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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

Alexander S. Macaulay, Presiding Judge Seventh Judicial Circuit

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Case No. 2015-000392

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

v.

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

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

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sort of get your thoughts together and your presentations however you'd like to make them for a few minutes?

MR. LYLES: I think if we had a little bit of time, maybe until Monday, to go through this together and sort of figure out what we can take out by agreement, and then we'll have ---

THE COURT: Well, there's no question that's the way to do it.

MR. LYLES: Yes, sir.

THE COURT: As you've seen, although I make some feeble effort in trying to keep up with things, it's rather difficult for me to make a comfortable decision based on something I've only seen, if I've even looked at it earlier ---

MR. LYLES: Yes, sir.

THE COURT: --- you know, one day when y'all have lived with it. Now, this is another thing, you know, is we're getting to that point where there are two things that are going to be critical in this case. And one of them is charges. I know that I have some pretrial briefs that has some suggested charges. But if you have any charges and verdict forms, now, please get them to Mr. Bowman, hopefully, Monday morning. You've got tomorrow to work on them. And, of course, Saturday and Sunday too, like I used to do. So see if you couldn't

get the charges when you come back Monday, and then we'll perhaps be better off to move along with that.

Now, is there anything that I can help with as far as the plaintiff's concerned?

MR. LYLES: No, sir, Your Honor.

THE COURT: Mr. Belcher, do you want to consult -- well, I'll just go through the roll. Anything from your parties?

MR. BELCHER: None from us, Your Honor.

THE COURT: All right. How about Mr. Gresh? You got anything you want to bring ---

MR. GRESH: No, Your Honor.

THE COURT: Don't be so retiring. All right.

And Mr. Anderson, anything?

MR. ANDERSON: Not until Monday, Your Honor.

THE COURT: All right. Very good. You'll be loaded then.

All right. Mr. Imhoff?

MR. IMHOFF: Nothing until Monday.

THE COURT: Okay.

Mr. Vick?

MR. VICK: No, Your Honor.

THE COURT: All right. You going to be with us or Ms. Brown going to be back?

MR. VICK: To be determined, Your Honor.

THE COURT: All right. Very good. Makes no difference.

MR. IMHOFF: Do we get to vote on who gets to come back?

MR. VICK: I'll be back at the office on Monday.

THE COURT: Well, I've got two -- what is it? -- little programs up here of attorneys, so I'll just -- whichever shows up, I'll put one or the other up.

All right. Mr. Hemphill?

MR. HEMPHILL: No, Your Honor.

THE COURT: All right. Well, I'll see you all Monday morning.

By the way, ladies and gentlemen that are involved in this case, again, I do appreciate your patience too. And I'll see you all or some of you at least Monday morning. Have a good weekend.

MR. LYLES: Thank you, You Honor.

MR. BELCHER: Thank you, You Honor.

MR. IMHOFF: Thank you, Your Honor.

(WHEREUPON, court stood in recess for the day at approximately 3:45 p.m.)

November 4, 2013

(WHEREUPON, court convened with all parties present, and the following proceedings were had commencing at

approximately 9:22 a.m.)

THE COURT: All right. Is there anything we need to bring to the Court's attention before we start, from the plaintiff?

MR. LYLES: Your Honor, before court this morning, I discussed with the defense lawyers that I have about five more minutes of examination of Mr. Hodgin on direct. And they have agreed to that.

THE COURT: Very well. Thank you.

Anything from the defense other than you do agree with that? You're permitting it?

MR. BELCHER: Your Honor, we've agreed to accommodate Mr. Lyles on that. I don't think there's anything else to bring before the Court at this time.

THE COURT: Very good. All right.

Ask the jury to join us, please.

(WHEREUPON, the jury entered the open courtroom at approximately 9:22 a.m.)

THE COURT: All right. Let the record reflect the jury and the alternate are in the jury box.

Mr. Foreman, ladies and gentlemen of the jury, we will now continue with the testimony of Mr. Hodgin.

Is that correct?

MR. LYLES: Yes, sir.

THE COURT: Is he with us? Oh, there he is.

(WHEREUPON, the witness resumed the witness stand.)

THE COURT: Mr. Hodgin, you understand you're still under oath?

THE WITNESS: Yes, sir.

THE COURT: Very good. Thank you, sir.

You may continue.

DIRECT EXAMINATION

CONTINUED BY MR. LYLES:

Q. Good morning, Mr. Hodgin.

A. Good morning.

Q. Mr. Hodgin, what are contract administration services?

A. Typically, it consists of a design professional, such as an engineer or architect, overseeing the work of a contractor so that there would be site visits made during the construction or repair process. And the design professional would review the work of the contractor and making sure it's in general accordance with the construction contract documents. Typically, the contractor would submit pay applications to the design professional. And then when the design professional signs the pay application of the contractor, he's certifying that the work has been done in accordance with those contract documents and then send them to the owner for payment.

Q. And what benefit is there to the owner of those types of services?
A. Well, to know that the project is proceeding in accordance with the contract documents, there's no known defects or code issues that need to be resolved.
Q. And is it your opinion that contract administration services would be appropriate for the repair that you have specified for the Stoneledge project?
A. Absolutely.
Q. And is that a service that C.S.E. can provide?
A. Yes.
Q. Y'all are qualified to do that?
A. Yes.
Q. And can you tell me how much contract administration services for a repair project like you have specified for Stoneledge would cost?
A. I know it's in our documents. I don't recall specifically the number off the top of my head. But I will tell you in general on new construction, you're typically looking at a ten to twelve percent of any construction costs would be for C.A., what they call C.A. services, contract administration services, which also includes design. When you're doing a repair project, we don't necessarily have to redesign the buildings. We know what the original design intent is. But for a

repair, we do need to oversee to make sure that the repairs are adequate and complete and comprehensive enough to address the problems that were identified. So we're usually in the five to seven and a half percent range. Somewhere in there.

Q. And it's five to seven and a half percent of what?

A. The price of the repairs.

Q. Thank you very much, Mr. Hodgin.

A. Sure.

THE COURT: Mr. Belcher or Mr. Gresh?

MR. BELCHER: Thank you, Your Honor.

CROSS-EXAMINATION .

BY MR. BELCHER:

Q. Good morning, Derek. Welcome back.

A. Good morning.

Q. You've had the benefit of sitting here in the courtroom for a few days now along with Mr. Metcalf; right?

A. Yes, sir.

Q. You've listened not only to your own testimony but the testimony of several other witnesses; right?

A. That's correct.

Q. And you listened to the testimony of Joe and Jeff Bostic?

A. I listened to most of it. I did excuse myself for

part of the second witness, whichever one that was.
Q. And you understand that they want these buildings fixed?
A. Yes, sir.
Q. They want them right?
A. Yes, sir.
Q. And the owners want them made right too?
A. Yes, sir.
Q. So everyone in the courtroom so far that you've heard has said, "We want to get these buildings fixed." Fair?
A. Fair.
Q. Now, you showed the jury a bunch of photographs on, I guess, Wednesday and Thursday?
A. Yes, sir.
Q. And those photographs are now an exhibit to your testimony, I believe.
MR. BELCHER: There's a stack of them.
THE COURT: All right. We'll go off the record while you -- the court reporter can help you if you ...
(Off record discussion)
THE COURT: All right. You may proceed.
MR. BELCHER: Thank you, Your Honor.
Q. So exhibit 22 is all your photographs that you've entered into evidence of issues that you found out there?

