

14 A. Yeah, she I think has lived here all
15 of her life and was more familiar with who
16 we might contact.

17 Q. Is Ms. Ramsey, was she a teacher at
18 some point?

19 Q. Okay.

20 A. I don't know what Margaret does. I
21 think her family may own -- may own property
22 like a hotel or something like that. I
23 think they've been here a long time, but I
24 don't know it exactly what.

25 Q. Okay. Good enough. And without

M. NANCE

1 getting into whatever discussions you may
2 have had with counsel at the first
3 appointment, can you tell me roughly when you
4 first came and met with the fine gentleman
5 at this firm.
6

7 A. I don't remember it exactly how much
8 time transpired. I'm not sure.

9 Q. Okay. Was it between November and
10 Christmas?

11 A. I would say probably, yes.

12 Q. Okay. And who attended that meeting
13 other than counsel, was it yourself?

14 A. Myself, Clint Chestnut, Margaret and
15 that may have been all that set in. I --
16 I think the Jeffords were gone that
17 particular time, but they were -- we had
18 probably spoken with them. You know, they
19 travel so I don't know at what point we
20 talked to them, but we did talk to them.

21 Q. Okay. And then I assume you
22 retained counsel, do you?

23 A. Yes.

24 Q. You entered into an arrangement with
25 your counsel?

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A. Yes.

Q. Okay. After that, what did you do next?

A. I basically just looked for things in the paper to see what was happening, whether what was how that was progressing. And there was a lot of front-page stories that we got. So we got a lot of our information from the newspaper.

Q. All right. Would it be fair to say it was a recurring story?

A. Yes, for quite awhile.

Q. All right. And the paper you're referring to, is that the Sun Times?

A. Yes.

Q. All right. Were there any other papers you recall you looked at?

A. No. It mostly came from the Sun Times.

Q. All right. Did you look at any Internet information with respect to the issue?

A. No, I have a computer but I don't use it.

M. NANCE

Q. Okay. That's fine. Did you, and I'm talking about any time after now let's say Christmas of 2007, all right? It sounds like you're tracking things in the newspaper; is that correct?

A. Uh-huh (yes).

Q. Okay. Did you go to any meetings?

A. No, I got the information from DHEC that they were having, but I was working and could not attend those meetings. And I may have spoken to, you know, trying to find, you know, somebody that had attended those meetings to just to find out what they talked about. But I don't remember a lot of information that I got from that.

Q. Okay. Did you -- were you aware of any meetings anybody else was having, apart from perhaps with your counsel, about the AVX situation?

A. The only thing I knew about was that that land, the apartment complexes that were going to be, you know, there was things going on with that. So I knew about that.

Q. Okay.

M. NANCE

1
2 A. Learned about through -- through the
3 newspaper and through -- through what people
4 were talking about, you know, because there
5 was a lot of discussion.

6 Q. Okay. And what is your
7 understanding about the apartment property as
8 you describe it?

9 A. That, well that there was one
10 gentleman that bought up property on Beaver,
11 maybe five or six houses, had them removed
12 then found out that the soil was contaminated
13 and -- and that was -- and he couldn't build
14 on it.

15 Q. Okay.

16 A. The apartments right over across the
17 ditch at the end of this street, they had
18 already laid foundations for a few more
19 buildings and that stopped. You know,
20 nothing else proceeded with that, so things
21 pretty much came to a standstill at that
22 point because everybody, you know, wanted to
23 know what -- what the deal was.

24 Q. Okay. And these are things again
25 you learned primarily through the news?

M. NANCE

1
2 A. Through the news and through just,
3 you know, the information that people had.

4 Q. And that's the other one I want to
5 touch base with you about. What do you --
6 do you recall who you spoke to about these
7 issues?

8 A. Well I work at Wal-mart and almost
9 everybody at Wal-mart has either worked at
10 AVX, has a family member that works at AVX
11 or knows somebody that works at AVX and so I
12 -- I can't give you -- well I worked as
13 jewelry department manager at Wal-mart on 501
14 close and had seven employees in my
15 department. Two of them were AVX.

16 Q. Former AVX employees?

17 A. One was a former and one was at
18 present. She worked for me part time and
19 worked full time at AVX.

20 Q. Do you remember the names of those
21 folks?

22 A. Yes. Betty Johnson and Brenda
23 Phillips.

24 Q. And was Ms. Johnson the former
25 employee or the part timer?

M. NANCE

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A. She was the former.

Q. Okay. And Ms. Phillips was the part timer?

A. Uh-huh (yes).

Q. Right. Okay. To your knowledge, does Ms. Phillips still work at AVX?

A. Possibly. I know her husband passed away, but I would assume that she still is working there. I'm pretty sure she is.

Q. All right. What information do you recall Ms. Betty Johnson shared with you?

A. Well I can tell you a little bit about Betty. She -- Betty was having a whole lot of problems with her teeth and they were loose. And she was -- she had gone and they were -- they were going to -- she was going to spend about twenty thousand dollars trying to get her because she wanted to get implants if she could.

She also had a really bad rash on her arms. It was a red rash, it was itchy, she would call me sometimes and say I can't make it to work, I got to go see. And they couldn't diagnose it. She, you know,

M. NANCE

1 they tested her for things. And she also
2 had liver problems. And she had worked --
3 that was her x-employee was AVX and she had
4 worked back at the time when, you know, so I
5 don't know if there was any correlation.
6 But that -- that was some of the issues that
7 she had.
8

9 Q. And may I interrupt you just for a
10 second before we move on to Ms. Phillips? I
11 anticipate that's what you were doing. Other
12 than what you just described, did Ms. Johnson
13 share any other information with you about
14 AVX?

15 A. No.

16 Q. Okay.

17 A. But she did share with me that she
18 had worked at AVX and had been involved with
19 that.

20 Q. Involved with?

21 A. Working with stuff that was now
22 being said was, you know, toxic.

23 Q. Well, what did -- oh, you mean some
24 chemicals or ---

25 A. Like the degreaser and things.

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Q. All right. So your understanding is Ms. Johnson actually worked with some of the TCE that was used?

A. Uh-huh (yes).

Q. Okay. Do you still work with Ms. Johnson?

A. No, I have retired.

Q. Congratulations.

A. Thank you very much.

Q. When did you retire?

A. The first of this year.

Q. Okay. Up till then were you still working with Ms. Johnson at Wal-mart?

A. Uh-huh (yes).

Q. Okay. Do you know whether she's still working at the Wal-mart?

A. I would say she is.

Q. Okay. All right. Ms. Phillips, what information did she provide you about AVX?

A. She -- when the story in the newspaper came out about them, AVX applying for a permit to put chemicals into the air and it was turned down, that permit was

M. NANCE

1 denied, she told me that they had moved --
2 that everything had moved to the back of the
3 building, that she was on a list to maybe be
4 laid off if they were sending their stuff
5 out of town to be worked, and that she
6 could, she would possibly be needing to work
7 full time and wanted to know if I would help
8 her to get full time if she had to leave
9 AVX.

10
11 Q. Okay.

12 A. She was worried about her job.

13 Q. Okay. I wanted to make sure you
14 were done, I didn't want to interrupt you.
15 When, obviously it's before the first of this
16 year since you retired?

17 A. Uh-huh (yes).

18 Q. Okay. When do you recall Ms.
19 Phillips gave you that information?

20 A. After the -- after the thing in the
21 paper where they had applied for a permit
22 for releasing pollutants up into the air and
23 it was denied. It was after that.

24 Q. Okay.

25 A. So whatever time that was that

1
2 appeared.

3 Q. Do you still communicate with Ms.
4 Phillips even since you left?

5 A. I went to Ohio and stayed up there
6 for awhile and that's what I'm doing now. I
7 am going back and forth. I have -- I have
8 an apartment, a building that I've had for
9 years. So my tenant left after fifteen
10 years and took advantage of the eight
11 thousand dollar housing thing. Bought a
12 house. He was a teacher, a biology teacher
13 and so I went up there and made myself an
14 apartment in the upstairs and that way, now
15 that I'm retired I can be up there and visit
16 with my grandchildren and use this as my
17 beach house.

18 Q. Where is it in Ohio?

19 A. Dayton, Ohio -- well's it's Fairborn.
20 It's right outside of Dayton at Wright
21 Patterson Air Force Base.

22 Q. Okay. Went there as a boy scout a
23 couple of years.

24 A. Did you?

25 Q. Oh, yes.

M. NANCE

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A. Went to the museum?

Q. Yes, exactly.

A. Interesting.

Q. So do you know whether Ms. Phillips is still working at AVX?

A. I don't know because I haven't really talked to them in awhile.

Q. Okay. All right. Any other people you talk to that provided you information about the AVX situation?

A. No.

Q. Okay. Have you undertaken to review any of the environmental reports that have been generated? You mentioned one this morning, but let's put that one aside for just a minute. Any others that you've undertaken to review?

A. Only things is that, you know, whatever was sent to me or whatever I saw in the paper, I did not really pursue --- I figured, I look at it this way, I have very competent counsel and they have competent people doing the -- and I didn't need to do a lot of the research.

M. NANCE

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Q. That's fine. You mentioned things that may have been sent to you. I think you said that ---

A. Just -- just things for the -- for the meetings and letters, a couple of letters that sort of told us things that were going on. I don't remember exactly what it said. I didn't go back and re-look at them. But they were just for -- to let us know that something was being done.

Q. Okay.

A. And that was it.

Q. To your recollection ---

A. Nothing specific.

Q. To your recollection, would these have been letters from DHEC?

A. Yes.

Q. Okay. Not any letters from anyone else other than maybe your counsel?

A. No, that's right.

Q. Okay. Did you keep copies of those?

A. I think I have them.

Q. All right. Okay. Would it be fair to say that they're letters providing you

M. NANCE

notice of meetings that may occur?

A. That and just saying that they were doing -- that, you know, basically I took it as they were just letting us know that they were aware and were, you know, pursuing the problem.

Q. All right.

A. Okay.

Q. Have you ever received a letter from DHEC indicating that your property was contaminated?

A. No.

Q. Have you ever received a letter from DHEC indicating your property was not contaminated?

A. No.

Q. Okay. Now you mentioned you looked at, in preparation for the deposition, a DHEC report. Did you -- can you describe to me that report?

A. I don't know exactly what it was. It was just -- I'm not sure.

Q. All right. Where -- was this a report you had at your home?

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A. Yeah.

Q. Okay. So it's still at your home?

A. Yeah.

Q. All right. Do you have copies of any other reports at your home?

A. No.

Q. How did you come to obtain that one particular report if you recall?

A. I think it was in some material that I got here.

Q. Okay.

A. Something I looked at.

Q. All right. Did you look, apart from what you may have at your house, have you looked at any other environmental reports that may have been provided to you, copies of which may have been provided to you by counsel?

A. No.

Q. Okay. Have you looked at any figures or maps?

A. No. Only the map that -- that was in the paper that showed where they were putting the test drills.

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2

Q. Okay.

3

A. That's it.

4

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Q. All right. Have you ever seen any maps or figures that purported to describe where the contamination was located?

7

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A. Only what they -- they printed something a map showing the area I think in the paper. I remember seeing that.

9

10

Q. Okay. All right, so no other sources?

11

12

A. No.

13

14

Q. Just in the paper? All right. Could you provide me your full name ma'am?

15

16

A. Mary Lou Nance M-a-r-y L-o-u N-a-n-c-e.

17

18

Q. Thank you. Your Social Security Number; please?

19

A. 272-38-1845..

20

21

Q. And I'll promise not to spread it around. Your date of birth?

22

A. 9/1/42.

23

24

Q. Okay. I take it that you must have grown up in Ohio?

25

A. Yeah, I lived there for about forty

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years.

Q. Okay. Where were you born?

A. In Kentucky.

Q. Okay.

A. Harland County, Kentucky.

Q. Harland County?

A. Harland County. Everybody knows
Harland County.

Q. I've had some cases up there. Oh,
I know about Harland.

A. Did you see the movie that they made
about that?

Q. Yes.

A. I thought well, that might be some
of my relatives, who knows?

Q. And I won't get into it.

A. I moved away from there when I was
in fourth grade. Moved to Ohio and lived
there in Fairborn and the Dayton vicinity for
the next forty years.

Q. Oh so you anticipated where ---
Okay, so you moved out of Kentucky?

A. Yes.

Q. And into Ohio, outside of Dayton?

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2

A. Yes, Fairborn.

3

Q. Fairborn roughly in the fourth grade?

4

A. Yes.

5

6

Q. Okay. And you lived there for the next -- in that area for the next forty years?

7

8

A. Yes, I graduated from high school and I worked there, got married around there.

9

10

Q. Okay. Do you recall --- Let me ask this, did you live in the same house from the fourth grade until you left home?

11

12

13

A. No, we lived other places.

14

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Q. All right. Do you have any present recollection of what those addresses may be?

16

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A. I think the very first one was Elm Street, but I couldn't tell you the number.

18

19

Q. Okay.

A. And I lived on Garland Avenue. Now that was where I lived when I moved away from home, on Garland Avenue.

20

21

22

Q. Okay. When you left home did you go on to school or to work or ---

23

24

A. No, I worked.

25

Q. Okay.

M. NANCE

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2 A. I started working when I was sixteen
3 at a Woolworth Store, one of the neat ones
4 that had the fountain. The old fashioned
5 type fountain. I worked at the candy
6 counter and I had an air conditioner over my
7 head and every night I went home and I
8 couldn't talk because I wasn't used to air
9 conditioning.

10 Q. I hear you.

11 A. So and when I graduated, I went into
12 the office and ran the office there at the
13 Wal-marts -- Woolworth Store.

14 Q. All right. How long did you work
15 at the Woolworth Store?

16 A. Not even two years, I guess. Then
17 I moved to Dayton and worked for Reichs,
18 which was a big department store. And I
19 worked in the toy office and then I
20 transferred to the photo lab because they
21 had, back in those days, they hired live
22 models and took pictures and for the
23 newspaper and so I went up there and I
24 worked in the office at that.

25 Q. Now you worked in the office or the

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actual lab?

A. I didn't do -- I didn't -- I just did paperwork.

Q. Okay.

A. Did appointments and paperwork.

Q. And roughly how long were you in that position?

A. Not long because I married one of the photographers and he left and went to -- went to work for his father which owned a photography studio and he did pictures of school pictures and things like that. And he went to work for him. And I did some work with them. You know, if we did little leagues or whatever, I put the magazines together and took orders and things of that nature.

Q. And was that studio also in Dayton?

A. Yes, that was -- it was in Dayton.

Q. Okay. The gentleman you married, what was his name?

A. Robert Neas, Robert Neas, Jr. And the studio was Robert Neas Studio.

Q. Okay.

M. NANCE

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A. Over on Wayne Avenue.

Q. And how long did you work at that studio?

A. I just did little part time things. Well I was married for about thirteen years and during that time, you know, we did in the summer I would, you know, work and do things. But it was just a part time situation.

Q. Okay. Do you recall any of the things that you did?

A. Yeah. We'd go out to do little league or we did debutante balls. We did senior proms and -- and things like that. I would just -- I would run film, I would go pick up things. I was just doing things like that.

Q. Okay. Can I take it your marriage with Mr. Neas dissolved?

A. Yes.

Q. You said after thirteen years. Do you recall approximately how old you were at this point?

A. No.

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Q. Okay.

A. I was seventeen when I graduated in 1960, so I think I wrote down a date. Do you want the date for this? It doesn't matter? Okay.

Q. The precise date if you have it, that's great, but I don't need the precise date.

A. I think we divorced in 1977.

Q. Okay. What did you do next after that in the way of ---

A. After that I left that I worked in a discount retail store.

Q. Okay.

A. And ---

Q. Also in Dayton?

A. Yes.

Q. Okay. And approximately how long were you in that position?

A. Not long. It was a short term thing.

Q. Year or two?

A. And I remarried and married again and we went to Indiana. And I lived in

M. NANCE

1
2 Indiana and I tried to remember the town and
3 I couldn't. And that marriage lasted four
4 years. After we married, he had two
5 children, I had two children. And they --
6 his wife decided to -- you take your
7 children. And some families blend and some
8 don't. Ours didn't, so I left Indiana and
9 just moved back to Fairborn and moved in
10 that apartment building that I showed you a
11 picture of.

12 Q. Okay.

13 A. And then I went to work for a
14 management company that did -- it was called
15 Sachs Management. They did property
16 management. They did hotels and restaurants.
17 And the property I worked at was in Fairborn
18 and that was a Holiday Inn.

19 Q. Okay. Let me make sure I get it
20 pinned down.

21 A. Okay.

22 Q. Approximately 1977 you worked for a
23 discount store, maybe a year or two. You
24 remarried. What was that gentleman's name?

25 A. Tom Courtney.

M. NANCE

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Q. Okay. And you moved to some town

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A. Indiana, some place in Indiana. And we lived there for awhile. He got a -- a store there and but it, like I say, we didn't blend well.

7

8

Q. It didn't work out.

9

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A. It didn't work out so I went back to Fairborn, moved back to the apartment and went to work there in Fairborn at a Holiday Inn.

13

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Q. Okay. You mentioned you had two children?

15

A. Yes.

16

17

Q. And these were children you had with Mr. Neas?

18

A. With Mr. Neas, yes.

19

Q. Okay. What are their names?

20

21

A. Michael, Michael Neas and Laurie Neas.

22

23

Q. Okay. And were they living with you when you went back?

24

A. Yes, they were always with me.

25

Q. All right. So you go back to

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Dayton, the greater ---

A. To Fairborn, the Dayton area. Their dad lived in Dayton and we lived in Fairborn, about twenty minutes away.

Q. All right. You're working at the Sachs Management.

A. Working for Sachs Management. Working at a Holiday Inn. Started out as a front desk clerk. In three months the girl that managed it left and I took over as front desk manager. Then they created a position called rooms manager. They put me in charge of housekeeping, maintenance and front desk. Then I -- we lost an assistant manager so I stepped into that. Was assistant manager and then the person that I worked for became the Vice President of Sachs Management Corporation and I became general manager of the same property. I worked on the same property the whole time.

Q. Okay. And how long were you there?

A. About eight and a half years.

Q. Okay. Then what did you do next, ma'am?

M. NANCE

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2 A. I hate to say this, I married again.

3 Q. You married again?

4 A. Some people it takes a long time to
5 figure out that you don't do this well.

6 Q. All right.

7 A. And I knew that ---

8 Q. And who ---

9 A. I knew that ---

10 Q. And who was that?

11 A. I married Lin Nance. He was an
12 engineer. He had come to Dayton from
13 Nashville, Tennessee, to work on -- they were
14 remodeling the base hospital and he was like
15 a project engineer. He worked on that, then
16 he worked, you know, he did jobs different
17 places as a project manager on different
18 construction jobs.

19 Q. All right. And so you were with
20 Lin Nance. You marry, where do you live at
21 this point?

22 A. We moved into a condo there -- there
23 in Fairborn. We just -- then we bought a
24 house -- then we bought a house and it was
25 there in Fairborn.

M. NANCE

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Q. Did you keep the apartment?

A. Yes, I did.

Q. Are you ---

A. And I even bought that and I bought the one next door to it. So I had two small duplexes, not fancy, but I had the two -- two buildings.

Q. You were renting them out?

A. Yes.

Q. Okay. How long were you with Mr. Nance?

A. We bought that house in -- he -- he didn't have good credit and so we got that on my, just -- and we stayed there until -- and then he took a job with Montgomery County. He was a county engineer that did like took care of roads and snow removal and things like that. Basically, that was his job.

Q. Okay.

A. And we -- I came to Myrtle Beach in 1996 and we divorced in 1997.

Q. Okay.

A. My mother came with me to Myrtle

M. NANCE

1 Beach and he went back to Knoxville and he
2 had his mother was pretty much older than
3 mine and he took care of his family.

4 Q. Okay. When you moved to Myrtle
5 Beach, had your children grown up and moved
6 out of the house or did they come with you?

7 A. They were both grown.

8 Q. Okay.

9 A. I -- I -- I came --- I was
10 friends with the Chestnuts. They -- their
11 sister, it's a big family. I had met and
12 went to church there in Fairborn and she was
13 always calling me wanting me to come down
14 here. My mother wanted to move to a warmer
15 climate so I went to Florida.

16 On the way back I stopped here. I
17 saw the houses. I saw that they had built
18 over there. Saw Reba and Frankie's house.
19 Saw that they were building a new Wal-Mart.
20 I was tired of the hotel business. I was a
21 little burnt out with that and I thought
22 well, that would be a -- it's close, I could
23 work there. So I got down here and within
24 three weeks I was working.
25

M. NANCE

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2 And Frankie had bought the other
3 property over on the waterway and so they --
4 I made a deal with him to rent the house.
5 Moved in there, started working. And then
6 my daughter got divorced and called and asked
7 me if I would take my granddaughter for
8 awhile. So she brought her down here. I
9 put her in Calvary Christian School and she
10 ended up staying with me about eight years.

11 She -- she left and went back after
12 my mother died. Her mother was settled into
13 a good situation, a nice home and Madison
14 was tired of the private school and the
15 restrictions and went from a three hundred
16 kid school to one with thirty-two hundred
17 students. But she wanted to go. She wanted
18 to go to private school. So she went back
19 and finished school with her mother there.
20 Left me down here by myself.

21 Q. I understand. Your mother, and her
22 name again, ma'am?

23 A. Jan Bumagardner.

24 Q. Okay. Moves in with you ---

25 A. She stayed with me until the house

M. NANCE

1
2 got built next door. And then she -- she
3 bought that house. I continued to rent from
4 Frankie. My mother had her own income and I
5 was working. And that gave us four bedrooms
6 so we could have family and friends and
7 everybody came to visit with us. So we just
8 kept that arrangement since we could afford
9 to do it at that time, so ---

10 Q. So you rented what ---

11 A. I rented Frankie's house for almost
12 seven years maybe.

13 Q. All right. From roughly 1996 till
14 ---

15 A. 1996 till 2002.

16 Q. Okay. And your mothers lives, what
17 was the address on her house?

18 A. 807.

19 Q. Okay.

20 A. And Frankie's was 811. And then
21 when she passed away, the deed for 807 was
22 in both our names, so I moved over there
23 when she passed away.

24 Q. So the house, the residence at 807
25 Rogers Drive came to you through inheritance?

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A. Right.

Q. Okay.

A. Yeah, I include -- yes.

Q. You didn't have any siblings?

A. I have a brother.

Q. Okay. But for whatever reason, it came to you.

A. Well I had two brothers. One is dead, one is -- yes. It was -- that was the arrangement that my mother and I had made. I paid the down payment and we had both our names on it with the right to what do you call that, yeah, survival?

Q. Okay.

A. That thing we had that type of thing.

Q. All right. And when did your mother pass?

A. 2002.

Q. Okay. And at that point you move over into 807 Rogers Drive?

A. Yes. Right.

Q. All right. Is your grandchild still with you at that point?

M. NANCE

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A. She was then. Shortly after that's when she moved back to Ohio and went to high school and lived with her mother.

Q. Okay. Can you recall how old she was when she first came to you to live with you and ---

A. I think she started second grade at Calvary. And she was in high school starting high school when she left.

Q. She was a freshman in high school?

A. I think she was a freshman or sophomore.

Q. All right. And is she still up in Ohio?

A. Yes.

Q. Do you still hear her on occasion?

A. Oh, yes. She has a birthday this month and that's where I'm headed right after my brother comes down here for a visit. He's coming on vacation. He likes Myrtle Beach and her birthday's on the 20th. So I'm headed up.

Q. You still have folks frequently come and visit with you?

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A. Well, yeah, but they stay at the beach now.

Q. Okay.

A. They stay at ---

Q. The -- is your granddaughter doing fine?

A. Yes, she's doing okay.

Q. Okay. Did she -- I take it she graduated from high school?

A. Yes, going to college.

Q. She's going to college now?

A. Uh-huh (yes).

Q. Where's she going?

A. A community college, Sinclair College in Dayton.

Q. Other than the period of time your granddaughter lived with you first at 811 and then later at 807 ---

A. She could stay either place. Wherever she, you know.

Q. She went back and forth?

A. Yeah, she went back and forth. You can see how close the houses are. We did a lot of that.

M. NANCE

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Q. Other than your granddaughter, has anyone else resided with you?

A. No.

Q. Okay. And I think you've established that your mother had her own house. I'm sure you went back and forth?

A. Oh, yes.

Q. And you're a couple of doors down from each other. All right. But she had her own residence?

A. Just a few steps from each other. It was very close.

Q. Okay. All right. But you do have visitors on occasion over those years from 1996 onward.

A. Oh, yes.

Q. Came and visited with you? Okay. Have you prior to this lawsuit, have you ever filed a lawsuit against anyone?

A. Yes, I had a car accident. A guy in a construction truck was unfamiliar with Myrtle Beach. He ran a stop sign and ran into me. And I had some injuries and I saw a -- I saw a chiropractor. I saw a

M. NANCE

1
2 neurologist, I guess. And he wanted to do
3 surgery and I thought I would rather pursue
4 other things to -- and I asked for a second
5 opinion. And I went to another -- another
6 neurologist and he diagnosed me different and
7 put me with a physical therapist that he
8 knew. I got better and I did -- they paid
9 my doctor bills and I settled -- had a small
10 settlement.

11 Q. Okay. Have you ever been sued by
12 anyone?

13 A. No.

14 Q. Okay. When you got legal counsel,
15 you were aware that a lawsuit was filed on
16 your behalf and others against AVX back in
17 2007?

18 A. Yes.

19 Q. Okay. Before you -- before that
20 lawsuit was filed, had you discussed the AVX
21 situation with anyone other than your counsel
22 and the neighbors that we already discussed
23 that were in and around your neighborhood?

24 A. No.

25 Q. Okay. Did you try to communicate

M. NANCE

with anyone else about the AVX situation?

A. No.

Q. Now had you ever seen the first Complaint that was filed in this case?

A. I had seen it.

Q. Okay. When do you recall you saw it?

A. I don't know. I saw it here at this -- I saw it here in the lawyer's room this morning.

Q. Okay. Had you seen it before it was filed, do you know?

A. No.

(WHEREUPON, COMPLAINT WAS MARKED FOR IDENTIFICATION AS DEPOSITION EXHIBIT NUMBER-1)
BY-MR.DEVORE:

Q. Okay. Ma'am I'm going to hand you what's now been marked as Exhibit Number-1 to your deposition. And I'm going to represent to you this is the original Complaint filed in the action.

A. Okay.

Q. On or about December 27, 2007. Actually I won't even represent that, I'll

M. NANCE

1
2 just represent it to you it's the first one.

3 A. Okay.

4 Q. Take your time and when you're ready
5 just let me know. I just -- I only have a
6 couple of questions about -- maybe just a
7 few questions about it.

8 A. Okay.

9 Q. All right. Can I direct your
10 attention to the second page and there's a
11 Paragraph Number 11. You see that paragraph?

12 A. Uh-huh (yes).

13 Q. Can you tell me, what is your
14 understanding, if any, as to the
15 environmental testing that was performed near
16 the real property in the area described in
17 Paragraph 11?

18 A. What's my opinion of it?

19 Q. No, ma'am, what's your understanding.

20 A. My understanding of it. That they
21 drilled -- they drilled test drills to get
22 samples to test the soil and water, I
23 suppose.

24 Q. Okay. What is your understanding of
25 what is considered a safe and appropriate

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level for TCE?

A. Pardon me.

Q. I'll recast it. What is your understanding of what a safe and appropriate level of TCE is?

A. I don't know.

Q. Okay. Now on Paragraph 12 it says that the Plaintiffs are individual property owners and homeowners who have learned their property is contaminated by TCE. Did I read that correctly?

A. Uh-huh (yes).

Q. Did you have some understanding as of December of 2007, that your property was contaminated?

A. I just had an understanding there was a good possibility being so close to AVX that my property was affected.

Q. Okay. But you had not learned that your property was actually contaminated?

A. Not specifically, no.

Q. Okay. All right. What prompted you, if you recall, to file a class action?

A. Well, because we were -- we all were

M. NANCE

1
2 in the same boat so we decided to do it
3 together.

4 Q. And when you say together, are you
5 talking about ---

6 A. The people on my street, Clint,
7 Margaret, myself, Frankie. We decided
8 together that we were all facing the same
9 issue so we would do it together.

10 Q. Okay. And Mr. and Mrs. Ramsey?

11 A. Yes.

12 Q. Okay. And did you have any
13 understanding at that time that the class of
14 people covered by the complaint, Exhibit-1,
15 was far greater than the folks in your
16 neighborhood?

17 A. I really didn't know what -- I
18 didn't know specifics.

19 Q. Okay. And again, I think you've
20 testified that you didn't review this
21 document, Exhibit Number-1, before it was
22 filed to your knowledge; is that correct?

23 A. No. But, you know, it was okay
24 with me that it was filed.

25 Q. All right. And did you -- I think

M. NANCE

1
2 you suggested you subsequently took a look at
3 it; is that correct?

4 A. Right.

5 Q. All right.

6 A. This is also something that when you
7 asked me what -- what form I had seen, it
8 was this.

9 Q. Okay, so the ---

10 A. That tells the -- the different
11 chemicals.

12 Q. Okay.

13 A. These are the different chemicals.

14 Q. And you're referencing the attachment
15 to it?

16 A. Right. Yes, sir.

17 Q. So did you have -- whether or not
18 you expressed them to your counsel, okay, did
19 you have any concerns about the size of the
20 class, the folks covered by Exhibit Number-1
21 when you reviewed it?

22 A. I didn't really give it any -- no.

23 Q. Okay. And after that, you reviewed
24 Exhibit Number-1, did you undertake to
25 communicate with anyone within the class

1
2 area?

3 A. No, I didn't.

4 Q. Okay. And there's something I
5 failed to mention when we started, if you
6 need a break at any time, you just let me
7 know and I'll be more than happy to
8 accommodate you. It's not an endurance
9 contest. If it was, you'd probably beat me.

10 (WHEREUPON, AERIAL IMAGE MAP WAS
11 MARKED FOR IDENTIFICATION AS DEPOSITION
12 EXHIBIT NUMBER-2)
13 BY-MR.DEVORE:

14 Q. I'm going to hand you, ma'am, what's
15 been marked as Exhibit Number-2. Will you
16 take a moment, look at it and I'll have a
17 series of questions over the day I suspect
18 about it with you.

19 A. Okay.

20 Q. Can you just let me know when you're
21 ready?

22 A. Okay, I'm ready.

23 Q. Okay. Using this Exhibit-2, this
24 aerial image map, are you able to identify
25 the location of your residence at 807 Rogers

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Drive?

A. This is Beaver Road and I think these are -- this would be my two streets. So this is Jenson and Rogers. And my house would be the second one here on this side of the street, left side of the street.

Q. Would you mind, indulge me, I'm handing you a red Sharpie there, could you put a circle around where you understand that your ---

A. My house? Okay.

Q. Your residence is. And we had a lot of discussion yesterday, Mr. Jeffords had a double lot and I take it yours is a single lot?

A. Yes.

Q. Okay. And who's immediately, I think we've established this, but immediately next to you on one side is Mr. Chestnut?

A. Yes, Clint.

Q. And he's on the ocean side from you?

A. Yes.

Q. And Mr. Jeffords on the other side?

A. Yes.

M. NANCE

1
2 Q. Okay. Is there anyone on -- that
3 owns a lot closer to the ocean after Mr.
4 Chestnut?

5 A. No, because it's a retention pond.

6 Q. Okay. So it's just water there?

7 A. Uh-huh (yes).

8 Q. Okay. Do you know what the purpose
9 of that retention pond is?

10 A. It's just for when it rains or and
11 there's a lot of rain, it all drains off
12 into the one by his house and the one that's
13 directly in front of my property.

14 Q. Okay. So it's been a storm water
15 control; is that your understanding?

16 A. It just catches the water when it
17 rains. That's all I know.

18 Q. Okay. Anyone explain to you that it
19 was those two retention areas were set up
20 for that purpose?

21 A. For drain -- for ---

22 Q. Drainage.

23 A. Nobody explained it to me, I just

24 ---

25 Q. Just commonsense?

M. NANCE

1
2 A. I just figured that's what it was
3 and it was there and it filled up with water
4 when it rained.

5 Q. And immediately after that retention
6 pond, that is toward the ocean from there
7 you have Beaver Road; right?

8 A. Yes.

9 Q. Okay. And there's a corner there,
10 Beaver and Rogers? Is there an intersection
11 there?

12 A. Yes.

13 Q. You're familiar with that
14 intersection?

15 A. Yes.

16 Q. Okay. And what's on the other side
17 of that intersection directly ----

18 A. On Beaver Road?

19 Q. To your knowledge; yes.

20 A. It's empty lots now. It used to be
21 residence.

22 Q. Okay.

23 A. That was where the -- the houses
24 were that were torn down to make the
25 apartment complex.

1
2 Q. Okay. Do you have any sense of
3 when those residences were torn down?

4 A. Well, it was probably shortly before
5 2007 because it was right before that came
6 out. Because that's what, to my
7 understanding, prompted the whole thing.

8 Q. Okay.

9 A. You now, the ---

10 Q. Okay. Did you yourself observe them
11 being torn down, you know, going back and
12 forth?

13 A. Yes.

14 Q. Okay. So it was sometime before
15 2007; right?

16 A. I think so.

17 Q. Okay. All right. And then below
18 that do you know anything about this piece
19 of property?

20 A. No. If this is a parking lot,
21 because there was a parking lot and I think
22 that AVX leased from someone. That's all I
23 know about it is there's a woods back there
24 and property and a parking lot.

25 Q. Okay. As you look at Exhibit

M. NANCE

1
2 Number-2, are you able to identify the
3 streets, the general area?

4 A. Uh-huh (yes).

5 Q. Okay.

6 A. I think I could.

7 Q. All right. And you've been living
8 down there for, in the general area, again
9 since 1996?

10 A. Yes.

11 Q. All right. When you were working,
12 you got back and forth to the Wal-Mart by
13 car, I trust?

14 A. Uh-huh (yes).

15 Q. All right. Do your grocery
16 shopping, things like that, in the general
17 area?

18 A. Yeah.

19 Q. Okay.

20 MR. DEVORE: If you want, I'll quit
21 giving them to you, but if you want them.

22 MR. CONNOR: I'll give them back to
23 you.

24 MR. DEVORE: That's fine, you can
25 stack them down there if you want.

M. NANCE

(WHEREUPON, AMENDED COMPLAINT WAS
MARKED FOR IDENTIFICATION AS DEPOSITION
EXHIBIT NUMBER-3)

BY-MR.DEVORE:

Q. Now I'm going to hand you what's now
been marked as Exhibit Number-3 in your
deposition.

A. Okay.

Q. If you will take a moment, take a
look at it. I've got some questions about
it. If you just give me a nod or just
tell me when you're ready.

A. Okay.

Q. All right. Have you seen this
document before?

A. Yes.

Q. Okay. Without any discussion what
you may have conversed with counsel about,
when do you recall seeing it?

A. I saw it this week or last week. I
don't know, whenever -- it has been recently.

Q. Okay. It was -- you see at the
very end there, the last page is May 7,
2010. It's a cover letter to the Clerk

1
2 there.

3 A. On the last page?

4 Q. Yes, ma'am.

5 A. Okay.

6 Q. So you saw this after May 7?

7 A. Yes.

8 Q. Okay. So you saw it after it was
9 filed?

10 A. Yes.

11 Q. Okay. Can I direct your attention
12 to Paragraph 21 of Exhibit-3? Take a moment
13 and read that if you would. And my question
14 is would you be able to identify that area
15 on Exhibit Number-2?

16 A. Yes, I think I could.

17 Q. Okay. All right. Would you mind,
18 you've got the red Sharpie again, however you
19 wish to do it, would you please outline in a
20 solid line if you would, the area that you
21 understand to be that described in Exhibit
22 Number-3, Paragraph 21, the class area.

23 A. Well this is Withers Swash. Up here
24 there's a park. And Ocean Boulevard is
25 this. And 17th Avenue is, and 6th Avenue --

M. NANCE

1
2 6th Avenue, North is not on here, but 6th
3 Avenue, South is this. This is what you
4 mean?

5 Q. Well, let me ask you that. 6th
6 Avenue, North isn't even on Exhibit-2, is
7 that correct?

8 A. Well, this is South, this is the
9 South end of town.

10 Q. Understood, ma'am.

11 A. Okay. So ---

12 Q. Do you have any understanding that
13 the class area extends all the way to 6th
14 Avenue, North?

15 A. I wouldn't think so. That's what
16 this says, though. 6th Avenue, North in the
17 City of Myrtle Beach. 6th Avenue, North
18 would be on up here.

19 Q. Right. And that would be quite some
20 distance from what's shown on this map?

21 A. That's what I was thinking.

22 Q. Is that correct?

23 A. That's what I'm thinking.

24 Q. Are you thinking that it logically
25 would be 6th Avenue, South as opposed to 6th

M. NANCE

1 Avenue, North? Or you haven't thought about
2 that either way?

3 A. I don't know. You know, maybe it
4 does. I don't know. But this is -- that's
5 not on this map, I don't think on here.

6 Q. Okay. Well, why don't you ---

7 A. So what do you ---

8 Q. Well however you want to do it,
9 ma'am. Why don't you do what you understand
10 to be --- Well, let me phrase it in a
11 different way. Other than Paragraph 21, do
12 you have any independent understanding of
13 what is the area?

14 A. The only thing that I -- that I
15 recall was seeing a little map that they
16 showed where they -- that test out drilling
17 was done. I remember seeing ---

18 Q. Okay.

19 A. --- a map of that.

20 Q. Okay. So if you might where you
21 understand these areas to be, if you would
22 do it to the best of your ability and give
23 me a bold line. Box it in for me so to
24 speak.
25

M. NANCE

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A. 17th Avenue, South, that's 17th Avenue, South.

Q. Now where us, if you know, where is Withers Swash on this map?

A. That's this over here, because it's a park.

Q. Okay.

A. I know that.

Q. What is this area here? Do you have any understanding of what all that is?

A. This is -- this is the -- this runs right at the end -- these are dead end streets and there's an apartment complex across. And this is a drainage ditch that runs through that area.

Q. Okay. And you don't know what it's described as?

A. What?

Q. Other than a drainage ditch.

A. I just call it a ditch.

Q. Okay, that's fine.

A. So ---

Q. Well go ahead as I suggested it to the best of your ability show me where you

M. NANCE

understand the area is.

A. Well, I think, my understanding, is on this side of the ditch. Up this way and down to Ocean Boulevard, 17th Avenue.

Q. Okay. All right.

A. Definitely that.

Q. Okay. All right. We'll go ahead and take a break, ma'am. I don't mean to interrupt you.

A. No problem.

(Whereupon, A brief recess was taken.)

BY-MR.DEVORE:

Q. Before we broke for a moment, Ms. Nance, I presented you with Exhibit Number-2 and I think you had outlined your understanding of the class area. But there was something else you wanted to mention before we broke and I told you I'd give you that option.

A. There was also an article in the paper about a property that had a movie theater on it that AVX had bought. And I think that -- the best that I can remember

M. NANCE

1
2 it was also had contamination on that, which
3 I thought if they knew that this was
4 happening when this property became available,
5 I would have thought they would have bought
6 that rather than let people buy it and build
7 houses on it. I mean that was my thought
8 when I read that article that they had
9 bought that and nothing was built on it.
10 You know what I'm saying?

11 Q. And as you are addressing that, you
12 were pointing to your neighborhood area by
13 your house?

14 A. Well it was close. It was off of
15 Kings Highway and there was a movie theater
16 that was right -- it had a movie theater on
17 it at one time and they bought the property.
18 And I think, my understanding that that was
19 a contaminated area also.

20 Q. Okay. Do you have any understanding
21 as to what gave rise to the contamination
22 that may exist on that property?

23 A. Well it was just the chemical they
24 used in their production.

25 Q. Okay. But do you know whether

M. NANCE

there's been a determination by DHEC as to what was the source of the contamination on the old cinema property that you described?

A. It's my understanding that that was contamination from AVX also.

Q. Okay. And what's -- and that's based upon news articles?

A. Yes, that was another -- that was something else that was there about that property.

Q. Okay. And you don't know what, if any, determination's been made?

A. I don't remember specifics or any determinations.

Q. Okay. All right. Looking at Exhibit Number-2, I think you've now outlined your understanding of the class area for the Amended Complaint, which is Exhibit Number-3; correct?

A. Right.

Q. All right. And so I'm clear and you are, you've made the assumption that the reference to 6th Avenue is for 6th Avenue, South, as opposed to 6th Avenue, North, which

M. NANCE

1
2 is in the Amended Complaint? Not disputing
3 it, I just want to make sure I understand.

4 A. It just says that and I don't
5 understand it, other than I only 6th Avenue
6 I see is this one right here.

7 Q. Okay. Now if it were indeed 6th
8 Avenue, North --

9 A. Well that would be a big area.

10 Q. Okay.

11 A. A big area. You'd need to give me
12 a big map.

13 Q. Okay. At least a couple more miles
14 down the road?

15 A. I would think so.

16 Q. Okay. And it doesn't make sense to
17 you that would be?

18 A. Well, I don't know because I don't,
19 you know, I'm not -- I don't understand
20 these. I'm not an expert on it and I have
21 no idea how all of this, you know, works,
22 but ---

23 Q. Right. Okay.

24 A. But I do know that, you know, water
25 will flow to, you know, so ---

M. NANCE

1
2 Q. I'll direct your attention, ma'am,
3 I'm back on Exhibit Number-3, the Amended
4 Complaint.

5 A. All right.

6 Q. And if you'd be so kind as to go to
7 Paragraph 18, it's on Page 3 of the
8 document. And if you would read that. I
9 have a couple of questions about it.

10 A. Okay. 18, okay?

11 Q. Yes, ma'am. It suggests that
12 Plaintiffs and it's class representatives, the
13 class is defined as those homes, businesses
14 and real property that are located within the
15 area of the Defendant's plant in which are
16 contaminated with TCE; is that correct?

17 A. Right.

18 Q. All right. What is your
19 understanding, if any, of what is
20 contaminated with TCE mean? Is it any TCE,
21 TCE in a specific, in soil, groundwater, air?
22 Or do you have anything to share with me
23 today about that?

24 A. Well, my opinion would be that if it
25 was dumped or spilled or however, it got

M. NANCE

1
2 into the soil. There was also an odor and
3 this is my understanding. I know if you
4 smell something and if you're not a smoker,
5 but if you smell smoke, you can get cancer.

6 And this area has had an odor to it
7 as long as I've lived there. The -- it was
8 a joke with my kids when they came down as,
9 "Well we know we're getting close because we
10 smell AVX," because it was very potent for
11 many years. And if you can smell something
12 it gets into your lungs, it gets into your
13 organs, it gets in your skin, it's in your
14 hair, it's in the plants, it could be in
15 that pond where my granddaughter did
16 tadpoles. And so I know if things toxic if
17 you are exposed to them in any form.

18 And I think it was -- could be in
19 the groundwater, it was in the air and
20 people for many blocks were aware of that
21 because when this all came apparent, a lot
22 of the people that I know in Bent Oak, you
23 know, were inquiring whether they should do
24 anything because everybody was aware of ---

25 You know, when I first moved down

M. NANCE

1 here my was, not even I figured well if it
2 was anything that would hurt me or my
3 family, they wouldn't be allowed to do it.
4 But then what I have read they did a lot of
5 this for many years just without any
6 supervision, just on their own. Whatever
7 they spill they cleaned up on their own and
8 nobody was really paying attention. And so
9 their employees were exposed to it and people
10 in the community were exposed to it in
11 different ways.
12

13 Q. Okay. I'm going to comment, I'm
14 going to ask you about the smell and some
15 things in a couple of minutes.

16 A. Okay.

17 Q. But before we leave this particular
18 topic, I want to make sure I understand your
19 testimony correctly.

20 A. Okay.

21 Q. Are you saying that contaminated is
22 used in Exhibit Number-3, and specifically
23 Paragraph 18, means any TCE in soil, air,
24 water or groundwater?

25 A. I would say any, yes, anywhere that

M. NANCE

1
2 it can be, yeah.

3 Q. Okay. And is it also your
4 understanding that contaminated means any
5 concentration?

6 A. Yes.

7 Q. Okay.

8 A. I mean if it's there and you can
9 smell it or it can be tested and found in
10 the soil, whatever, then it's -- you can --
11 you can be affected by it.

12 Q. And that's regardless of whatever the
13 concentration is? If it's a tenth of one
14 part per billion or much higher?

15 A. My opinion is if it's there, it's
16 there.

17 Q. Okay. But if it's there, your
18 understanding is that means wherever it's
19 located at any concentration means that
20 property is contaminated? Is that correct?

21 A. Yeah, if it's -- if it shows up and
22 it, I'm sure there's different levels, but if
23 it's there, it's there. So, and I don't
24 know if, you know, the potency of any of
25 these things that was used.

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Q. And that's actually ---

A. And that's for the experts to figure out.

Q. So for example, experts like folks at DHEC, if they establish a level that's acceptable in air, would you still consider that to be contamination?

A. I can tell you that I wouldn't want to breathe it and I wouldn't want my granddaughter or my mother breathing it on any level.

Q. Okay.

A. So I mean if it is something that is poisonous, it needs to be monitored, kept where it's supposed to be and, you know, I didn't work there. There would be no reason for it to be in my neighborhood. So if they're not containing it and it is a toxic thing, then on any level it's not acceptable.

Q. All right. And likewise, would your position be the same about any amount that may be in soil, groundwater or surface water?

A. Yes, because I don't think anybody really knows completely if it was considered

M. NANCE

1 a safe enough thing to use years ago but now
2 it's not. So, you know, I wouldn't want to
3 be exposed to it on any level.
4

5 Q. Okay. And based on your
6 understanding then, am I correct that any
7 property that has any concentration of TCE in
8 it, in soil, air, groundwater or surface
9 water you would consider to be contaminated?

10 A. Yes, and I think that's probably the
11 perception of -- of people having read all
12 that. The perception is this is a
13 contaminated area.

14 Q. Okay.

15 A. And -- and most likely to different
16 degrees, but polluted.

17 Q. Okay. And I'm to understand also
18 that is your position even if DHEC, for
19 example, sets permissible concentrations of
20 TCE in soil, air, groundwater or surface
21 water? Is that correct?

22 A. Pretty much.

23 Q. Okay. That's fine. I just need to
24 understand what you understand. Okay? Do
25 you understand you're a class representative

M. NANCE

1
2 in the Amended Complaint?

3 A. I understand that and I really, you
4 know, I'm not expert in anything, but I am
5 willing to do it.

6 Q. Okay. How much time would you say
7 roughly you've committed thus far over the
8 last three years to the effort as a class
9 representative?

10 A. Well, I wouldn't -- not much because
11 I really did not know what I should do. I
12 have been, you know ---

13 Q. Don't tell me what you may have
14 discussed with your counsel.

15 A. No, I mean I have been depending on
16 them to figure this out.

17 Q. They're the professionals.

18 A. They're the professionals, but I am
19 willing to be a representative because I'm
20 involved in it and I have no problem doing
21 it.

22 Q. Okay.

23 A. And if there was something that I
24 need to do, I probably -- I would have no
25 problem doing it.

M. NANCE

1
2 Q. You were not involved I take it in
3 deciding what the boundaries would be of the
4 class area as you've outlined on Exhibit
5 Number-2?

6 A. I would say that the DHEC or whoever
7 was doing this testing came up with the
8 parameters. But you can't draw a picture
9 around air and air can go anywhere and the
10 stuff was in the air. So in my mind, that
11 is trying to put it in a box and you can't
12 put stuff in the air in a box. It can go
13 anywhere. It can go even up past 6th
14 Avenue, North.

15 Q. Okay. Now we talked about your
16 understanding, your position with respect to
17 any concentration of TCE in soil and water
18 and groundwater and surface water being
19 contamination. I understand that. Would
20 that also apply, that same understanding, to
21 other types of contamination?

22 A. Yes, I'm an organic type person. If
23 I can -- if I can eat an organic fruit or
24 a vegetable, I'm going to take it every time
25 over something that has had chemicals added

M. NANCE

1 to the soil. So, you know, that's ---

2 Q. Are you -- so contamination, in your
3 understanding, means any amount of a
4 potentially harmful chemical at any
5 concentration ---

6 A. Right, I think we're much healthier
7 if we breathe pure air, if we grow our
8 vegetables in soil without chemicals. And so
9 yes, I very much believe that for it to be
10 healthy, to raise healthy children, you keep
11 them away from such things, the best you
12 can.

13 Q. Understood. And I understand I need
14 to wrap it into a question. Your position
15 is that any potentially harmful chemical
16 found at any concentration in soil, water,
17 groundwater ---

18 A. Air.

19 Q. Air, constitutes contamination?

20 A. Yes.

21 Q. Okay. And as you've suggested, the
22 area that you think maybe involved in this
23 particular case could be greater than that
24 that you've outlined on Exhibit-2?
25

M. NANCE

1
2 A. It could be much greater because
3 stuff in the air can travel anywhere. You
4 can't put a parameter around that.

5 Q. Okay.

6 A. And that has been a very potent
7 thing for many years, more in the first
8 years that I was here, but mainly because
9 they're cutting back and they're doing less
10 things at that facility. So, you know, I
11 don't smell it as much now, but for many
12 years I did.

13 Q. I appreciate your reminding me of
14 that. What was the -- what did it smell
15 like, the odors?

16 A. It was a -- it was a chemical odor.
17 It was -- it just smelled like a chemical.
18 I don't know what to compare it to.

19 Q. Is your recollection similar ---

20 A. It was a bit offensive and it was a
21 chemical odor.

22 Q. Is your recollection of what it
23 smelled like, the odors you're referring to,
24 is it similar to the description that Mr.
25 Chestnut provided?

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A. Possibly.

Q. Okay.

A. I don't go -- I remember his description as being an empty whiskey bottle. I don't have -- I don't drink so I'm not real experienced with that. But, you know, maybe that ---

Q. Well let's not cast any aspersions on Mr. Chestnut. He's not here to defend himself. But I understand your point. All right, and you can't ---

A. It was a chemical smell and when it was real strong I would go in and bring my granddaughter in and keep her in the house because I didn't know what are we smelling?

Q. All right. And you indicated you smelled as early as 1996 when you moved in?

A. I smelled it when -- I became aware of it after I got down here. But like I say, I can -- in my thinking was well if it was anything dangerous, they would do something about it. You know, it wouldn't be -- you wouldn't be smelling stuff if it was bad for you. I didn't think that, you

M. NANCE

1
2 know, I didn't --- I was naive and I feel
3 a little more cynical now than I did years
4 ago.

5 Q. All right. Am I understanding
6 correctly that you did not register any
7 complaints with AVX or anyone else about the
8 smell?

9 A. No, because I just assumed that if
10 it was something that would be harmful that
11 they wouldn't allow it. I just assumed
12 that, which was my mistake.

13 Q. And you suggested you smell it on
14 occasion even now?

15 A. Now I smell it less now, but I also
16 know that they do a whole lot less work and
17 they send things out and they've closed.
18 And, you know, a lot of people have been
19 laid off. And there's not much activity --
20 not as much activity going on there than has
21 gone on in the past.

22 Q. Okay. So on occasion you still --
23 is it the same smell?

24 A. It -- I don't smell it that ---
25 You know, it -- it's not there. It's, you

M. NANCE

1 know, it's not like it was, not like in the
2 beginning. It used to be on a regular basis
3 you smelled all these things.
4

5 Q. How many times a week, if you
6 recall?

7 A. It could be several times a week.
8 Sometimes more condensed. And others you
9 could, you know, like I say when it was
10 really bad I just closed the door and stay
11 in.

12 Q. The -- how many times a week, if at
13 all, do you smell it let's say in the last
14 year?

15 A. Not too many. So I think, like I
16 say I don't, I just don't think there's that
17 much going on over there now so it's -- you
18 don't smell it.

19 Q. Okay. You ever board up the house
20 or do anything?

21 A. I didn't board up the house. I'd
22 just go and close the door and turn on the
23 air conditioning, close the windows.

24 Q. All right. Have you had to do that
25 in the last couple of years that you recall?

1
2 A. Not so, I don't remember doing it so
3 much.

4 Q. All right. You mentioned a pond
5 that your granddaughter, and her name again
6 is?

7 A. Madison.

8 Q. Madison, that Madison, your
9 granddaughter, played in on occasion or
10 played at around when she lived with you.
11 Could you show me where that pond is as you
12 understand it?

13 A. It was right there, one was in front
14 of my house.

15 Q. Could you put an X -- perfect. Put
16 an X on it for me, thank you.

17 A. And then the one right here by
18 Clint. She, you know, I didn't really let
19 her do it. She was a child and she made
20 mud pies like most little kids and caught
21 tadpoles and put them in a fruit jar and ---

22 Q. Okay. And I think we identified
23 these earlier, your understanding these are
24 retention ponds of some nature to catch
25 drainage?

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A. Right.

Q. Okay. So it rains and the water falls in that direction?

A. Right.

Q. Okay. How often would she play, if you recall, in and around the ponds?

A. Well, she and the other kids in the neighborhood were all -- I mean that's where they had to play. We didn't have big yards so they were over around those things quite often.

Q. Do you know whether she played in and around any other water in the general area?

A. Oh, I would imagine she had her little self down here in this drainage ditch at times, too, knowing my granddaughter.

Q. I had one in back of my house when I was growing up and I was there all the time.

A. And it was fun. I loved -- a creek was fun. You get all these rocks and build you a little dam and she was just like any other kid.

M. NANCE

Q. Okay. Sounds like a little bit of a tomboy and that's a good thing. All right. Do you recall with respect to either -- well, let's do it in pieces.

With respect to the retention ponds you put the Xs in, did you -- do you recall observing anything in those retention ponds other than water and tadpoles and such?

A. Just water and tadpoles, what do they call it, cattails, things like that. It was ---

Q. Dragonflies?

A. Yes. Mosquitoes.

Q. All right. Skeeters too.

A. Snakes.

Q. Okay.

A. I mean it was -- it was interesting.

Q. There's a lot of stuff living in there is what you're telling me? Okay.

A. Yeah, there's stuff in it.

Q. All right. What about the -- what you've described as the drainage ditches kind of on the other side of your house?

A. That's a little stinky dirt drainage

M. NANCE

1
2 ditch. There's kind of a odor to that too.
3 It's a little stinky ditch.

4 Q. All right. What is that odor like
5 if you recall?

6 A. It's just a -- just a stinky ditch.
7 I don't know how ---

8 Q. It's a stinky low country ditch.

9 A. It's just a little stinky ditch.

10 Q. Okay.

11 A. And it's, you know, especially if
12 it's not running, you know, stagnant then
13 it's a little more stinky.

14 Q. Would it be fair to say that when
15 it rains pretty good that you get some water
16 flowing through there?

17 A. It will flow. There's a little, a
18 small flow to that.

19 Q. So when you got a dry spell it kind
20 of stagnates and sits there.

21 A. Yes.

22 Q. Okay. Have you ever had reason to
23 go down there and see whether there's any
24 snakes and tadpoles and such down there?

25 A. I walked -- I'd walk my dogs down

M. NANCE

there and just take a look and see what kind of trash the people ---

Q. The people upstream had been putting in?

A. Put in it.

Q. All right, other than some trash that people put in it and, you know, when the water itself, do you recall observing anything unusual, different?

A. No.

Q. Do you recall ---

A. No but I didn't really, you know.

Q. Okay. And what kind of dog do you have?

A. Two little miniature dachshunds. One is a dapple and he's cute.

Q. Now can I direct you to 22-B, Paragraph 22-B of Exhibit-3, ma'am. And actually, let me if you'll indulge me, would you read both 22-A and B to yourself and then I'll have some questions about. You just let me know when you're ready. No rush.

A. Okay.

M. NANCE

1
2 Q. Am I correct that you are a
3 representative class member for the sub-class
4 B?

5 A. That's what -- how it -- where he
6 has me listed, yes.

7 Q. All right. And would you agree with
8 me that sub-class includes all persons,
9 partnerships, corporation who own real
10 property in the areas defined in Paragraph 15
11 of the Complaint but are not contaminated; is
12 that correct?

13 A. That's what it says.

14 Q. Okay. Is that your understanding
15 that your property is in sub-class B and
16 thus is not contaminated?

17 A. That's what it says here. But the
18 public perception of that from, you know,
19 when I -- when I -- if I had somebody ask
20 me where I live, I would tell them my
21 address. Was it over there by that plant
22 that dumped all that stuff? So the
23 perception is that whole place is just a
24 contaminated area. But this says that mine
25 is not, but ---

1
2 Q. Well putting aside for a moment what
3 folks may think about the area, what I'm
4 trying to get at is as you sit here today
5 that your property at 807 Rogers Drive, do
6 you have an understanding that it is not
7 contaminated as is defined in Exhibit
8 Number-3 of the Complaint?

9 A. That's what this says. And, you
10 know ---

11 Q. And I'm not trying to wrestle with
12 you so you understand, all right?

13 A. All right.

14 Q. But if your understanding is
15 different, then what is set forth here in
16 Paragraph 22-B, that your property is not
17 contaminated, I would just like to know.
18 And you can explain it to me however you
19 wish.

20 A. I don't know whether it is or not.
21 I have not seen anything that tells me
22 whether it is or not. So ---

23 Q. Okay. So right now you don't know
24 whether your property should be in Class A
25 which is constitute a property which are

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contaminated; correct?

A. Okay. Yes.

Q. Okay. Or whether your property, 807 Rogers Drive, should be in the sub-class of those that are not contaminated?

A. Right.

Q. Okay. You just don't know either way?

A. I don't know -- I don't know.

Q. All right. And you haven't seen any documents or other information ---

A. No, I don't have anything.

Q. That confirms that for you one way or the other?

A. Right.

Q. Okay. And you haven't talked to any experts either; is that correct?

A. No.

Q. Okay. All right. You can look at that or put it aside. I'm kind of done with that one for the moment.

A. Okay.

Q. Looking back at Exhibit Number-2, ma'am, it's some of the area that you've

M. NANCE

1
2 been kind enough to outline for us that you
3 understand is the class area; is that
4 correct?

5 A. Yes.

6 Q. Could you tell me -- are you aware
7 of any sources of contamination as you have
8 described that term in our discussion here,
9 other than AVX? You know whether there's
10 any other sources of contamination anywhere
11 within this area that is ---

12 A. No, I really don't know of any.

13 Q. Okay. Have you attempted to
14 determine whether there are any?

15 A. No, I have not.

16 Q. Okay. Would you be able to tell
17 me, even roughly, how many properties within
18 the area you have outlined in Exhibit-2 have
19 contamination?

20 A. I don't know.

21 Q. Okay. And logically you can't tell
22 me which don't have contamination; is that
23 fair?

24 A. That's fair.

25 Q. Okay. Do you -- would you agree

M. NANCE

1
2 with me that property uses within the area
3 you've outlined, Exhibit Number-2, include
4 commercial uses?

5 A. Yes.

6 Q. Okay. Gas stations?

7 A. Yes.

8 Q. Dry cleaners; if you know?

9 A. I don't know where one is. I don't
10 use a dry cleaner because that's chemicals.

11 Q. Okay, fair enough.

12 A. So -- but there's a possibility that
13 it could very well be in there.

14 Q. Okay. And of course, residential
15 uses?

16 A. Yes.

17 Q. Are you aware I think there's a
18 trailer park in that area. Are you aware of
19 that?

20 A. Yes.

21 Q. Okay. Are you aware there's City of
22 Myrtle Beach property?

23 A. City of Myrtle -- I don't know what
24 that is.

25 Q. You don't know that? All right.

1
2 Have you undertaken to determine the nature
3 of property uses within that class area?

4 A. No.

5 Q. So what you know is basically having
6 lived there for the last for the last
7 fourteen years?

8 A. I just -- driving by, yeah.

9 Q. Okay. All right. Fair enough. Do
10 you have any experience in determining the
11 value of real estate?

12 A. No.

13 Q. Okay. So you're not in a position
14 to suggest what the value of any of the
15 properties within the area you've indicated
16 may be?

17 A. No.

18 Q. Okay. Or how much they may ---

19 A. It would only be a speculation and
20 it would probably be a very poor one. So
21 no, I don't really know about the prices.

22 Q. And we don't want you to speculate,
23 only if you want to.

24 A. I don't want to waste my time or
25 yours.

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Q. Okay.

A. Talking about something I have no --
no knowledge about.

Q. Okay. You mentioned earlier you
kind of keep up on all this through the news
generally speaking?

A. Generally.

Q. Okay. And again, I don't want to
know anything counsel has -- may have told
you. But am I correct you're not checking,
for example, the DHEC/AVX web page.

A. No, I don't have my --- I since I
have been traveling I had my TV and computer
and everything turned off.

Q. Okay. Your spending kind of
commuting back and forth to Ohio?

A. Back and forth, uh-huh (yes).

Q. Okay. Have you been keeping up with
any information on the AVX situation that's
in the local Myrtle Beach newspapers?

A. I don't. I haven't gone out of my
way. I figure my counsel is keeping tabs on
everything.

Q. All right.

M. NANCE

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A. And I feel very comfortable that I don't have to do the leg work.

Q. Okay. And I don't want to know what he may have provided you or his partner. Are you being provided any information, you know, news articles anything that I need to be aware of that you're tracking?

A. No, I'm not tracking anything.

Q.. Okay. So you don't know what's been going on in the area, the class area, that you've outlined in Exhibit-2?

A. The only thing that I know about is that they've been sticking molasses and stuff that I put on my biscuit. It's a little hard for me to believe that something I'm eating on my biscuit can be shoved down a crawdad hole and it's going to fix it.

Q. Okay. How do you know about the molasses?

A. I read about it.

Q. Okay. So it's in the news here?

A. It's in the news.

Q. Okay.

M. NANCE

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2 A. I mean it's like -- to me it's like
3 what's going on in the Gulf. They're going
4 to throw this and this and this at it hoping
5 something sticks.

6 Q. Okay.

7 A. I don't think they really -- my
8 opinion is they don't really know. If they
9 did, it would have been cleared up. I think
10 it's a big problem and it's -- and it
11 doesn't have a simple answer.

12 Q. Okay. Fair enough. Do you -- so
13 you don't know what activities other than
14 what you just described that AVX has been
15 undertaking to remediate?

16 A. Right. That was the big thing I
17 thought, that, you know, they're sticking
18 molasses down a hole and hoping that it'll
19 make a bacteria that'll break it down or
20 whatever. That was all that I remembered,
21 which ---

22 Q. Do you know what, if any, further
23 investigation AVX has conducted in the -- in
24 whole or in part of the class area?

25 A. I don't know what AVX has done. I

M. NANCE

1 would be more inclined to -- to believe what
2 somebody outside of there was doing. I --
3 I'm a, you know, a little skeptical --
4 skeptical about, you know, what they did
5 because they did so many things without, you
6 know, just on their own and not reporting
7 things and so I wouldn't put a whole lot of
8 -- personally right now.

10 Q. Do you have any personal opinion
11 about the consulting firm Arcadis?

12 A. I don't know it.

13 Q. Okay.

14 A. So I don't have any opinion about
15 it.

16 Q. You don't have any reason to
17 disbelieve ---?

18 A. I have no reason. If it's an
19 outside and it's a legitimate firm. I
20 really don't know anything about it.

21 Q. So if Arcadis had gone out and
22 investigated some, all or of the ---

23 A. Who would have hired them, you know?
24 I would have more -- more -- I would want
25 to know who's paying their bill for ---

M. NANCE

1
2 Q. That's fair. So are you suggesting
3 that Arcadis, as a consultant if they're paid
4 by AVX, that their information is not valid?

5 A. I'm saying I would have more -- I
6 would be more comfortable with something that
7 was not being paid for, that -- that just
8 would make me more comfortable to get
9 information from something -- somebody that's
10 impartial.

11 Q. Okay.

12 A. And I think you might possibly be a
13 little more partial if you're getting -- if
14 they're signing your paycheck. That's my
15 opinion.

16 Q. If DHEC says the information is
17 accurate, does that give more comfort?

18 A. Well the DHEC is the government.
19 It's the government and I'm not real -- I
20 would listen to it. I would take everything
21 that they say with a grain of salt too,
22 considering they have allowed all this to go
23 on for all this time, you know, I would --
24 I know everybody wants to resolve the problem
25 because it's heat on everybody on everybody

M. NANCE

1
2 with something so big that's happened and has
3 been allowed to extend out all over this
4 period of time without any results of
5 progress being made to alleviate it.

6 Q. So you would question or have
7 reservations about any information that an
8 AVX retained ---?

9 A. Yes, I believe ---

10 Q. Well let me ---

11 A. Yes, I probably would.

12 Q. I want to make sure I get the frame
13 that you if you indulge me.

14 A. Okay. Sure.

15 Q. So you would have reservations about
16 the information that any AVX retained
17 consultant may develop or even DHEC may
18 develop about conditions in the class area?

19 A. I probably would have more stock in
20 somebody that was not government and not AVX
21 and more an outside entity evaluating it.
22 That would make me more comfortable on a
23 personal level.

24 Q. Okay.

25 A. Because, like I say ---

M. NANCE

1
2 Q. And I understand from what you have
3 just testified about your reservations. But
4 whether I agree with them or not, I
5 understand your position.

6 A. Okay.

7 Q. Do you have any information to
8 dispute any investigation results that AVX's
9 consultants such as Arcadis may have
10 developed?

11 A. Do I ---

12 Q. Do you have any basis to dispute
13 what ---

14 A. I have no basis.

15 Q. Okay.

16 A. No.

17 Q. Then would your answer be the same
18 as to any work that DHEC did out in the
19 class area?

20 A. Right.

21 Q. Okay. Do you have any interest in
22 any property other than what you've marked on
23 807 Rogers Drive that's in the class area?
24 You don't have any rental properties or own
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A. No.

Q. Anything else? Okay.

A. Not -- not in this area.

Q. Okay. Do you own property
elsewhere?

A. Yes, I own a lot over by the
waterway.

Q. Okay. Is that over by where Mr.
Jeffords is?

A. Uh-huh (yes).

Q. Okay. Good for you.

A. Yes.

Q. Have you developed it? Have you
improved it?

A. No, I haven't done anything. Well,
just the trees have been removed and there
was dirt put on it. But it's -- I've not
gone any further than that. I haven't built
on it yet.

Q. Okay. Is it your intention at some
point to build on it?

A. I don't know. At this point, I
don't know.

Q. I take it since 1996 you have not

M. NANCE

1
2 put up for sale your property at 807 Rogers
3 Drive?

4 A. No, I have not.

5 Q. Okay. Did you at any time intend
6 to sell that property?

7 A. No. My intention was to do what
8 I'm doing right now. That was and possibly
9 use that as a rental property because I've
10 had people in Ohio that have expressed
11 interest if you -- if that's what you decide
12 to do with it and turn it into a rental
13 property, we'd be happy to rent it.

14 Q. Okay. And am I correct that you
15 would do that kind of in conjunction with
16 developing your property over on the
17 intracoastal?

18 A. Uh-huh (yes).

19 Q. But you haven't made that -- you're
20 still in, the decision making ---

21 A. There's a little bit of a cloud over
22 my retirement at this point with this going
23 on.

24 Q. Okay.

25 A. What I can do potentially.

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Q. Okay. Have you attempted at any time to sell the property at 807 Rogers Drive?

A. No.

Q. Okay. Do you have -- do you believe you have the funds to convert 807 Rogers Drive to a rental and develop the property ---

A. No.

Q. Okay, on the intracoastal?

A. Not right now.

Q. Not at this point in time?

A. Not at this point.

Q. Okay. Who were the folks up in Ohio that have expressed interest in renting 807?

A. Friends of my daughter.

Q. Okay. Do you know what the term stigmatization means?

A. I think I do.

Q. All right. Would you tell me what your understanding of the term is?

A. Well, it is a negative term, stigmatized by something that happens to you.

M. NANCE

It's a negative connotation, I guess.

Q. All right. Can you look at Paragraph 20 of Exhibit-3 for me?

A. Paragraph 20?

Q. Yes, ma'am. And read that one and my question, I'll repeat it later if I need to. I need to understand what you understand stigmatization means in that paragraph.

A. While there's contamination that stigmatization would be maybe what people think about it since all this has come out. I don't know.

Q. Okay. I want to direct you down to Paragraph 22-B again, ma'am.

A. Okay.

Q. And it states in part these properties adjoin the contaminated area and are in such close proximity that the real property value has been affected or devalued by the chemical release at the AVX plant. Do you see that?

A. Uh-huh (yes).

Q. All right. So isn't it correct here

M. NANCE

1
2 we're talking about property according to
3 Exhibit-3 that's not contaminated but is
4 somehow close enough to the contamination to
5 have been adversely affected; is that
6 correct?

7 A. Yes.

8 Q. All right. Can you share with me
9 today any sense you have as to what in such
10 close proximity means to you? That is, how
11 close to contamination would a
12 non-contaminated property have to be?

13 A. It could be next door. It could be
14 blocks away because I think people that, you
15 know, if they think about -- it's the area,
16 you know, it's that area, it's not that
17 house or this house. It's that area. So
18 it could be rather large.

19 Q. If you have -- your personal sense,
20 how far away from any area of contamination
21 would there be a negative affect on property
22 value for non-contaminated properties; if you
23 have one?

24 A. I don't have any -- I don't -- I
25 wouldn't know.

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Q. All right. Would you agree with me that the term adjoining or the adjoined the contaminated area there means something that has a shared property line?

A. Say that again.

Q. Let me back up. Let me direct you to it. So these properties adjoin the contaminated area?

A. It could be -- it could mean this house and this house or it could mean this set of houses and this set of houses. It could mean either.

Q. Okay. All right.

A. That could be adjoining.

Q. So it doesn't ---

A. No, it's not that's --- It could -- you could be real specific with it or it could have a broader meaning.

Q. And as you sit here today, you don't attach any particular distance one way or the other to it?

A. No. No.

Q. Okay. You mentioned some folks in earlier today from Bent Oak. Where is that

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A. Bent Oak is a -- the housing project over about close to Bridgen or in that area off 15th Avenue. There's a housing project that is back there behind. You can get to it if you go past the AVX and go past our street, keep, then it's over to your right.

Q. Okay, is it ---

A. And it's a big area. There's a lot of houses over in there.

Q. Is it anywhere on this Exhibit Number-2?

A. Gosh, I don't know. It probably is. It's probably this in here.

Q. Okay. Would you -- well, I don't want you to speculate. If you think that's where it is, that's fine. I'll ask you to mark it.

A. No, I don't --- But there's a lot -- there's a lot of houses in there so -- let's see. I would think maybe that would be it.

Q. It's your understanding it's on the other side from your neighborhood, the other

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side of Pridgen Road?

A. Yes.

Q. Okay. And you suggested some people asked you questions; is that correct?

A. Yes, they can smell the, you know, they can smell that. And I can give -- a specific name was -- what is her name? Stephanie James and she's a policewoman on -- from Myrtle Beach. Okay, she specifically sought me out and asked a little bit about what was going on because, you know, like I say, they figured they may be, you know, since they could smell all of that because it does carry, you know.

Q. What did you tell Ms. James about it?

A. I just told -- I said I have -- I really don't know, you need to talk to somebody who's more knowledgeable about it than me. I don't know if you would be affected or I really don't know what I wouldn't know what to tell you to do about it other than, you know, investigate a little more and see if that you might be affected.

M. NANCE

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2 Q. Okay. Anyone else from Bent Oak
3 that you recall you talked to?

4 A. Well, Betty. I think Betty lives in
5 the Bent Oak. Betty -- Betty Johnson. But
6 I -- she lives in Bent Oak.

7 Q. Okay. Have you transferred any
8 interest in your property to anybody else?

9 A. No.

10 Q. Do you have a loan on it, a
11 mortgage?

12 A. No.

13 Q. Did you seek -- because you took it
14 through inheritance, I recall? You took it
15 through inheritance or right of survivorship?

16 A. Right of survivorship and after my
17 mother passed away, I had a forty-seven
18 thousand dollars and I paid it off with some
19 of my retirement money.

20 Q. Okay.

21 A. Just so, you know, it would be,
22 wouldn't have to pay the interest and things
23 like that on it.

24 Q. All right.

25 A. Just invested it into the property.

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Q. Okay. Have you had any reason to have the property appraised since 2007?

A. No, it was just -- it was appraised when we bought it and that's the only appraisal. The Bank made the appraisal.

Q. Okay. Do you recall what the appraisal value was in 1996?

A. I don't know.

Q. Did you keep any documentation of that?

A. My mother probably has. You know, it may be in some of her paperwork. I don't know. I haven't looked to know what's there other than maybe the mortgage and -- or the title or whatever.

Q. You paid off the mortgage when?

A. After my mother passed away, I just decided that was where I was going to retire and I would just go ahead and take care of that, you know, looking towards my retirement.

Q. So that was after 2002 when your mother passed?

A. Yes.

M. NANCE

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Q. Do you recall the bank you paid off the mortgage on?

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5

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A. I think it was Peoples Bank, I think. I think it was Peoples. Because it's changed names now, but ---

7

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Q. But the loan was in your mother's name?

9

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A. It could have been in both of our names, I don't really know. It's too long ago and I don't remember. I think it possibly was in both of our names maybe.

13

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Q. Okay. Did you ever pay on that mortgage?

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A. She paid on that one because I was renting the other one. I was paying mine for the rent. She paid for the -- that up until when she passed away and then I paid it off.

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Q. Okay. But you don't know whether in your mom's -- your mother's papers there may be some information?

23

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A. Well, she, yeah, I probably still have her papers. I disposed of some things, but I would say there's -- I might have

1
2 something. What would you ---

3 Q. Well, if you -- I'm not in a
4 position to instruct you what to do. What I
5 would like if I can get them through your
6 counsel, would be any, you know, the
7 mortgage, the title copy obviously of the
8 property. I just need to understand any
9 appraisal ---

10 A. You talking about like a deed?

11 Q. Yes, ma'am. An appraisal, you
12 suggested it may have been appraised back ---

13 A. No, the only time that it would have
14 been appraised would have been if it was
15 appraised by the bank for the purpose of the
16 mortgage.

17 Q. Okay.

18 A. That's the only thing I could think.
19 But -- but I have never had it. And, you
20 know, I just paid it off and I didn't have
21 it appraised. There was no reason to do
22 anything of that nature.

23 Q. Okay. I think we've established you
24 don't know whether your property 807 Rogers
25 Drive is contaminated or not, I mean as you

1
2 sit here today. Do -- are you aware of any
3 testing that has been done on your property?

4 A. The only testing that I saw testing
5 done at AVX inside their fence and at here
6 by the first retention pond. By Clint's
7 house there's a strip of land and they did
8 some drilling in that area.

9 Q. And is that on the Beaver ---

10 A. And I have ---

11 Q. I'm sorry, go ahead.

12 A. And I have no idea who was doing it
13 because I did walk up and ask and you didn't
14 get any information.

15 Q. Okay.

16 A. So I really don't --- But they --
17 there was a pipe drilled in there and they
18 were there for several days.

19 Q. Okay. And where is that on the
20 other -- that is, is that on the side of
21 the retention pond that is adjoining Beaver
22 Road that you saw the sampling? In other
23 words, it's down along Beaver Road or is it
24 on Mr. Chestnut's side of the retention?

25 A. It's on our street. It was on our

1
2 street.

3 Q. Okay.

4 A. Beside -- there's some land, you
5 know, that goes right down to his house.
6 There's a little narrow strip of land and
7 then you have your water and on that area
8 they did a drilling.

9 Q. So was it on -- I'm just trying to
10 the extent you recall what you observed, is
11 -- was the strip of land alongside Rogers
12 Drive?

13 A. Yes.

14 Q. Yes, okay. And somewhere between
15 the street and where the retention pond
16 starts?

17 A. Yes.

18 Q. Okay. And do you recall was the
19 sample taken kind of the corner of that
20 location?

21 A. It was toward -- it was more towards
22 Beaver Road than towards his house.

23 Q. Understood. And I'm just looking at
24 this, you know, where these lots are kind of
25 demarcated. Is that distance is one or two

M. NANCE

1
2 or three lots from Mr. Chestnut's house where
3 you saw the sampling? Or you tell me what
4 you think the distance was, where you saw
5 the testing. That is, how many lots away
6 from Mr. Chestnut's lot was it?