A. Yes, if that's what the number, exhibit number, is, yes.
Q. And these are the photographs that you chose to include for the jury to look at when they go and deliberate?
A. Correct.
THE COURT: What exhibit is that?
MR. BELCHER: Plaintiff's Exhibit Number 22, Your Honor.
THE COURT: Very good. Thank you.
Q. And those pictures were taken over the time 2009, 2010, 2012, 2013; fair?
A. Yes, sir.
Q. All right. And you've identified unit numbers on each of those photographs?
A. Yes, sir.
Q. And these are the pictures you want this jury to take a look at to support the idea that your scope is superior to that of any other scope that's going to be presented to the jury to repair these buildings, to fix them and to make them right?
A. I guess you could say it like that. Those are photographs that we thought were representative of the hundreds of photographs taken for phase one, yes.
Q. Of the hundreds of photographs taken of phase one,

you want the jury to look at those one hundred and thirteen photographs?
A. Yes.
Q. All right. Did you include for the jury any photographs where you didn't find damage to porches or walls or anything behind destructive testing?
A. I'm not sure if those exist. If they do exist, there would not be very many of them.
Q. You just wouldn't have taken those kind of pictures?
A. No. I take pictures of everything. But what I'm saying is the dominant condition at Stoneledge when we did the destructive test, we found damage.
Q. All right. So your testimony to this jury would be that if you found conditions that didn't need repairs or conditions that didn't support your scope, you would have still included them in the hundred and thirteen photographs that you want this jury to consider when considering which scop of repair to grant to these plaintiffs?
A. Right. I think there's actually photographs in there where you don't necessarily see damage. You'll see a defect that might cause damage. So there's a mixture of both. There's things that are wrong that may not have caused rot at this point, and there's things in there that are rotten that need to be fixed.

Q. All right. Do you remember if you've taken a picture -- you've provided a picture for this jury to consider where you have inspected a porch that does not exhibit staining and wood rot?

A. I don't remember any porches that where the entire porch would be void of damage. I don't think that any such porch exists. There might be a localized observation where there might not be rot, but I don't know of any porch that does not have damage.

Q. Okay. So you acknowledge that there are porches out there where there is a localized condition that needs to be repaired?

A. No. I think all of the porches need a comprehensive repair. And I believe that that's the same scope that the defense has offered, is that there's a comprehensive repair on every single balcony. What I'm saying is that there might be a localized destructive test that there wasn't physical damage. That may exist. I'm not aware of it.

Q. And just so we're clear, because you gave about five hours of testimony, so we've got to kind of organize it for the jury here because I'm going to be brief with you. Your scope of repair requires the tear down and removal of the balconies?

A. The exposed portion of the balconies, yes.

Q. All right. So those balconies where they have concrete on top ...
A. Yes.
Q. ... you're ripping that off?
A. Yes.
Q. And have you read Mr. Moore's scope of repair?
A. I believe so.
Q. You know he's doing that too?
A. Yeah.
Q. All right. You also want to take off all O.S.B. sheathing?
A. You mean the subfloor?
Q. Yes, the subfloor.
A. Yes.
Q. All right. Whether it's rotten or it's not?
A. Again, I don't know of any places where we did not find rotten subfloor.
Q. Okay. So you want to take every piece of subflooring off of all of these exposed decks? That's your scope?
A. Yeah. The exposed portion of the deck is relatively small. So if you took off the rotten pieces, there's not much left. So it would make more sense -- it's probably even less money. I don't know this because I'm not a contractor. But to try to salvage the pieces that aren't

rotten would probably cost more money than it would take to take it off.

Q. All right. Well, we'll look at some pictures of that here in a minute.

A. Okay.

Q. But I just wanted to tell the jury -- I want to make sure the jury understands the extent of your scope on these balconies.

A. Okay.

Q. You want to take off all the subfloors?

A. Yes.

Q. You want to take out all of the floor joists that go underneath the subfloor?

A. Joists were specified, but trusses were installed. So if there's untreated wood trusses that we'll take out, we'll replace it with what's originally specified which was treated joists.

Q. Okay. So even if there's no damage to those trusses or joists, whatever's there right now, you want to take them all out?

A. I know that there's damage. There might be some that you could salvage. But what our intent is is that we're going to slope -- we're going to reframe the balconies to provide slope, so we need continuity of the framing. So we're going to take that small section of

exposed deck out and put pressure-treated joists; that's correct.

Q. I understand. I understand. And I appreciate your testimony. But I'm trying to define what your scope is here. Okay? And let's stick to that. And I'll give you an opportunity to tell the jury why you're doing what you're doing.

A. Okay.

Q. I just want to explain to the jury the extent of what you're doing. So no matter whether these trusses or joists or whatever's in there right now, you want to rip them out?

A. Correct.

Q. And the columns you want to take down as well?

A. Yes.

Q. And you understand the Rick Moore scope says take down the columns and reframe them?

A. Correct.

Q. All right. Well, that's just kind of one of the first things that I wanted to address, is just to sort of organize the extent of your scope just on that particular issue. And I'm going to talk about all the issues with you.

A. Okay.

Q. But I want to back up, and I also want to organize

exactly what it is that you do and what Mr. Moore does in cases like this. All right?

A. Okay.

Q. We have heard the term forensic science or forensic investigation of construction defects?

A. Yes.

Q. Now, forensic would suggest science; right?

A. There's forensic accountants. I mean forensic -- just the term forensic I think just means that the material or the subject can be debated in a court of law.

Q. And there's a process, there's a forensic method that you undertake when investigating any building?

A. Yes.

Q. And that's whether you're working with Mr. Moore or working against Mr. Moore, you should always have the same forensic process?

A. Yes.

Q. All right. Now, based on what I've done in this field over the years, I understand that there's some assumptions that are made in the forensic process when evaluating what goes on with buildings and how you evaluate a building.

A. Yes.

Q. And let me share those assumptions with you, and you tell me if you agree or disagree with me.

A. Okay.
Q. One is that water intrusion is what causes the rot and discoloration by and large?
A. Yeah.
Q. So you've got water coming into a building where it shouldn't be?
A. Yes.
Q. Or it's coming into a building and it's not getting out the way that it should?
A. Correct.
Q. And either of those scenarios can happen in a building; right?
A. That's correct.
Q. It's okay to have water coming into a building or coming into an area as long as it's getting back out?
A. Correct. And along its path that it doesn't go to any undesirable places or touch moisture sensitive materials that it might damage.
Q. Right. And that's part of the forensic process that we identify as water management; correct?
A. Yes.
Q. All right. So nobody builds -- maybe some people set out to. But nobody really builds, and it's really impossible to suggest that you're going to build, a watertight building. Fair to say?

A. I'm not going to say watertight, but protected, properly protected and water managed would be the right term.

Q. Meaning you have to contemplate that water's going to get in the building through a little hole or somewhere; you've got to make sure it's going to get its way out?

A. Yes.

Q. And as long as it's getting its way out and it's following the appropriate pathway and it's not causing rot and damage and things like that, that's going to be part of the water management process?

A. Yes.

Q. And that's something that you, as a forensic expert, to investigate the process for that?

A. Yes.

Q. All right. The second assumption I have is one that, you know, I know you've testified about before. And it's sort of a golden rule perhaps or one of the big rules in this business is the ninety/one rule?

A. Yes.

Q. Can you explain to the jury what the ninety/one rule is?

A. The ninety/one rule is a building envelope concept that ninety percent of all water intrusion happens to one

percent of the building envelope.
Q. Okay. So you're going to expect as a forensic engineer, just as any forensic professional who's engaged in this business, if there is water getting into a building, there's going to be several culprits that make up that one percent of where you expect water to be getting in; correct?
A. That's correct.
Q. And that's going to be intersections of dissimilar materials?
A. Yes.
Q. Such as where the wood wall meets the concrete wall behind the barrier?
A. Right. Where the siding meets the stone would be another one.
Q. Right. Where your water table is?
A. Correct.
Q. Okay. And we can talk about the water table because we both know that that needs to be addressed. And that's addressed in both scopes; correct?
A. I believe so, yes.
Q. All right. And you may get some water around windows?
A. You do get water around windows in almost every case.

Q. Right.
A. Yeah.
Q. It's always windows; right?
A. Correct.
Q. In fact, I think back to the testimony that I've heard over the years about the window rodeo. Have you ever participated in the window rodeo down in Charleston?
A. No. I know all about it.
Q. Yeah.
A. But I do not participate.
Q. And that's where some of the sharpest minds in the forensic industry go down to Marion Square, and they all try to install windows in a mockup that doesn't leak; right?
A. Over a two-day process of thinking it over and following instructions, yes.
Q. And even the sharpest minds in the State of South Carolina install windows that don't pass tests in the window rodeo; right?
A. That's correct.
Q. Yeah. All right. Well, back to the forensic process. The way I've always looked at it -- and tell me if I'm wrong -- is that there's some steps to the forensic process. All right? We've made those two assumptions that water will get into the buildings and

that's what is the cause of rot and decay or discoloration. Water needs to get out of the building. So the other one is the ninety/one rule that water will get into certain suspect places where we, as construction attorneys, and you, as forensic professionals, know to expect water; correct?

A. Correct.

Q. Now, the only way I've ever known how to go about a case -- and I just want to -- this is part of trying to organize it for the jury because with five hours of testimony, I think makes it difficult to understand the intricate -- just what the process is. So I want to make sure that this jury understands.

Number one in the forensic process, you identify where the water is getting in. Is that fair to say?

A. Yes.

Q. All right. Number two, you propose an engineering fix of what needs to be done to either stop that water from getting in or managing that water to get back out?

A. That's correct. But you skipped over several steps in between.

Q. Okay. Well, let me just so -- do you disagree -- but that is a step?

A. It's a step, but it's much later in the process.

Q. Well, let me give you my steps, and you tell me what

order you would put them in.
A. Okay.
Q. Okay? Because from my side, maybe I see it a little bit differently.
A. Okay.
Q. Another step would be identifying the damage associated with the water?
A. Yes.
Q. Would you put that above engineering the repair?
A. Yeah. You have to know the extent of the damage and defects before you can come up with the repair scope.
Q. Okay. So the process, number one, identify the area of water intrusion; number two, identify the extent of damage caused by that water intrusion?
A. And what defects within the walls that you're observing, yes.
Q. All right. The extent of damage and then what it's going to take to fix it. That's where I'm coming up with the engineering fix. If there's a defect causing it, you need an engineering fix; right?
A. Yes.
Q. But before you even get to the engineering fix, you want to know the extent of the damage?
A. Yes.
Q. And you want to have enough information about the

extent of that damage to make sure that your scope is accurate to correct that damage?

A. Yes.

Q. And you want to make sure that you have enough information to determine whether or not your scope is sufficient or in excess of what's necessary to address the issues that you've found so far; right?

A. Can you restate that again?

Q. All right. You want to make sure that you have enough information to determine what the extent of your scope needs to be, whether it can be surgical or whether it can be wholesale, whether the buildings can be salvaged? Is that correct?

A. That's correct. That's correct.

Q. And then finally, you want to repair the damage, and you want to implement the fix?

A. Yes.

Q. All right. Now, we agree with the process here, so we're all on the same page that by and large -- maybe there's some other sub-steps in there, but that's the process?

A. I think so, yes.

Q. Identifying water intrusion, extent of damage so that you know how to fix it, repairing or engineering a fix, engineering repairs to whatever's been damaged, and

then implementing those repairs. Fair?
A. Yes.
Q. So it is a scientific method?
A. Is that a question?
Q. It is a scientific method; correct?
A. Yeah, it should be.
Q. And it's one that we all agree needs to be implemented in this case?
A. Yes.
Q. Now, the disagreement, from what I can tell, between the parties sitting on this side and the parties sitting on that side is number three in that. What's it going to take to fix these buildings; correct?
A. I believe you're correct, yes.
Q. And then a lot of times, we agree, as I think particularly with the roof edges and things like that, there's some things that are consistent in both your scope and the scope that Mr. Moore's going to testify about later on this week. Fair?
A. I believe so, yes.
Q. All right. And you've worked with Mr. Moore before; right?
A. Many times, yes.
Q. All right. In fact, you and he worked together on projects as co-experts; right?

A. That's correct.
Q. And not only in the investigation phase or the court phase, but in the contract administration phase as well; right?
A. Yeah, we have done that before. We also have worked together on coming up with mutually agreed upon scopes of repairs in other cases.
Q. Okay. For instance, True Blue in Georgetown, do y'all have a mutually agreed upon scope there?
A. I don't know that that was a good example of a mutually agreed upon scope, but there's a scope that's based on the settlement of the case. Fairways is an example of an agreed upon scope. That was another case we worked on.
Q. Fairways?
A. Yes, sir.
Q. Fairways was thirty buildings?
A. That's correct.
Q. Less damage than what you're seeing at Stoneledge?
A. Yes, sir.
Q. All right.
A. Some of the same life safety issues with the fire-rated wall issues, but not as much water damage for sure.
Q. None of these issues are really unique to Stoneledge; right?

A. There's a few things. I mean, I don't have that many cases with the stone-clad balcony issues. But water intrusion in general is a common feature in most construction litigation.

Q. And some people have this kind of water issues in their house, and until it gets inside their house, they don't even know they have it; right?

A. Yeah. I think that's a good example of what's happened, I think, at Stoneledge. When you see it in the house, it has happened over a very long period of time, and there's much more extensive damage and the wall needs to be addressed.

Q. Well, going back to Mr. Moore, you know Mr. Moore has done an investigation out there; right?

A. Yes, sir.

Q. And you know that he made, I think, eighteen destructive test cuts where he opened up balconies and opened up walls to look and see what was there?

A. I don't know the total number. I know in one of my photographs, there was an eighteen. So if that was the last one, then there would be at least eighteen.

Q. At least eighteen?

A. Yeah.

Q. And have you typically agreed with Mr. Moore's forensic method if he follows the forensic method that

we've talked about already?
A. Yeah. As far as the investigation, sure.
Q. And there are times that you agree and times that you disagree on what needs to be done to buildings?
A. Yeah, I would say in general that's what most of these cases come down to. I mean, if you've got two very qualified experts on both sides, it's just a matter of the cost and the scope. I mean, you can't dispute the facts about the case. It's just a matter of what's it going to take to get it fixed. And I think that's where we are in this case.
Q. Exactly. Exactly. What's it going to take? Well, what I did last night when I was sitting down and looking at it is I tried to look at the places where the scope of Mr. Moore, which I know the jury hasn't had the benefit of hearing yet ---
A. Right.
Q. --- but we'll talk about it later. But where Mr. Moore's scope and your scope differ distinctly?
A. Okay.
Q. There's a wide change in what you're telling the jury has to be done and what Mr. Moore's telling the jury has to be done?
A. Okay.
Q. And tell me if you agree with me on these because

this is going through your hundred and thirteen photos and taking some Post-it notes and stickies. The agreements are on the siding and the weather -- I'm sorry. The disagreements, the major disagreements, are in the siding and weather-resistant barrier?