7 A. One.

8 Q. Okay. All right. And you saw some
9 folks there doing some sort of technical
10 work; is that correct?

11 A. Uh-huh (yes). They had a hole, they
12 had a pipe coming out of the ground.

13 Q. All right.

14 A. And some equipment and I have no
15 idea who they did it for and but they were
16 there for several days.

17 Q. Okay. And you approach them and
18 they weren't giving you any information?

19 A. They weren't offering anything.

20 Q. Okay. Was any pipe or anything left
21 behind after they were completed?

22 A. No, they covered it up.

23 Q. Okay.

24 A. You can't tell that there was
25 anything there now.

M. NANCE

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2 Q. All right. Have you asked anyone
3 for any results of whatever was tested for
4 there?

5 A. No. I figure if there's any results
6 that can be had that my counsel would obtain
7 those things.

8 Q. All right. Okay. And have you
9 yourself seen any results?

10 A. No.

11 Q. Okay. From that or any other
12 testing?

13 A. No. I haven't asked to see, no.

14 Q. You mentioned earlier you have
15 reviewed one DHEC report. I want to make
16 sure ---

17 A. It was the one -- it was the one
18 that was attached to this.

19 Q. I see, it's what's attached to
20 Exhibit-1?

21 A. Right.

22 Q. Okay. Thank you for clarifying that
23 for me. So you haven't seen any reports
24 that reflect any sort of testing or
25 investigation or analysis or anything?

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A. No official things like that, no.

Q. Okay. Let's do something easy for a minute.

A. Good.

Q. To the extent that you know, what's the rough acreage of your lot; do you know?

A. Oh, I don't know. It is a small lot. It's, well you saw the picture. It's -- I think one of the guys said it was maybe twenty-eight feet.

Q. Okay.

A. And there's just feet and inches between the property. It's very close. We look in each other's window. I was very unused to that. When I came from Ohio I had a big yard and lots of privacy. That was a big adjustment.

Q. All right. Do you know the approximate square footage of your house?

A. Well Clint said his was a thousand. They're all about the same size, so I would guess ---

Q. You're on one level?

A. I'm on one level and I've got a

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crawl space.

Q. Okay. Is it a vented crawl space?

A. Yes.

Q. Okay. Do you have -- are you on municipal water, that is City water?

A. Yes.

Q. Do you have any irrigation wells, anything like that?

A. No.

Q. Okay. You know roughly how much you pay in utilities a month?

A. I think this last month I probably paid thirty dollars, thirty something in water and ninety-five in electric.

Q. It was a hot June?

A. Yes.

Q. Yes. You don't have a basement; correct?

A. Don't have a basement.

Q. All right. Do you have any kind of work room, anything like that?

A. No work room, just a small porch on the front and a small on the back.

Q. Sounds the same as Mr. Chestnut has?

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A. Yes, they're very similar.

Q. His Daddy built them kind of the same I take it? All right. Do you have a garage, detached or attached?

A. No garage, just a -- I've got a cement driveway. Some of them just have gravel. But I have a cement driveway.

Q. Okay. And is that what -- in the picture you show me, your Riviera was parked on?

A. Yeah, that was it.

Q. Okay. How do you heat and cool the house?

A. With a, I guess it's -- there's a unit outside and a unit in the attic.

Q. Okay.

A. And I just replaced that. And I sure wouldn't have if I -- I wouldn't have spent as much money as I did. But I had it done before this and I spent eight thousand dollars replacing the whole thing.

Q. Got you. Is it -- I'll offer to you is it a heat pump?

A. Yes.

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Q. Okay. Any above or underground storage tanks of any nature on the property?

A. No.

Q. How many bedrooms do you have, ma'am?

A. Two bedrooms, two bath. They each have a -- one on each end of the house. They have a bedroom and a bathroom.

Q. Okay. Full bath?

A. Uh-huh (yes).

Q. Okay. Do you have a fireplace?

A. No.

Q. All right. When you came down in 1996, I take it you were drawn to this particular neighborhood because you had befriended a member of the Chestnut family up in Ohio?

A. Right.

Q. And who was that again?

A. It was Lilly Wellenger. She was -- she lived up there. She and I went to church together and we both had grandchildren that we carried back and forth. So we came -- became good friends. And then she -- one

M. NANCE

1
2 of her sisters, like I say, it's a big
3 family, had a heart surgery and Lilly wasn't
4 unable to drive. And I came down with the
5 whole family and then she told me her
6 brother was building some houses down there.
7 I ended up coming down.

8 Q. Okay. When you came down and you
9 observed these houses, some were built and
10 some were still under construction.

11 A. Yeah, the Jeffords' house was built.

12 Q. Was built. And that's the one we
13 already discussed you leased for a number of
14 years. Did you undertake to look at any
15 other neighborhoods anywhere around the beach
16 area before you decided?

17 A. Yeah, I went down and looked at some
18 places down by closer to the water and they
19 were like a hundred and fifty thousand. And
20 I said I don't think so. I can be a
21 little bit further away from the beach and
22 take something that costs a little bit less.

23 Q. Okay.

24 A. And that was about the only ---
25 Well I did go over and look at the

1
2 apartments that are right across from the
3 waterway. I did look at those.

4 Q. And those were just for rent
5 apartments? Or where they condominiums?

6 A. You could buy them.

7 Q. Okay. So they're condominiums.

8 A. They're condominiums.

9 Q. All right. Were they out of your
10 price tolerance at the time?

11 A. They weren't, but I think you had to
12 pay some kind of maintenance fee and I
13 didn't want to do that. I wanted to own a
14 piece of property and not deal with that.

15 Q. Okay. Other than those two general
16 locations ---

17 A. That was about the only thing that I
18 looked at.

19 Q. Okay. All right.

20 A. I looked at some trailers and I
21 didn't do that. I think I drove through
22 Crystal Lakes and I looked around. It was a
23 very pretty area and I liked the lake
24 because that's where Lilly lived, my friend.

25 Q. Okay.

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A. But I did not want to live in a trailer, so this was much more what I was looking for.

Q. And that trailer camp's, trailer location, it's nowhere on this Exhibit to 2, is it?

A. No, it's on further back. It's on further back. And this was such a nice location that it was convenient to everything, it was affordable, it was five minutes from the airport and my granddaughter flew back and forth on holidays and summer and so everything was very convenient.

Q. Okay. What about did you get to observe any of the general area when you were looking around, you were driving around. Did you see kind of the character of this general area that's on Exhibit Number-2?

A. Yes.

Q. Okay.

A. It's just a normal type area.

Q. Any major changes you recall. I mean I'm sure people have switched out ---

A. This has built -- this has built up.

M. NANCE

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2 I mean the South end was less developed
3 fifteen years ago and so that was before the
4 Broadway at the Beach was there, which is
5 nice and close and I really enjoy that.
6 And, you know, there's been a lot of things
7 built.

8 Q. The -- but even when you observed it
9 back in 1996, were there -- there was a mix
10 of commercial, residential, restaurants, bars
11 similar to what you have there today?

12 A. Yes.

13 Q. Maybe more of them, but similar kind
14 of cross section?

15 A. Yes.

16 Q. Okay. Did you, by any chance,
17 observe AVX when you were down the first
18 time or at any time before you bought?

19 A. I rode by it but I didn't really
20 think too much about it.

21 Q. It's just an industrial location?

22 A. Right. It was just a factory. I
23 was used to seeing factories and things like
24 that.

25 Q. You were accustomed ---

M. NANCE

A. It was a small factory, yeah. You know, it was in my neighborhood in Ohio.

Q. Well that's what I was going to follow. I mean having grown up in the Midwest, I'm sure there are plenty of them around. Do you recall the ones that you observed in Ohio, what kind of stuff they did up there?

A. Alley Industries, but I'm not sure what they make. He had, you know, little factories here and there around the neighborhood where I have my apartment.

Q. It wasn't unusual to you?

A. No, it wasn't unusual at all.

Q. All right. The other neighborhoods you looked at I think, would it be fair to say they were a little more desirable, but as a consequence a bit more expensive?

A. Right. It was a new things they were building down the lower three part golf course. There was a nice development that was going in at that time. They were -- but, you know, there was quite a bit of difference being that close to the water.

M. NANCE

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2 You know it was a big difference in price.

3 Q. Okay. Within the area you've drawn
4 with the hard line, are there any
5 neighborhoods or sub-communities you would
6 describe as nicer or more desirable than your
7 neighborhood where you live?

8 A. No, these were older homes, the
9 older homes and these were brand new homes.
10 And that was preferable to me to be in
11 something that was new.

12 Q. Okay. As it sits today, are there
13 any within your red line, any neighborhoods
14 or sub-communities you would suggest are --
15 or believe are more desirable or nicer than
16 yours?

17 A. No, I'm very satisfied with that
18 location.

19 Q. Okay. None that might have bigger
20 houses, bigger lots?

21 A. I don't want a bigger house because
22 it -- this is just enough for me to take
23 care of. I don't want anything more.

24 Q. There are not any nicer to you?

25 A. They're not any nicer to me.

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Q. Okay.

A. I have a small yard, it's easy to maintain.

Q. Okay. So you're at a cost point you knew kind of what you wanted in size, you knew what you wanted in maintenance?

A. And I knew where I wanted to be down the road, so that -- that did fit into my plan for me and my family.

Q. Okay. And when you first came down, I mean your mother was with -- was your mother with you in Ohio?

A. My mother was, my mother was, yes. My dad died and my mother -- when my mother was -- my mother was 62. They were in California and my mother was not a person to be live by herself and she asked if she could -- and it was fine with me. So my mother was basically with me from the time 62 to 79 years old.

Q. Okay.

A. And it was good arrangement, there was no problems with that. And when my daughter asked me to take care of my

1 granddaughter, that wasn't a problem either.

2 That was ---

3 Q. Do you feel you can provide me with
4 the fair market value, your opinion of the
5 fair market value of your home today?
6

7 A. The only thing, yeah, I -- I've --
8 I know what -- the house that's on the other
9 side of -- of Frankie's, it has been on the
10 market. He did try to sell it. And he
11 had a -- and so I asked Rick, the person
12 that's living in it now. And he asked a
13 hundred and thirty-nine thousand for his.
14 Then he went down to a hundred and nineteen
15 thousand and then he went down to a hundred
16 and nine and he couldn't get a -- I think
17 maybe one or two people at the most even
18 inquired about it.

19 Q. Okay, and what's ---

20 A. But he started at one, thirty-nine.
21 So that I would say, you know, and I don't
22 know a lot about real estate, but I would
23 say I'd fall in there somewhere, a hundred
24 and twenty-five or something maybe. I don't
25 know. I have not, like I don't know that

M. NANCE

much about real estate and I have not inquired so I really don't know.

I can just tell you that the two houses across the way were sold to Jim Davis. He bought them a hundred and nine and a hundred and twelve. But those were rentals that were in bad shape and they have since, you know, refurbished them and now they're quite nice and would be worth considerably more than what they paid. They were very happy to get it, although now they say they would not have bought them if they had had any idea.

Q. Do you know Rick's last name?

A. No, I don't.

Q. Do you happen to know his address?

A. Well ---

Q. He's on the other side of the Jeffords.

A. It's probably 813 I guess.

Q. Okay. Do you know when, do you recall when he first put the For Sale sign in front of his yard?

A. Well, that wasn't -- that was Donny

1
2 that owns that. Rick doesn't own it.

3 Q. He's just leasing it?

4 A. He's the renter there.

5 Q. Got it.

6 A. And Donny that lives on 13th Avenue
7 is the owner.

8 Q. And do you know Donny's last name?

9 A. It's on there. It's Donny, I don't
10 know his ---

11 Q. Don Emery?

12 A. Yes, that's what it is.

13 Q. Okay. All right.

14 A. There's also a house -- there's a
15 house next to the last house has -- was
16 vacated after this and has been empty for a
17 considerable amount of time on my side of
18 the street next to the last house.

19 Q. The last house toward the drainage
20 ditch?

21 A. Yes. No towards the end house this
22 way on the left hand side, the next to the
23 last house has not -- they have not been
24 able to rent that for I think it's been
25 empty now for maybe years rather than months.

M. NANCE

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2 Nobody has been there I don't think.

3 Q. Because this is your road right
4 here.

5 A. Right. I'm up closer to -- right,
6 I'm up closer to Beaver and the empty,
7 there's a empty house down there I'm not
8 sure who owns it. I think it was rented
9 out by a company. I think the people that
10 own it and they have not been able to rent
11 it.

12 Q. Do you recall when Donny first put
13 his house up for sale?

14 A. No, I can just tell you there was a
15 sign there and I didn't inquire about it
16 till just lately to find out, you know.

17 Q. And no matter when he started to
18 sell it and drop price, your information is
19 he did not sell it?

20 A. He did not sell it. And from what
21 Rick said, there wasn't anybody that even,
22 you know, came to look at it.

23 Q. Then you mentioned Jim Davis had
24 purchased a couple of houses. Do you know
25 when he purchased those homes?

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A. It's been -- it's been a few years.
I mean they've been there at least two or
three years maybe.

Q. Okay. So you don't know whether
it's before or after 2007; is that correct?

A. It was after and he thinks that the
people, the guy that sold him the house
probably or possibly may have known and did
not disclose anything about this to him when
they purchased those properties.

Q. Okay. But it's clear in your mind
that Mr. Davis -- did he buy both or is he

A. His son, it's Mr. Davis and his son.

Q. His son's name is?

A. Greg and I don't know his last name.
I think it's Jim Davis. I'm not sure what
Greg, you know.

Q. Okay. But you're confident they
purchased those after 2007?

A. Yeah, I'm pretty sure they did. And
they're not, you know, nobody told them
anything.

Q. Well then they improved them; is

1
2 that correct?

3 A. Yes. They're very nice now.

4 Q. Okay. Do you have any information
5 they tried to sell them since?

6 A. I don't think they've tried to sell
7 those houses.

8 Q. Okay. Other than the homes in your
9 neighborhood in and around Rogers Drive, have
10 you considered any other information in order
11 to attempt to value or in an attempt to give
12 me a fair market value for your home?

13 A. That's the only information I have,
14 what has gone on in my own neighborhood.

15 Q. And would it be fair for me to
16 characterize even then that your estimate is
17 more of a guess than anything else?

18 A. Sure.

19 Q. Okay. All right. Are you aware of
20 any other for sale signs having been posted
21 or properties for sale anywhere in the class
22 area as you have set it out in Exhibit-2?

23 A. I haven't really paid any attention.

24 Q. Okay. Has the contamination as you
25 understand it today, your definition of it

M. NANCE

that we've talked about, has it affected how you use your property in any way?

A. I brought something else with me. I, okay, you saw I had plants and most of the time I -- I put things in containers. Well I went out in my back porch and I planted some tomatoes. They're pretty. I gave them to somebody that you and I both know and she told me the other day, because I planted this in the ground, and she said that she's from Horry County, she said I ate those tomatoes you gave me. She said don't give me any more and I don't think you ought to be eating those either. Very pretty tomato.

Q. Okay.

A. It has a stigma.

Q. All right.

A. Because I put it in the ground, not in my pot. So nobody wants them. I can't give them away.

Q. Have you been eating the tomatoes?

A. I have. Every time I do I think, you know, am I going to grow another head or

1
2 something?

3 Q. So other than the tomato, I mean ---

4 A. I just, you know, I think about it,
5 you know. Is it safe for me to be digging
6 around in this dirt? You know is it safe
7 to eat my herbs?

8 Q. Right.

9 A. Just things like that. It's ---

10 Q. You continue to do them but you have
11 some concerns about them; is that ---

12 A. Yes.

13 Q. Okay. But you've continued to use
14 your house in the same general fashion; is
15 that correct?

16 A. Yes, pretty much.

17 Q. Okay.

18 A. It's pretty bad when you can't give
19 your tomatoes away.

20 Q. If you want to give it to me, I'll
21 take it.

22 A. Okay.

23 Q. Won't bother me in the least.

24 Would it be fair to say you don't
25 know how or why the contamination occurred?

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A. Pardon me?

Q. Would it be fair to say that you don't have any information as to how or why the contamination occurred; do you?

A. The only thing that I think they just did not, you know, have a good way of handling their toxic products and, you know, their employees handled it, their people dumped it and it was just, you know --

Q. And I think you're referring in your Answer to AVX; is that correct?

A. Right.

Q. So you don't have any specifics as to how any contamination that may be coming from AVX arose? What caused it; do you?

A. I just thought -- I thought it was from spills or from maybe ruptured tanks or barrels or, you know, inadequate storage and things like that.

Q. And how did you come to that understanding?

A. From reading my -- from reading the materials.

Q. When you say the materials, you're

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tapping on the ---

A. Yes, whatever -- that was what I read.

Q. Exhibits Number-1 and 3; is that correct?

A. Yeah, it was just from ---

Q. Okay. You haven't learned anything about how the contamination may have arose from the newspapers?

A. I don't know where. I just -- it is in my mind that it was from things like that, spills from containers or ---

Q. And would it be fair to say that you don't have any information as to any other sources of contamination as you used the term that may have -- may exist in or around the class area that you've outlined?

A. I have not heard of any. I've not read of any.

Q. Okay.

A. I haven't heard talk of any, so I'm not ---

Q. All right. Can you tell me what, if any, damages you are seeking from AVX in

M. NANCE

the case that you have filed?

A. I don't know. I don't know, in my own mind, what's appropriate. I trust my counsel to talk with me about that and advise me to ---

Q. I'm sorry, I don't mean to interrupt.

A. I'm sorry.

Q. As you sit here today, you don't know what amount of damages that you are seeking from AVX?

A. No.

(WHEREUPON, ANSWERS TO INTERROGATORIES WAS MARKED FOR IDENTIFICATION AS DEPOSITION EXHIBIT NUMBER-4)

BY-MR.DEVORE:

Q. Okay. Ma'am I've handed you what's been marked as Exhibit-4 in your deposition.

If you'll take a moment and look at it.

Okay, ma'am, whenever you're ready, not to rush you. You just let me know.

A. Okay.

Q. All right. Have you ever seen what's not been marked as Exhibit Number-4

1
2 before?

3 A. I don't think that I have.

4 Q. Okay. I want to make sure on the
5 answer to the first Interrogatory, and I'll
6 represent to you that lawyers like to use
7 big words and interrogatory basically means
8 question, that's what we do. So the
9 Question Number 1, the answer to it suggests
10 that you purchased the property at 807 in
11 1996.

12 A. Yes.

13 Q. I just need to make sure I
14 understand from our discussion today, you
15 didn't actually, in your mind did you
16 actually buy it or did you take it through
17 some other means?

18 A. We bought it because my mother and I
19 went to John Thomas over in Conway that
20 Verlee and Verlee and her husband and signed
21 the papers over there for the purchase of
22 the property.

23 Q. Okay. And so you had some joint
24 interest in it, you and your mother?

25 A. Yes.

M. NANCE

Q. Okay. And then her interest came to you in some fashion upon her passing?

A. Yes.

Q. Okay. All right. So you had kind of a part ownership of it from 1996 to 2002 or so and then you owned the whole thing?

A. We went, yes. That way we both felt that if something happened to one or the other of us we had a place.

Q. All right. And on the next page to Answer Number 8, do you happen to know the gentleman referenced Allen Chestnut?

A. No, I do not.

Q. Okay. How about the Camps, Ronald and Jan?

A. No.

Q. Or Dick Spivey?

A. No, I don't know them.

(WHEREUPON, ANSWERS TO INTERROGATORIES WERE MARKED FOR IDENTIFICATION AS DEPOSITION EXHIBIT NUMBER-5)

BY-MR.DEVORE:

Q. Okay. All right. I'll hand you now ma'am what's been marked as Number 5 in

1
2 your Exhibit-5 in your deposition. And when
3 you're ready, my first question has to do
4 with the answer to Number 7.

5 A. Okay.

6 Q. Okay. The Answer states Plaintiff
7 expects to argue that her property value's
8 been diminished by the presence of chemicals
9 in the area surrounding AVX plant. The
10 Plaintiff will present an appraisal to offer
11 an opinion of damages between fifty and sixty
12 percent of value of the property. Is that
13 correct?

14 A. Uh-huh (yes).

15 Q. Okay. I want to make sure I
16 understand fully, are you relying one hundred
17 percent on your expert to determine what, if
18 any, devaluation of your property has
19 occurred?

20 A. I'm guessing my counsel to do that.

21 Q. So when this Answer refers will
22 present an appraiser, because you're the
23 Plaintiff, you understand that?

24 A. Okay.

25 Q. All right. You'll present an

1
2 appraiser, maybe through your counsel.

3 A. Right.

4 Q. All right. And that appraiser
5 whoever it's going to be, is going to offer
6 an opinion about devaluation of your
7 property; is that your understanding?

8 A. Yes.

9 Q. Okay. And you are not going to
10 offer any opinion about what you think the
11 property may be devalued by because you
12 simply don't know?

13 A. I don't know.

14 Q. Okay. All right. I'll try to do
15 this as efficiently as I can. Do you know
16 a gentleman Marvin Cooley?

17 A. No.

18 Q. Okay. Audrey Johnson?

19 A. No.

20 Q. Izzie Brown?

21 A. No.

22 Q. Ann Maus M-a-u-s?

23 A. No.

24 Q. Cory Kapla?

25 A. No.

M. NANCE

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Q. Okay. William Johnston?

A. No.

Q. We've established you know Don Emery?

A. Yes.

Q. Okay. Do you have any idea what information Don Emery may offer about any devaluation in the area?

A. I have no idea. I haven't discussed it with him and I have no idea.

Q. Okay. Do you know Tom Leath, the City Manger, City of Myrtle Beach?

A. No.

Q. Okay. Tom Tingle?

A. No.

Q. Lynn Hansack?

A. No.

Q. Billy Oliver?

A. No.

Q. Kenneth Richards?

A. No.

Q. How about Carol Minsk at DHEC?

A. No, I don't know her.

Q. You know any of the folks in DHEC?

A. No.

1
2 Q. Okay. Have you met Henry Beckham by
3 chance?

4 A. No.

5 Q. Or Mr. Fedder, Dr. Fedder?

6 A. No.

7 Q. Okay. Do you have an opinion as to
8 whether or not your property could be sold?

9 A. I don't think -- I think that I
10 would have a problem selling it.

11 Q. Okay. Would you agree with me that
12 there's the possibility the house could be
13 sold?

14 A. I just don't know. I don't know.
15 I haven't tried. All I can tell you is the
16 house that was there for sale, nobody looked
17 at it even though he reduced the price by
18 thousands of dollars and had no takers, so I
19 would imagine I'd probably get the same kind
20 of result.

21 Q. Okay. But you haven't tried to sell
22 your particular piece of property?

23 A. No, I have not tried to sell my
24 particular.

25 Q. And you have no current intention to

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sell your property?

A. Not at this time I don't.

Q. Okay.

A. I haven't made any kind of decision like that.

Q. All right. Do you intend to offer yourself any testimony that your property's been stigmatized?

A. Do I plan to ---

Q. To offer any testimony that your property ---

A. I will if it's necessary.

Q. Okay.

A. If I'm asked to, I would ---

Q. Well, why don't you -- I'll ask you to right now.

A. Okay, well ---

Q. What would your testimony be? Or what is your testimony?

A. That I think that my property has been devalued because of the situation that's going on with the contamination.

Q. Okay. And you don't know how much it's been devalued?

M. NANCE

1 A. I have -- no, I don't. I have not
2 sought to find out and it has not been, you
3 know, anybody's opinion, you know. I haven't
4 sought any opinion about it. But I do feel
5 that it had, you know, because of the
6 circumstances that it would be difficult to
7 sell it.

8 Q. Okay. And you haven't done any sort
9 of investigation or data gathering of your
10 own to determine that?

11 A. No. No.

12 Q. Okay. And the same is you haven't
13 really done any investigation or data
14 gathering about how it's ---

15 A. No, I have not.

16 Q. Okay. Would you agree with me that
17 since 2007 we're in the midst of an economic
18 crisis?

19 A. Uh-huh (yes). A little bit, yes, I
20 would.

21 Q. I think you're being tongue in cheek
22 when you say a little bit.

23 A. A little bit.

24 Q. I mean you've heard it referred to
25

1
2 as the worst since the Great Depression;
3 correct?

4 A. Yes.

5 Q. Do you -- would you agree with me
6 that property values in Horry County have
7 been adversely affected by the economic
8 situation?

9 A. Probably so, but I don't think in
10 the neighborhood that I am in the price
11 range house that I have that my situation
12 would be equal to somebody that say has a
13 mansion or a expensive property. This is a
14 small, modest thing that a lot of people
15 would be able to afford and probably would
16 be more attractive to in this economy.

17 Q. Okay.. What do you base that
18 understanding that your property value would
19 not be impacted by the economic situation on?
20 What information ---

21 A. It's just a small -- it's just a
22 smaller, just commonsense. It's a smaller
23 property. It's affordable. It's -- and I
24 just don't think, you know, I would be in
25 the same category as somebody that had two

M. NANCE

1 hundred and three hundred thousand dollar
2 house. And being in the location that it
3 is, I don't think it would lose its value as
4 much because it's a very good location.
5

6 Q. Okay. Well would you agree it would
7 lose some value, but not as much?

8 A. Well it's going to lose value I
9 think more because of the situation I'm in
10 than where I am or what the situation is
11 with the economy.

12 Q. Okay.

13 A. That's my opinion.

14 Q. All right. And that's what I want
15 to get into. I understand, well I'm just
16 trying to establish at this point if you're
17 agreeable to it. If you're not tell me no.
18 But would you agree that the economic
19 conditions that we find ourselves in
20 nationally have adversely affected the value
21 of your property?

22 A. It may have affected my property,
23 but not as much as the situation where I now
24 have to disclose that my house is in a area
25 that could possibly be contaminated.

1
2 Q. Okay. And we're going to talk about
3 disclosure in a few minutes. But I
4 understand your position. Now so the economy
5 has, the economic conditions have some impact
6 but your belief is not as much as the AVX
7 situation is; correct?

8 A. Correct.

9 Q. Can you allocate for me of the
10 amount of reduction how much you believe is
11 related to the AVX situation and how much is
12 related to the economic situation?

13 A. I don't know.

14 Q. Okay. So your understanding is both
15 of those things are affecting your property
16 value but you don't know which is affecting
17 it. But you believe the AVX situation is
18 affecting it more, but you can't really give
19 me a percentage allocation?

20 A. That's right.

21 Q. Okay. Now you mentioned more
22 expensive properties that would be more
23 impacted than your property by the economic
24 conditions; is that correct?

25 A. Right.

M. NANCE

1. Q. Okay. Do you have kind of a price
2. point in mind when you say that?
3.

4. A. Well, I would think more expensive
5. properties. Any would be more impacted by
6. the economy.

7. Q. Okay.

8. A. I think mine would be more
9. attractive to people because of the location
10. and because of the price range and being a
11. vacation home in a vacation area.

12. Q. What about other residences within
13. the class area that you've outlined on
14. Exhibit-2. If their price was two hundred
15. and fifty thousand, do you think that their
16. fair market value has been impacted more by
17. the economic condition than your property
18. value?

19. A. Would you repeat that?

20. Q. Sure, I'll try. If you want to
21. take a break, I'm more than happy to take a
22. break.

23. A. Yes, let's do.

24. Q. Okay. Would you like to go ahead
25. and do lunch? Does that make sense? A

M. NANCE

little bit after 12 o'clock.

A. That would be fine.

Q. Okay. You want to come back oneish?
Does that work for everybody?

A. Okay.

Q. Let's go ahead and do that.

MR. CONNOR: Sure, whatever you want
to do.

MR. DEVORE: You're in control of
that.

(Whereupon, a luncheon recess was
taken.)

BY-MR. DEVORE:

Q. Ms. Nance, you have a chance to get
a little lunch?

A. Uh-huh (yes).

Q. Good. Before we took a break I was
asking you about the economic conditions
since 2007. In my pending question I
believe, but let me just restate it, is so
you have a particular price of a house or
residence in mind when you say that more
expensive housing may be impacted greater by
the economic conditions?

M. NANCE

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2 A. Okay. Can we start again?

3 Q. Let me try again. I think you've
4 indicated that albeit a guess, that your
5 property is worth somewhere around between a
6 hundred and nine and maybe a hundred and
7 thirty-nine thousand dollars, fair market
8 value today; is that correct?

9 A. I don't really know. I don't know.

10 Q. All right. You have suggested
11 though in your testimony that the economic
12 conditions, you know, that the country and
13 Horry County find itself in, you don't
14 believe has had a as much of an impact on
15 the value of your property as it may have
16 had on the value of more expensive
17 properties; is that correct?

18 A. True.

19 Q. Okay. And what I'm to figure out
20 is what's a more expensive property? What
21 kind of price range?

22 A. In the hundreds of thousands. Not,
23 you know, I feel like I'm ---

24 Q. Is it fair to say anything over two
25 hundred and fifty thousand?

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A. Maybe, yeah.

Q. Okay.

A. If it's not, you know ---

Q. You don't -- you really don't have a sense of that?

A. I don't have a sense of the values of -- of properties too much.

Q. Okay. Are you seeking any damages for any personal injuries in this lawsuit?

A. Whatever is owned -- no. I'm not ---

Q. Okay. As you sit here today ---

A. As I sit here today, no, I'm ---

Q. Okay, you're not aware of any ---

A. I may not -- no.

Q. You're not aware of any injuries you've suffered, if any, correct?

A. No, I don't.

Q. Okay. What do you want out of this lawsuit?

A. That's a good question. I don't really -- I don't know. I have not formed that in my mind. This was -- this was a place that I was going to retire to. I

M. NANCE

1 think, you know, depending on -- I don't --
2 this is a very -- this was a very
3 comfortable situation for me where I was
4 located, being in Myrtle Beach. And it's
5 hard for me to get too far out there with
6 deciding what I need to do or what I need
7 to ask for and that's why I have a counselor
8 to, counsel to help me decide what might be
9 best for my situation.
10

11 Q. Okay. So you can't give me any
12 dollars and cents amount of what would
13 satisfy you as a result of this case?

14 A. No, I have thought about it and I
15 think it would be very hard for me to
16 replace what I have and have the same
17 circumstances that I have. You know, the
18 comfortable position that I'm in and all
19 that. So it's -- it would be difficult for
20 me to at this time formulate that for myself
21 because I just don't think I could --- I
22 think if I tried to duplicate what I have
23 there it would cost me a whole heck of a
24 lot more money because this -- things have
25 built up over the last fifteen years, there's

M. NANCE

1
2 less property that's available. So it's kind
3 of hard for me to think of it.

4 Q. All right. If you were going to
5 try to sell your property, how much would
6 you ask for; if you know?

7 A. I don't know. I have not formulated
8 that in my head. I don't know.

9 Q. Are you concerned that if you choose
10 to sell the property at some point in the
11 future, you'll be able to get fair market
12 value for it?

13 A. I think what I think I would not --
14 if I left there so bad that I could not
15 replace what I have, you know, unless I -- I
16 just -- I can't picture it in my head. I
17 know that everything has built up. I know
18 that the value of the property over at the
19 waterway has, you know, it's gone up and I
20 can't see myself being able to replace what
21 I have. So ---

22 Q. So as you sit here today, you don't
23 know if and when you would ever sell the
24 property on Rogers Drive?

25 A. Right now I don't know. Right now

M. NANCE

I don't know. I would need to discuss that more with somebody that could help me work out a decision about it.

Q. All right. If you're awarded any damages in this case, you get an amount of money and you later sell your house for fair market value, would you intend to return the money?

A. I don't know -- I'd have to think about that.

Q. Okay.

A. Because I ---

Q. Okay. When was your -- when do you understand your property was damaged?

A. I think that property has been damaged for a long time. I think when they -- years back it was damaged. And like I say, when I think about it, I think when that property became available knowing what I'm sure they knew had happened and that they had not fixed, the right thing for them to have done was to bought that property and not let people buy it and put houses on it and, you know, put their dreams on something

21 A. I think it might have been going on
22 for twenty years. I don't know for sure,
23 but I think it was a -- my sense of it was
24 that all this stuff happened maybe before
25 they even realized the seriousness of what

M. NANCE

1 they were dealing with. But I think it was
2 a long time.

3 Q. Okay.

4 A. I don't know how long they've been
5 in business or whatever, but I would say
6 they used similar stuff the whole, I mean I
7 don't know what they all the stuff that they
8 made or dealt with, but I would say that the
9 -- I would say the damage was done
10 considerably earlier than it was reported.

11 Q. Okay. Would it be fair to say your
12 position is that whenever contamination, TCE
13 contamination, occurred at AVX, that is as a
14 result of a spill or a release or anything
15 of that nature, that's when your property was
16 damaged?

17 A. That's when the whole thing started
18 and obviously they didn't know how to stop
19 it. And it has continued to spread out
20 further and further.

21 Q. Okay.

22 A. And encompass, you know, more --
23 more area and more people and made a much
24 bigger problem.
25

M. NANCE

1
2 Q. Okay. Is it then that your property
3 was damaged when there was first any offsite,
4 that is off the AVX site, migration of any
5 TCE?

6 A. Yes, when it -- when it got -- left
7 their property and started spreading out,
8 then I think a lot of property may have been
9 damaged in that time. And it has been there
10 for years.

11 Q. And that would include your property?

12 A. That would include, that particular
13 little subdivision, yes. I think that it
14 includes that.

15 Q. Because of the ---

16 A. Because of the location and ---

17 Q. The physical proximity?

18 A. The proximity of it, yes.

19 Q. Okay. So right now you really --
20 you're not -- you don't know when you're
21 going to sell. If and when you may sell so
22 you're not certain ---

23 A. I don't know when and if and what I
24 would do and I have not been able to -- I'm
25 not that far in working this out for myself.

M. NANCE

1
2 Q. Okay. Has anyone told you, you
3 might have trouble selling your property in
4 the future?

5 A. Well I think it's kind of, I mean
6 if you have to disclose that there's problems
7 with your property then -- then you have a
8 more trouble selling it than if there's
9 nothing that you, you know, no nothing that
10 you have to worry about in that respect.

11 Q. Okay. That's something you've
12 ascertained yourself, if you're required to
13 disclose something?

14 A. If I -- yes, if I have to disclose
15 I think that will impact -- that would, you
16 know, impact anything I do with it.

17 Q. Okay. What if you don't have to
18 disclose?

19 A. I think I do have to. My feeling
20 is that I would have to and I would be
21 obliged to because if I know something like
22 that, I wouldn't want to put another family
23 in the same situation.

24 Q. Okay.

25 A. And I think it should have been, you

M. NANCE

1
2 know, I think if AVX knew it they, you know,
3 that for a long time all that stuff should
4 have been disclosed.

5 Q. Okay.

6 A. Give people the option of making the
7 choice.

8 Q. And when you say when AVX knew it,
9 what do you mean?

10 A. I think they knew they had a
11 problem. Well they tried to clean up
12 without, you know, reporting it. The City
13 acts like, I presume from the way they talk
14 that they had no idea which I, you know, I
15 find that --- but, you know, when you're
16 dealing with something that is toxic and at
17 least people should know about it. And they
18 have the option of the choice. Some people
19 might not mind. In my particular case, I
20 do.

21 Q. I'm just trying to figure out what
22 the it was. Are you saying whenever there
23 was any contamination on the AVX property
24 they should have disclosed it or when it may
25 have moved off site or all of the above?

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A. I think the whole process should have been above board and people should have known. People should have been able to decide whether it was something that was innocent or it was, you know, nobody seems to have known or shared information of things going on.

Q. Okay. Has anyone told you, and I'm taking out of this equation your counsel if by any chance that's the case, has anyone told you, you are legally required to disclose anything about your property to any prospective purchaser?

A. I think I read it.

Q. Okay.

A. I think I read that it was a law that you disclosed things.

Q. Okay. And would that be the disclosure form we discussed with Mr. Chestnut and Mr. Jeffords?

A. Yeah, I would think. Yeah.

Q. Okay. Is that ---

A. That you get from a real estate person or whatever?

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Q. Right.

A. Yes.

Q. Okay. I want to make sure we're talking about the same thing. Any other requirement you're aware of that may apply to you and require you to disclose anything about your property?

A. Not that I can think of.

Q. Okay.

A. Other than just that particular form that I think is a law.

Q. Okay. Do you own -- you drive a car, don't you?

A. Yes, I do.

Q. You pump your own gas?

A. Yes, I do. And I stay away from the fumes. I don't breathe. I hold my breath.

Q. Have you ever smelled any of the fumes?

A. I know what they smell like.

Q. Okay.

A. I've also smelled secondhand smoke and stuff that comes out of aerosol cans and

M. NANCE

1 I
2 I know that all of them are not good for
3 you.

4 Q. All right. Same thing about diesel
5 fuel?

6 A. Sure.

7 Q. You know diesel smoke?

8 A. Yes. Yeah, I avoid it.

9 Q. Do you ever use any household
10 pesticides?

11 A. I try to use things that are
12 non-toxic and -- when I do my plants and
13 what I do with my animals.

14 Q. So you don't use any flea spray and
15 stuff like that?

16 A. I do with my dogs simply because I'm
17 a little more concerned about the fleas that
18 come in the house. But so I do use some
19 stuff on my dog.

20 Q. Okay.

21 A. But I do know that it's a poison.

22 Q. Have you used any pesticides in and
23 around your house, you know, to control
24 roaches or mosquitoes or anything like that?

25 A. I don't have -- they have spring

M. NANCE

services and I have not signed up for anything like that. I just hope that I don't have any termites. I haven't seen any. I do look for them, but I'm not on any kind of a program or anything for them.

Q. All right. So you don't know whether a termite killer's been applied to your property?

A. If it -- if it was, it was probably when I bought the house and I think that's a requirement when they build. That's my understanding.

Q. All right. And you get your -- the oil changed in your car?

A. Yes, I have somebody do that.

Q. Okay. And you take it to one of the quickie lube places or whatever?

A. No, I take it up to Hussey Motors which has been around here for ages and everybody knows them. I bet you know them, don't you?

MR. CONNELL: Yes, ma'am.

Q. You like them and they like you and everybody gets along.

M. NANCE

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2 A. They take good care of me and I
3 feel comfortable when I get out on my road
4 and they do all my work.