A. Right. I haven't done the homework like you've done recently, but I think that that's my understanding of what I've looked at in the past, that there's not a removal of all of the siding to install a weather-resistant barrier; that's correct.

Q. Right. And a lot of that -- as you've already testified to, a very large part of that deals with the fire-rated and there just not being any weather-resistant barrier on those walls at all. That's a big issue; right?

A. Well, that's weird, because when we did the total de-clad, there's a mixture of O.S.B. that shouldn't be there because that's a wood combustible sheathing product. And it actually was covered with weather-resistant barrier. And then the gypsum, which is moisture sensitive, was not. So there's a mixture. So I would not be comfortable to have a repair scope that did not address the fire-rated walls and make sure that they're adequately protected with a weather barrier.

Q. Okay. And that's what I'm getting at. That's a

major distinction between your scope and Mr. Moore's scope is what we're going to do with those fire-rated walls?

A. Right.

Q. And your biggest concern is that they don't have a weather-resistant barrier on them, and then you have sheathing, plywood, O.S.B. plywood, right close to it that does have sheathing; right?

A. Well, it's not just that. It's that they're not a rated assembly. There's a life safety issue that needs to be dealt with. They're not code compliant as constructed with O.S.B. in the mix. They should be totally covered with what's called Type X, which is a fire-rated gypsum sheathing. Totally covered. And then that should be covered with a weather-resistant barrier. So the moisture is one part, but the other part is the actual life safety issue of the firewalls themselves.

Q. Well, let me ask you this, Mr. Hodgin. Obviously, these buildings were exposed without siding on them in 2001 or -- I'm sorry -- 2002 or 2003 when Bostic's sub-contractors were building them. Fair to say?

A. To some degree, yeah, that would happen.

Q. And the Oconee County official, one of the number one things that he's charged with when he comes out and does his inspections is to review or consider life safety

issues; right?
A. That's one of the things that they look at, yes.
Q. All right. And they're not going to pass a building through an inspection for a fire rating that they don't think has an adequate fire-rated wall. Fair?
A. If they saw it, they would not pass it if there was a known defect. I don't know that they had any specific inspections. What they did actually in this case was they wrote a letter to the architect and put the entire burden on the architect, Miller Player, to say, "Miller Player, you are required to certify each and every one of these tenant separation walls." And so there's actually letters or certifications in the file from Miller Player to Oconee County that Oconee County relied on to say that they're correct. And we saw a photograph of one that actually had a breach. There was a hole in-between the units. So Miller Player didn't get it quite right. Oconee County relied on Miller Player to say that it was correct.
Q. Okay. And you've already heard the testimony that Bostic Construction didn't have a contract with Miller Player and Associates?
A. That's correct.
Q. All right. So if Miller Player and Associates is telling Bostic, "That is a fire-rated wall, and we will

certify that to the Oconee County building official," can Bostic not rely on the architect who's been charged with that responsibility by the Oconee building official to confirm that that wall was put in in accordance with the applicable building code?

A. As long as the observations are made by an architect at the appropriate time. I agree, it should have been caught. Some of these mistakes that we're seeing in the photographs should never have been passed.

Q. Right. But Bostic wouldn't know if it was fire-rated or not. It would be relying either on the building authority or the -- I mean, Bostic isn't ultimately the one that says this is how we get to pass the code; right?

A. Well, I don't know that I would say Bostic had a duty to act as a design professional. They're relying on the documents prepared by Miller Player which clearly call for a rated wall assembly, two hours on the common wall and one hour on the exterior extension of each and every wall. Totally covered with gypsum. It's clear on the plans. So how you could construct something that's different than that and then suggest that someone else is supposed to pick it up, I think that's unreasonable. Bostic should have just complied with the plans that were provided by the design professional and they would have met the code.

Q. What if this jury hears testimony later in the week that Bostic put up weather-resistant barrier on those walls and the building official came out and said, "Tear that down. It's flammable. It doesn't belong on a fire-rated wall"?

A. You'd have to find an alternate that would -- you're still mixing two issues. One is moisture protection, and one is the fire-rated wall assembly. So if they took down the weather-resistant barrier because the building code official told them to take it down, you've got to have some kind of alternate that would provide the moisture protection.

Q. What if the building county official is going to come up here and testify in a couple of days that he said, "Take that off. I don't want anything flammable on that wall. It doesn't -- you don't put sheathing up, don't put any type of weather-resistant barrier up"?

A. I would be surprised by the testimony, and it would be inconsistent with what was left in place, which would be weather-resistant barrier over combustible O.S.B. sheathing.

Q. But you would agree and it's your testimony already that has to be there over the O.S.B.?

A. The weather-resistant barrier?

Q. Yes.

A. Well, that's interesting. Technically, that's the only thing that you may not have had to put on, but it's certainly required by a lot of industry standards. There's actually a code provision that would allow that to not be there, which makes no sense whatsoever. But if you did that, if you omitted the weather barrier, you'd create all kinds of other problems, at least in four locations like you were talking about, roof/wall intersections, windows, trim, and at the stone intersection. You have to have a weather barrier to counter-flash the flashing. So to omit the weather barrier creates all kinds of other issues from a water management standpoint.

Q. You know, that's not a direction I was going to go with, Mr. Hodgin. But since you've testified in that direction, you've just testified that the code does not require the installation of weather-resistant barrier on O.S.B. sheathing; right? Yes or no, please.

A. Well, it's not that simple. The simple answer is --

THE COURT: Just a moment. Answer the question.

And then he has opportunity to explain his answer.

So answer the question first, and then you can explain your answer.

Q. Would you like me to repeat the question?

A. No.

THE COURT: Please.

A. Technically ---

THE COURT: I would -- very good. If you would, repeat your question.

Q. It is your testimony to this jury that the code does not require the installation of weather-resistant barrier over O.S.B. sheathing on this project. Is that your testimony, yes or no?

A. Yes. There's a provision in the code that would have allowed it to be omitted.

THE COURT: All right. Now, you may explain your answer.

A. The reason that that doesn't make any sense is that if you omit it, you actually cause a significant problem in other places to meet the code which would be at the four locations I just described. And there are all kinds of industry standards that would be contrary to the code. Even the folks that said that that was okay, which was the A.P.A., the industry group that oversees O.S.B., in 2000, December of 2000, came out with a technical bulletin that says basically we don't ---

Q. I'm sorry. You can't testify as to things that you do not have -- you cannot testify as to hearsay information.

THE COURT: Well, just a moment. Just a moment, now. Is this something that you rely on in your profession?

THE WITNESS: Yeah.

Q. It's a document I haven't seen, but if you're welcome to testify ---

A. I do have it here if you want.

Q. Sure. Please, just testify.

A. There's a code evaluation report in 1999 which said that the O.S.B. met what's called a moisture resistance criteria, that the code described where you could omit the weather barrier. A little bit more than a year later, A.P.A. came out and said basically, "Put a weather barrier over all of our products." This was a couple of years before the Stoneledge project occurred. So technically, the code allowed it to be omitted, but it would be inconsistent with other parts of the code as well as several industry standards.