5 Q. Okay. When do you understand your
6 property may have first been stigmatized?

7 A. When all the reports started coming
8 out in the paper. That -- that's, yeah.

9 Q. On and after November of 2007?

10 A. Yes.

11 Q. Has there been a reduction in the
12 number of newspaper articles about the AVX
13 situation since then?

14 A. I don't know because I don't take
15 the paper.

16 Q. Okay.

17 A. So I don't on a regular basis, you
18 know, so I would not know for sure.

19 Q. Okay. And you're not working at
20 Wal-Mart so you're not talking with the
21 people there about it any more?

22 A. No.

23 Q. Has your discussion with others,
24 except for maybe the folks in your
25 neighborhood along Rogers Drive, do you still

M. NANCE

1
2 talk to other people about the AVX situation?

3 A. Occasionally when there's -- when I'm
4 in a social group somebody will ask me how
5 things are going. But to sit down and have
6 any kind of serious conversations or anybody,
7 no.

8 Q. So would you agree generally with
9 Mr. Jeffords' impression that things have
10 simmered down a little bit over the last
11 couple of years?

12 A. Yes, it's not talked as -- I mean
13 people still know that it's there and it's
14 not resolved and so --- But ---

15 Q. It's not what it was in 2007?

16 A. It's not what it was then, right.

17 Q. Okay. Would you agree with me as
18 time goes on and more facts become available
19 that the impression of this neighborhood may
20 change for the better or for the worst?

21 A. I think it will be a long time
22 before it changes from the attitude they have
23 now. You know it's perceived to be a
24 contaminated area and I think that's going to
25 linger for a -- for a long time.

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Q. Okay.

A. In my opinion.

Q. All right.

A. I think if somebody comes down and sits down with a real estate person and they mention that, they will look elsewhere first.

Q. All right.

A. Yeah, that's ---

Q. And that's regardless of what information comes out about the neighborhood?

A. Yes, I do, because once something like that has been put out there and put out there to the extent that it has, it will be a long time. Because there's going to be people around for a long time that remember that and will talk about it and tell people about it, especially if they move in there. Because it's the first thing that people want to tell anybody coming into that neighborhood is, you know, this isn't a good place to bring your kids. This wouldn't be a good place, you know.

Q. Have you heard anyone tell anyone else that yourself?

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A. Yeah, Rick said that to the people who were looking at the house. That if you have children, you might want to know this.

Q. Okay. Anybody else you have actually heard say that to somebody else?

A. I think everybody in that neighborhood rather would have that opinion and might say that.

Q. I understand you may believe they have that opinion. My question is, have you actually heard anyone make a statement like that to a prospective purchaser other than your reference to Rick?

A. Just them one. I overheard.

Q. All right.

A. But, you know, like the two people that Jim and Greg that bought there will tell you in a heart beat, if we had of had any inkling we certainly would not have bought these properties.

Q. Okay.

A. Because that's where their grandchildren -- they're down here for the 4th of July and they have grandchildren and,

M. NANCE

1
2 you know. If they could have chosen another
3 place that we didn't have to have these same
4 concerns, I think they would have been much
5 happier.

6 Q. And let me ask you, it's the
7 concern; isn't it? It's what they don't
8 know is what's concerning them; isn't that
9 correct?

10 A. Yeah, and to me it's one of those
11 things that you are not going to really know
12 whether it, you know, what kind of hazard it
13 is the possibly until years from now.

14 Q. What if environmental testing was
15 done in the area of your neighborhood and no
16 contamination or concern was detected and
17 that was made available to you in a letter
18 from DHEC, they stated it to you. Would
19 that help reduce your concerns?

20 A. No. Not -- not completely. I
21 don't think it ever because I look at our
22 government, I look at what, you know, they
23 don't do -- governmental departments and
24 things I don't have a whole lot of
25 confidence in. I see -- I see what's going

M. NANCE

1 on in the Gulf and all this stuff, the foods
2 that are contaminated, the toys that are
3 contaminated, the jewelry I got that you
4 could -- you couldn't stand the smell of,
5 you figure it's in the paint of the costume
6 -- there's too many things and once it's
7 there I don't know that my mind would be
8 eased and whether I would totally be able to
9 trust that from the history of things.
10

11 Q. So you don't trust DHEC?

12 A. I think ---

13 Q. It's okay if you don't. I'm just
14 asking, you don't trust them? You either
15 trust them or you don't. That's entirely up
16 to you.

17 A. I mean I look at what happened in
18 the housing industry and Barney Franks and
19 that man is still trying to fix a problem
20 that he caused. And I'm thinking the man
21 should be in jail. So, you know, I have --
22 I'm very leery.

23 Q. And I want to make sure we're
24 communicating. What if you received
25 information from DHEC that your property was

M. NANCE

not contaminated? It had been analyzed and not contaminated. Would that make any difference in reducing your concerns?

A. Well I haven't received anything like that and I don't know that I would be totally convinced because I don't know how trustworthy they are. They were very negligent to let all this happen. They've been around, AVX has been around, the problem has been around so ---

Q. And would it be fair that you would also not find trustworthy a -- an AVX consultant who may investigate the area around your home and determine that there is no contamination? You wouldn't trust that information?

A. Not necessarily. Whoever it was that was been around my property already wouldn't talk to you, were rude. So, you know, why would I?

Q. I'm just asking your personal -- your belief, your opinion about it.

A. Yeah. I would much rather it be somebody independent that would -- I would

1
2 have more confidence I think in that than
3 other things.

4 Q. Okay. If I'm understanding you
5 correct in total, you don't know whether your
6 property is contaminated or not as we sit
7 here today; is that correct?

8 A. Right.

9 Q. Okay. And you are concerned by what
10 you don't know about the situation, the AVX
11 situation and how it may impact upon your
12 property?

13 A. Right.

14 Q. Correct?

15 A. Right.

16 Q. Okay. And if DHEC, the State
17 agency, tells you your property is not
18 contaminated, you're going to remain
19 suspicious of that; is that correct?

20 A. Possibly, yes.

21 Q. Okay. And likewise, if AVX or one
22 of its consultants provided you information
23 indicating your property wasn't contaminated,
24 you would still remain suspicious of that; is
25 that correct?

M. NANCE

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2 A. Well AVX told them that they would
3 clean it up, that wasn't, you know, they
4 didn't believe it. That wasn't -- it wasn't
5 done. Not a lot's been done by AVX or to
6 my knowledge, so ---

7 Q. So you would be suspicious of that
8 representation?

9 A. I would -- I would have to be
10 convinced. I would have to have something
11 that was ---

12 Q. So in bringing it down to its
13 essence, your concern is based on the
14 unknown; isn't that correct?

15 A. Yes, and I think there's a lot of
16 unknown and possibilities that things like
17 that can't really be fixed for along time.
18 Sometimes I think it might be something that
19 nature would have to clean up itself.

20 Q. Okay.

21 A. And it's probably -- it's probably
22 going to happen long after I'm gone.

23 Q. Okay. What would, forget the
24 lawsuit for a minute, what would satisfy you
25 with respect to alleviating, removing the

1
2 unknowns?

3 A. I think for me to totally be at
4 ease in my home would be to have what I
5 have there here.

6 Q. Somewhere else?

7 A. Somewhere else.

8 Q. Even if it's shown that there's no
9 contamination?

10 A. But there has been contamination
11 there. And who knows, do you think there's
12 going to be anybody who could guaranty one
13 hundred percent that it's all gone and it's
14 all safe and everything's hunky dory? I
15 don't think they can do that.

16 Q. Okay. And with respect to your
17 property, I want to make sure we're clear on
18 the record, you don't know whether your
19 property was ever contaminated in the past;
20 do you?

21 A. No, but I'm awfully darn close to
22 where stuff was -- where it happened, where
23 the chemicals sat, where they possibly had
24 spills. I'm very close to that.

25 Q. Okay.

1
2 A. So the possibility and likelihood is
3 high.

4 Q. Okay. And your personal definition
5 of what constitutes contamination is any
6 detectable amount is not acceptable?

7 A. If it's detectable, if I can smell
8 it, then I know that it's coming into me.

9 Q. Okay. And when I'm saying
10 detectable, just so we're clear, I understand
11 your point about smelling it.

12 A. I don't want -- I'd prefer not to
13 have chemicals or the possibility of smelling
14 it or touching it or whatever. If I can
15 avoid that that's where I want to be.

16 Q. And that's at any concentration?

17 A. Sure. I would be -- I would be
18 that way anywhere.

19 Q. Okay. Let me ask you -- I'm going
20 to ask you about those disclosure forms in a
21 second. Before we jump on that, if there
22 was a way, if you were guaranteed in some
23 fashion that when you decided to sell your
24 property, whenever that was, that you would
25 get fair market value for it as ascertained

M. NANCE

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2 by one or more appraisers who you approved,
3 and assumed in their appraisals that there's
4 no contamination, would that be an acceptable
5 resolution to you?

6 A. I like where I live and it's more
7 valuable to me than probably the price that
8 an appraiser that didn't decide that's where
9 they were going to retire ---

10 Q. So the answer would be no?

11 A. No.

12 Q. Okay. What would make you whole
13 then?

14 A. I don't -- I don't know. I don't
15 know, I haven't reached that point in ---

16 Q. Fair enough. That's what I'm --
17 that's why I'm asking.

18 A. Okay.

19 Q. All right.

20 MR. DEVORE: What have we got,
21 Number -- there we go.

22 MR. CONNELL: I've seen this before.

23 MR. DEVORE: Oh, yes.

24 MR. CONNELL: I imagine I'll see it
25 again.

M. NANCE

(WHEREUPON, S.C. DISCLOSURE STATEMENT
WAS MARKED FOR IDENTIFICATION AS DEPOSITION
EXHIBIT NUMBER-6)
BY-MR.DEVORE:

Q. Ms. Nance, I'm going to hand you
what's now been marked as Exhibit Number-6 in
your deposition. Will you take a moment, as
much time as you'd like, go ahead and review
it and when you're ready for me to start
asking you questions, just let me know.

A. Okay. Okay.

(Whereupon, Off the record briefly.)

BY-MR.DEVORE:

Q. All right, ma'am. Thank you for
taking the time to go over it. Now do you
have any understanding, is this the
disclosure statement that you were generally
referring to earlier?

A. Yeah, I've never seen it before,
have never read it before, but I'm assuming
this is -- this is what I would fill out if
I were selling my property. I'm assuming
this is what you get when you -- I'm
thinking that. I don't know that for a

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fact.

Q. All right.

A. What it says, this disclosure statement is only not required on a first house that has not been inhabited or inhabited or whatever.

Q. Right.

A. Okay.

Q. I'll represent to you that this is the form that a residential property owner would be required to fill out when they went under contract with someone who they wish to sell their house to; okay?

A. Okay.

Q. But that there are some exceptions for as you've already pointed out, a residence that may not have been inhabited previously, vacant land, things of that nature; all right?

A. Okay.

Q. So on the second page of Exhibit Number-6, see at the top there, there's kind of some language that's inside a box? Says as seller of the property herein identified

M. NANCE

do you have knowledge of any problem, malfunction or defect with any of the following.

A. Yes.

Q. Okay. So would you agree with me that's something you have to have knowledge of?

A. Right.

Q. Okay. And on the following page, Page 3 of 4 of the document, we'll go up there. See at the top there, there's some other language inside the box at the top? Says regarding the property herein identified, including the lot, other improvements and fixtures located thereon, do you have knowledge of any? And then there's a list of Items 13 to 24. Do you see that?

A. Uh-huh (yes).

Q. Okay. Now why don't we do this, if I think perhaps the most efficient way? On page 3 of 4, says regarding the property herein identified. The language I just read to you.

A. Uh-huh (yes).

M. NANCE

Q. Starting with Number 13, are you in a position today to tell me which of these boxes, that is yes, no, or no representation, that you would check for Number 13?

A. Room additions or other structural changes. There have not been any, so it would be no.

Q. Okay. With respect to Number 14 for environmental hazards, substances, materials or products including asbestos, formaldehyde, radon gas, methane gas, lead base paint, underground storage tank, toxic mold or other hazardous or toxic material, whether buried or covered, contaminated soil or water alert or other environmental condition.

For your property on Rogers Drive, would you, which of these three boxes, yes, no, or no representation would you check if you were to sell that property today?

A. Well according to what it says on the front page, it says you may have a duty to disclose and if you know or should have known of them consult with an attorney. So I think I would take -- I think because my

M. NANCE

1
2 house and of what I -- and my situation I
3 would probably do that one.

4 Q. And which is that one, ma'am? I
5 don't know what that one is.

6 A. No representation.

7 Q. No representation?

8 A. That's what I would think.

9 Q. Okay.

10 A. That -- yeah.

11 Q. All right. What about for Number
12 15, nuisances, noise, odor, smoke affecting
13 the property? Would you check yes, no, or
14 no representation?

15 A. I would -- I would think -- I would
16 say probably no.

17 Q. Okay. What about for previous
18 damage caused by fire?

19 A. No.

20 Q. No. Number 17, violations?

21 A. No.

22 Q. Okay. Let me do it this way, if I
23 may. Is -- why don't you do down and look
24 through 18 through 24 on this page and let
25 the court reporter and I know whether you

M. NANCE

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would check yes to any of those?

A. 18 would be.

Q. 18 would be?

A. No.

Q. Okay, you go ahead.

A. No for 19; no for 20; no for 21.

I don't know about 22. I don't -- my house might be in a flood zone and I would just tell them if it was, so maybe be yes for that one maybe.

Q. Okay.

A. No for 23. Sometimes I don't understand. Oh, and no for the 24.

Q. Would you mind terribly looking at Page 2 of 4 and if you're willing to do the same thing, track through 1 through 12 and let me and the court reporter know how you would check either yes, no, or no representation.

A. This is easy. If I knew of any problems with any of these things deciding, so there's no problems, no.

Q. Okay.

A. I'm thinking I'm reading this right.

M. NANCE

There's no problems with the roof.

Q. I'm sorry, ma'am, so Number 1 would be no?

A. No. Two would be no problems with the roof.

Q. Okay.

A. Three, no. No on four. There's no problem with the plumbing, no problem with the heating and air conditioning, it's new. No for Number 7.

Q. Okay.

A. I don't have a septic tank so no for Number 8. No, there's no problems with appliances. No for the infestation.

Q. Which number is that, ma'am?

A. Number 10. There's nothing. I would think these would be all no.

Q. Okay.

A. I don't think there's anything that would apply.

Q. All right. Thank you. I appreciate your patience in going through it. Would your concern with respect to the value of properties closely proximate to contamination

M. NANCE

1
2 apply to any source of contamination that
3 maybe in and around the class area?

4 A. I didn't understand that.

5 Q. I'll try it again. I think I
6 understand your position is that property
7 that may not be contaminated but is somehow
8 proximate to contaminated property maybe
9 devalued; is that correct?

10 A. I think that the perception about
11 the property, mine even if it's not
12 contaminated, is -- would be perceived
13 because it's in the area.

14 Q. Okay.

15 A. So, yes.

16 Q. And when you say area, you're
17 talking about in the area of AVX; correct?

18 A. Right.

19 Q. Okay. Does that also hold true, the
20 same concept, for any other contamination
21 source that maybe in and around the class
22 area on Exhibit Number-2?

23 A. I think I'm getting tired because
24 I'm not really sure what you're asking.

25 Q. I'll try again.

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A. Sorry.

3

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Q. Okay. And if we have to take a break, that's fine.

5

A. Okay.

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Q. The -- here's what I'm driving at. Let me try to reduce it down further. Okay.

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As I understand it, you assert that if a piece of property that's not contaminated is near, and you really can't define how near, but is near a contamination source that the non-contaminated property maybe devalued?

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A. Yes, because I think it's just a -- people aren't looking this and this. I mean it's like telling me, you know, if I stand on my right foot I'm okay, if I stand on my left foot, I'm not okay. It's -- it's a bigger -- so it's a perceived thing for the whole -- the whole rather than especially in this area more than a specific --- You know, you tell -- if you tell me this isn't good and that's okay and I'm thinking, you know, that's how I kind of see it.

24

25

Q. Okay. All right. And whether I agree with you or not, I understand what

M. NANCE

1
2 you're driving at.

3 A. Okay.

4 Q. All right. Now so it would not, am
5 I correct, it would not matter whether the
6 contamination source is AVX or anything else.
7 That is if there's another contamination
8 source in this area that is the class area
9 you've brought out on Exhibit Number-2,
10 wouldn't the same -- wouldn't you have the
11 same position about that?

12 A. Probably so if it was -- if it was
13 something, yeah. If it was down here then I
14 would take the area, this --- I would be
15 less likely to be interested in anything if
16 it was down here and there was the same
17 situation.

18 Q. Okay. So for example, if there's a
19 dry cleaner that had releases inside of this
20 area Number 2 in contaminated groundwater and
21 soil and air, would your same position be
22 that property near that is devalued?

23 A. Yes, in my mind it would be. It
24 would not be something that I would be
25 interested in. I would be less likely and

M. NANCE

think other people would too if they have the same concerns about health issues and things.

Q. And would the same hold true for gas stations that have leaking tanks?

A. Sure.

Q. Okay. Or any other source of contamination?

A. Yes, any source of contamination, yes.

MR. DEVORE: Okay. All right. I think we're done ma'am, as far as I'm concerned. And I appreciate your time on a Friday before the holiday weekend.

(Whereupon, the deposition of MARY LOU NANCE was concluded.)

M. NANCE

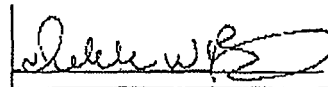
CERTIFICATE

STATE OF SOUTH CAROLINA:

COUNTY OF HORRY:

I, Debbie Rayl, Professional Verbatim Reporter and Notary Public for the State of South Carolina, certify that I did have Mary Lou Nance to appear before me at 9:30 a.m. on the 2nd day of July, 2010, in the office of Kelaher, Connell and Connor, Surfside Beach, South Carolina; that the witness was duly sworn to tell the truth, the whole truth and nothing but the truth; that the foregoing pages constitute a true and accurate transcript of the testimony given at that time and place.

I further certify that I am not of counsel or kin to any of the parties to this cause of action, nor am I interested in any manner in its outcome.



Debbie Rayl

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

C/A NO.: 2007-CP-26-7459

Clint A. Chestnut, Rebatt Frankie Jefford,)
Mary Lou Nance, Margaret Ramsey and)
Nicholas Ramsey,)
Individually and as Class Representatives,)

Plaintiffs,)

vs.)

AVX Corporation,)

Defendant.)

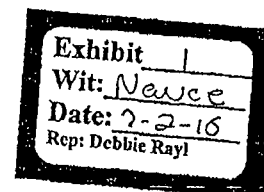
*Class Action Pursuant
to SCRPC 23*

COMPLAINT
(Negligence/Nuisance/
Trespass/Strict Liability)

JURY TRIAL DEMANDED

The Plaintiffs, complaining of the Defendant, respectfully allege unto this Court as follows:

1. The Plaintiff, Clint A. Chestnut, is a citizen and resident of Horry County, South Carolina and is the owner of a home/real property at 805 Rogers Drive, Myrtle Beach, South Carolina.
2. The Plaintiff, Rebatt Frankie Jefford, is a citizen and resident of Horry County, South Carolina and is the owner of a home/real property at 811 Rogers Drive, Myrtle Beach, South Carolina.
3. The Plaintiff, Mary Lou Nance, is a citizen and resident of Horry County, South Carolina and is the owner of a home/real property at 807 Rogers Drive, Myrtle Beach, South Carolina.
4. The Plaintiffs, Nicholas H. Ramsey and Margaret Ramsey, are citizens and residents of Horry County, South Carolina and are the owners of a home/real property at 815 Rogers Drive, Myrtle Beach, South Carolina.



5. The Defendant, AVX Corporation (hereinafter "AVX"), upon information and belief, is a corporation organized and existing under the laws of the State of South Carolina and with its principal place of business in Myrtle Beach, South Carolina.

6. That during the years from 1980 to the present, the Defendant AVX Corporation, through its officers, agents and/or employees, used a chemical known as trichloroethylene, also known as "TCE", to clean machine tools and parts.

7. That TCE has been used by Defendant AVX Corporation as a degreaser at its manufacturing plant.

8. That on or about December 4, 1996, Defendant AVX entered into a Consent Order with the Department of Health and Environmental Control, an entity of the State of South Carolina.

9. In this Consent Order, (a copy of which is attached hereto as Exhibit A) Defendant AVX, through its officers, agents and/or employees, admitted that it had violated South Carolina Pollution Control Act, S.C. Code Ann. § 48-1-10, *et seq.* (Supp. 1995); the South Carolina Well Standards and Regulations, 25 S.C. Code Ann. Regs. 61-71 (Supp. 1995), promulgated pursuant to the South Carolina Safe Drinking Water Act, S.C. Code Ann. § 44-55-40; and the Underground Injection Control Regulations, 25A S.C. Code Ann. Regs. 61-87 (Supp. 1995), promulgated pursuant to the South Carolina Pollution Control Act.

10. That further the Defendant AVX was required to take certain action including implementing a work plan regarding the TCE found on AVX's site.

11. That in November 2007, environmental testing performed near the real property including the homes and businesses from 17th Avenue South where AVX is located in Myrtle

Beach to 7th Avenue South showed TCE levels many times greater than what is considered safe and appropriate.

12. That the Plaintiffs are individual property owners and homeowners who have learned that their property is contaminated by TCE.

13. That the Plaintiffs individually and as Class Representatives, bring this action as a class action under SCRPC 23, the class being defined as those homes, businesses and real property which are located within the area of Defendant's plant and which are contaminated with TCE.

14. That the class is limited to only South Carolina residents and citizens. The class excludes Horry Land Company which has filed its own lawsuit for damages to its property.

15. That Plaintiffs proceed pursuant to SCRPC 23 as a class action on behalf of themselves and all those similarly situated who have suffered from contamination to their real property as a result of the actions of the Defendant AVX.

16. There are numerous properties and numerous owners of those properties that have been affected by the contamination of TCE and the class is so numerous that joinder of all members is impracticable.

17. There are questions of law and fact common to the class.

18. The claims of the representative parties are typical of the claims of the class.

19. The class representatives will fairly and adequately protect the interests of the class.

20. The amount in controversy exceeds One Hundred Dollars (\$100) for each member of the class.

21. That further pursuant to South Carolina law, Plaintiffs are required if their property is sold to advise the prospective purchaser of any defects and/or dangerous conditions to the property and that pursuant to what Plaintiffs and each class member has or will learn there is contamination from TCE which makes the aforementioned property "a distressed property" and accordingly unable to be sold with disclosure.

FOR A FIRST CAUSE OF ACTION

(Negligence)

22. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

23. That the Defendant was negligent, reckless, willful and wanton in one or more of the following particulars:

- a. in failing to keep the TCE from spreading to Plaintiffs' property;
- b. in failing to use proper techniques to make sure the TCE did not leak into the ground water;
- c. in failing to warn Plaintiffs of the TCE;
- d. in failing to take quick action to keep the contaminate from leaking into the groundwater;
- e. in failing to supervise such that the TCE would not leak into the ground water;
- f. in failing to notify the proper authorities when it was discovered the TCE was leaking into the ground water;
- g. in failing to properly clean up the TCE such that it did not affect the Plaintiffs' property;

- h. in failing to immediately advise DHEC of the dangers of the TCE;
- i. in failing to warn Plaintiffs that TCE would be leaking into its ground water;
- j. in failing to order immediate testing and to take preventative measures to make sure the TCE did not leak in, on or near Plaintiffs' property;
- k. in violating the South Carolina Pollution Control Act and its various rules and regulations.

24. That as a direct and proximate result, Plaintiffs have suffered damages in that they are unable to sell their homes/real property and that their property has now become distressed property, and that their property is worthless and that their property has been damaged and devalued in that they must now disclose pursuant to South Carolina law that the property has chemicals on or about it which may be harmful or dangerous to prospective purchasers and their families.

25. That Plaintiffs bring this cause of action for actual damages, punitive damages and for the costs of this action.

FOR A SECOND CAUSE OF ACTION

(Nuisance)

26. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

27. The Plaintiffs bring this cause of action for nuisance.

28. That the Defendant has used its own land for business uses and as a result of those business uses, chemicals used by the Defendant and within the Defendant's control have migrated onto Plaintiffs' and Plaintiffs' class properties which have suffered injury.

29. That Defendant's use of the chemical TCE was injurious to Plaintiffs' property and now Plaintiffs are unable to sell and enjoy their property.

30. That under South Carolina's nuisance law, it does not matter that the Defendant may have used reasonable care in the use of the chemicals because Defendant is strictly liable for the use of its property in such a fashion so that others are not injured.

31. That Plaintiffs bring this cause of action for nuisance on behalf of themselves and all those similarly situated and request judgment as listed in the first cause of action for actual damages, punitive damages and the costs of the action.

FOR A THIRD CAUSE OF ACTION

(Trespass)

32. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

33. That the Plaintiffs bring this cause of action for trespass in that the Defendant, through its officers, agents and/or employees did intentionally trespass on Plaintiffs' land through the use of chemicals known as TCE.

34. That this is a continuing trespass which has occurred over the course of a number of years and that Defendant is unable to stop the migration of the chemicals onto Plaintiffs and Plaintiff's class properties.

35. That as a result of the trespass by the Defendant, Plaintiffs and all those similarly situated suffered damages to their home/real property to include devaluation of their property.

36. That Plaintiffs request damages as enumerated in the first two causes of action for actual damages and the costs of the action.

FOR A FOURTH CAUSE OF ACTION

(Strict Liability)

37. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

38. The Plaintiffs bring this cause of action for strict liability against the Defendant.

39. That the Defendant engaged in an ultra hazardous activity, to wit, using TCE, a dangerous chemical, at its plant.

40. The use of this chemical involves a substantial risk of serious harm to the Plaintiffs' property which is contiguous to the plant.

41. That the activity is one which cannot be performed with complete safety no matter how much care is taken.

42. That the use of TCE is not one of a common occurrence in the particular community and is known to be dangerous with dangerous consequences to person and property.

43. That Defendant had a duty to the Plaintiffs to make sure that the TCE did not come onto the property of Plaintiffs and Plaintiff Class.

44. That Plaintiffs bring this cause of action for themselves individually and all others similarly situated for damages for an ultra hazardous activity.

45. That Plaintiffs ask for judgment against Defendant for actual damages for strict liability for an ultra hazardous activity and for actual damages and the costs of the action.

WHEREFORE, Plaintiffs request as follows:

- A. That the Court certify a class pursuant to SCRCP 23.
- B. On the First Cause of Action individually and on behalf of all class members for actual damages, punitive damages, and the costs of the action.

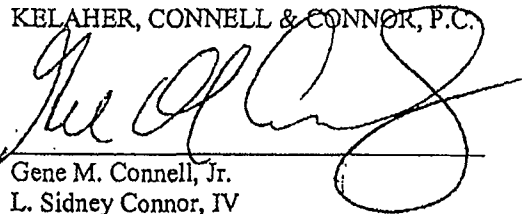
C. On the Second Cause of Action individually and on behalf of all class members for actual damages, punitive damages, and the costs of the action.

D. On the Third Cause of Action individually and on behalf of all class members for actual damages, punitive damages, and the costs of the action.

E. On the Fourth Cause of Action individually and on behalf of all class members for actual damages, punitive damages, and the costs of the action.

F. For such other and further relief as the Court may deem just, necessary and proper.

KELAHER, CONNELL & CONNOR, P.C.



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Attorneys for Plaintiffs

November 27, 2007
Surfside Beach, South Carolina.

EXHIBIT "A"

THIS IS A TRUE COPY OF DEPARTMENT OF HEALTH
& ENVIRONMENTAL CONTROL RECORDS

[Signature]

STATE OF SOUTH CAROLINA
BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL CONTROL

IN RE: AVX
SCD 062 690 557
HORRY COUNTY

CONSENT ORDER
96-43-HW, DWP
96-71-DWP, HW

AVX, a corporation which produces a variety of ceramic capacitors used in the aerospace industry; data processing; telecommunications; and military applications, has been in operation at its Myrtle Beach location since 1953. Samples collected from soil and groundwater over the past fifteen years have indicated that a release of trichloroethene (TCE) and other volatile organic compounds (VOCs) has occurred and that groundwater at the site has been impacted.

This Consent Order is entered into between the South Carolina Department of Health and Environmental Control and AVX with respect to the company's continued efforts to implement a more aggressive investigation and remediation of groundwater at its Myrtle Beach facility.

FINDINGS OF FACT

1. On June 22, 1995, representatives of AVX visited the Waccamaw EQC District Office and informed Department personnel that groundwater contamination had been discovered at the company's Myrtle Beach facility.

2. During the visit, AVX submitted a report to the Department entitled "Site Environmental Summary Report for AVX" by Geraghty and Miller. The report confirmed the presence of VOCs in the groundwater and soil in two (2) areas of the facility - an area west of the main building and an area in the southeast corner of the property.

3. Data from routine sampling events performed since 1981 was compiled in the report and confirmed that trichloroethane (TCE), 1,1,1-trichloroethane (1,1,1-TCA), 1,2-dichloroethane, and related chlorinated VOCs were the major constituents of concern at the site; although benzene, toluene, ethylbenzene, and xylene (BTEX) non-chlorinated compounds were also detected along AVX's property boundary with Myrtle Beach Air Force Base. The report also indicated that AVX had conducted extensive assessment, removal, and remedial activities of contaminated soil and groundwater at the site during the past fifteen years without notifying the Department.

4. AVX stored virgin and spent TCE and 1,1,1-TCA in underground storage tanks (USTs) until 1983, when the tanks were removed without approval from the Department. The TCE and 1,1,1-TCA were subsequently stored in above-ground storage tanks until their usage was eliminated in 1993. While investigations performed by AVX in the mid-1980's indicated that there were no ongoing releases of TCE or 1,1,1-TCA in the area where the former USTs were located, the investigations did suggest that past material handling practices and/or leaks from the former USTs and its associated piping could have been responsible for the

contamination. There are no known underground chemical storage tanks currently at the site.

5. In addition to the USTs, TCE and related VOCs may have been released in 1992 during the excavation of footings for a building addition in the west area of the site, as two abandoned underground pipes thought to contain TCE, methylene chloride, and/or toluene were ruptured. Discolored soils in the area were excavated, stockpiled, analyzed, and sent for proper treatment or disposal.

6. In an effort to evaluate and remediate VOCs found in onsite soils, AVX carried out a number of soil remedial actions during the mid-1980's without notifying the Department. Typically, as noted in one instance in the mid-1980's, soils contaminated with VOCs would be excavated and landspread onsite to expedite VOC volatilization. The open trenches would be left exposed until VOC levels were acceptable for back-filling of soils.

7. In May 1981, AVX installed four shallow groundwater monitoring wells without approval from the Department. Analysis from these wells indicated elevated VOC levels and initiated the installation of additional monitoring wells throughout the 1980's. Samples were collected and analyzed from these wells at least twice a year until 1992. To date, AVX has installed a total of 19 monitoring wells without approval from the Department, with 5 of these wells being abandoned and 14 remaining in place.

8. In 1985, AVX began installing pumping wells or converting existing wells into pumping wells without approval from the Department in an effort to pump

contaminated groundwater into onsite cooling towers as noncontact cooling water. After exiting the cooling towers, the contaminated water was (and is currently) discharged, along with facility wastewater, to the municipal sewer. Originally, a total of nine pumping and/or production wells were installed from 1985 to 1987 for these purposes. In July 1991, AVX installed an additional Production Well, followed in May 1992 with the installation of a Pumping Well to ensure that groundwater contamination along the western border was contained onsite. A Production Well was also installed in the southeast corner of the property. Prior to discovery of its contaminated groundwater, AVX had used an uncontaminated aquifer to supply the cooling towers with water since 1967.

9. In 1989, AVX attempted to stimulate natural bioremediation by injecting nutrients and lime into the contaminated area west of the building. As a result, AVX installed and operated a TYPE V.A. Injection Well without a permit, as defined in the Underground Injection Control Regulations, 25A SC Code Ann. Regs. 61-87.11. The efforts at in-situ bioremediation were judged to be only marginally effective and were quickly discontinued.

10. On December 6, 1995, representatives of AVX met with the Department in a second meeting. On behalf of AVX, Geraghty and Miller proposed to the Department a more aggressive remedial approach through the submittal of a workplan requiring AVX to conduct additional assessments at the site, to perform a feasibility study for soil remediation, and to upgrade the groundwater recovery system to prevent offsite migration of the VOCs. During the meeting, AVX expressed an

Interest in signing a formal document with the Department under which the company could proceed with the additional assessment and remedial activities as approved by the Department.

CONCLUSIONS OF LAW

Based on these findings, AVX has violated the South Carolina Pollution Control Act, S.C. Code Ann. §48-1-10 et seq. (Supp. 1995); the South Carolina Well Standards and Regulations, 25 S.C. Code Ann. Regs. 61-71 (Supp. 1995), promulgated pursuant to the South Carolina Safe Drinking Water Act, S.C. Code Ann. §44-55-40; and the Underground Injection Control Regulations, 25A S.C. Code Ann. Regs. 61-87 (Supp. 1995), promulgated pursuant to the South Carolina Pollution Control Act, S.C. Code Ann. §48-1-40 et seq. (Supp. 1995), as amended, for failure to comply with the following:

1. Section 48-1-90 of the South Carolina Pollution Control Act, in that it shall be unlawful for any person directly or indirectly to throw, drain, run, allow to seep, or otherwise discharge into the environment of the State, organic or inorganic matter, including sewage, industrial wastes or other wastes, except as in compliance with a permit issued by the Department;

2. R.61-71.11E(1) - South Carolina Well Standards and Regulations, in that prior to the construction of any monitoring well, the following information must be submitted to and approved by the Department: (a) Proposed location(s) on a scaled map or plat; (b) Proposed construction detail; and (c) Intended purpose of the monitoring well(s);

3. R.61-71.11.E(2) - South Carolina Well Standards and Regulations, in that a monitoring well record form or other form provided and/or approved by the Department shall be completed and submitted to the Department within thirty (30) days after completion of a monitoring well. The form shall contain the following information: (a) Name and address of facility/owner; (b) Location of monitoring well(s) on a scaled map or plat; (c) Driller and certification number; (d) Date drilled; (e) Driller's or Geologist's log; (f) Total depth; (g) Screened interval; (h) Diameter and construction details; (i) Depth to water table with date and time measured; and (j) Surveyed elevation of measuring point with respect to an established benchmark;

4. R.61-87.11E(2)(a) - South Carolina Underground Injection Control Regulations, in that no person shall construct, use or operate a well of this class for injection: (a) Except as authorized by a permit issued by the Department as provided by these regulations.

A "release" or "threat of release" of "hazardous substances" into the "environment" has occurred at the Site within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, P.L. 96-510, as amended (CERCLA).

The Department has the authority to implement and enforce CERCLA and related regulations pursuant to the South Carolina Hazardous Waste Management Act, S.C. Code Ann. § 44-56-200 (Supp. 1994). The Pollution Control Act, S.C. Code Ann. § 48-1-10 et seq. (Supp. 1995), and the South Carolina Hazardous Waste Management Act, S.C. Code Ann. § 44-56-10 et seq. (Supp. 1995), give the

Department the authority to hold hearings, issue orders, assess civil penalties and conduct studies, investigations, and research; to abate, control and prevent pollution; and to protect the health of persons or the environment.

NOW THEREFORE, IT IS ORDERED with the consent of AVX and pursuant to Sections 44-56-40 and 44-56-200 of the South Carolina Hazardous Waste Management Act; Section 48-1-50 and 48-1-330 of the South Carolina Pollution Control Act; and Section 44-55-90 of the South Carolina Safe Drinking Water Act, of the 1976 Code of Laws, as amended, that AVX shall perform the following:

1. Now and in the future, ensure that a workplan, letter requesting approval, or permit application (whichever is applicable) is submitted and approval has been granted in writing by the appropriate Department personnel prior to initiating any remedial or investigational activities; including but not limited to, installing additional groundwater monitoring wells, production or recovery wells, or underground injection wells.

2. Within twenty (20) business days of the execution date of this Consent Order, pay to the Department a civil penalty in the amount of seven thousand dollars (\$7,000.00). This penalty includes five thousand seven hundred dollars (\$5,700.00) for violations of the South Carolina Pollution Control Act enforced by the Bureau of Solid and Hazardous Waste Management and one thousand three hundred dollars (\$1,300.00) for violations of regulations enforced by the Bureau of Water.

3. Within twenty (20) business days of receipt of this fully executed Consent Order, submit to the Department's CERCLA Site Engineer for review and approval, a workplan for the upgrading of AVX's groundwater recovery and treatment system, including the installation of air stripping technology to treat the groundwater (hereinafter, Groundwater/Air Stripper Workplan). The Groundwater/Air Stripper Workplan shall be consistent with the technical intent of the National Contingency Plan and shall include, but may not be limited to: (1) A current conditions report on the status of the groundwater contamination; (2) A plan that outlines activities, technologies, and/or strategies AVX proposes to implement during its upgrade of its groundwater recovery system to add air stripping capabilities; (3) A time schedule for implementation of all major activities proposed within the Groundwater/Air Stripper Workplan; and (4) A Health and Safety Plan (HASP) that is consistent with the Occupational Safety and Health Act (OSHA) regulations and protocols.

4. Within thirty (30) business days of receipt of this fully executed Consent Order, submit to the Department's CERCLA Site Engineer for review and approval, a workplan for the additional investigation and remediation (hereinafter, Investigation Workplan) of the soil and groundwater contamination noted within the "Findings of Fact" of this Consent Order. The Workplan shall be consistent with the technical intent of the National Contingency Plan and shall include, but may not be limited to: (1) A plan that outlines activities and/or strategies AVX will implement to help identify and investigate all potential sources of its groundwater contamination; (2) A summary of all previous activities implemented by AVX to help remediate and/or contain the

contamination, including the effectiveness of each of these activities (attaching copies of all or parts of prior submittals which contain this information will be acceptable); (3) Provisions for conducting a feasibility study which outlines and evaluates alternative technologies and/or strategies for soil and groundwater remediation, including but not necessarily limited to, a pilot study on the effectiveness of a soil vapor extraction/air sparging system and/or a vacuum enhanced recovery system for soil and groundwater remediation; (4) A proposal which addresses the continued long-term monitoring of groundwater wells surrounding the Site; (5) A time schedule for implementation of all major investigational and remedial activities proposed within the Workplan; and (6) A HASP that is consistent with OSHA regulations and protocols.