Q. And I think -- so to summarize your testimony, the code doesn't require it if the code doesn't make sense?

A. That particular aspect of the code. And, in fact, several years ago I even taught a class called Top Ten Building Code Problems. That was one of the problems included in my class was how that particular piece was inconsistent with other parts of the code and things that

we know make sense.
Q. But Bostic's required to follow the building code above all?
A. Right, which is "Walls shall provide weather resistance." And they actually did. It's just a mixed bag. They installed it in some places and didn't install it in other places.
Q. Well, we may talk about it a little bit more, but I promised organization. And I'm on a tangent, so ---
A. Okay.
Q. --- let's back up here. All right?
A. All right.
Q. We've covered the walls now. We have a disagreement about the walls. Rick Moore says that you can do one thing with the walls, and it's going to cost a certain price. And you say we can do something else with the walls, and it's going to cost a lot more. Fair to say?
A. Correct.
Q. Let's move down to stone removal.
A. Okay.
Q. That seems to be the next big disagreement or big discrepancy between your scope of repairs and Mr. Moore's scope of repairs.
A. Correct.
Q. You understand that Mr. Moore's scope of repairs is

a surgical scope to remove stone where necessary to address -- to survey and address potential issues with water intrusion. Is that a fair definition of his scope with regard to stone removal?

A. I believe so. I think we agree on the balconies, that the balconies have to be stripped. And I think -- elsewhere, I think you're correct.

Q. Now, you want to take off all the stone though. If there's a piece of stone on these buildings on the exterior, your scope of repair contemplates removing it?

A. I believe so, yes.

Q. All right. You are attempting to address an issue that occurs at the water table of where the stone veneer meets the O.S.B. sheathing; correct?

A. And all damages caused below that point, yes.

Q. I may need to -- you're going to get to see some art.

A. Okay.

Q. It may not be very artistic, but you're going to get to see it. All right. I'm going to try to turn this so that the jury and the Court can see it.

THE COURT: That's all right. Just be sure the jury can see it and, of course, the witness.

Q. All right. Just so I'm clear -- and I'm not an architect, and I'm not terribly good at drawing these

things, but ---

THE COURT: Just a moment. Ma'am, can you see the chart there?

THE JUROR: (Nodded head up and down in the affirmative)

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

Q. My understanding is that you have -- let's say that this is a side wall of Stoneledge. We'll put a window in there. You have the cedar siding that we've seen all the pictures of that goes down this wall. Fair?

A. Yes.

Q. All right. That's lap cedar siding?

A. Yes, sir.

Q. Then at some point, that siding meets the stone?

A. Yes, sir.

Q. All right. And this is that veneer Owens Corning stone that sticks on kind of like a brick?

A. Yes, sir. Not really, but I'll agree with your illustration.

Q. It's mortared on?

A. Yes.

Q. Okay. Now, in-between here, you have this flat piece of stone that serves as a break; correct?

A. Yes.

Q. So just like if a wall were coming down on this

pillar right here, you would have a horizontal surface that serves as a little, what we call, water table?

A. Yes, sir.

Q. All right. And the goal is that all of that water that's getting in under the ninety/one rule is going to roll down, it's going to hit that water table and it's going to splash out; right?

A. It shouldn't splash out. It should be directed out in a uniform manner over properly installed flashing.

Q. It's going to go in a uniform flashing going over the wall?

A. Yes, sir.

Q. And when it doesn't at certain locations -- I remember the unit number, but I don't remember which exact picture it was. Unit thirty-three sort of depicts that water table?

MR. BELCHER: Your Honor, may I approach the witness for clarification on that?

THE COURT: Please.

A. Yes, sir.

THE COURT: Now, does that photograph have an identification?

MR. BELCHER: It does not have a page number other than a watermark as unit thirty-two, photograph taken on 3/15/2010.

THE COURT: Is it thirty-two or thirty three?
MR. BELCHER: Thirty-two, Your Honor.
THE COURT: Thirty-two. Very good. Thank you.
MR. BELCHER: Just give me a moment with counsel.
THE COURT: Certainly.
(WHEREUPON, Mr. Belcher conferred off the record with co-counsel.)
MR. BELCHER: Your Honor, could I publish this photograph to the jury?
THE COURT: Any objection?
MR. LYLES: No, sir.
(Off record discussion)
Q. Well, we're taking a long time to do this, but I just want to explain to the jury what a water table is here. And I know this is a little bit fuzzy. The jury's going to be able to see all of your pictures back there. But this is that stone water table. This is the wall with weather-resistant barrier; right?
A. Yes, sir.
Q. So when you go back to this, which actually may be a little bit better in that picture, this black, that's my water table. That's the concrete water table that you're seeing?
A. Yes, sir.

Q. And that's where water's supposed to flow over it in an organized fashion when it comes down from the walls that's supposed to be flashed.
A. If you had flashing there, yeah.
Q. And if that happens and happens right, then you should not be getting any further rundown of this water down the wall; right?
A. Correct.
Q. You're going to exit all that water out?
A. Correct.
Q. Now, you understand that the Rick Moore scope, along with your scope, addresses this intersection here to make sure that we get water flowing out of this water table?
A. Yes, sir.
Q. All right. So now we get down to the stone, which I think was where I actually started my question with you.
A. Okay.
Q. So what do you understand to be behind this stone?
A. Ten years of water intrusion.
Q. What do you expect to find behind this stone?
A. Damaged O.S.B. and damaged framing.
Q. Damaged O.S.B. and O.S. framing. Where does the framing and the O.S.B. that you're talking about in sort of a cavalier manner, where does that stop down here below the stone?

A. It would be at the foundation wall. Where the concrete walls meet the wood framing. And I would say, you know, if there's any stone to be salvaged, there's two places that we had considered would be at the foundation wall, the very bottom of that wall after the wood framing stops. But I'd say that's about the only place. We had considered that, but it's such a little amount that it really doesn't add up to a whole lot.

Q. Were you present for any of the destructive tests done either by your company or anyone else with regard to the phase one foundations here and what these foundations look like behind this stone?

A. I believe I was either present or I've seen the photographs.

Q. All right. Have you seen the photographs of the Superior wall systems?

A. Yes.

Q. All right. The Superior wall systems -- and if I make this the gray, which I'm not suggesting that that's the gray. But the Superior wall systems are a concrete panel; correct?

A. Yes.

Q. It comes in on a truck; right?

A. I believe so.

Q. It's already a big four-by-eight or sixteen-by-eight

square of a concrete wall; right?
A. Yes.
Q. Is it not your understanding that that concrete wall system looks like that behind all of this stone to a certain degree, that you're going to have stone direct applied or applied with scratch coat and lath to all of this Superior wall system?
A. Conceptually, it's like that, but it's not really like that because Superior walls are more expensive than the wood frame walls, so you have step-down foundations. So it's not like that much Superior wall is sticking above grade. You would stop the Superior after you got above grade, and then you would start the wood frame wall above that.
Q. Okay. So you would put the grade somewhere around here?
A. What I'm saying is the Superior wall system would have to come up above grade. But you don't pay for a more expensive wall system to extend significantly above grade. So if the grade is sloped, the Superior wall system is stepped as you go from the back of the building toward the front of the building.
Q. And you believe that -- so just so I understand it -- and the jury may or may not. The sill plate construction that you have for the wood framing, you

believe to be stepped down like this on top of the step-down Superior wall system?

A. Yes.

Q. All right. And if you're mistaken about that or if we see some photographs here in a little while that suggests that that Superior wall system goes direct across the top, is that going to change or impact your testimony as to how much stone needs to be removed?

A. No, I don't think, not substantially. If you had destructive testing, you'd have to do it across the entire wall. How would you know from a single destructive test that it runs continuous across the wall unless you did the entire wall? If you have a small section, you're still going to have the top of one piece of Superior wall. The plans clearly call for a stepped foundation. And I think there was even -- in my very first deposition December -- I can't remember if it was 2009 or 2010. But the very first deposition, somebody had some photographs, I think, of the unfinished units when the foundation was in. And you could see the stepped foundations.

Q. As you sit here today, do you know whether those photographs depicted one of the units built by Bostic?

A. I don't. I'd have to look at it again.

Q. Yeah. All right. Well, you understand that there

are two different kinds of foundation systems out there, some built by Bostic and some not; right?

A. That's correct.

Q. All right. I just want to make sure. Because it's an important distinction that I'm trying to make to the jury here.

A. Okay.

Q. You want to take off all of this stone regardless of what's behind it, whether it's concrete behind it or whether it's O.S.B. sheathing and weather barrier or whatever behind it; right?

A. The answer is yes. The most important part of the scope is to get off all of the stone over wood framing. If you want to try to salvage what's over the foundation walls, that's fine. We could certainly live with that. But that's not going to save a whole lot of stone, I don't think, at that point.

Q. Well, if this foundation wall is this big and all of this down here is salvageable and all of this up here, which would be wood, up to the water table would be in the area where you would expect the rot and deterioration; right?

A. No. Water migrates vertically down the wall due to gravity. So later after this photograph, do you remember seeing a photograph where we took off the stone down to

the base of the wall? And there's actually wet insulation and wet and damaged framing behind the O.S.B. sheathing where it had settled at the base of the wall. So the gravity -- even though the entry point's up at the top of the water table, I would think you would have to concede that all the water that's been going in there for ten years is going to cause damage from that point all the way down to the foundation wall. And I don't know that that's addressed in the Rick Moore scope. You have to take all the stone off to fix the damage of the wood framing.

Q. Okay. And I think what we need to do here is we need to clarify for the jury what foundation wall we're talking about here. And I need you to just tell me one way or the other. Do you know what the foundation wall looks like on the buildings that we're here about for this trial? Do you know whether it's necessarily a step-down like that or if it's straight across on the top?

A. Based on my understanding of all the file documents and my destructive testing, it's stepped-down. You will not know the specific location or termination point between the foundation wall and the wood framing in the absence of a comprehensive repair.

Q. Well, you just told me that if there's stone on top of this concrete, you can salvage it; right?

A. What I'm saying is what's below the wood framing, if moisture got to that location, it would just be getting the concrete wet. And I am not familiar water intrusion coming in the side wall. It's just the front walls here with the below-grade stuff. On side walls, I think we should be safe to leave some of that stone in place. We're taking it out because we didn't think it's that much.

Q. Well, if it is, if we find out throughout the rest of this trial with Mr. Moore and his photographs and the other people who are going to testify and have done investigations that this is a significant amount damage applied to concrete, that's not an issue that needs to be repaired; correct?

A. As long as you can de-clad and take it off and match what's there, I would not have a problem with leaving it in place. It would be functional.

Q. And you know Mr. Watkins is already out there performing above-grade repairs; right?

A. As well as below-grade repairs, yes.

Q. And everybody's satisfied that he matched the stone and he's done a good job. He's repaired all the water damage on those units that he's worked on with regard to the sub-grade repairs?

A. As far as I know.

Q. So, you know, Mr. Hodgin, one of the things that you have to do for this jury is that you have to testify to what's called a reasonable degree of certainty as to your opinions; correct?
A. Correct.
Q. Is it fair after our little exercise here that you cannot, as you sit here today, testify to a reasonable degree of certainty that all of the stone has to come off of those buildings?
A. I think I've testified to that. I just said if there's areas below the wood framing, you can leave it in place. I don't think there's any disagreement. What I think is not known by either myself or Mr. Moore is the exact extent of wood framing that's going to be damaged below the water table. Unless you have a comprehensive repair to look at that, it's not going to be addressed.
Q. If you don't know what Mr. Moore said, let's let Mr. Moore testify as to what he knows. Okay?
A. I know what his scope says.
Q. All right.
A. And that's not to de-clad all of the stone from the side wall.
Q. Right. Do you agree with him now that you don't have to de-clad all of the stone from the side wall?
A. No. You have to address all of the wood frame

damage.
Q. So if we're going around in circles now -- my question to you ---
THE COURT: Let's do this. State your question.
Answer the question, then you can explain your answer.
THE WITNESS: Okay.
Q. Have you not testified here today that to the extent there's stone applied to concrete Superior wall systems, it does not need to be removed?
A. Yes.
Q. Now, that changes your prior opinion of removing all the stone?
A. It's just ---
Q. Yes or no?
A. It doesn't change my opinion. My scope is based on taking it all off because I don't think there's that much to salvage, and it's just easier to take it off.
Q. Easier?
A. Yeah. From a contractor's standpoint to leave some in place and have to integrate -- at the base of the wood frame wall section, you would need to have a weep screed and flashing detail to preclude water from going down the wall. So you'd have to have a stepped flashing system.

You're going to have stone that you leave in place integrated with new stone. From a contractor's standpoint and my experience, if there's not a whole lot left to salvage, it would be easier for them to take it off.

Q. I'm trying my best not to confuse the jury. I'm trying to give them a linear path to follow here. And what you're testifying about is not the question I asked. Let me ask the question one more time.

A. Okay.

Q. Has your opinion not now changed as you sit here on the stand that in your -- let me correct that. Your prior opinion was that all of the rock on these buildings, regardless of the substrate behind it, has to be removed. That's your scope, yes or no?

A. That's my scope. My opinion has always been, today and in depositions, that any stone over concrete walls are not likely to be a problem and could be salvaged. If you want to try to salvage it, go ahead and salvage it.

Q. All right. And you understand that the jury is about to see a bunch of different estimates in this case about how much it's going to cost to fix these buildings; right?

A. I think they'll see two at least.

Q. Yeah. And you understand that some of those

estimates, including the one implementing your scope, is hundreds of thousands of dollars more expensive because all the stone has to come off of these buildings?

A. I don't think that's the main reason. That's one reason why the cost would be higher. But I don't know how significant it is.

Q. Well, you just testified to this jury that it would be easier for a contractor to just do it this way. But also it would be a heck of a lot more expensive for them to just tear off a whole bunch of stone that doesn't need to be torn off. Is that fair to say?

A. I don't know. I'm not a contractor. You'd have to ask the contractor.

Q. All right, sir. We'll move on. Let's move on to the porches. Take a deep breath.

A. I'm fine.

Q. Because we're going to porches where I think we by and large agree on in a lot of places.

A. We what?

Q. I think we by and large agree on the porches in a lot of places.

A. Okay.

Q. We understand that there's going to be -- we all understand that there's some places where rot exists on these porches; right?