The Department shall separately approve or disapprove the Groundwater/Airstripper and Investigation Workplan within a reasonable period of time of receipt. Any comments generated through the Department's review of the Workplans must be addressed in writing by AVX within thirty (30) days of receipt of said comments by AVX. Upon approval of each Workplan by the Department, the Workplan and schedules contained therein shall be incorporated herein and become an enforceable portion of this Consent Order.

5. Within sixty (60) days of receipt by AVX of the Department's written approval of each Workplan, AVX shall begin implementation of each Workplan as described therein.

6. AVX shall submit to the Department's Site Engineer written monthly progress reports which: (a) Describe the actions AVX has taken toward achieving compliance with this Consent Order during the previous month; (b) Include, in summary format, results of any sampling and tests, if any, received by AVX during the reporting period regarding investigational or remedial activities; (c) Include investigational or remedial activities completed under the approved Workplans during the previous month; (d) Describe all actions which are scheduled for the next month within the approved Workplans, and provide other information relating to the progress of the work as deemed necessary or requested by the Department; and (e) Include information regarding the percentage of work completed, any delays, encountered or anticipated, that may affect the future schedule for implementation of the Workplans, and a description of efforts made to mitigate delays or avoid anticipated delays. These progress reports are to be submitted in writing to the Department by the fifth day of every month following the execution date of this Consent Order.

7. Within forty-five (45) days after completion of the investigational activities described in Item 4 above, AVX shall submit a report to the Department's Site Engineer outlining and specifying the results of those activities performed pursuant to the Investigation Workplan. This report shall include, but not be limited to, the identification of all possible sources (if determined) and a feasibility study which evaluates the alternatives for remediation of those sources. The Department shall either approve or disapprove this report within a reasonable period of time. If the report, as submitted by AVX is not approved, AVX shall submit a revised report,

which addresses the comments in the Department's letter, within thirty (30) days after receipt of the Department's disapproval letter, or, within an additional period of time as agreed to in writing by the Department, in its discretion, upon written extension request by AVX.

8. The Department shall periodically review the effectiveness of AVX's investigative and remedial efforts as described above. In the event that additional work is deemed necessary, as determined by the Department after discussions with representatives of AVX, to further investigate or remediate the contamination or a potential source of contamination, AVX shall prepare and submit the appropriate plan for approval by the Department within the time schedule specified at that time. This/These plans shall be incorporated herein as an enforceable portion of this Consent Order.

9. If any event occurs which causes or may cause a delay in meeting any of the above-scheduled dates for completion of any specified activity pursuant to the approved Workplans, AVX shall notify the Department in writing at least five (5) days before the scheduled date if practicable, as determined by the Department. AVX shall describe in detail the anticipated length of the delay, the precise cause or causes of delay, if ascertainable, the measures taken or to be taken to prevent or minimize the delay, and the timetable by which AVX proposes that those measures will be implemented. The Department shall provide written notice to AVX as soon as practicable that a specific extension of time has been granted or that no extension has been granted. An extension shall be granted for any scheduled activity delayed by an

event of force majeure which shall mean any event arising from causes beyond the control of AVX that causes a delay in or prevents the performance of any of the conditions under this Consent Order including, but not limited to: a) acts of God, fire, war, insurrection, civil disturbance, explosion; b) adverse weather conditions that could not be reasonably anticipated causing unusual delay in transportation and/or field work activities; c) restraint by court order or order of public authority; d) inability to obtain, after exercise of reasonable diligence and timely submittal of all applicable applications, any necessary authorizations, approvals, permits, or licenses due to action or inaction of any governmental agency or authority; and e) delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence by AVX. Events which are not force majeure include by example, but are not limited to, unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure by AVX to exercise due diligence in obtaining governmental permits or performing any other requirement of this Order or any procedure necessary to provide performance pursuant to the provisions of this Order. Any extension shall be granted at the sole discretion of the Department, incorporated by reference as an enforceable part of this Consent Order, and, thereafter, be referred to as an attachment to the Consent Order.

10. In consideration of AVX's performance of the approved Workplans, the Department covenants not to sue or take any other civil or administrative action against AVX for "Covered Matters". "Covered Matters" shall be limited to those

matters specifically covered in the approved Workplans and in this Consent Order. "Covered Matters" does not include: (a) claims based on the failure of AVX to meet the requirements of this Consent Order; (b) any liability for any claim related to or arising out of response actions taken, selected, or ordered by the Department that are designed in whole or in part to respond to a release or threatened release of hazardous substances or pollutants or contaminants into surface water or ground water at or near the Site; (c) any claim for recovery of response costs incurred by the Department; (d) criminal actions or liabilities; (e) claims for damages to natural resources; (f) any contamination or condition not previously known nor revealed by the results of the approved Workplans, but discovered by or made known to the Department after completion of the approved Workplans; and, (g) all other matters not specifically covered in the approved Workplans and this Consent Order.

With respect to future liability for Covered Matters, this covenant not to sue shall take effect upon the Department's written certification of approval of AVX's completion of all Covered Matters required by this Consent Order.

11. Nothing in this Consent Order is intended to be, or shall be construed as, a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or equity, which the Department may have against AVX for any matters not expressly included in "Covered Matters".

12. Nothing in this Consent Order is intended to be, or shall be construed as, a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or equity, which the Department may

have against any person, firm, corporation or other entity not a signatory to this Consent Order.

13. In consideration for the Department's covenant not to sue, AVX agrees not to assert any claims or causes of action against the Department arising out of response activities undertaken at the Site, if warranted in the future, or to seek any other costs, damages or attorney's fees from the Department arising out of response activities undertaken at the Site except for those claims or causes of action resulting from the intentional or grossly negligent acts or omissions of the Department. The State of South Carolina, the Department, or any agency representative shall not be a party to any contract involving AVX at or relating to the Site.

14. Subject to Items Ten (10) and Eleven (11) above, the Department agrees that, upon AVX's fulfillment of the terms of this Consent Order, as approved by the Department, any liability of AVX to the Department for "Covered Matters" will be deemed as resolved between AVX and the Department and that the Department shall make no claims against AVX for "Covered Matters". Nothing in this Consent Order shall prohibit the Department from bringing or taking future response or remedial actions that may be required at the Site and from seeking any relief in law or equity from any and all responsible parties.

15. The Department agrees that access to the Site will be restricted to representatives of AVX, its consultants, contractors and invited guests except as modified herein. Employees of the Department and the EPA and their respective consultants and contractors will not be denied access during normal business hours

or at any time work under the approved Workplans is being performed or during any environmental emergency or imminent threat situation, as determined by the Department (or as allowed by applicable law).

16. This Consent Order shall be binding upon and inure to the benefit of AVX and the Department and their respective successors and permitted assigns. AVX may not assign its rights or obligations under this Consent Order without the prior written consent of the Department.

17. AVX does not admit, accept or concede the Findings of Fact or Conclusions of Law set forth in this Consent Order and specifically reserves the right to contest any such Findings of Fact or Conclusions of Law in any subsequent proceeding regarding the Site. The Consent Order shall be admissible in any enforcement action brought by the Department but may not be utilized by third parties against AVX as proof of any allegations, findings or conclusions contained herein.

IT IS FURTHER ORDERED AND AGREED that failure to meet the deadlines established herein or any other violation of the provisions of this Order shall be deemed a violation of the South Carolina Hazardous Waste Management Act, the South Carolina Pollution Control Act, and/or the South Carolina Safe Drinking Water Act. Upon ascertaining any such violation, the Department shall initiate appropriate legal action to obtain compliance with both this Order and the aforementioned Act(s).

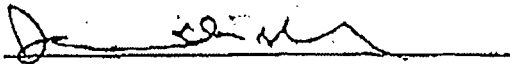
THE SOUTH CAROLINA DEPARTMENT OF
HEALTH AND ENVIRONMENTAL CONTROL

DATE: 12/19/96
Columbia, South Carolina

BY: Douglas E. Bryant
Douglas E. Bryant
Commissioner

WE CONSENT:

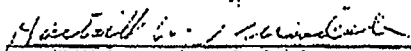
AVX



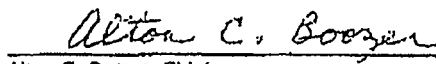
DATE: 3 Dec. 1996

DATE: _____

THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

Hartsill W. Truesdale, P.E., Chief
Bureau of Solid and Hazardous Waste Management

DATE: 12/04/96

Alton C. Boozer, Chief
Bureau of Water

DATE: 12/10/96

Valerie A. Betterton, Director
Water Enforcement Division

DATE: 12/16/96



Approved by: Legal Office

DATE: 12/17/96

AVX CORPORATION
RECEIVED
KYOCEERA GROUP COMPANY

AVX Corporation
P.O. Box 867
Myrtle Beach, S.C. 29578
Tel: (803) 448-9411

January 10, 1997

JAN 13 1997
S.C. Dept. of Health & Env. Control
Solid & Hazardous Waste Management

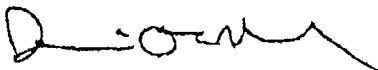
CERTIFIED MAIL NO. 7368 948 121

Mr. Kenneth D. Brown
South Carolina Department of Health and Environmental Control
Bureau of Solid and Hazardous Waste Management
2600 Bull Street
Columbia, South Carolina 29201

Dear Mr. Brown:

Enclosed is a check in the amount of \$7,000.00 in payment of the civil penalty related to Consent Order (96-43-HW, DWP; 96-71-DWP, HW).

Sincerely,



Dennis Oldland
Corporate Safety/Environmental Manager

AVX CORPORATION

CORPORATE ACCOUNT
P.O. BOX 867, MYRTLE BEACH, S.C. 29578-0867

SOUTH CAROLINA NATIONAL BANK
EDP SERVICES - A233, CONTROL CENTER
101 GREYSTONE BOULEVARD
COLUMBIA, SOUTH CAROLINA 29226
(803) 448-7087

921
332

CHECK NO. 024145

DISBURSEMENT NO.
74145

VENDOR NO.
SC0H&E

CHECK DATE
01/06/97

PAY

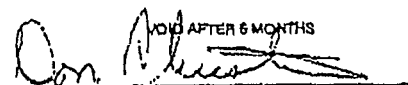
AMOUNT
*****7,000.00

PAY
EXACTLY

EXACTLY SEVEN THOUSAND AND NO/100 *****

TO
THE
ORDER
OF

S.C. DEPARTMENT OF HEALTH AND
ENVIRONMENTAL CONTROL
2600 BULL STREET
COLUMBIA, S.C. 29201

VOID AFTER 6 MONTHS


AUTHORIZED SIGNATURE

⑈0024145⑈ ⑆053200019⑆ 1401 95878⑈

MEMORANDUM

TO: Pam Helton
Management Services

FROM: Kenneth D. Brown *KDB*
Enforcement Section
Bureau of Solid and Hazardous Waste Management

SUBJECT: Civil Penalty Levied

DATE: January 14, 1997

A civil penalty has been levied against the violator named below. Total payment of the penalty is seven thousand dollars (\$7,000.00), included herein. Please properly record this revenue for control purposes.

Violator: AVX Corporation
801 17th Avenue South
P.O. Box 867
Myrtle Beach, SC 29578

Amount of Penalty Received: Seven Thousand Dollars
(\$7,000.00)

Consent Order: 96-43-HW,DWP; 96-71-DWP,HW
(Joint Order w/ BSHWM & BDWP)

Statute Violated: South Carolina Pollution Control Act;
South Carolina Safe Drinking Water Act

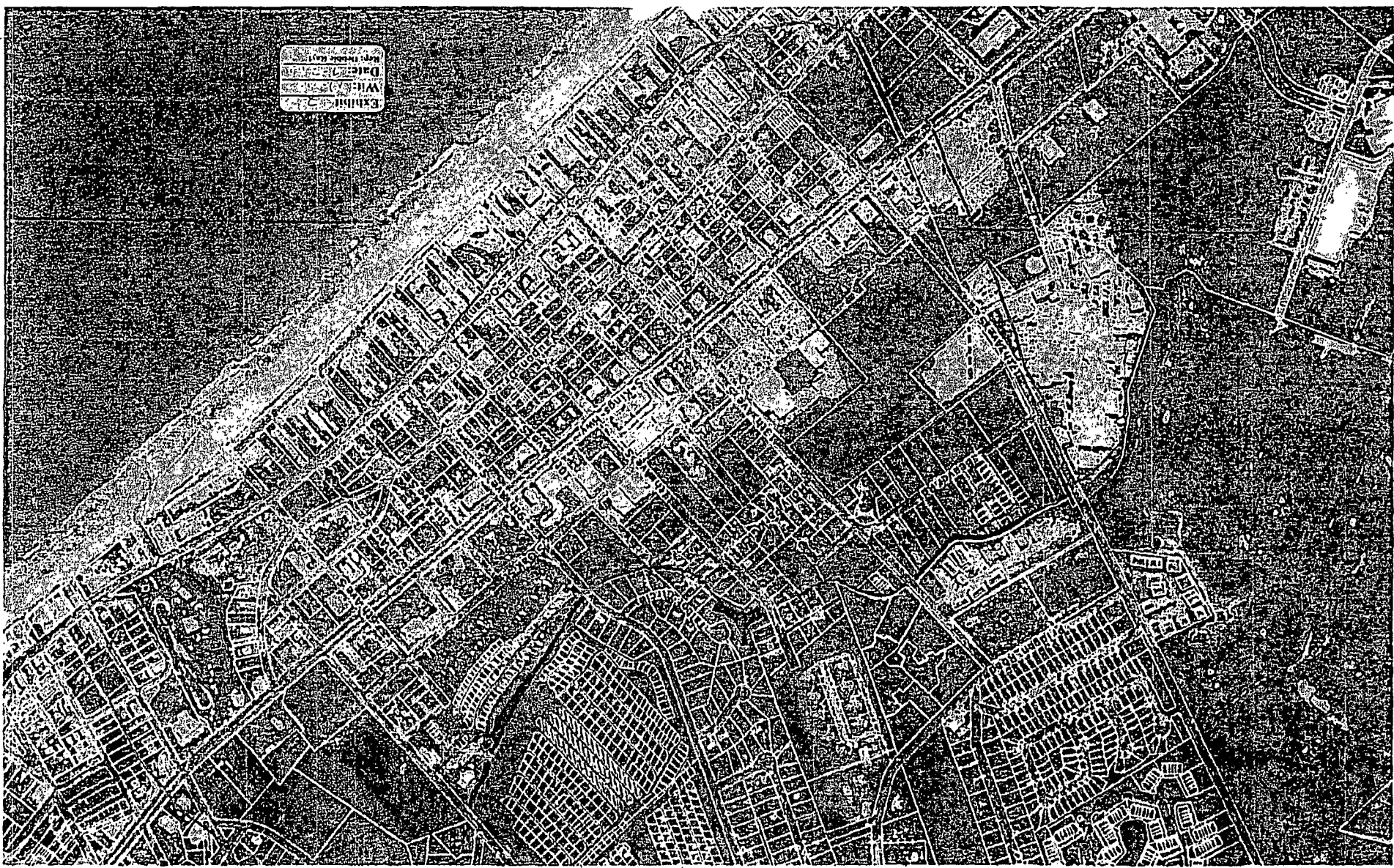
Disposition of Penalty: \$4,150.00 to General Fund
\$2,850.00 to Horry County

FYI

Joint Order Penalty Breakdown:
\$5,700.00 (BSHWM - PCA)
\$2,850.00 - General
\$2,850.00 - County

\$1,300.00 (BDWP - All to General)
\$1,000.00 (BDWP - Underground
Injection Control Regs)
\$300.00 (BDWP - South Carolina
Well Standards and Regs)

Payment Terms: The total penalty is \$7,000.00.
The penalty has been paid-in-full.



STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2007-CP-26-7459

Clint A. Chestnut, Rebatt Frankie Jefford,)
Mary Lou Nance, Margaret Ranisey,)
Nicholas Ramsey, Harold Cushman,)
Julia Todd Edwards, Don Emery,)
Eula Cooke and Glenda Rabon Harper,)
Individually and as Class Representatives,)

Plaintiffs,)

vs.)

AVX Corporation,)

Defendant.)

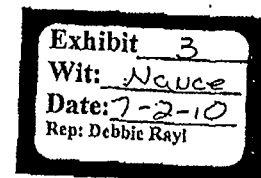
*Class Action Pursuant
to SCRCP 23*

AMENDED COMPLAINT
(Negligence/Nuisance/
Trespass/Strict Liability)

JURY TRIAL DEMANDED

The Plaintiffs, complaining of the Defendant, respectfully allege unto this Court as follows:

1. The Plaintiff, Clint A. Chestnut, is a citizen and resident of Horry County, South Carolina and is the owner of a home/real property at 805 Rogers Drive, Myrtle Beach, South Carolina.
2. The Plaintiff, Rebatt Frankie Jefford, is a citizen and resident of Horry County, South Carolina and is the owner of a home/real property at 811 Rogers Drive, Myrtle Beach, South Carolina.
3. The Plaintiff, Mary Lou Nance, is a citizen and resident of Horry County, South Carolina and is the owner of a home/real property at 807 Rogers Drive, Myrtle Beach, South Carolina.



4. The Plaintiffs, Nicholas H. Ramsey and Margaret Ramsey, are citizens and residents of Horry County, South Carolina and are the owners of a home/real property at 815 Rogers Drive, Myrtle Beach, South Carolina.

5. The Plaintiff, Harold Cushman, is a citizen and resident of Horry County, South Carolina and is the owner of real property which is contaminated by the Defendant.

6. The Plaintiff, Julia Todd Edwards is a citizen and resident of Horry County, South Carolina and is the owner of real property which is contaminated by the Defendant.

7. The Plaintiff, Don Emery, is a citizen and resident of Horry County, South Carolina and is the owner of a home which is contaminated by the Defendants.

8. The Plaintiff, Eula Cooke, is a citizen and resident of Horry County, South Carolina and is the owner of real property which is contaminated by the Defendants.

9. The Plaintiff, Glenda Rabon Harper, is a citizen and resident of Horry County, South Carolina and is the owner of real property which is contaminated by the Defendants.

10. The Defendant, AVX Corporation (hereinafter "AVX"), upon information and belief, is a corporation organized and existing under the laws of the State of South Carolina and with its principal place of business in Myrtle Beach, South Carolina.

11. That during the years from 1980 to the present, the Defendant AVX Corporation, through its officers, agents and/or employees, used a chemical known as trichloroethylene, also known as "TCE", to clean machine tools and parts.

12. That TCE has been used by Defendant AVX Corporation as a degreaser at its manufacturing plant.

13. That on or about December 4, 1996, Defendant AVX entered into a Consent Order with the Department of Health and Environmental Control, an entity of the State of South Carolina.

14. In this Consent Order, (a copy of which is attached hereto as Exhibit A) Defendant AVX, through its officers, agents and/or employees, admitted that it had violated South Carolina Pollution Control Act, S.C. Code Ann. § 48-1-10, *et seq.* (Supp. 1995); the South Carolina Well Standards and Regulations, 25 S.C. Code Ann. Regs. 61-71 (Supp. 1995), promulgated pursuant to the South Carolina Safe Drinking Water Act, S.C. Code Ann. § 44-55-40; and the Underground Injection Control Regulations, 25A S.C. Code Ann. Regs. 61-87 (Supp. 1995), promulgated pursuant to the South Carolina Pollution Control Act.

15. That further the Defendant AVX was required to take certain action including implementing a work plan regarding the TCE found on AVX's site.

16. That in November 2007, environmental testing performed near the real property including the homes and businesses from 17th Avenue South where AVX is located in Myrtle Beach to 7th Avenue South showed TCE levels many times greater than what is considered safe and appropriate.

17. That the Plaintiffs are individual property owners and homeowners who have learned that their property is contaminated by TCE.

18. That the Plaintiffs individually and as Class Representatives, bring this action as a class action under SCRCP 23, the class being defined as those homes, businesses and real property which are located within the area of Defendant's plant and which are contaminated with TCE.

19. The class excludes Horry Land Company which has filed its own lawsuit for damages to its property.

20. That Plaintiffs proceed pursuant to SCRCP 23 as a class action on behalf of themselves and all those similarly situated who have suffered from contamination or stigmatization to their real property as a result of the actions of the Defendant AVX. The Plaintiffs have divided this case into two separate classes defined as follows.

21. That the class is generally defined as all people who own real property in Horry County, South Carolina and located in the City of Myrtle Beach bounded on the west by Withers Swash, bounded on the east by Ocean Boulevard (S.C. 93) and located between 17th Avenue South and Sixth Avenue North in the City of Myrtle Beach.

22. That the Class is further subdivided into two subclasses within the general class definition as follows:

(A) Subclass "A" includes all persons, partnerships, corporations who own real property in the area defined in paragraph 15 and whose property is contaminated by chemicals which have escaped or been spilled and left the AVX plant property. Subclass "A" class representatives are Plaintiffs Harold Cushman, Don Emery, Julia Todd Edwards, Glenda Rabon Harper and Eula Cooke.

(B) Subclass "B" includes all persons, partnerships or corporations who own real property in the areas defined in paragraph 15 of the Complaint but are not contaminated; however, these properties adjoin the contaminated area and are in such close proximity that the real property value has been affected or devalued by the chemical release at the AVX plant. Subclass B representatives are Clint Chestnut, Rebatt Frankie Jefford, Mary Lou Nance, Margaret Ramsey and Nicholas.

23. There are numerous properties and numerous owners of those properties that have been affected by the contamination of TCE and the class is so numerous that joinder of all members is impracticable.

24. There are questions of law and fact common to the class.

25. The claims of the representative parties are typical of the claims of the class.

26. The class representatives will fairly and adequately protect the interests of the class.

27. The amount in controversy exceeds One Hundred Dollars (\$100) for each member of the class.

28. That further pursuant to South Carolina law, Plaintiffs are required if their property is sold to advise the prospective purchaser of any defects and/or dangerous conditions to the property and that pursuant to what Plaintiffs and each class member has or will learn there is contamination from TCE which makes the aforementioned property "a distressed property" and accordingly unable to be sold with disclosure.

FOR A FIRST CAUSE OF ACTION

(Negligence)

29. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

30. That the Defendant was negligent, reckless, willful and wanton in one or more of the following particulars:

- a. in failing to keep the TCE from spreading to Plaintiffs' property;
- b. in failing to use proper techniques to make sure the TCE did not leak into the ground water;

- c. in failing to warn Plaintiffs of the TCE;
- d. in failing to take quick action to keep the contaminate from leaking into the groundwater;
- e. in failing to supervise such that the TCE would not leak into the ground water;
- f. in failing to notify the proper authorities when it was discovered the TCE was leaking into the ground water;
- g. in failing to properly clean up the TCE such that it did not affect the Plaintiffs' property;
- h. in failing to immediately advise DHEC of the dangers of the TCE;
- i. in failing to warn Plaintiffs that TCE would be leaking into its ground water;
- j. in failing to order immediate testing and to take preventative measures to make sure the TCE did not leak in, on or near Plaintiffs' property;
- k. in violating the South Carolina Pollution Control Act and its various rules and regulations.

31. That as a direct and proximate result, Plaintiffs have suffered damages in that they are unable to sell their homes/real property and that their property has now become distressed property, and that their property is worthless and that their property has been damaged and devalued in that they must now disclose pursuant to South Carolina law that the property has chemicals on or about it which may be harmful or dangerous to prospective purchasers and their families.

32. That Plaintiffs bring this cause of action for actual damages, punitive damages and for the costs of this action.

FOR A SECOND CAUSE OF ACTION

(Nuisance)

33. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

34. The Plaintiffs bring this cause of action for nuisance.

35. That the Defendant has used its own land for business uses and as a result of those business uses, chemicals used by the Defendant and within the Defendant's control have migrated onto Plaintiffs' and Plaintiffs' class properties which have suffered injury.

36. That Defendant's use of the chemical TCE was injurious to Plaintiffs' property and now Plaintiffs are unable to sell and enjoy their property.

37. That under South Carolina's nuisance law, it does not matter that the Defendant may have used reasonable care in the use of the chemicals because Defendant is strictly liable for the use of its property in such a fashion so that others are not injured.

38. That Plaintiffs bring this cause of action for nuisance on behalf of themselves and all those similarly situated and request judgment as listed in the first cause of action for actual damages, punitive damages and the costs of the action.

FOR A THIRD CAUSE OF ACTION

(Trespass)

39. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

40. That the Plaintiffs bring this cause of action for trespass in that the Defendant, through its officers, agents and/or employees did intentionally trespass on Plaintiffs' land through the use of chemicals known as TCE.

41. That this is a continuing trespass which has occurred over the course of a number of years and that Defendant is unable to stop the migration of the chemicals onto Plaintiffs and Plaintiff's class properties.

42. That as a result of the trespass by the Defendant, Plaintiffs and all those similarly situated suffered damages to their home/real property to include devaluation of their property.

43. That Plaintiffs request damages as enumerated in the first two causes of action for actual damages and the costs of the action.

FOR A FOURTH CAUSE OF ACTION

(Strict Liability)

44. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

45. The Plaintiffs bring this cause of action for strict liability against the Defendant.

46. That the Defendant engaged in an ultra hazardous activity, to wit, using TCE, a dangerous chemical, at its plant.

47. The use of this chemical involves a substantial risk of serious harm to the Plaintiffs' property which is contiguous to the plant.

48. That the activity is one which cannot be performed with complete safety no matter how much care is taken.

49. That the use of TCE is not one of a common occurrence in the particular community and is known to be dangerous with dangerous consequences to person and property.

50. That Defendant had a duty to the Plaintiffs to make sure that the TCE did not come onto the property of Plaintiffs and Plaintiff Class.

51. That Plaintiffs bring this cause of action for themselves individually and all others similarly situated for damages for an ultra hazardous activity.

52. That Plaintiffs ask for judgment against Defendant for actual damages for strict liability for an ultra hazardous activity and for actual damages and the costs of the action.

WHEREFORE, Plaintiffs request as follows:

A. That the Court certify a class pursuant to SCRCF 23 including Class A and Class B as heretofore defined in the Complaint.

B. On the First Cause of Action individually and on behalf of all class members for actual damages, punitive damages, and the costs of the action.

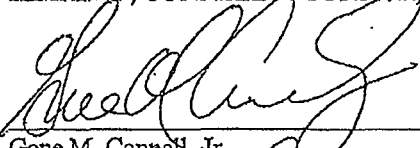
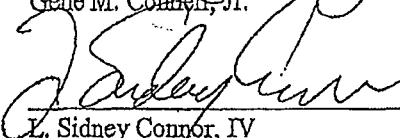
C. On the Second Cause of Action individually and on behalf of all class members for actual damages, punitive damages, and the costs of the action.

D. On the Third Cause of Action individually and on behalf of all class members for actual damages, punitive damages, and the costs of the action.

E. On the Fourth Cause of Action individually and on behalf of all class members for actual damages, punitive damages, and the costs of the action.

F. For such other and further relief as the Court may deem just, necessary and proper.

KELAHER, CONNELL & CONNOR, P.C.


Gene M. Connell, Jr.
L. Sidney Connor, IV

The Courtyard, Suite 209
1500 U. S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorneys for Plaintiffs

May 7, 2010
Surfside Beach, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2007-CP-26-7459

Clint A. Chestnut, Rebatt Frankie Jefford,)
Mary Lou Nance, Margaret Ramsey,)
Nicholas Ramsey, Harold Cushman,)
Julia Edwards, Don Emery, Eula Cooke,)
and Glenda Rabon Harper,)
Individually and as Class Representatives,)

Plaintiffs,)

vs.)

AVX Corporation,)

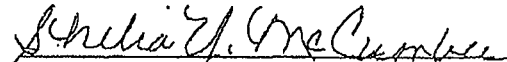
Defendant.)

AFFIDAVIT OF SERVICE

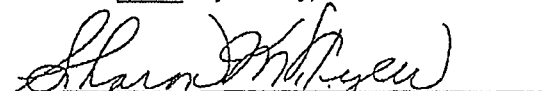
PERSONALLY appeared before me, Shelia Y. McCumbee, who being duly sworn, deposes and says that she is an employee of Kelaher, Connell & Connor, P. C., Attorneys at Law, and that she has served this 7th day of May, 2010, via U.S. Mail (with proper postage affixed thereto), a copy of the documents described below, in the above entitled action to the following:

Brad A. DeVore, Esq.
Richard E. Morton, Esq.
Samuel W. Outten, Esq.
Womble Carlyle Sandridge & Rice, PLLC
3500 One Wachovia Center
301 South College Street
Charlotte, NC 28202-6037

DOCUMENTS: Amended Civil Action Coversheet, Amended Summons, Amended Complaint


Shelia Y. McCumbee

SWORN AND SUBSCRIBED before me,
This 7th day of May, 2010.


Notary Public for South Carolina
My Commission Expires: 2-25-19

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2007-CP-26-7459

Clint A. Chestnut, Rebatt Frankie Jefford,)
Mary Lou Nance, Margaret Ramsey,)
Nicholas Ramsey, Harold Cushman,)
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Plaintiffs,)

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AVX Corporation,)

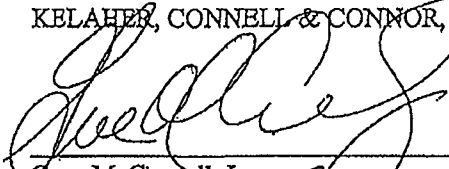
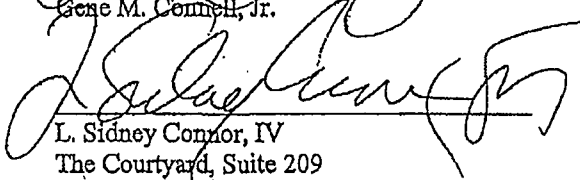
Defendant.)

AMENDED SUMMONS

TO: THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Complaint on the subscriber or subscribers at his or their office at Suite 209, The Courtyard, 1500 U.S. Highway 17 North, Post Office Drawer 14547, Surfside Beach, South Carolina 29587 within thirty (30) days after the service hereof; exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid; the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you for the relief demanded in the Complaint.

KELAHER, CONNELL & CONNOR, P.C.


Gene M. Connell, Jr.
L. Sidney Connor, IV
The Courtyard, Suite 209
1500 U. S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorney for Plaintiffs

May 7, 2010
Surfside Beach, South Carolina.

FOR MANDATED ADR COUNTIES ONLY
Florence, Horry, Lexington, Richland, Greenville and Anderson

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Clint A. Chestnut, Rebatt Frankie Jefford, Mary Lou Nance, Margaret Ramsey, Nicholas Ramsey, Harold Cushman, Julia Todd Edwards, Don Emery, Eula Cooke, and Glenda Rabon Harper,
Individually and as Class Representatives,

Plaintiff(s)

vs.

AVX Corporation,

Defendant(s)

IN THE COURT OF COMMON PLEAS

AMENDED
CIVIL ACTION COVERSHEET

2007-CP-26-7459

Submitted By: Gene M. Connell, Jr./L. Sidney Connor, IV
Address: Kelaher, Connell & Connor, P.C.
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547

SC Bar #: 1358/1363
Telephone #: (843) 238-5648
Fax #: (843) 238-5050
E-mail: gconnell@classactlaw.net
sconnor@classactlaw.net

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

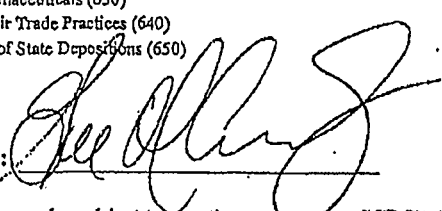
DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

☐ Contracts	☐ Torts - Professional Malpractice	☐ Torts - Personal Injury	☐ Real Property
☐ Constructions (100)	☐ Dental Malpractice (200)	☐ Assault/Slander/Libel (300)	☐ Claim & Delivery (400)
☐ Debt Collection (110)	☐ Legal Malpractice (210)	☐ Conversion (310)	☐ Condemnation (410)
☐ Employment (120)	☐ Medical Malpractice (220)	☐ Motor Vehicle Accident (320)	☐ Foreclosure (420)
☐ General (130)	☐ Notice/File Med Mal (230)	☐ Premises Liability (330)	☐ Mechanic's Lien (430)
☐ Breach of Contract (140)	☐ Other (299)	☐ Products Liability (340)	☐ Partition (440)
☐ Other (199)		☐ Personal Injury (350)	☐ Possession (450)
		☐ Wrongful Death (360)	☐ Building Code Violation (460)
		☐ Other (399)	☐ Other (499)
-
☐ Inmate Petitions	☐ Judgments/Settlements	☐ Administrative Law/Relief	☐ Appeals
☐ PCR (500)	☐ Death Settlement (700)	☐ Reinstate Driver's License (800)	☐ Arbitration (900)
☐ Sexual Predator (510)	☐ Foreign Judgment (710)	☐ Judicial Review (810)	☐ Magistrate-Civil (910)
☐ Mandamus (520)	☐ Magistrate's Judgment (720)	☐ Relief (820)	☐ Magistrate-Criminal (920)
☐ Habeas Corpus (530)	☐ Minor Settlement (730)	☐ Permanent Injunction (830)	☐ Municipal (930)
☐ Other (599)	☐ Transcript Judgment (740)	☐ Forfeiture (840)	☐ Probate Court (940)
	☐ Lis Pendens (750)	☐ Other (899)	☐ SCDOT (950)
	☐ Other (799)		☐ Worker's Comp (960)
-
☐ Special/Complex/Other	☐ Pharmaceuticals (630)		
☐ Environmental (600)	☐ Unfair Trade Practices (640)		
☐ Automobile Arb. (610)	☐ Out-of State Depositions (650)		
☐ Medical (620)			
☐ Other (699)			

Submitting Party Signature: 

Date: May 7, 2010

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

KELAHER, CONNELL & CONNOR, P.C.

ATTORNEYS AT LAW

SUITE 209

THE COURTYARD

1500 U.S. HIGHWAY 17 NORTH

P.O. DRAWER 14547

SURFSIDE BEACH, SOUTH CAROLINA 29587

EDWARD T. KELAHER*
GENE M. CONNELL, JR.
L. SIDNEY CONNOR, IV
LISA POE DAVIS

* OF COUNSEL

AREA CODE 843
238-5648
FAX: 238-5050

May 7, 2010

Melanie Huggins
Horry County Clerk of Court
Post Office Box 677
Conway, SC 29526

Re: Clint A. Chestnut, et al. v. AVX Corporation
C/A No. 2007-CP-26-7459
Our File No. 2007-0500C

Dear Ms. Huggins:

Enclosed please find an original and copy of an Amended Civil Action Coversheet, Amended Summons and Amended Complaint in the above captioned case. Please file the original documents and return clocked copies to me in the stamped, self-addressed envelope enclosed for your convenience.

By copy of this letter, I hereby serve counsel for Defendants with the above-stated documents.

Thank you for your kind assistance in this matter.

Sincerely yours,


Gene M. Connell, Jr.

GMC,Jr.:sm
Enclosures

cc w/enc.: Brad A. DeVore, Esq.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2007-CP-26-7459

Clint A. Chestnut, Rebatt Frankie Jefford,)
Mary Lou Nance, Margaret Ramsey,)
Nicholas Ramsey, Harold Cushman,)
Julia Todd Edwards, Don Emery,)
Eula Cooke and Glenda Rabon Harper,)
Individually and as Class Representatives,)

Plaintiffs,)

vs.)

AVX Corporation,)

Defendant.)

PLAINTIFFS' FIRST SUPPLEMENTAL
ANSWERS TO INTERROGATORIES
AND REQUESTS FOR PRODUCTION

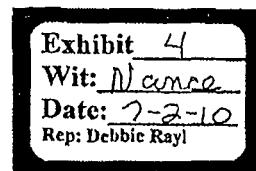
TO: THE DEFENDANT, AVX CORPORATION, AND ITS ATTORNEYS:

The Plaintiffs, Clint A. Chestnut, Rebatt Frankie Jefford, Mary Lou Nance, Margaret Ramsey and Nicholas Ramsey, supplement their Answers to Defendant AVX Corporation's Interrogatories as follows:

1. Identify the location of your Property by street address, and describe when and how you acquired the Property as well as the nature of the use (i.e., residential or commercial) of the Property.

ANSWER:

- Plaintiff Chestnut purchased property at 805 Rogers Drive, Myrtle Beach, SC 29577 in 1998 for residential use.
- Plaintiff Jefford purchased property at 811 Rogers Drive, Myrtle Beach, SC 29577 on or about October 12, 1985 for residential use.
- Plaintiff Nance purchased property at 807 Rogers Drive, Myrtle Beach, SC 29577 in 1996 for residential use.
- Plaintiffs Ramsey purchased property at 815 Rogers Drive, Myrtle Beach, SC 29577 on or about 2007 for residential use.



8. Identify all persons known to you or your attorneys to have personal knowledge of the allegations contained in the Complaint, including in your response the name, current address and telephone number of each person so identified, a summary of the facts known to or observed by each person so identified, and whether or not written or recorded statements have been taken from these persons and, if so, who possesses such statements.

ANSWER:

- (a) Dick Spivey
KOA Campground
Myrtle Beach, SC 29577

He will testify as to his knowledge and observations of pollution in Withers Swash including water discoloration, fish kills and unusual odors.

- (b) Ronald and Jan Camp
504 Beaver Road
Myrtle Beach, SC 29577

They will testify as to smell and discoloration in the ditches surrounding AVX dating to the mid 1970s. They will also testify that AVX dumped material on Horry Land's property.

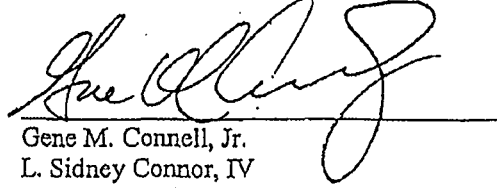
- (c) Allen L. Chestnut, P.E.
Heyward M. Key, P.E.
S&ME, Inc.
1330 Hwy 501 Business
Conway, SC 29527

The witnesses will testify that they performed various tests at the property and will testify as to their findings. They will also testify as to conversations they had with representatives and contractors of AVX.

DOCUMENTS:

The Plaintiffs crave reference to any and all records contained in that DHBC matter entitled In Re: AVX, SDC 062 690-557.

KELAHER, CONNELL & CONNOR, P.C.