A. Yes.
Q. And were you here for my opening argument or opening statements?
A. No.
Q. All right. Would you agree with me that one of the places where we located a significant amount or at least a consistent damage to these porches and decks is the outboard side where these pillars are?
A. Yes.
Q. All right. Do you understand that Rick Moore's scope and the estimate that we are going to provide contemplates removing those columns, the stone, wood, and everything, and putting them back in and doing them right?
A. It should.
Q. And your scope includes that too?
A. Yes.
Q. Our disagreement, similar with the walls, is the extent of what else needs to be done out there. Fair?
A. I believe so, yes.
Q. All right. And I kind of held you back earlier, so I'm going to let you go now. You were talking about wanting to take out all of the flooring, the subflooring, busting up the concrete, taking out all of the floor joists or truss, whatever they are, in there ---

A. Correct.
Q. --- and starting from scratch?
A. And the only thing that you described that's different than Mr. Moore's scope is the framing. He's busting up the concrete. He's taking off the subfloor. He's repairing damages to the framing. I'm just replacing the framing.
Q. You understand that there -- like with the walls, there's a substantial discrepancy in price between what your scope requires and what Mr. Moore's scope requires?
A. I would imagine mine would be more expensive since it includes the framing, yes.
Q. Right. And we're just trying to find out what's fair and what's a fair amount of work that needs to be done on these porches. Okay?
A. Yeah.
Q. And I think you testified earlier -- and please correct me if I'm wrong. But based on the hundred and thirteen photographs that you want this jury to see when they're deliberating, you believe that the framing and all of the O.S.B. roof deck has to come off; correct?
A. It's not a roof deck; it's the subfloor on the balconies. But that's the scope, yes.
Q. All right. Now, over the course of time, Mr. Moore's done his destructive test cuts; right?

A. Yes.
Q. And several others have been on site for those test cuts; correct?
A. Yes.
Q. And you understand that Mr. Moore was retained by me for Joe and Jeff Bostic; right?
A. Yes.
Q. So he was only looking at buildings that Bostic built?
A. Well, I would imagine that's the case.
Q. And you, about ten days ago or so, sent my office a CD, which I think you had either offered before or we had requested. But you sent us a CD or a stack of CDs that contain all of the photographs that have been provided to you from Mr. Moore and other people who were retained by other parties; right?
A. Correct.
Q. And have you reviewed all of those photographs?
A. No. Not recently, no.
Q. Would it be important for you to review all of those photographs to determine whether or not your scope is adequate, consistent or in excess of what needs to be done?
A. I've reviewed them in the past. I'm satisfied with my scope.

Q. All right.

MR. BELCHER: Your Honor, may I approach the witness?

THE COURT: Yes, sir.

MR. BELCHER: I'd like to mark a series -- I think I'm going to mark them one at a time for now, if that's all right, Your Honor?

THE COURT: How many?

MR. BELCHER: Well, there's a total of a hundred and two pages of photographs. They're from his file. But I don't want to ---

THE COURT: I'm just thinking if you're going to have them marked, we need to go off the record.

MR. BELCHER: Well, let's just mark the whole thing for identification purposes, and then I'll decide how much we have to do.

THE COURT: Very good.

(WHEREUPON, Defendant Bostic's Exhibit Number DB-3 was marked for identification only.)

Q. Mr. Hodgin, we've just marked a stack of photographs that I think were produced to you from Mr. Moore, our expert. And I want to talk to you a little bit about them. And just for your information and background, I just pulled a bunch of photographs. There's some damage in them. There's some -- you know, there's some pretty

nasty things in here. And we'll probably put this whole thing back there for the jury just for good conscience. But take a look here, if you will ...

MR. BELCHER: Your Honor, do you mind if I mark, A, B, C, for identification as to which ones he's looking at so we don't have to ---

THE COURT: No. Very well.

MR. BELCHER: All right. Thank you, Your Honor.

THE COURT: Well, let's -- the only thing is -- just a moment.

Madam Court Reporter, would that be consistent with your identification?

COURT REPORTER: It would be ...

THE COURT: All right. The exhibit is?

COURT REPORTER: Exhibit is DB-3.

THE COURT: How many do you want to do? In other words, can you pre-mark them? All right. Very well. We'll go ahead. But just remember, each time you mark one, we'll have to go off the record so we don't interfere with any testimony.

MR. BELCHER: Maybe what I'll do -- if it's okay with the Court, if I tab the ones that I showed him.

THE COURT: That's what I ---

MR. BELCHER: And then later we can mark them

THE COURT: There we are.

MR. BELCHER: --- if they go into evidence.

THE COURT: Very well. Very good. Let's just go off he record, and you can see if you can do that now.

MR. BELCHER: All right. Thank you.

(WHEREUPON, court stood at ease.)

THE COURT: All right. Are you ready to proceed?

MR. BELCHER: Yes, Your Honor.

THE COURT: Very well.

MR. BELCHER: All right. If I may approach the witness.

THE COURT: Certainly. Excuse me. I was thinking of something else.

MR. BELCHER: And you may want to turn the lights back off.

THE COURT: All right. Very good.

MR. BELCHER: Madam Court Reporter, if the record would reflect that I'm showing Mr. Hodgin a photograph, which seems to be identified as TC7-31312RNH and a photograph below. There are two photographs on one piece of paper.

Q. Take a look at that photograph, Mr. Hodgin. Based on your recollection of the conditions on the ground and

Mr. Moore's test cuts, does the photograph at the top of that page appear to be a photograph of the cedar ceiling that is underneath these patios that you want to take off?

A. Yes, sir.

Q. All right. And the photograph below, does that appear to reflect the space between the floor of the deck above that you want to take off and the ceiling that you want to take off?

A. It may, yes.

Q. All right. If the Court would permit, can you identify for me in this photograph and for the jury where there is damage? And I know that's a very unusual focus. Do you observe any damage in either of these photographs that requires repair?

A. No, I don't see any damage in those photographs. If you recall, the scope that we have is to only replace the framing on that open exposed side of the balconies where I don't think we've seen any balconies that did not have damage in those areas. We are salvaging the portion of the framing that's in -- there's like half of it that's open and half of it has a screen-enclosed porch with a roof over it. That side of the framing seemed to be in good shape. And we're going to salvage that. I would think that would likely be below the screen-enclosed

porch.
Q. All right. To the extent that a photograph such as this is not below a screened-in porch but is, in fact, the conditions on the ground for what is underneath an open deck, would you still call for the removal, complete removal, tear down and building back up of all of those trusses and all that floor and that ceiling and all of that right there?
A. I certainly wouldn't think so. I think what you'd find is that anything that's clean and undamaged would be under the screen-enclosed side.
Q. All right. Well, let's look at something else. Since that's something that -- Mr. Moore is going to have to testify as to what he saw ---
A. Certainly.
Q. --- because you didn't see this photograph; right?
A. Well, I may have seen it before.
Q. And you would say that damage -- if these look like that -- if these uncovered porches look like this, then your scope would change; you just don't believe that that picture is accurate in reflecting those porches?
A. Well, even if it is, there's so much at the front and rear walls, I just can't imagine that -- if there's undamaged areas, they're going to be pretty limited. I really think it's probably under the screen-enclosed

porch side.

Q. Here is another photograph which is marked test cut seven, 3/15/2012, R.H.M. That -- tell me if I'm wrong -- depicts similar conditions?

A. It does. And what's good about this picture you can actually see this is the point at which you transition from the screen-enclosed porch which would be the top of the photograph to the open side of the porch, which is where the damage starts by this pillar.