Gene M. Connell, Jr.
L. Sidney Connor, IV
The Courtyard, Suite 209
1500 U. S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorneys for Plaintiffs

June 9, 2010
Surfside Beach, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2007-CP-26-7459

Clint A. Chestnut, Rebatt Frankie Jefford,
Mary Lou Nance, Margaret Ramsey,
Nicholas Ramsey, Harold Cushman,
Julia Edwards, Don Emery, Eula Cooke,
and Glenda Rabon Harper,
Individually and as Class Representatives,

Plaintiffs,

vs.

AVX Corporation,

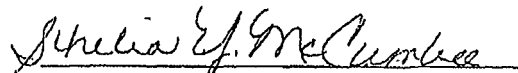
Defendant.

AFFIDAVIT OF SERVICE
BY MAIL

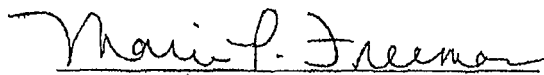
PERSONALLY appeared before me, Shelia Y. McCumbee, who being duly sworn, deposes and says that she is an employee of Kelaher, Connell & Connor, P. C., Attorneys at Law, and that she has served this 9th day of June, 2010, via U.S. Mail (with proper postage affixed thereto), a copy of the documents described below, in the above entitled action to the following:

Brad A. DeVore, Esq.
Richard E. Morton, Esq.
Samuel W. Outten, Esq.
Womble Carlyle Sandridge & Rice, PLLC
3500 One Wachovia Center
301 South College Street
Charlotte, NC 28202-6037

DOCUMENTS: Plaintiffs' First Supplemental Answers to Interrogatories and Requests for Production


Shelia Y. McCumbee

SWORN AND SUBSCRIBED before me,
this 9th day of June, 2010.


Notary Public for South Carolina
My Commission Expires: 6/24/14

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2007-CP-26-7459

Clint A. Chestnut, Rebatt Frankie Jefford,
Mary Lou Nance, Margaret Ramsey and
Nicholas Ramsey, Individually and as
Class Representatives,

Plaintiffs,

vs.

AVX Corporation,

Defendant.

ANSWER TO FIRST SET OF
INTERROGATORIES AND
REQUESTS FOR PRODUCTION

TO: THE DEFENDANT, AVX CORPORATION, AND ITS ATTORNEYS:

The Plaintiff, Mary Lou Nance, answering Defendant AVX Corporation's First Set of
Interrogatories and Requests for Production of Documents, states:

INTERROGATORIES

1. Identify the location of your Property by street address, and describe when and
how you acquired the Property as well as the nature of the use (i.e., residential or commercial) of
the Property.

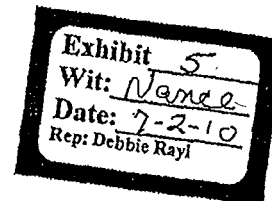
ANSWER:

807 Rogers Drive, Myrtle Beach, SC 29577; purchased; residential home.

2. Have you ever attempted to sell the Property? If yes, include in your response
how many times you have attempted to sell the Property, the specific dates upon which you
attempted to sell the Property, the names, addresses and telephone numbers of all individuals
involved in each attempted sale, the outcome of each attempted sale and all documents generated
related to an attempted sale.

ANSWER:

No.



3. Have you ever solicited the services of a realtor or broker to assist you with selling the Property? If yes, in your response, identify the realtor or broker by name, address and telephone number, and include the approximate date(s) upon which you retained or consulted with the realtor or broker and all documents provided to the realtor or broker or generated by the realtor or broker.

ANSWER:

No.

4. Have you ever received any offers to purchase the Property? If yes, provide the dates upon which you received each offer, the amount of the offer as well as the name, address and telephone number of each person or entity making the offer and all documents related to the offer.

ANSWER:

No.

5. Identify all appraisals of the Property for the last ten years including in your response the name, address and telephone number of all individuals and entities performing appraisals of the Property as well as the dates upon which all appraisals were performed, the results of the appraisals and all documents related to the appraisals.

ANSWER:

Plaintiff's appraisal was done by the bank when Plaintiff purchased the property. Plaintiff was not provided with the appraisal as it was done by the bank for purposes of loaning the funds to the Plaintiff.

6. Have you ever had your Property tested for Contamination? If yes, identify all individuals and entities involved in the testing including name, address and telephone number as well as the dates upon which the tests were performed, the types of tests performed, the results of all tests and all documents related to the testing.

ANSWER:

No, although Plaintiff is aware of various test wells placed in the area by South Carolina Department of Health and Environmental Control. Further, Plaintiff is aware Defendant's agents have set up various test wells through a company called Arcadis, Inc.

7. Itemize and describe all damages which you seek to recover in this lawsuit, including the nature of the damages, the dollar amount, the method by which you calculated the amount, and all evidence and documents that support your calculation.

ANSWER:

Plaintiff expects to argue that her property value has been diminished by the presence of chemicals in the area surrounding the AVX plant. Plaintiff will present an appraiser to offer an opinion of damages between 50%-60% of value of the property.

8. Identify all persons known to you or your attorneys to have personal knowledge of the allegations contained in the Complaint, including in your response the name, current address and telephone number of each person so identified, a summary of the facts known to or observed by each person so identified, and whether or not written or recorded statements have been taken from these persons and, if so, who possesses such statements.

ANSWER:

- (a) Clint Chestnut
805 Rogers Drive
Myrtle Beach, SC 29577

Will testify about the damages to his property and will testify under South Carolina law as to the value of his property and as to the diminution in value.

- (b) Rebatt Frankie Jefford
811 Rogers Drive
Myrtle Beach, SC 29577

Will testify about the damage to his property and will testify under South Carolina law as to the value of his property and as to the diminution in value.

- (c) Mary Lou Nance
807 Rogers Drive
Myrtle Beach, SC 29577

Will testify about the damage to her property and will testify under South Carolina law as to the value of her property and as to the diminution in value.

- (d) Margaret Ramsey
815 Ramsey Drive
Myrtle Beach, SC 29577

Will testify about the damage to her property and will testify under South Carolina law as to the value of her property and as to the diminution in value.

- (e) Nicholas Ramsey
815 Ramsey Drive
Myrtle Beach, SC 29577

Will testify about the damage to his property and will testify under South Carolina law as to the value of his property and as to the diminution in value.

- (f) Marvin Cooley
216 Castle Drive Unit 1395
Myrtle Beach, SC 29577

Will testify about his property in Owens Subdivision and that he was not able to sell his property because of the contamination by the AVX plant.

- (g) Mario Ducoudray
115 Montague Street 5B
Brooklyn, NY

Will testify as the owner of property at 815 Jensen Lane and that he believes that the value of his property is affected by the AVX contamination.

- (h) Audrey Dean Johnson
Address Unknown
Conway, SC
Phone: 365-4039

Will testify she is a former AVX employee and will further offer testimony as to working at the plant and as to the various spills that occurred at the plant.

- (i) Izzie Brown
5600 Pawley Swamp Road
Conway, SC

Will testify she owns property at 710 9th Avenue South, Myrtle Beach, SC and will further testify as to diminution of value to her property as a result of the spills at AVX.

- (j) Anne Maus
2010 English Oak Court
Waldorf, MD

Will testify she owns property (TMS 18113222076) near the AVX plant where the contamination occurred and will testify she believes the value is diminished.

- (k) Korey Kapla
1416 Beaver Road
Myrtle Beach, SC

Will offer testimony regarding the value of his property (TMS 181132208) and as to diminution as a result of the contamination.

- (l) William Johnston
Lorraine Johnston
806 Jensen Road
Myrtle Beach, SC

Will offer testimony regarding the value of their property (TMS 1811322045) and as to diminution as a result of the contamination.

- (m) Don Emory
612 13th Avenue South
Myrtle Beach, SC

Will offer testify regarding the value of his property at 13th Avenue South and as to diminution as a result of the contamination from the spills at AVX.

- (n) Dan Spariosu
United States EPA Region 4
Atlanta Federal Center
Atlanta, GA 30303

Will offer testimony as an expert in environmental activities which occurred at the old Myrtle Beach Air Force Base and will further testify that the spills are unrelated to the contamination spills at AVX.

- (o) Richard Haynes
Bureau of Land Management
South Carolina Department of Heath and Environmental Control
2600 Bull Street
Columbia, SC 29201

Will offer testimony as an expert in land reclamation with the State of South Carolina. He will offer testimony on the environmental issues at the old Myrtle Beach Air Force Base. He will further offer testimony that the old Myrtle Beach Air Force Base environmental spills are not related to the AVX contamination.

- (p) Tom Heath
City Manager
City of Myrtle Beach
Myrtle Beach, SC 29577

Will offer testimony regarding the City of Myrtle Beach's discussions with AVX regarding the AVX spills. He will also offer testimony of an historical nature as to the investigation by the City of Myrtle Beach into the AVX spills, to include meetings with AVX officials about the spills, how they occurred, when they occurred and when the City of Myrtle Beach became first aware of it.

- (q) Tony Tingle
Terek Ladaa
Shaw Environmental Services
312 Directors Drive
Knoxville, TN

Each will offer testimony about the environmental report that they authored in October 2008 and will further offer testimony regarding their investigation of the old Myrtle Beach environmental site and their findings therein.

- (r) Lynn Hancsak
Base Regional Area Cleanup Team (BRAC)
12 Phyllis Boulevard
Myrtle Beach, SC

Will testify he was the chairman of the BRAC team from 10/30/95 to date and further as to the findings regarding the environmental contamination at the old Myrtle Beach Air Force Base.

- (s) Billy Oliver
Superintendent of Water Plant
City of Myrtle Beach
P. O. Box 2468
Myrtle Beach, SC 29578

Will offer testimony regarding his involvement with the AVX spills to include the approved AVX discharges into the City of Myrtle Beach's water and sewer system. He will also offer historical testimony regarding when and how he learned that there had been additional groundwater contamination at the AVX plant.

- (t) Kenneth Richards
Consoer Townsend & Assoc.
404 James Robertson Parkway
Knoxville, TN

Will testify that he reviewed the proposed AVX discharges into the Myrtle Beach City Water and Sewer system in 1988. He will also testify as to chemical makeup

of those discharges and as to any investigation he might have done concerning spills at the AVX plant in the early 1980s and 1990s.

- (u) Fred Akel, PE
City of Myrtle Beach
P. O. Box 2468
Myrtle Beach, SC 29578

Will offer testimony as City Engineer as to his involvement with AVX including the discharges and spills by AVX. He will also offer historical testimony concerning his employment at the City of Myrtle Beach, how he learned about the spills, what action has been taken and what documents have been produced by AVX to the City regarding the spills.

- (v) Carol Minsk
South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

Will testify she is a DHEC hydrologist who is in charge of the cleanup at AVX and as to the level of contamination and as to the wells which are currently in the community that are measuring the contamination. She will further testify as to how the cleanup is going and as to how long it will take.

- (w) Lucas Berresford
South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

Will testify he is a DHEC employee and chemist who is involved in the cleanup and will further testify regarding various letters given by DHEC to certain property owners showing no contamination. He will further testify as to why letters were not given to other property owners because they were in the contaminated area.

- (x) Mark Harnish
Arcadis Environmental Services
600 Waterfront Drive
Pittsburgh, PA

Will testify about his investigation of the spill at AVX. He will also testify about his involvement in the investigation including his investigation of the plume and how far it is moved off site from the plant. He will further testify about various wells and cleanup procedures now in effect.

- (y) George Maalom, PE
Rogers and Callcott Engineers
P.O. Box 5655
Greenville, SC

Will testify that he was hired to sample drinking wells in Myrtle Beach at 17th Avenue South and to do various environmental assessments. He will testify about his investigation and what was done on or about January 10, 2008 concerning the drinking well samples.

- (z) Larry Blue
AVX
P.O. Box 867
Myrtle Beach, SC 29578

He will testify he is a former DHEC employee who currently works for AVX. He will further testify he has knowledge of all the spills from AVX and was a DHEC employee in the early 1980s when a DHEC Consent Order was signed regarding various contamination spills that occurred offsite.

- (aa) Ron Andrews, PE
City of Myrtle Beach
Myrtle Beach, SC

Will testify he is an engineer for the City of Myrtle Beach and Assistant City Manager. He will testify he was involved in testing of the City property and was involved in determining how the spills migrated offsite into the neighborhood in question. He will also testify as to various meetings he has had with AVX employees and/or contractors concerning this contamination. He is further the point man for the city of Myrtle Beach on all issues regarding AVX contamination.

- (bb) Gary Stewart, PE
South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, SC

Will testify as a professional engineer with the State who investigated the spill and is currently involved in the cleanup. He will also testify about how long the cleanup will take and as to what steps DHEC is requiring AVX to do at this time.

The Plaintiff reserves the right to name as witnesses any witnesses listed by the Defendant in answer to the Plaintiff's Interrogatories

9. Identify each witness you intend to call at the trial of this matter who will testify including a summary of the facts to which each witness will testify as well as any documents to which each witness will refer.

ANSWER:

Please see Answers to No. 8 above.

10. Identify each person whom you expect to call as an expert at the trial of this lawsuit, the professional qualifications and experience of each such person, the subject matter on which each such person is expected to testify, the substance of the facts and opinions to which each such person is expected to testify, a summary of the grounds for each opinion to be given by each such person, all documents prepared by the expert related to this action and all documents relied upon by the expert in forming any opinions related to this action.

ANSWER:

- (a) Henry Beckham
7901 N. Ocean Boulevard
Myrtle Beach, SC

He will testify as a certified appraiser about the damages suffered by the class plaintiffs because of the spill around the AVX plant. He will further offer expert testimony as to diminution of value of the Plaintiffs' properties.

- (b) Dr. C.W. Fetter
C.W. Fetter & Assoc.
11 Leamington Lane
Hilton Head, SC 29928

Dr. Fetter will testify as a hydrology expert who will offer testimony on the plume and the areas contamination by the Defendant. He will also offer testimony regarding the area involved to include the area outlying the plume and why it is involved in the case.

- (c) Gary Stewart, PE
South Carolina Department of Heath and Environmental Control
2600 Bull Street
Columbia, SC

Will testify as a DHEC employee who is an expert in regard to contamination and spills. Will further testify about the contamination and spills that occurred from the AVX site and that those spills were direct result of activities by AVX on its property.

- (d) Carol Minsk
South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

Will testify as a DHEC employee who is an expert in regard to contamination and spills. Will further testify about the contamination and spills that occurred from the AVX site and that those spills were direct result of activities by AVX on its property.

- (e) Lucas Berresford
South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

Will testify as a DHEC employee who is an expert in regard to contamination and spills. Will further testify about the contamination and spills that occurred from the AVX site and that those spills were direct result of activities by AVX on its property.

- (f) Mark Harnish
Arcadis Environmental Services
600 Waterfront Drive
Pittsburgh, PA

Will testify about his investigation regarding the spills and as to where they came from and how they came into the neighborhoods from AVX. He will further testify as to cleanup and what AVX is doing to try to clean up the spills in question.

All experts listed above will testify as to the cause of the spill, the cleanup efforts, the testing performed and the fact that the spills came from AVX.

11. With respect to each and every enumerated request in the Requests for Admission to which your response was anything other than an unequivocal admission, state the basis for your response, specifying all facts and law on which you relied and how such facts and law support your response.

ANSWER:

Plaintiff would respectfully state that all Requests for Admissions have either been admitted or denied. Plaintiff craves reference to all documents listed in Response to Request for Production No. 1. Plaintiff further craves reference to all experts identified in Answer to Interrogatory No. 10. Plaintiff's denials are based upon the law that a property owner can testify regarding the value of her property and further upon testimony of all witnesses listed in these Answers to Interrogatories. Plaintiff will offer testimony

that her property is stigmatized as a result of the spills at AVX. Plaintiff will also offer testimony that the property is unable to be sold and will rely on experts and lay witnesses all previously identified for her denials of the Requests for Admission.

12. With respect to each and every enumerated request in the Requests for Admission to which your response was anything other than an unequivocal admission, identify all persons with knowledge of facts on which you relied in formulating your response or which otherwise support your response, specifying with respect to each such person the specific facts of which he or she has knowledge.

ANSWER:

Please see Answer to No. 11 above..

13. With respect to each and every enumerated request in the Requests for Admission to which your response was anything other than an unequivocal admission, identify each and every document on which you relied in formulating your response or which otherwise supports your response.

ANSWER:

Please see Answer to No. 11 above.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. All documents identified or referred to in responding to Defendant AVX Corporation's First Set of Interrogatories to Plaintiff Clint A. Chestnut, Individually.

RESPONSE:

The Plaintiff is in possession of the following documents which are available for inspection and/or copying by the Defendant.

- (a) South Carolina Department of Health and Environmental Control (DHEC) Administrative Record from 12/10/07 to date. Two volumes approximately 800 pages available from DHEC.
- (b) South Carolina Department of Health and Environmental Control (DHEC) Order re AVX spill dated 12/10/96.
- (c) City of Myrtle Beach records re AVX 12/10/96 to 12/29/08.
- (d) AVX City of Myrtle Beach Water and Sewer treatment records from 1991.
- (e) Arcadis reports and field notes authored by Mark Harnish from 2007 to 2010.
- (f) Horry County Aerial Map with TMS Numbers for the affected areas. (Previously provided).
- (g) BRAC cleanup minutes from MBAFB dated 10-30-95.
- (h) Shaw Environmental Report re groundwater testing (2008)

- (i) Horry County Gateway Public Records on all potential class members in the subject area (found on the Horry County website).
- (j) Contaminant Hydrology textbook authored by Dr. C.W. Fetter, 2nd Edition (approximately 800 pages).
- (k) CD prepared by C.W. Fetter regarding outlines of the contaminated area.
- (l) CD with contour maps of a portion of Myrtle Beach prepared by C.W. Fetter dated 11/20/08.
- (m) List of all tax map numbers (TMS numbers) previously provided to attorney Kevin Dunlap, 12/1/08.
- (n) Horry County aerial map of distribution of TCE.
- (o) Arcadis Groundwater Investigation Report 3/1/08 on file at DHEC (approximately 1,000 pages).
- (p) All documents listed on AVX privilege log in *AVX v. Horry Land Company* Case No. 4:07-cv-3299; said documents produced by U.S. District Court Order having documents No. 1-223 and request to produce documents No. 1-4.
- (q) Transcript of Motion to Remand Hearing U.S. District Court dated 3/4/07.
- (r) Arcadis report produced to DHEC on 5/21/07.

2. All photographs, diagrams or charts related to the allegations and claims contained in your Complaint.

RESPONSE:

Please see Response No. 1 above.

3. All documents that support or relate to the allegations and claims contained in your Complaint.

RESPONSE:

Please see Response No. 1 above.

4. All written or recorded statements related to the allegations and claims contained in your Complaint.

RESPONSE:

Please see Response No. 1 above.

5. A copy of the curriculum vitae or resume for each expert witness you intend to call to testify at the trial of this matter.

RESPONSE:

CV of C.W. Fetter can be found online at C.W. Fetter and Associates, Hilton Head, SC.

6. All documents provided to, referred to or relied on by your expert witness in forming his or her opinions in this action.

RESPONSE:

Please see Response No: 1 above.

7. The complete file of all expert witnesses you intend to call at the trial of this action including all documents provided to and generated by your expert witness including but not limited to opinions, reports, drafts of reports, correspondence, emails, notes, etc.

RESPONSE:

Plaintiff does not have the complete file of expert, but will produce at a convenient time.

8. All documents related to any attempted sale of your Property including but not limited to any formal or informal offers or counteroffers, correspondence, emails, notes, etc.

RESPONSE:

None.

9. All documents related to any appraisal of your Property including but not limited to any formal appraisal reports (including drafts), correspondence, emails, notes, etc.

RESPONSE:

N/A.

10. All documents related to any solicitation or consultation with a realtor or broker to sell your Property including but not limited to proposals, contracts, correspondence, emails, notes, etc.

RESPONSE:

N/A.

11. All documents related to any offer to purchase your Property including but not limited to offers, counteroffers, proposals, correspondence, emails, notes, drafts, etc.

RESPONSE:

N/A.

12. All documents related to any testing for Contamination on your Property including but not limited to analytical results, consultants' reports (including drafts), correspondence, emails, notes, etc.

RESPONSE:

None, other than DHEC testing documents and documents from Arcadis.

13. All documents that support or relate to your damages claims including your calculations.

RESPONSE:

Please see Response No. 1 above.

14. All documents that support or relate to your negligence claim.

RESPONSE:

Please see Response No. 1 above.

15. All documents that support or relate to your nuisance claim.

RESPONSE:

Please see Response No. 1 above.

16. All documents that support or relate to your trespass claim.

RESPONSE:

Please see Response No. 1 above.

17. All documents that support or relate to your strict liability claim.

RESPONSE:

Please see Response No. 1 above.

18. All documents that support or relate to your punitive damages claim.

RESPONSE:

South Carolina Department of Health and Environmental Control Order dated 12/10/96.

19. A copy of all exhibits, documents, photographs and other tangible items you may intend to use at any hearing or trial in this action.

RESPONSE:

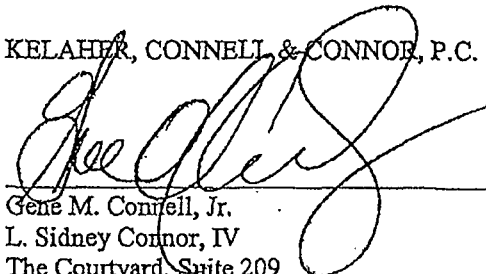
Please see Response No. 1 above.

20. All documents indicating a potential source of the Contamination other than AVX.

RESPONSE:

Please see Response No. 1 above.

KELAHER, CONNELL & CONNOR, P.C.



Gene M. Connell, Jr.
L. Sidney Connor, IV
The Courtyard, Suite 209
1500 U. S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorneys for Plaintiffs

April 5, 2010
Surfside Beach, South Carolina.



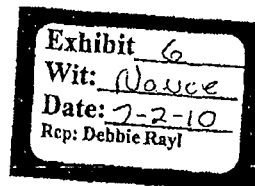
STATE OF SOUTH CAROLINA RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT

INSTRUCTIONS TO PROPERTY OWNERS

1. South Carolina Code of Laws Title 27 Chapter 50 Article I requires that beginning January 1, 2003, an owner of residential real estate (single-family homes and buildings with up to four dwelling units) shall provide to a purchaser this property condition disclosure statement which must be completed prior to signing a contract of sale. This disclosure statement must be provided in connection with the sale, exchange, option and sale under a lease with an option to purchase. This disclosure statement is not required for some transactions, including the first sale of a dwelling which has never been inhabited. A complete list of exemptions may be found in Section 27-50-30.
2. You must check one of the boxes for each of the 24 questions on pages 2 and 3 of this form.
 - a. If you check "Yes" for any question, you must explain the problem or attach a descriptive report from an engineer, contractor, pest control operator or other expert or public agency. If you attach a report, you will not be liable for any inaccurate or incomplete information contained in the report as long as you were not grossly negligent in obtaining or transmitting the information.
 - b. If you check "No" for any question, you are stating that you have no actual knowledge of any problem. If you check "No" and you know there is a problem, you may be liable for making an intentional misrepresentation.
 - c. If you check "No Representation" for any question, you are stating that you are making no representation regarding the conditions or characteristics of the property, but you may have a duty to disclose even if you know or should have known of them. Please consult with an attorney to determine any potential liability you may have for checking this answer.
 - d. If you check "Yes" or "No" for any question and subsequently something happens to the property to render your statement incorrect or inaccurate (for example, the roof begins to leak), you must promptly provide the purchaser a corrected statement or you may correct the problem.
3. If you are assisted in the sale of your property by a licensed real estate broker or salesperson, you remain solely responsible for completing and delivering this statement to the purchaser. The broker or salesperson must disclose any material facts about your property which he/she knows or reasonably should know, regardless of your responses on this statement. You are to complete this form yourself and answer all questions truthfully and as fully as possible. By signing below you acknowledge that the failure to disclose known material information about the property may result in liability.
4. You must provide the completed statement to the purchaser prior to the time you and the purchaser sign a contract to purchase your property or as otherwise agreed to in the contract. You should provide the purchaser a copy of this statement containing your signature and keep a copy signed by the purchaser for your records.

Initials: _____ Seller _____ Date _____ Buyer _____ Date _____
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AS SELLER OF THE PROPERTY HEREIN IDENTIFIED, DO YOU HAVE KNOWLEDGE OF ANY PROBLEM (MALFUNCTION OR DEFECT) WITH ANY OF THE FOLLOWING:

	Yes*	No	No Representation
1. Foundation, slab, fireplaces/chimneys, floors, windows (including storm windows and screens), doors, ceilings, interior and exterior walls, attached garage, patio, deck or other structural components including any modifications? a. Siding: masonry ___ wood ___ composition/hardwood ___ vinyl ___ synthetic stucco ___ b. Approximate age of structure _____	☐	☐	☐
2. Roof (leakage or other problem)? a. Approximate age of roof covering _____	☐	☐	☐
3. Water seepage, leakage, dampness or standing water or water intrusion from any source in any area of the structure?	☐	☐	☐
4. Electrical system (outlets, wiring, panel, switches, fixtures, etc)?	☐	☐	☐
5. Plumbing system (pipes, fixtures, water heater, etc.)?	☐	☐	☐
6. Heating and/or air conditioning? a. Heat source: furnace ___ heat pump ___ baseboard ___ b. Cooling source: central ___ wall/window unit(s) ___ c. Fuel source: electricity ___ natural gas ___ propane ___ oil ___ d. Approximate age of heating unit ___/cooling unit ___	☐	☐	☐
7. Water supply (including water quality, quantity and water pressure?) a. water supply is: city/county ___ community system ___ private well ___ b. water pipes are: copper ___ galvanized ___ PVC/CPVC ___ polybutylene ___	☐	☐	☐
8. Septic system? a. Type system: septic tank ___ community system ___ connected to city/county system ___ city/county system available ___ b. Does the system require a pump? Yes ___ No ___ c. Has the septic system been serviced/pumped during your ownership?	☐	☐	☐
9. Appliances (range/oven, attached microwave, hood/fan, dishwasher, disposal, etc.)?	☐	☐	☐
10. Present infestation, or damage WHICH HAS NOT BEEN REPAIRED from past infestation of wood destroying insects or organisms? a. Is there a transferable termite bond? Yes ___ No ___	☐	☐	☐
11. Drainage, grading or stability of soil or retaining structure?	☐	☐	☐
12. Other built-in systems and fixtures? central vacuum ___ pool ___ hot tub ___ spa ___ attic fan ___ exhaust fan ___ ceiling fan ___ sump pump ___ irrigation system ___ cable tv wiring or satellite dish ___ security system ___ or other systems ___	☐	☐	☐

Initials: ___ Seller ___ Date ___ Buyer ___ Date ___
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REGARDING THE PROPERTY HEREIN IDENTIFIED, INCLUDING THE LOT, OTHER IMPROVEMENTS, AND FIXTURES LOCATED THEREON, DO YOU HAVE KNOWLEDGE OF ANY:

	Yes*	No	No Representation
13. Room additions or other structural changes?	☐	☐	☐
14. Environmental hazards (substances, materials or products) including asbestos, formaldehyde, radon gas, methane gas, lead-based paint, underground storage tank, toxic mold or other hazardous or toxic material (whether buried or covered), contaminated soil or water, or other environmental contamination?	☐	☐	☐
15. Nuisances (noise, odor, smoke, etc.) affecting the property?	☐	☐	☐
16. Previous damage caused by fire?	☐	☐	☐
17. Violations or variances of building codes or zoning ordinances?	☐	☐	☐
18. Restrictions to property use? (covenants or deed)	☐	☐	☐
19. Utility or other easements, shared driveways, party walls or encroachments from or on adjacent property?	☐	☐	☐
20. Lawsuits, foreclosures, bankruptcy, tenancies, judgments, tax or other liens, proposed assessments or notice from any governmental agency that could affect title to the property?	☐	☐	☐
21. Owners' association fees or "common area" expenses or assessments?	☐	☐	☐
22. Flood hazards or that the property is in a federally-designated flood plain?	☐	☐	☐
23. Rental, rental management, vacation rental or other lease contracts in place on the property at the time of closing?	☐	☐	☐
24. Any outstanding charges owed by the tenant for gas, electric, water, sewerage, or garbage services provided to the property?	☐	☐	☐

***IF YOU ANSWERED "YES" TO ANY OF THE ABOVE QUESTIONS, PLEASE USE THE FOLLOWING SPACE FOR YOUR EXPLANATION AND ATTACH ANY RELEVANT PROFESSIONAL REPORTS.**

Initials: _____ Seller _____ Date _____ Buyer _____ Date _____

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STATE OF SOUTH CAROLINA :
: SS:
COUNTY OF HORRY :

IN THE COURT OF COMMON PLEAS

-----X
CLINT A. CHESTNUT, REBATT FRANKIE :
JEFFORD, MARY LOU NANCE, MARGARET :
RAMSEY, NICHOLAS RAMSEY, HAROLD :
CUSHMAN, JULIA TODD EDWARDS, DON :
EMERY, EULA COOKE, and GLENDA : Case Number
RABON HARPER, Individually and as : 2007-CP-26-7459
Class Representatives, :
:
Plaintiffs, :
:
-VS- :
:
AVX CORPORATION, :
:
Defendant. :
-----X

Videotaped Deposition of HENRY BECKHAM, the
witness herein, called for the purpose of Discovery
Examination by the Defendant, pursuant to the South
Carolina Rules of Civil Procedure, taken before Rita
Rodriguez, a Notary Public for South Carolina, at the
Law Offices of Kelaher, Connell & Connor, 1500 Highway
17 Business North, Surfside Beach, South Carolina, on
Friday, March 18, 2011, commencing at 9:25 a.m.

1 A P P E A R A N C E S:

2

ON BEHALF OF PLAINTIFFS:

3

L. SIDNEY CONNOR, ESQ.

4

Kelaher, Connell & Connor, P.C.

1500 Highway 17 Business North

5

P.O. Drawer 14547

Surfside Beach, South Carolina 29587-4547

6

7

ON BEHALF OF DEFENDANT:

8

RICHARD E. MORTON, ESQ.

Womble, Carlyle, Sandridge & Rice, LLC.

9

3500 One Wells Fargo Center

301 South College Street

10

Charlotte, North Carolina 28202-6037

11

P R E S E N T:

12

John Landau,

13

Videographer

14

- - - - -

15

16

STIPULATIONS

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This deposition was taken pursuant to proper

18

Notice and pursuant to Circuit Rule 30, to be used

19

for the purpose of discovery and/or evidence at

20

trial, or for any other purpose permitted by

21

Circuit Rule 30; all objections except as to the

22

form of the question are reserved until the time

23

of trial. Reading and signing of deposition was

24

waived.

25

- - - - -

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1 Defendant's Exhibits

Marked

2

15- Front cover of book entitled, Land

3

Valuation.

167

4

16- Article written by Dr. Kilpatrick.

168

5

17- Document entitled, Post-Repair Diminution in
Value from Geotechnical Problems.

169

6

18- Letter from Tonya Haun to Mr. Connell, dated
August 27, 2010.

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170

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19- Handwritten notes by Mr. Beckham.

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1 HENRY BECKHAM,
2 of lawful age, the Witness herein, called for
3 Discovery Examination by the Defendant, being by
4 me first duly sworn, as hereinafter certified,
5 deposed and said as follows:

6 EXAMINATION

7 BY MORTON:

8 Q. Mr. Beckham, good morning.

9 A. Good morning.

10 Q. My name is Rick Morton. We met probably a month
11 ago on a rainy day out there in the neighborhood
12 of the plaintiffs in this case.

13 Do you recall that?

14 A. I vaguely remember. Everybody had hoods on that
15 day.

16 Q. Can you please state your full name for the
17 record.

18 A. Henry Higgins Beckham.

19 Q. I represent AVX in this lawsuit, and I'm going to
20 be asking you some questions. The court
21 reporter, of course, is going to be taking down
22 your answers.

23 You have given deposition testimony on
24 several occasions before; is that correct?

25 A. Yes.

1 Q. In fact, you have given expert opinion deposition
2 testimony on several occasions before; is that
3 correct?

4 A. Yes.

5 Q. So you know the drill. You know you have to give
6 an oral response for the court reporter to take
7 down; correct?

8 A. Yes.

9 Q. If I ask you a question that you don't
10 understand, just please ask me to restate the
11 question or just tell me that you don't
12 understand it, and I'll try and restate the
13 question.

14 Is that fair?

15 A. That's fine.

16 Q. You could take a break any time you like, just
17 let us know. I only ask that you answer any
18 pending question before you take a break.

19 Is that fair?

20 A. Fine.

21 Q. Are you on any medication that would prevent you
22 from testifying truthfully here today?

23 A. No.

24 Q. Are you on any medication which would prevent you
25 from recalling facts which are necessary for your

1 testimony here today?

2 A. No.

3 Q. Is there any other reason why you cannot testify
4 truthfully here today?

5 A. No.

6 Q. Do you have any questions about the deposition
7 process before we go on?

8 A. No.

9 Q. You do understand, Mr. Beckham, that you have
10 been designated as an expert opinion by the
11 plaintiffs in this case; is that correct?

12 A. Yes.

13 Q. What do you understand your task in this case to
14 be?

15 A. My task will eventually be, once the parameters
16 of the properties in question are set, that I'll
17 be working with other experts to determine the
18 impact on real estate values for different
19 properties within the effected area.

20 Q. What parameters of the properties are you
21 referring to?

22 A. At this time, I don't know a date, an effective
23 date of any appraisal opinion that I would have
24 that we would be utilizing. I don't know the
25 exact scope, I think that's to be determined by

1 the judge, the number of properties, the location
2 of those properties, the identity of the various
3 properties that we'll eventually be appraising.

4 Q. So what information do you need in order to
5 determine the number of properties which will
6 eventually need to be appraised?

7 A. I'll need to be provided with a listing, if you
8 will, a listing and identity of the various
9 properties to be appraised.

10 Q. Have you been given any information about the
11 identity of the properties which are at issue in
12 this case?

13 A. The only tentative identity I have is that those
14 properties would be at least the properties
15 located within the perimeter of the plume as
16 drawn by Dr. Fetter.

17 Q. Why do you characterize that as a tentative
18 identification of properties?

19 A. I think that's subject to change. I don't know
20 if his opinion has been finalized. There may be
21 properties that would be on the border. I don't
22 think his line was drawn to be specific to
23 property lines. There may be an adjacent
24 property that is impacted or could be impacted
25 just as much as a property that was within the

1 perimeter of that plume.

2 Q. Do you intend to appraise adjacent properties?

3 A. I'll appraise the properties that I'm tasked to
4 appraise.

5 Q. You are an appraiser by profession; correct?

6 A. Yes.

7 Q. How many years have you been an appraiser?

8 A. Approximately 30 years.

9 Q. In that 30 years, how many appraisals have you
10 conducted, approximately?

11 A. I probably appraised 200 properties a year over
12 that time frame.

13 Q. So what methodology do you commonly use when
14 you're appraising property?

15 A. The methodology is dependent upon the type of
16 property, and the scope of work is determined by
17 the client.

18 Q. In this case, what methodology do you intend to
19 use to appraise the properties?

20 A. I think the most efficient way, the most
21 effective way to appraise multiple properties in
22 this particular neighborhood, and again, with
23 what I perceive to be the area, would be a mass
24 appraisal.

25 These properties, for the most part, are,

6 So I think the most effective way, the
7 efficient way to do it would be to utilize some
8 form of a mass appraisal as opposed to individual
9 appraisals of each particular property.

10 Q. So you have indicated there are different
11 property uses within the tentative class area; is
12 that correct?

13 A. Yes.

14 Q. And what different property uses are you
15 referring to?

16 A. The plume map that I have seen that Dr. Fetter
17 prepared includes several different zoning
18 districts. And by knowledge of what, I'm
19 familiar with the neighborhood, you've probably
20 got a mix of single-family homes, some vacant
21 single-family lots, you have duplexes, you will
22 have some multifamily either mid-rise
23 condominiums or townhouses. And you will have
24 some commercial properties, various commercial
25 properties, primarily on U.S. 17.

1 Q. And are you saying that you can conduct a mass
2 appraisal for all those different kinds of
3 properties?

4 A. I think you could conduct a mass appraisal for
5 each classification of property. You obviously
6 would not blend or mix your market information
7 from commercial characteristics onto the
8 residential. And the same way with the
9 single-family versus multifamily.

10 MR. MORTON: I'm going to go ahead and
11 mark as Exhibit 1 this map.

12 - - - - -

13 (Thereupon, Defendant's Exhibit

14 Number 1 was marked)

15 - - - - -

16 Q. Is this Exhibit 1 the map from Dr. Fetter that
17 you have spoken about a few minutes ago?

18 A. I think so, yes.

19 Q. This is the map which shows the, what did you
20 call it, the plume?

21 A. The perimeter of the plume, I assume.

22 Q. And you believe this perimeter of the plume is
23 subject to change?

24 A. I think, yes. My understanding is that the
25 contaminated groundwater is in motion, is a plume

1 perimeter.

2 Q. What do you understand about this perimeter? Do
3 you understand that to could be a -- well, let me
4 back up.

5 What do you understand the contaminant to
6 be in this case?

7 A. The contaminant, it's my understanding, is the
8 TCE, trichloroethylene, that emanated from years
9 of use at the AVX plant that has gotten into the
10 groundwater and has now moved as the groundwater
11 has shifted. It's moved to the north and,
12 basically to the north.

13 Q. With regard to the area which has been
14 denominated by Dr. Fetter on this Exhibit 1, do
15 you understand that area to include all of the
16 known detections of trichloroethylene and
17 groundwater within the neighborhood?

18 A. I'm going to let you ask that again.

19 Q. Do you know whether or not trichloroethylene has
20 got, whether or not there is a state standard for
21 groundwater contamination?

22 A. I don't know if there is a state standard. My
23 understanding is it was triggered by an E.P.A.
24 requirement that once it reaches a certain level
25 or threshold that it must be dealt with, it must

1 areas. That everything in here in fact exceeds
2 that or is in danger of exceeding that. There
3 are no donuts, if you will, no donut holes that
4 one has a certain level and the other has a
5 lesser level. I think they're all impacted
6 within the perimeter of this TCE contamination
7 that exceeds or triggers the cleanup
8 requirements.

9 Q. So when you talk about perimeter, you're talking
10 about this area which is denominated on Exhibit 1
11 by Dr. Fetter; is that right?

12 A. I'm talking about the properties that are located
13 within that, yes.

14 Q. And just for clarification, on this Exhibit 1,
15 the perimeter you're talking about is drawn on
16 this map in what looks like red pen by Dr.
17 Fetter; is that right?

18 A. Yes.

19 Q. Is it your understanding then that all of the
20 properties within that perimeter are impacted by
21 TCE above the maximum contaminant level?

22 A. I don't know that all are above. I think there
23 have been selective drillings or testings. I do
24 know the one specific property that I had looked
25 at there were different levels at different

1 locations.

2 Q. What specific property are you speaking about?

3 A. I'm talking about the Horry Land property.

4 Q. Do you know of any properties within this
5 perimeter which are impacted by TCE below the
6 MCL?

7 A. I don't know what that number would be or --

8 Q. Do you believe that there are some properties
9 within this perimeter which are impacted by TCE
10 below the MCL?

11 A. There could be. I don't know that.

12 Q. Do you know which properties those are?

13 A. No.

14 Q. Do you know which properties within this
15 perimeter are impacted by TCE at or above the
16 MCL?

17 A. I do not.

18 Q. You have indicated that you think that you could
19 perform a mass appraisal of the properties within
20 this perimeter or, I guess, actually, you have
21 indicated that you could perform mass appraisals
22 for each type of property which is within this
23 perimeter; is that correct?

24 A. Yes.

25 Q. So can we go through the properties within this

1 perimeter and can you identity for me the
2 different types of properties which would require
3 separate mass appraisals?

4 A. As I said, I think you have got several different
5 types of properties along 13th Avenue South at
6 Holly Park and Beaver Run, 11th Avenue. That
7 particular neighborhood is an R-7 zoning
8 designation. For the most part, those are
9 single-family homes that are typically 50 to
10 60 years old, wood frame, fairly common of that
11 neighborhood.

12 As you move on to the north of that, I
13 think the zoning district actually changes to an
14 RM-8, which is a city zoning that allows both
15 single-family and multifamily. So you may have
16 an addition there. While you might still have
17 single-family homes, you may have some duplexes,
18 some older duplex, quadraplex type properties.
19 There are some vacant lands there.

20 I'm not sure exactly where the next zoning
21 change occurs. But as you move up towards 9th
22 Avenue and, again, off the highway, there is a
23 campground. I think there is a zoning district
24 for that particular campground. It's motor
25 transient accommodations or something.

11 A. I think what we'll do is we'll investigate, once
12 the date of the appraisal, where we would try,
13 where we would be trying to determine the before
14 and after values as if free and clear and then as
15 contaminated.

16 I think we would probably, I think we will
17 consider comparable neighborhoods. And there we
18 have the benefit of not only the immediate
19 subject neighborhood but we have got comparable
20 homogenous neighborhoods that are similar in
21 terms of age, physical characteristics in Ramsey
22 Acres and up in the Broadway and the hotel
23 section of town. These are similar neighborhoods
24 in terms of lot sizes, age of the buildings and
25 whatnot.

1 So I'm sure we would consider market
2 information from those other neighborhoods but we
3 would only appraise the ones within the effected
4 or the identified area.

5 Q. And I do want to speak with you about how you are
6 going to conduct the mass appraisals here in just
7 a bit, but right now I'm trying to determine how
8 many different property types you are going to
9 have to address separately.

10 So you are going to have to do, you are
11 going to have to address single-family
12 residential properties separately; is that
13 correct?

14 A. Yes.

15 Q. And you're going to have to address the RM-8
16 zoning separately; is that right?

17 A. The RM-8 zoning designation would include both
18 single-family that would carry over from the
19 Holly Park neighborhood, if you will, as well as
20 any, and again, I don't know, I haven't identify
21 these properties, it may, I'm saying it may
22 include some duplexes. It may all be either
23 single-family homes or single-family lots, I
24 don't know.

25 Q. Well, would you treat the duplexes and the

1 triplexes separately?

2 A. Yes, because they have different physical
3 characteristics.

4 Q. Are there any condominiums within this perimeter
5 area?

6 A. I don't know. I know there is some in the nearby
7 neighborhood. I don't know --

8 Q. How about down here to the north (indicating), do
9 those look like condominiums to you?

10 A. Yes, those are going to be. But, again, that's
11 going to be a different, that's a different
12 subsection, if you will, when you get east of 17.
13 Those homes and condominiums there are going to
14 have there own neighborhood characteristics that
15 would be separate from Holly Park and would
16 require a separate value or separate market
17 information.

18 Q. So any condominiums within the perimeter, you are
19 going to have to treat those separately; is that
20 correct?

21 A. Any property that we identify will likely fall
22 into a class that would have other common
23 properties.

24 Q. You haven't gone through and formally tried to
25 identify all the different classes of properties

1 within the perimeter, have you?

2 A. No.

3 Q. The single-family homes that are on the other
4 side of Business 17 -- that's Kings Highway;
5 right?

6 A. Yes.

7 Q. The single-family homes that are within the
8 perimeter on the other side of Kings Highway from
9 Holly Park Circle, are you going to have to treat
10 those differently too?

11 A. I think I will because they have different, even
12 though they may have similar physical
13 characteristics in terms of building age, design
14 and construction and whatnot, that is a different
15 neighborhood. That is east of 17 is more likely
16 influenced by more of a resort influence i.e. the
17 beach, than this being an owner occupied
18 permanent resident type neighborhood.

19 Q. If there are any duplexes or triplexes on the
20 other side of Kings Highway from Holly Park
21 Circle, you are going to have to treat those
22 separately as well; is that right?

23 A. Maybe, maybe not. And the reason for that is
24 the duplex and the triplex, that gets into more
25 of an investment type property than the

1 single-family purchased as a vacation rental or
2 purchased as a primary residence.

3 Q. Well, are you going to need to treat investment
4 properties separately?

5 A. I think if a property is capable of being leased,
6 it's a multiple unit property, yes, you treat it
7 separately from a single-family home. You don't
8 use the same market data to value that.

9 Q. You have indicated there is a campground out
10 there too. I always call that an RV park. Is
11 that a fair statement, is that an RV park?

12 A. I think part of the KOA campground is included
13 within this.

14 Q. Are you going to have to treat the RV park
15 separately?

16 A. I would think that you would.

17 Q. You have got some areas within this perimeter
18 which have manufactured housing; is that correct?

19 For example, here (indicating), behind
20 Holly Park Circle, there appears to be some
21 manufactured housing there; is that right?

22 A. I don't know.

23 Q. Are you familiar with this area at all?

24 A. Yes.

25 Q. If you had any manufactured housing within the

1 perimeter here on Exhibit 1, would you have to
2 treat that separately?

3 A. You would treat that, yes, you would not use the
4 same information to appraise manufactured housing
5 that you would appraise the single-family homes,
6 say, again, at Holly Park. You would have to
7 have different market information for that
8 appraisal problem.

9 Q. There are different types of commercial property
10 within this perimeter on Exhibit 1 as well; is
11 that correct?

12 A. Yes.

13 Q. You have got some out parcels, for example, on
14 which there are fast food restaurants. Would you
15 treat the different commercial properties
16 separately?

17 A. I think the commercial properties, it's my
18 experience, I think we can identify them and we
19 would account for their different physical, legal
20 and economic characteristics.

21 But in all, the land values are going to
22 be similar. The building materials and the
23 design of the building would be specific to the
24 individual properties. But, for the most part,
25 I think they would be fairly common of each

1 other.

2 I think if you look there may be specific
3 properties that stand out or have different, very
4 different physical characteristics. But most of
5 these are older commercial properties along U.S.
6 17 that are used for resort retail and they do
7 have similar physical, legal and economic
8 characteristics.

9 Q. You have got one property here at least which
10 appears to be a shopping center within the
11 perimeter; is that correct?

12 A. Yes.

13 Q. Now, would you treat that shopping center
14 together with all the other commercial properties
15 within this perimeter?

16 A. Possibly from a land value. We've got to
17 identify and quantify that specific property in
18 terms of its land size, it's front entrance, its
19 location and whatnot, and it's building
20 characteristics.

21 But, no, I would not. I would consider
22 the market data. I would use different units of
23 comparison and different market information to
24 value a shopping center than I would a fast food
25 restaurant.

1 Q. Does that mean then you would have to conduct a
2 different mass appraisal for the shopping center
3 property as opposed to the fast food restaurants?

4 A. No, I think you could cover that but then you are
5 going to have specific information that applies
6 to that specific property. It could be done in a
7 mass appraisal because it's got similar location,
8 land value characteristics as other commercial
9 properties on U.S. 17 on the south end of Myrtle
10 Beach.

11 But, yes, then you have got to, you have
12 got to interpret what your market information
13 means for that specific property. But you could
14 still put it in that same class of commercial
15 properties along U.S. 17.

16 Q. Do I understand correctly that you would mass
17 appraise all of the commercial properties within
18 this perimeter area together?

19 A. I don't know what all the commercial properties
20 are. If I found one that required a separate
21 valuation analysis that I was not comfortable
22 applying, that it did not look as common or as
23 typical, that it stood out, had unique or
24 different physical characteristics or legal or
25 economic characteristics, that may require an

1 individual appraisal. But I would use a good bit
2 of the information generated in the formation in
3 terms of rents, comparable sales. Land sales and
4 whatnot would still be considered on that
5 individual property.

6 Q. And then with regard to the commercial
7 properties, you would conduct a mass appraisal to
8 determine information about land value and rents
9 and some other characteristics?

10 A. Comparable building sales, price per square foot
11 of an improved property.

12 Q. Would you then adjust your appraisal of the
13 commercial properties based on their individual
14 characteristics?

15 A. Yes.

16 Q. So after you conduct your mass appraisal, you're
17 going to adjust that appraisal for the individual
18 characteristics of each commercial property?

19 A. Well, you look what the properties have in
20 common. And, again, the commercial properties
21 are going to be, they're not going to be as
22 common or as typical as, say, the single-family
23 homes. Obviously they have different types of
24 buildings and different uses. But they do have
25 the common, if you will, common land values,

1 common development patterns.

2 There are several other shopping centers
3 that are older centers that are in the next
4 generation and they're selling. I don't know
5 what the lease terms are remaining on this
6 particular center that you have pointed out but,
7 yes, we are going to adjust. In a mass appraisal
8 you identify the physical characteristics, the
9 characteristics of the property, you identify the
10 trends, the things that create value for certain
11 types of properties, and then you apply that
12 specifically to that particular property in terms
13 of its size or its age or its capacity. That's
14 just what you do.

15 Q. Can you explain to me how a mass appraisal works?
16 How would you conduct a mass appraisal?

17 A. The tax assessments typically use mass
18 appraisals. And, again, they try to find a
19 common class or type of property as a starting
20 point and they look for common sales or market
21 activity or market information about that type or
22 common property and then they apply it
23 specifically.

24 In the case of a single-family home in
25 Ramsey Acres, they may determine that that

1 typical house has a sales price or value of \$80 a
2 square foot. And then they will go and identify
3 this house as 1000 square feet and this house is
4 1200 and they will make those adjustments
5 accordingly.

6 Q. You've mentioned Ramsey Acres several times.
7 Where is Ramsey Acres?

8 A. Ramsey Acres is located to the west of the plume
9 area.

10 Q. So Ramsey Acres is not within the perimeter of
11 Exhibit 1?

12 A. No.

13 Q. Would you anticipate using Ramsey Acres as a
14 comparable market area for the area within the
15 perimeter?

16 A. I think it is. I think it has common
17 characteristics.

18 Q. And what common characteristics are you speaking
19 about in particular?

20 A. Lot sizes, the age, the style, the design of the
21 homes.

22 Q. The area within the perimeter has got a lot of
23 different kinds of properties, a lot of different
24 kinds of property uses; correct?

25 A. Well, you have got single-family, some

1 multiple-family possibly, commercial. And then
2 the multifamily over here as you identified.

3 Q. We have talked about some other uses too. You
4 have got some manufactured housing; correct?

5 A. Yes.

6 Q. You have got some vacant land; correct?

7 A. Yes.

8 Q. Does Ramsey Acres have the same kinds of mixed
9 use, mixed unit land use as the area within the
10 perimeter?

11 A. No, it's more going to be, going to be more like
12 the single-family component of, I'll call it the
13 subject area.

14 Q. The vacant land within the perimeter, are you
15 going to need to address that vacant land
16 separately?

17 A. Yes.

18 Q. There is also some light industrial land use
19 within the perimeter. Are you aware of that?

20 A. There may be. I don't know.

21 Q. If there is light industrial land use within the
22 perimeter, would you need to address that
23 differently?

24 A. If there is light industrial land use within the
25 perimeter, I would probably consider that -- yes,

11 A. Again, it's going to be, you're going to consider
12 the zoning of the property, all properties
13 appraised under its highest and best use. So I
14 would have to consider the zoning.

18 Q. Are there any telecommunication installations
19 within the perimeter?

21 Q. If there are any telecommunications property uses
22 within the perimeter, are you going to need to
23 treat those separately?

25 Q. I'm talking about a cell tower or transfer

1 station or something like that.

2 A. You would consider the physical, legal and the
3 economic characteristics of each property. And
4 when you would place it in a common class of
5 properties, that's what you would do. If it
6 doesn't fit, you're going to have to consider it
7 individually.

8 Q. So let me see if I understand this correctly.
9 Your intention is to perform mass appraisals on
10 the different common classes of properties within
11 the perimeter; correct?

12 A. When the mass appraisal is appropriate. If there
13 is a type of specific property that doesn't fit
14 with those broader classifications then you're
15 going to have to consider that probably on an
16 individual basis.

17 Q. Let me see if I could try this again. So is it
18 your intention to conduct mass appraisals on
19 common classes of properties when you could do
20 so?

21 A. When that is the most effective and efficient and
22 accurate way to appraise those types of
23 properties or those particular properties.

24 Q. That's a yes?

25 A. Yes. If I could appraise 100 single-family

1 homes, that's what I need to do. If there is a
2 single telecommunications tower that doesn't fit
3 any of my other classifications, then I'll have
4 to consider that particular property when it's
5 identified.

6 Q. As you sit here today, do you know how many
7 different common classes of properties you are
8 going to have to conduct mass appraisals for?

9 A. I do not.

10 Q. We have identified some already; correct?

11 A. We have talked about some of the more obvious
12 ones.

13 Q. But there could be more; is that right?

14 A. There could be more.

15 Q. But you don't know how many more?

16 A. No.

17 Q. As you sit here today, do you know how many
18 properties within the perimeter you are going to
19 have to conduct individual appraisals on?

20 A. I don't know.

21 Q. You don't have any idea?

22 A. No.

23 Q. You talked about some of these zoning areas, R-7
24 zoning area, RM-8 zoning area. Are there
25 nonconforming uses within those zoning areas?

1 A. I don't know.

2 Q. If there are nonconforming uses within those
3 zoning areas, are you going to have to treat
4 those properties separately?

5 A. No, you may not treat it separately. Maybe you
6 have got a duplex in the R-7 district that's
7 grandfathered, it's nonconforming. But I could
8 value that duplex in accordance with the other
9 duplex information that I might have or the other
10 multifamily rental property type classification.

11 You're going to consider the specific
12 characteristics of each property eventually
13 because you have got to assign a value to it.
14 But you're going to use market information
15 collected in a mass appraisal to value each
16 particular property. You do consider each one
17 but you're not, you are going to use some basis
18 such as the tax assessment for the size, the lot
19 and block measurements for the land and whatnot,
20 and the zoning characteristics.

21 Q. In your use as an appraiser -- I'm sorry. In
22 your work as an appraiser, you use the Uniform
23 Standards of Professional Appraisal Practice; is
24 that correct?

25 A. Yes.

1 Q. And we call that USPAP; is that correct?

2 A. Yes.

3 Q. Can you explain to me what USPAP is and who
4 administers it?

5 A. Well, the Appraisal Foundation, which is the
6 established, is the national licensing entity for
7 the various, that goes into the various states,
8 and it regulates the appraisal practice. It
9 determines what you're supposed to do, the
10 typical policies and procedure, what are the
11 minimum requirements for different types of
12 reports and whatnot. It deals with a wide range
13 of appraisal issues.

14 Q. Who administers or publishes USPAP?

15 A. The Appraisal Foundation.

16 Q. What is the Appraisal Standards Board?

17 A. The Appraisal Standards Board is, my
18 understanding of it, is the governing board or
19 the active board that determines, and the USPAP
20 Advisory opinions, the USPAP policies and
21 procedures are updated periodically, and I think
22 the board acts as a clearing house and decides
23 which ones change, which ones stay the same,
24 which ones were originally adopted.

25 Q. Do you recognize the USPAP standards as being a

1 reliable authority for your work as an appraiser?

2 A. You have to.

3 Q. So you do?

4 A. Yes.

5 Q. And, in fact, South Carolina has adopted USPAP as
6 the South Carolina standard for appraisals?

7 A. I think most states have adopted it.

8 Q. And that includes South Carolina?

9 A. Yes.

10 Q. You attempt to comply with USPAP in your work as
11 an appraiser?

12 A. I try to, yes.

13 Q. Does the Appraisal Standards Board also publish
14 other kinds of rules or guidance?

15 A. I don't know.

16 Q. Does the Appraisal Standards Board publish
17 Advisory Opinions?

18 A. Yes.

19 Q. Do you recognize those Advisory Opinions as being
20 reliable authority in your work as an appraiser?

21 A. Yes, they are part and parcel of the USPAP
22 regulations and requirements. There are 30 some
23 odd Advisory Opinions and those things change
24 based on changes that the board implements from
25 time to time as they think is the best policy of

1 regulating and administering the appraisal
2 process.

3 Q. And, in fact, the Appraisal Standards Board has
4 got an Advisory Opinion for valuing property with
5 environmental issues; is that correct?

6 A. I don't remember which number it is but I think
7 there is an Advisory Opinion that deals with the
8 appraisal of contaminated properties.

9 Q. Do you recall whether or not that's Advisory
10 Opinion No. 9.

11 A. Again, I don't know the exact number.

12 Q. Regardless, you do recognize the Advisory
13 Opinions as being a reliable authority for your
14 work as an appraiser?

15 A. Yes.

16 Q. Are you familiar with the Dictionary of Real
17 Estate Appraisal?

18 A. Yes.

19 Q. Do you know who publishing that?

20 A. I have got a copy of it. I think it's the
21 Appraisal Institute.

22 Q. Do you recognize the Dictionary of Real Estate
23 Appraisal as being a reliable authority with
24 regard to your work as an appraiser?

25 A. It's a reference source that I use from time to

1 time.

2 Q. Do you recognize it as being a reliable
3 authority?

4 A. The version that I have I think is beginning to
5 have a little bit of age on it. I think it's
6 changed from time to time. But, yes, it's a
7 reliable source. But there may be more updated
8 sources, more effective, more accurate sources.

9 Q. There is a book that I believe you have in your
10 file called Appraisal of Real Estate 12th
11 Edition; is that correct?

12 A. Yes.

13 Q. Do you recognize Appraisal of Real Estate as
14 being a reliable authority with regard to your
15 work as an appraiser?

16 A. I do.

17 Q. Do you understand there is a 13th Edition of
18 Appraisal of Real Estate?

19 A. I understand there is. I have got, I think my
20 collection starts with the 6th Edition and I
21 think I have three or four others up to the 12th.
22 And I haven't acquired the 13th.

23 Like I say, USPAP as well as the Appraisal
24 Institute, the Appraisal of Real Estate, the
25 Dictionary of Real Estate, those are updated to

1 account for emerging trends and changes in the
2 real estate appraisal industry.

3 Q. There is also a publication called Real Estate
4 Valuation and Litigation which I believe you have
5 a copy of as well; is that correct?

6 A. I don't know if that's a publication as much as
7 was. It may have been a seminar or continuing
8 education course that I took and that was the
9 publication used in that which would be available
10 through the Appraisal Institute as a publication.

11 Q. Do you recognize that publication as being a
12 reliable authority with regard to your work as an
13 appraiser?

14 A. Yes.

15 Q. The Appraisal Institute also publishes the
16 Appraisal Journal; is that correct?

17 A. Yes.

18 Q. Do you receive the Appraisal Journal?

19 A. No, I'm not a member of the Appraisal Institute.

20 Q. Do you read the Appraisal Journal?

21 A. From time to time.

22 Q. How do you obtain top copies of it?

23 A. I have friends who are members. Periodically an
24 article will come out that one of these friends
25 will know might be of interest and he will pass

7 A. It's just something I have chosen not to do.
8 That's a private appraisal organization. There
9 are numerous appraisal organizations and I just
10 belong to the National Association of Realtors
11 appraisal section. That seems to work for me.

15 A. Probably condemnation issues.

17 A. I do. I do a fair amount.

20 A. Probably for the last five years I'd say 25 to
21 35 percent.

22 Q. The publication we were talking about earlier,
23 Real Estate Valuation and Litigation, that
24 publication deals largely with condemnation
25 issues; is that correct?

13 A. I think that's what you have to look for. You
14 have to determine what was the value of the
15 property without, as if unimpaired, in this case,
16 and then what is the effect of the impairment or
17 the change in the after. And the difference
18 between those two values is the damage, if you
19 will, to that particular property.

23 A. I would recognize some of those. Those articles
24 in the journal are typically published by
25 individual appraisers who have experience or have

1 experienced a unique situation or a topic that
2 might be of interest and that's their opinion.
3 It's not necessarily the opinion of the board or
4 the Appraisal Institute itself. They are
5 informative. They do provide a reference source.
6 It may or may not be authoritative.

7 Q. So it's on a case-by-case basis?

8 A. Yes.

9 THE VIDEOGRAPHER: We are going off
10 record. The time is approximately 10:14 a.m.
11 This is the end of tape number one.

12 - - - - -
13 (Thereupon, discussion was had
14 off the record)

15 - - - - -
16 THE VIDEOGRAPHER: We are going back on
17 record. The time is approximately 10:19 a.m.
18 This is the beginning of tape number two.

19 BY MR. MORTON:

20 Q. Mr. Beckham, have you conducted any before and
21 after appraisals in this case?

22 A. I have not conducted any appraisals in this case.

23 Q. Do I understand correctly, in order to determine
24 if there is any impact to value due to the
25 contamination you are going to need to conduct a

1 before and after appraisal?

2 A. Yes, we will consider the property as if
3 unimpaired and then consider the effects of the
4 impairment.

5 Q. And there may in fact be no affected value from
6 contamination; is that correct?

7 A. There could be an instance where there was none.
8 I can't imagine that anything within this area is
9 not impacted to some degree.

10 Q. Do you have any market data which indicates that
11 there is any impairment in this area?

12 A. I have not begun the appraisal process. I don't
13 have any.

14 Q. So you don't have any market data which indicates
15 that there is any impairment to value of property
16 in this area due to contamination; is that
17 correct?

18 A. I have not started the appraisal. I don't know.

19 Q. So is it correct that you don't have any market
20 data to show any impairment to value?

21 A. I don't know.

22 Q. I'm looking for a yes or no answer. Do you have
23 any market data which, do you know, shows
24 impairment to value due to the alleged
25 contamination?

1 A. I don't know.

2 Q. You don't know if you have any market data?

3 A. I don't have any market data. I have not
4 considered, I have not looked at any market data.
5 I have not started the appraisal process so I
6 don't know what the market data is going to show.

7 Q. I have been given copies of some of the documents
8 in your file and I note, on the record, that you
9 brought your entire file in this case with you
10 today; is that correct?

11 A. Well, it was in the box, yes.

12 Q. We will go through the box later. But prior to
13 today's deposition, I have been given copies of
14 documents which are purportedly from your file by
15 counsel for the plaintiffs.

16 I'll go ahead and start marking these
17 documents now and we will go through them one by
18 one. We can mark that one as number two.

19 - - - - -

20 (Thereupon, Defendant's Exhibit
21 Number 2 was marked)

22 - - - - -

23 Q. I'm showing you now, Mr. Beckham, what we marked
24 as Exhibit 2 (handing).

25 Is this a document from your file?

1 A. It has my name tag on it but I can't read
2 anything else except Appraisal Institute.

3 Q. Is this document from your file?

4 A. I assume so.

5 Q. Is this your handwriting?

6 A. I'm ashamed to say but yeah.

7 Q. Beneath your name there is a notation that says
8 Y-915.

9 Do you see that?

10 A. Yes.

11 Q. Can you tell me what that is?

12 A. I have no idea.

13 Q. Is that also in your handwriting?

14 A. It appears, yes.

15 Q. And you don't know what the significance of that
16 notation is?

17 A. I do not.

18 MR. CONNOR: Let me object insofar as
19 it's obviously a copy and it might be helpful if
20 he saw the -- I think it's a copy off something
21 else. So that might help you recognize it. I
22 just object to the extent it's out of context.

23 Q. Let's go ahead and hand him his file then and see
24 if that might fresh your recollection of
25 Exhibit 1 (handing). If you can find a handy

1 place to put that.

2 A. I don't want to lose my view.

3 Q. Is there anything in your file which might
4 refresh your recollection with regard to
5 Exhibit 2?

6 A. That is a copy of the handbook for the
7 environmental risk seminar.

8 Q. So you took an environmental risk seminar at some
9 point in the past?

10 A. Yes.

11 Q. Was that in 1995?

12 A. I think so.

13 Q. What did you learn in that seminar?

14 A. The appraisal techniques, items to be considered
15 in the appraisal of environmentally impacted
16 properties.

17 Q. Why did you take that seminar?

18 A. It was of interest to me. We have to, as
19 licensed appraisers, we have to take continuing
20 education courses. I try to use the Appraisal
21 Institute courses. Their instructors and their
22 seminars seem to be better than the typical
23 offerings that you encounter. It would have
24 been available, it would have suited my schedule
25 at that particular time.

1 Q. That seminar on environmental risks in real
2 estate appraisal that you took in 1995, that was
3 taught by Mr. Roddewig; is that correct?

4 A. I don't remember.

5 Q. Do you know whether or not the Appraisal
6 Institute has got any current seminars with
7 regard to evaluating property with environmental
8 risks?

9 A. Like I said, the appraisal industry is in a state
10 of flux. It changes. I'm sure they have
11 updated this course.

12 Q. Have you had a course with regard to
13 environmental issues since 1995?

14 A. I think I have. I know there was another course
15 we took that was appraising detrimental
16 conditions which was a lot of the same
17 information that, again, got back to the
18 appraisal process of trying to determine damages,
19 if you will, from detrimental conditions
20 regardless of their source.

21 As far as purely environmental, I don't
22 know if they've obeyed that or not.

23 Q. I guess what I'm asking you is whether or not you
24 have had any course work which is specific to
25 evaluating property with environmental risks

1 since 1995?

2 A. Again, I know the detrimental conditions dealt,
3 for a large part, with environmental conditions.
4 And I think there was another one. I'd have to
5 go back and take a look.

6 Q. When was the detrimental conditions seminar?

7 A. In March of 2000.

8 MR. MORTON: I want to mark now
9 Exhibit 3.

10 - - - - -

11 (Thereupon, Defendant's Exhibit
12 Number 3 was marked)

13 - - - - -

14 Q. I'm showing you now Exhibit 3 (handing).

15 Is this a document from your file in this
16 case?

17 A. Yes.

18 Q. This appears to be two pages of handwritten
19 notes. Is this your handwriting?

20 A. Yes.

21 Q. At the top you have indicated that the first page
22 of this Exhibit 3 is a list of your resources in
23 this case; is that correct?

24 A. I don't know if it's specific to this case but it
25 would be a list of resources that I would

1 consider in this case, yes.

2 Q. You compiled this list; correct?

3 A. Yes.

4 Q. When did you compile this list?

5 A. Sometime within the past year.

6 Q. Do you remember what month? Did you do it in
7 October?

8 A. I don't remember.

9 Q. You have produced two Affidavits in this case to
10 date; is that correct?

11 A. I'm sorry.

12 Q. You have produced two Affidavits in this case; is
13 that correct?

14 A. I remember one.

15 - - - - -

16 (Thereupon, Defendant's Exhibit
17 Number 4 was marked)

18 - - - - -

19 Q. I'm showing you now what we have marked as
20 Exhibit 4 (handing).

21 This appears to be an Affidavit from you
22 in this matter; is that correct?

23 A. Yes.

24 Q. Is this the Affidavit that you remember or is
25 this another one?

1 A. I do remember this one now. I think I have done
2 a more recent Affidavit that speaks to the
3 outline of the plume here on Exhibit 1.

4 Q. With regard to Exhibit 4, this is an Affidavit by
5 you dated the first of October 2010; is that
6 correct?

7 A. Yes.

8 Q. Now, do you recall, turning your attending to
9 Exhibit 3, do you recall whether or not you
10 listed the resources on Exhibit 3 before or after
11 you executed the Affidavit that we have marked as
12 Exhibit 4?

13 A. I don't remember.

14 Q. Now, we talked about some of these resources that
15 you've listed. We talked about USPAP; correct?

16 A. Yes.

17 Q. We talked about the Appraisal of Real Estate 12th
18 Edition; is that correct?

19 A. Yes.

20 Q. I believe you said you were not aware of a 13th
21 Edition of the Appraisal of Real Estate. Have
22 you seen this 13th Edition?

23 A. No, I do not have the 13th.

24 Q. I'm going to go ahead and show it you (handing).
25 Have you not had an opportunity to see that at

1 all?

2 A. I do not have the 13th Edition.

3 Q. Have you seen it in anybody else's collection of
4 books?

5 A. No.

6 Q. Were you aware that the 13th Edition had been
7 published?

8 A. I don't know.

9 Q. The next resource you have here is called, it
10 looks like it says Land Valuation; is that right?

11 A. Yes.

12 Q. What do you have written out there next to the
13 words Land Valuation?

14 A. It says chief reference book.

15 Q. You're talking about the Appraisal Institute?

16 A. Yes.

17 Q. Is that the Real Estate Valuation and Litigation
18 book or is it a different book?

19 A. No, it's a different book (handing).

20 Q. How long have you had this Land Valuation
21 publication?

22 A. I think several years.

23 Q. Is there any portion of this publication which is
24 specific to environmental issues?

25 A. There are some. It's primarily just the

1 recommended appraisal policies and procedures for
2 appraising land and it does address environmental
3 issues to a limited extent.

4 Q. Am I correct in saying that this publication is
5 dated 2001?

6 A. 2001 by the Appraisal Institute.

7 Q. Is there anything in this publication which forms
8 the basis of your opinions in Exhibit 4?

9 A. Nothing that I know of specifically. But this
10 is a reference book that I use in the formulation
11 of my opinions when I do appraisals.

12 Q. Did you use that reference book in producing your
13 Affidavit that we marked as Exhibit 4?

14 A. Did I rely on this specifically?

15 Q. Yes, sir.

16 A. No.

17 Q. Why have you listed that publication, Land
18 Valuation, as a resource on Exhibit 3?

19 A. I'm not sure this list was prepared for this
20 particular case.

21 Q. Do you think this list was prepared for some
22 other purpose?

23 A. I don't think it was prepared for this case. I
24 do believe it was prepared in another case.

25 Q. So you think this Exhibit 3 was prepared in a

1 case other than the one that we are concerned
2 about here today?

3 A. Yes.

4 Q. Now, on this first page of Exhibit 3, the very
5 last handwritten notation there says "loss of
6 use"; is that right, am I reading that right?

7 A. Yes.

8 Q. What's the last word?

9 A. Reversion.

10 Q. Reversion, what does that mean?

11 A. And that's why I think it was a different case.
12 The lost of use of a property during a
13 remediation period, how long it's going to take
14 and what's the value of that upon the reversion,
15 what's the present value accounting for that
16 remediation period.

17 Q. With regard to property within the perimeter that
18 Dr. Fetter has denominated on Exhibit 1, do you
19 know if there is any lost of use for that
20 property due to the alleged contamination?

21 A. I don't know.

22 Q. Does that mean you do not know whether or not
23 there is any lost of use for a property within
24 that perimeter?

25 A. I don't know if there will be any lost of use for

1 property within that perimeter because I don't
2 know what the remediation program will involve.
3 If there is a loss of use for a period of time on
4 one of these properties, that would be calculated
5 into the possible damage.

6 Q. You don't know whether or not that's the case?

7 A. I don't know.

8 Q. The second page of this Exhibit 3 appears to have
9 some calculations on it. Can you tell me whether
10 or not those calculations relate to this case?

11 A. They do not.

12 Q. On the first page of this Exhibit 3 there is a,
13 up at the very top, there appears to be a circle
14 with an X in it. Do you know what the
15 significance of that figure is?

16 A. I do not.

17 Q. Did you make that figure in your own hand?

18 A. I don't know.

19 - - - - -

20 (Thereupon, Defendant's Exhibit

21 Number 5 was marked)

22 - - - - -

23 Q. Mr. Beckham, I'm showing you now what we have
24 marked as Exhibit 5 (handing).

25 Is this a document from your file?

1 A. It appears to be.

2 Q. Is this a document which is related to the

3 seminar on Environmental Risk and Real Estate

4 Appraisal Process which you took in 1995?

5 A. Yes.

6 Q. Do you know Mr. Roddewig?

7 A. I do not.

8 Q. Have you spoken with Mr. Roddewig about this

9 case?

10 A. No.

11 Q. Have you spoken with any other appraisers about

12 this case?

13 A. Not that I remember.

14 Q. Have you spoken with Dr. Kilpatrick about this

15 case?

16 A. Yes.

17 Q. When did you speak to Dr. Kilpatrick?

18 A. Probably a month or so ago.

19 Q. Was that the first time you had spoken with him?

20 A. We spoke on the phone, yes.

21 Q. So you have spoken one time with Dr. Kilpatrick?

22 A. At least once. I think twice. I think there may

23 have been a subsequent phone call.

24 Q. What was the substance of your conversation?

25 A. We were talking about the, talking about the

1 case, talking about what the efficiency, the
2 effectiveness of the mass appraisal technique
3 versus doing individual appraisals on all
4 properties.

5 Q. Why did you need to speak to Mr. Kilpatrick about
6 that?

7 A. I think he has experience in performing mass
8 appraisals. He's been named as an expert
9 witness in this particular case that I intend to
10 work with him to complete the appraisal process
11 on behalf of the plaintiffs. And I think it was
12 an introduction and a call about what to expect.

13 Q. How long was your conversation with Dr.
14 Kilpatrick?

15 A. Pretty lengthy.

16 Q. Did you take any notes during that conversation?

17 A. I don't think I did. I don't think so. If you
18 don't have them, I didn't take a note.

19 Q. When you say your conversation with Dr.
20 Kilpatrick was pretty lengthy, do you mean it was
21 more than 30 minutes?

22 A. I think it was, yes.

23 Q. Do you think it was more than an hour?

24 A. I doubt that it was more than an hour but it was
25 more than a, Hello, how are you? But I would

1 guess probably close to an hour. I don't know.

2 Q. Did you speak with Dr. Kilpatrick before he was
3 identified as an expert for the plaintiffs in
4 this case?

5 A. I don't know when he was identified.

6 Q. Did you contact Dr. Kilpatrick about possibly him
7 being an expert in this case?

8 A. No.

9 Q. Did you identify Dr. Kilpatrick as a potential
10 expert in this case?

11 A. No.

12 Q. Have you spoken with any other appraisers about
13 this case?

14 A. Not that I know of.

15 Q. When you say that you intend to work with Dr.
16 Kilpatrick in this case, what are your respective
17 roles?

18 A. My understanding is that he is an expert in mass
19 appraisals. My role will be to provide market
20 data and interpretation of that data. The local
21 market information that would go into the overall
22 appraisal process.

23 Q. Does that mean that, among other things, you are
24 going to help Dr. Kilpatrick identify comparable
25 market areas for the area within the perimeter?

1 A. Yes.

2 Q. What else does that mean, what else specifically
3 are you going to be doing in your role as an
4 expert in this case?

5 A. That hasn't been determined yet. Because we
6 don't know the extent of the scope of the
7 appraisal or the properties involved or, like I
8 say, it has not been determined, the properties
9 haven't been identified.

10 Q. So you haven't started any work on mass appraisal
11 in this case; is that right?

12 A. No.

13 Q. Do you know whether or not Dr. Kilpatrick has
14 started any work on mass appraisal in this case?

15 A. I don't know what he's done, no.

16 Q. Has Dr. Kilpatrick told you that he's started any
17 work on a mass appraisal in this case?

18 A. No.

19 Q. Has Dr. Kilpatrick told you what data or
20 information he's going to need with regard to his
21 work in this case?

22 A. No. Again, that will be determined once the
23 properties are identified that we need to
24 appraise.

25 Q. So you guys talked for about an hour. Do you

1 remember any other specifics about your
2 conversation?

3 A. Just some of his experience in dealing with mass
4 appraisals and different projects like that that
5 he had worked on before.

6 Q. Did he mention any of those projects in
7 particular?

8 A. I remember something in Florida that several
9 thousand properties was involved.

10 Q. Was that the Raytheon case?

11 A. I don't know. I don't remember.

12 Q. Do you remember any other case that he spoke
13 about with you?

14 A. No.

15 - - - - -

16 (Thereupon, Defendant's Exhibit
17 Number 6 was marked)

18 - - - - -

19 Q. Mr. Beckham, I'm showing you now what's been
20 marked as Exhibit 6 (handing), which is entitled
21 Case Study A.

22 Is this document from your file?

23 A. It appears to be a case study from one of these
24 seminars that possibly was within the file, yes.

25 Q. Do you believe that this is a case study from the

1 environmental issues seminar that you took in
2 1995?

3 A. Either that or the detrimental conditions
4 seminar.

5 Q. But you don't know which one?

6 A. I don't know.

7 Q. During the seminar, did you go through this case
8 study?

9 A. I don't remember.

10 Q. Now, what's the purpose of a case study in one of
11 those seminars?

12 A. Typically they use them to illustrate proper
13 appraisal techniques and items that you need to
14 consider in the preparation of an appraisal.

15 Q. So in the course of the seminar they would go
16 through, the instructor would go through this
17 case study?

18 A. Among others, yes.

19 Q. And is this an exercise that you would conduct
20 during the seminar or this is just a case study
21 that the instructor would go through line by
22 line?

23 A. He may or may not go through all case studies.
24 Typically they don't go line by line on all the
25 information that's provided within the seminar

1 materials. I don't remember this. I don't
2 remember the purpose of who -- I don't know.

3 Q. Well, on the second page of this Exhibit 6, about
4 halfway down, there are several questions after
5 the factual scenario.

6 Do you see those?

7 A. Yes.

8 Q. And the first question is, "What approach to the
9 assignment are going to use?" Now that appears
10 to be a typo. It's supposed to say, I believe,
11 What approach to the assignment are you going to
12 use?

13 Is that fair?

14 A. I don't know.

15 Q. Are these questions which you -- this is an
16 exercise, in other words, for the seminar. Did
17 you conduct this exercise; did you go through
18 this exercise at one of the seminars?

19 A. I don't remember.

20 Q. The third question on the second page of this
21 Exhibit 6 says, "In your opinion, is there any
22 sigma that attaches to your property?"

23 Do you see that?

24 A. Yes.

25 Q. Does that refresh your recollection about whether

1 or not you conducted this exercise?

2 A. No.

3 Q. So you still don't remember whether or not you
4 conducted this exercise?

5 A. I don't remember.

6 - - - - -

7 (Thereupon, Defendant's Exhibit

8 Number 7 was marked)

9 - - - - -

10 Q. I'm showing you now, Mr. Beckham, what we marked
11 as Exhibit 7 (handing).

12 Does this appear to be a document from
13 your file?

14 A. It appears to be a similar case study within one
15 of those seminars.

16 Q. Do you remember which seminar this was associated
17 with?

18 A. I do not.

19 Q. Down near the bottom there is a paragraph which
20 begins with the word, Question, and semicolon.

21 Do you see that?

22 A. Yes.

23 Q. And it asks several questions. "What appraisal
24 techniques will you use? What additional
25 information do you need? What is your opinion

1 about possible sigma?"

2 Did I read that correctly?

3 A. Yes.

4 Q. Do you remember answering those questions with
5 regard to this case study?

6 A. I do not.

7 Q. Do you have any recollection at all of conducting
8 this exercise during one of the seminars that you
9 took?

10 A. I do not.

11 - - - - -

12 (Thereupon, Defendant's Exhibit

13 Number 8 was marked)

14 - - - - -

15 Q. I'm showing you now, Mr. Beckham, what we marked
16 as Exhibit 8 (handing).

17 Does this appear to be a document from
18 your file?

19 A. I'm not familiar with this.

20 Q. Do you know whether it's from your file or not?

21 A. I do not.

22 Q. Have you ever taken any coursework to become a
23 Certified Environmental Risk Screener?

24 A. No.

25 Q. Have you ever taken any coursework to become a

1 certified Environmental Audit Reviewer?

2 A. No.

3 Q. Have you ever taken any course work to become a
4 certified Environmental Risk Auditor?

5 A. No.

6 Q. Have you ever taken any course work from the
7 National Association of Environmental Risk
8 Auditors?

9 A. No.

10 - - - - -

11 (Thereupon, Defendant's Exhibit

12 Number 9 was marked)

13 - - - - -

14 Q. I'm showing you now, Mr. Beckham, what we marked
15 as Exhibit 9 (handing).

16 Is this a document from your file?

17 A. It appears to be the schedule for that particular
18 seminar that was in my file, yes.

19 Q. This is the Environmental Risk and Real Estate
20 Appraisal Process seminar that you took in 1995;
21 is that right?

22 A. Yes.

23 Q. Did you attend all portions of that seminar?

24 A. Yes.

25 Q. Did you have to certify your attendance to all

1 portions of that seminar?

2 A. Yes.

3 Q. And you certified that to the South Carolina
4 license board?

5 A. Yes.

6 Q. Is there a South Carolina board which administers
7 license for real estate appraisers?

8 A. Yes.

9 Q. What is that called?

10 A. It's the Real Estate Appraisers Board.

11 Q. On this Exhibit 9, the 3 o'clock to 4:30 segment
12 is called out as being Case Studies.

13 Do you see that?

14 A. Yes.

15 Q. Do you recall doing any case studies in this
16 seminar?

17 A. I don't recall any specific case studies but I'm
18 sure we did.

19 Q. The Chapter 5 section on this Exhibit 9, which is
20 entitled Standards of Professional Practice,
21 underneath that is a notation for Guide Note
22 number 8.

23 Can you tell me what Guide Note number 8
24 is?

25 A. I don't know.

1 Q. Underneath that is Advisory Opinion G-9.

2 Can you tell me what that is?

3 A. I think G-9 is, I think they have changed the
4 numbering system on that, but I think AO-9 under
5 the current USPAP deals with the appraisal of
6 contaminated properties.

7 Q. Underneath that is the notation, Property
8 Observation Checklist.

9 Do you recall what that is?

10 A. I think that was a checklist that they suggested
11 that you use in the course of your normal site
12 inspection when you do an appraisal.

13 Q. Do you have a copy of that checklist?

14 A. I don't.

15 Q. Have you ever used that checklist?

16 A. I don't think so.

17 Q. How many times in your work as an appraiser have
18 you appraised property with environmental issues?

19 A. I would estimate no more than a half dozen.

20 Q. Was one of those cases the Horry Land case?

21 A. Yes.

22 Q. Is one of those half dozen cases this case?

23 A. It would be approximately a half dozen including
24 this, I would guess. Again, I don't remember all
25 of them.

1 Q. So does that mean then that other than this case
2 and the Horry Land case, you have appraised
3 approximately four properties with environmental
4 issues?

5 A. I don't know. I'd have to go back and look at my
6 records and see. I have done thousands of
7 appraisals during my career and I'm sure there is
8 some in there that had environmental issues that
9 we considered. There was some that would be
10 driven purely by environmental issues. I'd have
11 to review my files.

12 Q. Other than the Horry Land case and this case, do
13 you have any recollection of appraising any
14 properties with environmental issues?

15 A. Yes.

16 Q. Can you tell me what those properties were?

17 A. There was a property in Columbia years ago that
18 dealt with land near the city wastewater
19 treatment plant. There was a breach in their
20 dikes. It flooded some adjacent farmland. We
21 did appraisals there. That would have been with
22 somebody I was working for at the time.

23 When I first came to the beach we had, I
24 remember two separate issues. And I think that
25 was just the timing when underground storage

1 tanks and DHEC was beginning to adopt new
2 regulations on the old gasoline storage tanks.
3 And we had two cases where plumes affected
4 commercial properties on U.S. 17 in Myrtle Beach.

5 Q. Those two underground storage tank issues, were
6 those pretty close together chronologically?

7 A. I think they were.

8 Q. Were they close together geographically as well?

9 A. No, I think, again, they were two separate plumes
10 from two separate tanks, if you will. But I do
11 remember the timing of it. It was like, again,
12 I think it was driven by a change in regulatory
13 policy.

14 Q. Other than the wastewater treatment case and the
15 two underground storage tank cases, do you
16 remember any instance when you were appraising
17 property with environmental issues?

18 A. Years ago there was another case in Kershaw
19 County, South Carolina. A group called Hardwick
20 Chemical was discharging effluent into Spears
21 Creek. There were some landowners downstream
22 that made a claim on some damage issues and I
23 appraised those properties.

24 Q. Do you remember any other properties that you
25 appraised with environmental issues?

1 A. Not specifically, no.

2 Q. So do you remember about what year the case in
3 Columbia involving the wastewater treatment plant
4 was?

5 A. It would have been in the early '80s.

6 Q. And you were appraising the farmland on which the
7 wastewater treatment effluent had spilled; is
8 that right?

9 A. Yes.

10 Q. Did you determine an impaired value of that
11 farmland?

12 A. There was an impaired value for a period of time.

13 Q. How did you determine that impaired value?

14 A. There was actually a remediation program where
15 the property was not available for use during a
16 growing season or two growing seasons. There was
17 an impairment for that loss of use. But I think
18 the remediation program and the natural
19 cleansing, if you will, of properties in a flood
20 plain, as that was, it took care of itself over
21 time.

22 Q. So in that case in Columbia, you determined
23 impaired value based on the loss of use for a
24 finite period of time; is that right?

25 A. Yes.

1 Q. Do you know whether or not you could use that
2 same method in this case?

3 A. We talked about loss of use earlier and I told
4 you I did not know of any properties where that
5 situation would exist. But if it does, yes,
6 that's one of the things you would consider.

7 Q. The underground storage tank cases, do you
8 remember when the first one of those was?

9 A. It would have been '84 or '85.

10 Q. Did you have the same scope of work for both of
11 those UST sites?

12 A. No, I think they were different. I think one was
13 a vacant land, one was a vacant commercial site,
14 and the other was an existing little neighborhood
15 shopping center where the tenants, the work
16 staff, they were actually getting sick from
17 fumes.

18 So there were two different types of
19 properties.

20 Q. Did you determine an impaired value with regard
21 to the vacant land?

22 A. In regards to the vacant land it was, again, it
23 was loss of use during the remediation program.
24 And if I remember correctly, the DHEC or the
25 regulatory authorities were able to state with a

1 fairly finite answer as to the term and the
2 successfulness, if you will, the completeness of
3 the cleanup.

4 Q. So with regard to the vacant land that was
5 impacted by a leaking underground storage tank,
6 you again determined impaired value based on loss
7 of use for a finite period of time?

8 A. Yes.

9 Q. Did you determine an impaired value in the
10 shopping center case?

11 A. The shopping center was a little different
12 because it was an existing facility and the
13 problem was such that it had created a health
14 hazard for certain staff members there. And, if
15 I remember correctly, I think we did the loss of
16 use but we also considered a lingering residual,
17 if you will, that this particular property was
18 going to suffer from a reduced possibility of
19 reduced rent income going forward.

20 Q. How did you determine that the property was going
21 to have reduced rent income going forward?

22 A. Well, I think it was common knowledge in the
23 market. The tenants had talked about the issues
24 they had with staff and whatnot, and we just felt
25 like it would be a reduction in the market rent,

5 Q. When you use the term "we" with regard to the
6 shopping center case, who are you talking about?

7 A. It would have been the people that I was working
8 with at the time.

9 Q. Do you remember who those people were?

10 A. It was an individual here in town that worked for
11 me, a guy named Tom Brown. There was another
12 individual who is not in the appraising business
13 anymore, Rick Spradlin. And I don't know if we
14 did that particular case when I was still working
15 for Mr. Ratchard or not but I would have
16 discussed it with contemporaries and people in
17 the office.

18 Q. How did you determine what the reduced rental
19 income on that shopping center property was?

20 A. If I remember correctly, I think we actually went
21 out and talked to some people, described the
22 situation, and they said, well, you know, I
23 typically would pay this for that. And then they
24 gave us an indication that they would not be
25 willing to pay that previous rent.

1 Q. So you did a survey basically?

2 A. Yes.

3 Q. You did a survey of potential tenants for the
4 shopping center?

5 A. Potential tenants.

6 Q. How did you identify those potential tenants?

7 A. Like I said, this was a multi-bay neighborhood
8 center. I think one of the tenants, if I
9 remember correctly, may have been a surf shop
10 operator who had multiple locations around town.
11 We talked to him and we talked to a few other
12 people like that. We talked to some brokers who
13 handled that type of property. I don't remember
14 exactly but I do know we would have talked to
15 those people.

16 Q. Do you recall what the reduced rental income
17 going forward was?

18 A. I think it may have been 10 to 20 percent
19 reduction.

20 Q. And that would be in addition to the loss of use
21 for a period of time?

22 A. In addition to the loss of use during the
23 remediation program, yes.

24 Q. Do you remember how long a period the lost rental
25 income was?

5 A. I remember it being a fairly finite and definite
6 period. This was something that, and, again,
7 these were underground storage tanks. And I
8 think it was something that they could identify,
9 quantify very quickly and get to the problem,
10 stop the problem. And it was cured in fairly
11 short order. Unlike what I understand the AVX
12 problem to be, years. This underground storage
13 tank that we are talking about, I think it may
14 have been less than a year.

19 Q. How long did you determine the reduced rental
20 income was going to last?

24 A. When you do a capitalization approach, you assume
25 perpetuity. You assume operating income, market

1 income, market expenses at that point in time,
2 and you estimate a value as of that date under
3 those conditions.

4 Q. Do you know whether or not there is a health
5 hazard to anyone who is living or using property
6 within the perimeter that's set forth here on
7 Exhibit 1?

8 A. I don't know.

9 Q. Do you know whether or not DHEC has come out and
10 said that there is or is not a health hazard
11 within the perimeter that's designated on Exhibit
12 1?

13 A. I don't know.

14 Q. So you don't know whether or not DHEC has said
15 anything about health hazards in the area?

16 A. I think DHEC has identified specific locations
17 where they require disclosure of the existence of
18 the plume or the contamination. But I'm not
19 familiar with any specific directives from DHEC
20 regarding health, health hazards or the lack
21 thereof.

22 Q. Thank you.

23 THE INTERPRETER: We're going off
24 record. The time is approximately 11:11 a.m.
25 This is the end of tape number two.

1 - - - - -
2 (Thereupon, discussion was had
3 off the record)
4 - - - - -

5 THE INTERPRETER: We are going back on
6 record. The time is it approximately 11:20 a.m.
7 This is the beginning of tape number three.

8 BY MR. MORTON:

9 Q. Mr. Beckham, before the break I believe you
10 indicated that your understanding is that DHEC is
11 requiring disclosure of contamination in certain
12 portions of the property within the perimeter on
13 Exhibit 1.

14 Did I say that correctly?

15 A. I think I have heard that, yes. I think I'm
16 under that impression that there are certain
17 areas that DHEC has put people on notice.

18 Q. "Put people on notice." What people has DHEC put
19 on notice?

20 A. Again, I think -- I have no official information
21 regarding that. Anything that I'm relying on I
22 just think in the course of conversations. And I
23 have heard that DHEC is requiring that certain
24 properties they will not give a clean bill of
25 health, so to speak.

1 Q. What do you mean by "clean bill of health"?

2 A. I don't know what that document would involve.

3 Again, it's my understanding that there are
4 certain areas that DHEC says there is no problem
5 and then there are certain areas that DHEC says
6 there is a problem.

7 Q. Now, I'm asking you specifically about health
8 hazards. Is it your understanding that DHEC has
9 indicated to certain property owners that there
10 are health hazards in portions of the area within
11 the perimeter?

12 A. I don't know of any notification of a health
13 hazard.

14 Q. Do you know whether or not any landlord owning
15 property within the perimeter has suffered
16 reduced rental income on account of the
17 contamination?

18 A. I don't know.

19 Q. Is that something that you would investigate as
20 part of your work in this case?

21 A. Likely, because of what I perceive there to be a
22 possibility that there would be rental properties
23 there.

24 Q. When you talk about perceive to be, you're
25 talking about you perceive there to be rental

1 properties within the perimeter?

2 A. Yes. Like we talked about earlier, I think there
3 are probably some duplexes, quads or something
4 that would be historically used for rental
5 purposes.

6 Q. How would you go about determining whether or not
7 there is any reduced rental income for properties
8 within the perimeter?

9 A. We'll have to go talk to those property owners.
10 We'll conduct a market survey. We'll talk to
11 those particular owners and see if they have
12 experienced what you're talking about. See if
13 they have got any resistance. We'll see if
14 they're disclosing that their property may be
15 over a groundwater contamination. That's part
16 of the appraisal process that we'll have to go
17 through.

18 Q. So when you talk to those individual landlords,
19 are you going to use the information that you
20 receive from those interviews in your appraisals?

21 A. Yes.

22 Q. How is that going to fit into your mass appraisal
23 methodology?

24 A. I don't know how it fits until I do the
25 appraisal.

1 Q. How are you going to take into account the
2 information you receive from these landlords in
3 your mass appraisal? How do you do that?

4 A. I don't know what they're going to say. I don't
5 know what their experience is. When we get some
6 definitive or indicative market information that
7 there is a trend one way or another, we will
8 consider that trend and it will impact the
9 ultimate value conclusion.

10 Q. Is that part of the mass appraisal or is that
11 some other process?

12 A. That would be part of the mass appraisal.
13 Determining what impacts in the before have
14 occurred between the before and after with the
15 impairment and without for that particular type
16 of property that has landlords that is held out
17 for rental purposes. If they exist.

18 And, again, I just assume. I think there
19 are probably some duplexes in there. Some
20 apartment units.

21 Q. So do I understand correctly that you intend to
22 use the mass appraisal process to determine both
23 the unimpaired value and the potential impaired
24 value?

25 A. Yes.

1 Q. What market data are you going to use in order to
2 determine the potential impaired value?

3 A. We will use experience. We will use what has
4 been the experience, has there been any -- we'll
5 compare sales at different times. We'll try to
6 compare paired sales, sales of property where
7 full disclosure was available.

8 If need be, we would get out of the market
9 area and see, because all of these are going to
10 be different based on the extent of the
11 contamination, the length of time. A wide
12 variety of factors would be considered.

13 Q. How do you consider that wide variety of factors
14 in your mass appraisal?

15 A. Again, you are going to start with the idea that
16 this homogenous neighborhood and that particular
17 property type has similar physical economic and
18 legal characteristics. That they may vary
19 slightly in terms of overall building size but,
20 say, in terms of a single-family, that's a pretty
21 uniform value.

22 And then we'll try to isolate and see what
23 impact the contamination may have on buyers and
24 sellers of that type property. We have got to
25 consider financing availability. We have to

7 A. It factors into the mass appraisal, yes.

10 A. No.

13 A. No.

22 A. I have used market information in appealing
23 property tax assessments which are prepared under
24 mass appraisal techniques by the Horry County tax
25 assessor.

1 I'll go in and do basically the same
2 thing. We'll talk about a particular type of
3 property, i.e., a two bedroom oceanfront unit in
4 a certain motel. A certain type condo would have
5 a range of values for X.

6 I have not done an individual appraisal.
7 I may be represented by a homeowners' association
8 that has 300 units so, in fact, it's a mass
9 appraisal. But it's a different mass appraisal
10 than this which is why I'm going to rely on
11 assistance from Dr. Kilpatrick.

12 Q. Did you solicit the assistance of Dr. Kilpatrick?

13 A. No.

14 Q. Did you request the assistance of Dr. Kilpatrick?

15 A. No.

16 Q. Did you request the assistance of an expert in
17 mass appraisals?

18 A. No.

19 Q. Did you suggest the assistance of an expert in
20 mass appraisals?

21 A. No, I think it was there. It was just there. I
22 didn't request it but I certainly don't disagree
23 with it. I think it is the most effective and
24 efficient way to go in this particular case with
25 these multiple properties and multiple property

1 types.

2 And, yes, I would benefit from having some
3 assistance of people with experience in that type
4 of thing.

5 Q. Turning back to your experience valuing property
6 with environmental issues. The last appraisal
7 of that type that you mentioned is the property
8 in Kershaw County; is that right?

9 A. No, the last one would have been Horry Land
10 Company.

11 Q. I'm sorry, the last one of the four other than
12 Horry Land and this case that you have mentioned
13 is the Kershaw County one. We haven't talked
14 about that one yet.

15 A. Right.

16 Q. And that was, what was the name of the company
17 there?

18 A. Hardwick.

19 Q. Do you know what Hardwick Chemical Company
20 manufactured there?

21 A. I do not.

22 Q. Tell me a little bit about the circumstances in
23 that case.

24 A. The circumstances were Hardwick Chemical was
25 located on I-20 between Columbia and Camden.

5 There was some downstream landowners that
6 as Spears Creek passed through their properties,
7 one particular owner I remember had a pond where
8 he dammed Spears Creek, spilled waste. Spears
9 Creek continues on to the next property, would go
10 through low areas, swamps and whatnot. And one
11 pond owner claimed they had killed his fish.

12 Another land owner claimed that it
13 destroyed the vegetation in the swamp and created
14 erosion problems.

15 I just remember those two specific
16 instances of claims.

17 Q. Were you working for those landowners?

18 A. No, I was working for Hardwick Chemical.

19 Q. What were you asked to do in that case?

20 A. I was asked to appraise the properties and see if
21 there was any damage caused by Hardwick Chemical.

22 Q. What did you determine?

23 A. I determined it was not because we had, the other
24 experts in the case determined that the fish kill
25 that occurred in the pond was, I think was a

1 temperature inversion or thermo climb or natural
2 occurrence.

3 And then the other was a claim of killing
4 of the plant life causing erosion. It was a
5 swamp. I didn't see any evidence of any erosion
6 or plant life lost. It was a typical midlands
7 swamp.

8 Q. In the Hardwick Chemical case, was there any
9 documented contamination in Spears Creek?

10 A. I don't remember.

11 Q. Had Hardwick Chemical had a release of
12 contaminants?

13 A. Hardwick had a permit to discharge effluent into
14 Spears Creek and I don't remember if it was
15 contested that they exceeded their limit. I
16 don't remember.

17 Q. Did you see a copy of Hardwick's discharge
18 permit?

19 A. I don't remember. I'm sure I did.

20 Q. Do you remember what was in the discharge that
21 Hardwick was contributing to the creek?

22 A. I don't know.

23 Q. Approximately what year did you do that work?

24 A. This would have been in the late '70s, early
25 '80s.

1 Q. Did you examine any market data to determine
2 whether or not there was any impact to the
3 private property owner's value?

4 A. No, because I think the claim, the specific issue
5 was the fish kill, the cause of the fish kill,
6 and the loss of this plant life, if you will,
7 that caused what I perceived not to be an erosion
8 problem.

9 Q. Did you do individual appraisals on those
10 properties?

11 A. I'm sure I did.

12 Q. Did you do the before and after appraisals that
13 we have been talking about?

14 A. I would have considered that technique. I would
15 have appraised it and then come to the conclusion
16 that it was not the cause of any change or had
17 not caused a change and therefore there was no
18 damage.

19 Q. When you say "had not caused a change," are you
20 meaning that the effluent from Hardwick Chemical
21 had not caused any damage to the properties?

22 A. No. By the time I looked at it, the pond had
23 been restocked. And, as I said, the other
24 property, I remember they were contesting that
25 the effluent had killed the vegetation. When

9 Q. You don't recall whether or not you did a before
10 and after?

11 A. I'm sure I did. I would have done it and said
12 it's got the same value in the after that it had
13 in the before.

14 Q. Did the Hardwick Chemical case go to trial?

15 A. I think it was settled. I don't remember
16 testifying on it.

17 Q. But there was litigation involved?

18 A. Yes.

19 Q. So those property owners filed a complaint
20 against Hardwick Chemical?

21 A. Yes.

22 Q. And you were the defense expert in that case?

23 A. Yes.

24 Q. With regard to the underground storage tank site
25 at the shopping center, was there litigation

1 involved in this case?

2 A. I don't know if there was litigation. I'm sure
3 there was an attorney involved who would have
4 said you need to get an appraisal and maybe it
5 was used for negotiations. Again, I seem to
6 remember those cases settled. There may or may
7 not have been actually litigation filed.

8 Q. Are you talking about both underground storage
9 tank cases?

10 A. Yes. I just don't remember.

11 Q. What about the wastewater treatment plant
12 effluent case, do you know whether or not there
13 was litigation?

14 A. I think there was litigation. I think that went
15 on for quite sometime.

16 Q. Do you remember what the outcome of the
17 litigation was?

18 A. Again, it involved, there were many issues there.
19 It involved flood plain regulations, it involved
20 the discharge, it involved the breach, there was
21 negligence alleged. And, again, the valuation
22 was such, was a minor part of this overall
23 litigation. I think some of those issues are
24 still alive today.

25 This is the site where the old green

1 diamond that Burroughs & Chapin in Columbia did.

2 Q. Did that case go to trial?

3 A. I think different elements of the case did go to
4 trial. I don't think ours did.

5 Q. Did you ever offer deposition testimony in that
6 case?

7 A. No, I did not.

8 Q. You didn't testify at trial in that case?

9 A. No.

10 Q. Did you offer deposition testimony in the two UST
11 cases?

12 A. No.

13 Q. Did you offer any deposition testimony or trial
14 testimony in the Hardwick Chemical case?

15 A. No.

16 Q. Did you offer any Affidavits in the Columbia
17 wastewater treatment plant case?

18 A. No.

19 Q. Did you offer any Affidavits in the two UST
20 cases?

21 A. Not that I remember.

22 Q. How about the Hardwick Chemical case?

23 A. Not that I remember.

24 Q. Other than those four cases and this one and the
25 Horry Land case, do you recall any other cases in

1 Horry Land case using AO-9?

2 A. Yes.

3 Q. And was that appraisal produced as an exhibit in
4 that case?

5 A. Yes.

6 Q. What was your conclusion in that appraisal?

7 A. That property is somewhat different than these
8 and the circumstances are somewhat different.

9 The Advisory Opinion 9 deals with a
10 sequence or a process of appraising contaminated
11 properties. And the first is the cost of the
12 cleanup to be estimated by someone other than
13 myself. I don't remember exactly, they call it
14 different sequences, but it's the cost of the
15 cleanup, it's the length of time, whose
16 responsible for that cleanup, cost, the length of
17 time of the remediation period, the success of
18 the remediation period, the loss of use, if any,
19 during that remediation.

20 And then the reversion of the property
21 once the remediation is completed.

22 Now, Horry Land Company was different
23 from, and I haven't done these properties, but my
24 perception is it has different circumstances.

25 Q. How so?

1 A. AVX had actually sued Horry Land and said you
2 must share in the cleanup. So on the day of the
3 appraisal I had no way of knowing who was going
4 to be responsible for that cleanup. I had no
5 knowledge or conflicting evidence.

6 My experts, SM&E, the experts for Horry
7 Land, said it was unknown when and if the
8 property could be cleaned. There was no
9 economic alternative use during this unknown
10 remediation period. We had testimony from
11 bankers. And this was vacant land so there was
12 no economic alternative use and it could not be
13 developed until it was cleaned up. And there was
14 not an approved plan in place, we didn't know who
15 was going to pay for it. I had asked earlier if
16 the judge had ever ruled who.

17 So all of those unknown factors as of the
18 date of the appraisal that we used for Horry Land
19 led me to believe that that property was totally
20 diminished in value.

21 Q. And in our case here that we are concerned with
22 today, do you understand that AVX is responsible
23 for remediating TCE in the groundwater?

24 A. Again, that's not an assumption that I have done
25 an appraisal because we haven't gotten to that

1 point. We haven't said we are going to appraise
2 it as of that date. And that's one of the
3 questions that has to be answered is, Who is
4 responsible for this cleanup? It's got to be
5 cleaned you. The E.P.A. says it's going to be
6 cleaned.

7 I can't imagine that a homeowner would be
8 judged to be responsible for cleanup. But, you
9 know, that's, we are going to have to determine
10 who is going to pay for it. And if that
11 liability is elsewhere, that cost is not
12 considered. That's not a detriment to the
13 property because that's being borne by somebody
14 else.

15 But what we do have what's involved in the
16 remediation period. Is there a loss of use?
17 What impact during the remediation? And then at
18 the end, you know, What impact lingers? What's
19 the hangover from being in a contaminated area,
20 if you will?

21 Q. Do you understand that AVX -- let me back up.

22 Do you understand that DHEC has determined
23 that AVX is a responsible party for remediation?

24 A. I don't know that -- I don't know. And, again,
25 there are a number of questions that have to be

5 I'm going to have to make some assumption
6 as to how long this is going to go on and when is
7 DHEC, at the end of the remediation, does DHEC,
8 you know, say, okay, it's over with, you don't
9 have to disclose, you don't have to, it's cured,
10 there is no problem, there is no lingering
11 aftereffect. I mean, those are things that have
12 to be answered that go into the appraisal. And
13 I don't know.

14 Q. As you sit here today, your understanding is that
15 DHEC is requiring some type of disclosure within
16 some portion of the perimeter?

17 A. Well, a reasonable and prudent -- whether DHEC is
18 doing it or not, homeowners, sellers in South
19 Carolina must sign a disclosure statement as to
20 certain, and there is a checklist of things you
21 have to have. A reasonable and prudent real
22 estate agent is going to know there is a problem
23 in that neighborhood. He is going to disclose
24 that to any would be buyers. He's got to talk to
25 the sellers about that.

10 And, again, I don't know when DHEC or some
11 authority, the E.P.A., somebody has got to say at
12 the end of this period it's done. It's cleared.
13 And nobody has come up with a plan yet. I don't
14 think there is an approved plan by DHEC to say
15 AVX, you are going to do this, and in ten years
16 we are going to make certain progress, and it
17 works. I haven't seen that.

18 Q. Do you know whether or not AVX has submitted a
19 remediation plan to DHEC?

Reported By: Rita Rodriguez www.huseby.com
HUSEBY, INC. - 1230 W. Morehead Street, #408, Charlotte, North Carolina 28208 (800) 333-2082

1 Q. Do you know whether or not there have been pilot
2 remediation studies within the perimeter area?

3 A. I don't know.

4 Q. When you do your before and after valuation, what
5 is going to be the date for your after valuation?

6 A. We are going to have to make a decision as to
7 what that date is. You have got, when you
8 appraise a property, you have got to have an
9 effective date of the appraisal. You've got to
10 say it's as of this date under these conditions
11 this is the value. And that has not been set.

12 The Horry Land Company case, that date was
13 picked on the date that DHEC said the TCE has
14 migrated on your property. You have a problem.
15 And that was the data it was acknowledged and
16 known.

17 Now, I don't know if there is some drop
18 dead date over here or if it's that date or if
19 there is some subsequent event, you know, that
20 said it moved on into this area. I don't know.
21 I don't know what that date is yet. And that's
22 not, I will have input into it but that's not for
23 me to determine.

24 Q. If there has been impact to property values
25 within the perimeter, when do you think that

1 impact occurred?

2 A. I think that impact occurs, I think it occurs
3 over time. It's a process that I think as more
4 and more people are aware of this, as the
5 remediation plan is formalized, as DHEC signs off -
6 on these procedures for this remediation, it gets
7 there.

8 I think there were probably some impacts
9 very early on. There may have been sales that
10 occurred where people were not totally familiar
11 with what was going on. There may have been a
12 sale made where there was no disclosure made,
13 where the buyer was unaware of the problem. I
14 don't know. That's part of the process, the
15 appraisal process. Once we pick that date, once
16 we start looking at the comparable sales, we have
17 to verify the details of those sales to see who
18 knew what and what the conditions of those sales
19 were they were trying to use.

20 Q. Do you know of any lender who has refused
21 financing on property within the perimeter?

22 A. Yes.

23 Q. Who is that?

24 A. I met last week with, prior to the Horry Land
25 Company, Charles Fisher, previously of Beach

1 First National Bank and now Bank of North
2 Carolina, actually pulled a loan commitment on
3 property in the neighborhood once he was aware of
4 the contamination.

5 Q. Which property was that, do you know?

6 A. Which property? I think it was the Nance
7 property.

8 Q. How long ago was that?

9 A. I think he pulled his permit, his commitment in
10 2007.

11 Q. Other than Mr. Fisher's action, do you know of
12 any lender who has refused financing for any
13 property within the perimeter?

14 A. In my file, I don't remember the specific lender,
15 in my file I think there is a copy of a letter
16 from a residential lender declining a loan or
17 stating they would not lend in that area.

18 Q. Would that have been a letter to Mr. & Mrs. Camp?

19 A. I think so. I think it was to Camp.

20 Q. Do you remember where the Camp's property is
21 located?

22 A. I don't.

23 Q. Do you know whether or not the Camp's property is
24 within the perimeter?

25 A. I don't know where it's located.

1 Q. Do you know of any other instance where a lender
2 has refused financing for any property within the
3 perimeter?

4 A. I spoke, I think I have some notes in my file to
5 it, I spoke with several mortgage lenders as to
6 what their policies would be and was told that
7 they would be, it was very unlikely that they
8 would lend money in that area.

9 Q. And those notes are in your file?

10 A. Yes.

11 Q. So we'll get to that.

12 Those lenders that you spoke with had not
13 had any specific experience refusing lending on
14 property within the perimeter?

15 A. No, they had not rejected a specific property.

16 Q. Are you aware of the new Dollar General store
17 that's being constructed on 9th Avenue South?

18 A. I don't know anything about it.

19 Q. When was the last time you have driven through
20 the perimeter area?

21 A. I drove past it this morning coming down.

22 Q. And you have driven down Kings Highway?

23 A. Yes.

24 Q. Did you not see the new construction there on
25 Kings Highway?

1 A. I did. I didn't know what it was.

2 Q. Would you suppose that there is a construction
3 loan for that project?

4 A. From what I know of Dollar General, yes, there is
5 a construction loan, yes.

6 Q. Do you believe that any damage that may have
7 occurred to value or the property within the
8 perimeter area occurred when the first media
9 publicity about the contamination took place?

10 A. Until we identify the date of the appraisal and
11 until we go through the appraisal process, I
12 would reserve my answer on that.

13 Do I believe that it begins with that? I
14 think at some point there may have been some
15 perception towards, yes, we have a problem when
16 it becomes knowledge, when it becomes open
17 knowledge.

18 Q. So what role does media coverage play in the
19 perception in the marketplace with regard to
20 contamination?

21 A. I think there is a role. I mean, if they -- it's
22 there. They reported, I assume they reported a
23 fact. There was contamination and they write
24 their story and people read it and they talk
25 about it and they react to it. Whether they're

1 reacting to the story or the story about the
2 contamination or the perceived threat of the
3 contamination which only comes to light because
4 of the story, I don't know.

5 That's like I was watching the news last
6 night and you can't buy iodine pills in New York
7 because they're all worried about the radiation
8 coming over from Japan, you know. It's just --
9 if it wasn't on the news, they wouldn't know
10 there was a radioactive leak in Japan. But
11 people reacted to that perceived threat, I mean,
12 they took an action. Somebody went down to the
13 store and bought iodine pills. A lot of people
14 did because they run out. People react to
15 publicity, to news, to their understanding of the
16 facts. I don't know.

17 Q. So does that mean that the market is based, at
18 least partially, on perception of the
19 contamination?

20 A. No, the market is measured by their reaction to
21 it. If they didn't, if they don't perceive it
22 to be a threat, if they don't perceive it to be a
23 problem, and if they could get the mortgage and
24 there is none of this disclosure or hoops to jump
25 through, you know, there may or may not be any

1 impact.

2 But it just, I don't know what that
3 reaction has been because I haven't done the
4 appraisal. I haven't finished. And, again, this
5 is a separate circumstance. These properties,
6 for the most part, are very different from the
7 Horry Land which had no economic alternative use.
8 You could still live in these homes.

9 But how much has that property been
10 diminished in value even though you could still
11 use it, you know, I don't know. I haven't done
12 the appraisal.

13 Q. Do you believe that the value of property with
14 environmental issues is always going to be
15 impaired?

16 A. I'm not going to say always but I wouldn't be
17 surprised if you find some impairment. Any time
18 you have to do something that is atypical of the
19 market, any time that you have to react to a
20 possible negative, I think you have been
21 diminished.

22 Q. Do you have any market data to support the
23 proposition that the value of a property with
24 environmental issues is nearly always impaired?

25 A. Again, I have not done my appraisal in this

1 particular instance. But like we just talked
2 about, when people react to a situation, that's
3 when you, that's when you see this change. Just
4 like they reacted to buying the iodine pills.
5 They didn't need them but they're going to do it.

6 Are people going to react if you gave me
7 the choice of buying the exact home under this,
8 over this plume for the exact price that I could
9 buy the same house, everything is identical, in
10 Ramsey Acres where I don't have to disclose there
11 is a problem, I don't have to say AVX is now
12 cleaning this up and it's going to take 20 years,
13 but don't worry about it. Obviously I'm going to
14 buy a house in Ramsey Acres.

15 I may buy your house here at, I think they
16 call this West Withers, for the most part. I may
17 buy your house there but I'm going to demand some
18 concession. We are going to bargain. Because
19 it's something less than that guy at Ramsey Acres
20 has. And he doesn't have that problem or that
21 perception of the problem. So, yes, I think
22 there is a diminution of value.

23 Q. Do you have any market data to support that view?

24 A. I have not done the appraisal.

25 Q. Does that mean you do not have any market data to

1 support that view?

2 A. I haven't assembled my market data. I don't know
3 what I have got.

4 Q. You're just supposing there is going to be an
5 impact, you don't have any market data to support
6 it, do you?

7 A. No, I'm talking about basic human nature. That
8 all things being equal, I think you would do the
9 same, you are going to go to where there is no
10 perception or there is no problem. You're going
11 to make a choice.

12 Q. You have not had an opportunity to look at the
13 Appraisal of Real Estate 13th Edition, have you?

14 A. No.

15 Q. I'm going to direct your attention to a portion
16 of that publication which deals with
17 environmental issues. And I will give you a
18 chance to peruse it but, briefly, do you see that
19 this publication, Appraisal of Real Estate 13th
20 Edition, directs the appraiser to Advisory
21 Opinion No. 9?

22 Do you see that?

23 A. Yes.

24 Q. And do you see here this quote which says,
25 "Contamination may also have no affect on value.

1 The influence of environment impairment on real
2 property value must always be found in the
3 marketplace."

4 A. Yes.

5 Q. You haven't done that, have you?

6 A. I have not done that.

7 MR. CONNOR: Let me object. I want
8 those pages copied so that we can refer to them
9 later, please.

10 MR. MORTON: I have no problem with
11 that.

12 MR. CONNOR: And I would like to break
13 the deposition so that he can read that section
14 to his satisfaction, however long it takes. I'm
15 not going to have him read one line out and
16 answer questions from it.

17 He said that he doesn't have this version.
18 So you could ask him questions but he needs to be
19 able to read it.

20 MR. MORTON: I'll take a break after I
21 ask one more question.

22 MR. CONNOR: I'm going to object to the
23 question.

24 MR. MORTON: You can object all you
25 want.

1 MR. CONNOR: And I'm going to instruct
2 him not to answer it.

3 MR. MORTON: You're going to instruct
4 him not to answer it?

5 MR. CONNOR: Yes, because he hasn't
6 read it yet.

7 MR. MORTON: All right. I'm going to
8 ask the question.

9 Q. Appraisers should be, it goes on to say, this
10 publication, Appraisal of Real Estate 13th
11 Edition, "Appraisers should be cautioned that,
12 while formulaic approaches exhibit a structural
13 logic and may be easy to explain, the market does
14 not always respond in the same manner."

15 Do you see that?

16 A. Yes.

17 Q. Do you agree with that?

18 A. I agree with that.

19 THE VIDEOGRAPHER: Are we going to take
20 a break?

21 MR. CONNOR: Take a break.

22 THE VIDEOGRAPHER: The time is
23 approximately 12:04 p.m.

24

25