Q. Now, let's take a look at this picture up here. And please explain to the jury -- I will point ---

A. I've got the pointer.

Q. Oh, you do?

A. Yeah.

Q. All right. So please testify to the jury where you believe the screened porch starts and the open deck continues. Where the screened porch stops and the open deck continues.

A. Can you turn the light off? I think it might be easier.

I believe that the top of the photograph is the area of framing that the screen-enclosed porch, and where you see this water intrusion damage at this location and at the bottom of this framing is where the open porch starts and goes to the right or to the bottom of the photograph.

Q. Okay. And the jury probably heard it in my opening. But this is one of those pillars; right?
A. Right. That's a structural column that's holding up the framing for the balcony; correct.
Q. So when we go look out on the other side, we're going to see the screened-in porch over here, and we're going to see an open deck rail over here; right?
A. Right. I think so.
Q. All right. And the amount of damage depicted by this photograph is about that much?
A. (Laughter)
Q. According to what this photograph is showing?
A. Well, you could say it that way. I mean, to me ---
Q. Well, say it the way you want to say it. I mean, how much damage is there?
A. It's localized. But what's important, particularly on a truss framing system, is where the damage exits. If it's at a top corner. If it's at a connection point. So this damage. And from this point to the right would be where we would do the reframing.
Q. But your testimony and your scope of repair is that because you see that damage in that much space, you want to take that whole back off, tear it down and put it all back on because of that amount of damage?
A. No. This is a transition point. This would stay in

place. Everything to the right of this where this damage starts would be replaced.

Q. Right.

A. This would likely stay.

Q. So where you see this staining here, that would stay?

A. Yeah. That's part of this screen-enclosed porch. I mean, we'll look at it when we do the repair. But that's part of the screen-enclosed porch. That's where the damage starts between where the open porch begins.

Q. So you're not going to repair where this damage is?

A. We'd look at it during our repair process. But if it's just stained and it's under the screen enclosed porch, it's going to stay.

Q. Well, then, why are you fixing over here where there is no damage?

A. I'm fixing places you can't see which are to the right of this on the open balcony. I mean, what would be interesting to see is undamaged photographs in the open balcony. That would change my opinion if you could show me photographs in those areas.

Q. Well, I just grabbed a bunch of photographs for you to look at because I wanted you to have the benefit of looking at other photographs. Mr. Moore, I think, is probably going to have to be the one to testify as to

where these are.
A. Very good.
Q. Now, I will show you these, though. All right? Because in all candor, I'm not trying to trick you. I'm going to show you two pictures here that are part of Rick Moore's testimony, part of his photographic evidence. All right?
A. Okay.
Q. Take a look at those two pages of photographs, and let me know when you want me -- when I can put them up there.
A. Okay.
Q. Now, Mr. Moore is going to have to testify to these pictures to put them into evidence, but I want you to look at them because in all fairness -- I think it belongs ---
A. Yeah, I think you have the ---
Q. Well, that's the bottom. That's cedar; right?
A. No. That's the subfloor right there.
Q. Now, I don't think I need your testimony to tell me that ain't right; correct?
A. I hope not.
Q. All right. Now, and the same thing with the one above, that that is a localized issue of damage right there that needs to be replaced. Fair?

A. Yes.
Q. And that'll be consistent -- you see daylight up here in the top?
A. No. I think there's something wrong with the light on the projector. Oh, that damage? I didn't catch that when I looked at the photograph in front of me. It could be.
Q. So you think that's the front facia board that forms up the outside of those porches?
A. It could be. And this could even be on the screen-enclosed side because at the corners of the screen-enclosed side and the wall on the screen-enclosed side, we do have damages to the wall. But it's not significant damage as to the framing.
Q. You just don't know?
A. No.
Q. All right. Now, if this next picture that I had, which would be right next in line, it's just the same condition looking in the other direction. Do you see any damage or decay or rot or anything that needs to be replaced anywhere in those photographs?
A. No. You can tell that there's a stone wall out here, so you're looking toward the other end to where there's a side wall. I would say when it looks that clean, it would likely be the screen-enclosed porch area.

Q. But you don't know for sure whether it is or it isn't?
A. Based on the lack of damage, I would say to a reasonable degree of certainty it's the screen-enclosed porch.
Q. All right. But if Rick Moore testifies about these same photographs and tells you otherwise, then you're going to agree with Rick Moore?
A. Sure.
Q. So some of these photographs depicts some damage; some of these places simply don't. Right?
A. Right. And then again, the balconies, the areas of the balcony, they're pretty much a fifty/fifty split. You've got half that's covered and half that's not. Our scope is simply in the half that's not where we think there's significant damage exists. I think you'd be challenged to show pictures where there's not damage. That's the only place that we're going to replace the framing.
Q. Well, if Rick Moore shows, when he gets up here and testifies, that the damage on the uncovered porches where you want to tear them all the way off and put them all the way back on is not significant, are you going to agree with him that some limited scope of repair is appropriate for those balconies?

A. Not based on what I've seen. I mean, if Rick wanted to be the repair design professional for the homeowners and have a limited scope, I'm certainly fine with that. He can do that.

Q. At any time were you on site when Rick Moore was conducting his test cuts?

A. I believe so, but not all of them.

Q. Do you recall sticking your head up in any of the test cuts labeled R.M.H. 1716 one through eighteen?

A. No. I think my time was limited.

Q. Your time was limited. Did you have an employee there who was following Mr. Moore around and watching what he was doing and documenting what he was doing?

A. Yes.

Q. And you've produced all of your -- but you haven't produced any photographs showing one way or the other what's damaged and what's not underneath this, have you, other than your own photographs?

A. If we've got -- well, I'm certain we would have taken photographs the same day as Mr. Moore was out there, and we have produced those.

Q. Fair to say that none of the hundred and thirteen photographs that you want the jury to see as they deliberate depict anything other than a complete tear-off of those balconies? Is that fair?

A. Just on the side of the open balcony; correct.
Q. Well, nobody's suggesting that we need to replace the screened porch balconies; right?
A. No. I guess that was my point.
Q. All right.
A. Why show them photographs of something that I'm not fixing?
Q. Okay. Now, you also understand -- and your scope is to pull all of the balconies off of all thirty-seven units?
A. The open side, yeah.
Q. Do you understand that at least seven of the units do not have basements where this condition could even exist?
A. I don't recall a specific number. But if that's the way it is, then that's the way it's been priced. I don't think there's a problem with the scope including something that's not there.
Q. Well, if your scope says pull off the balconies of thirty-seven units, that's what the contractor is going to price; right?
A. No. Our scope would also say the contractor has the responsibility to field verify all the conditions described by our scope. And if they were to go out there and see that there's seven that don't require the same

scope, then that would be adjusted.
Q. Okay. Well, if that's something that we find needs to have an adjustment, you would certainly recommend that that adjustment be made?
A. Absolutely.
Q. And you do understand that there are a number of units that are slab-on-grade out there?
A. I don't remember the total number. But if there are and there's an adjustment that needs to be made, I would agree with that.
Q. So some units aren't going to have basements under their porches?
A. Correct. Or a patio. Is that what you mean?
Q. They would have slab-on-grade patio, a patio and screened-in porch. Right. I just want to make sure that we're clear that this is not an issue for all thirty-seven units out there.
A. That's correct.
Q. Whether it's an issue or not, it's subject to debate. But at least with regard to seven units, we're not ---
A. The scope would be different, yes.
Q. Just to wrap it all up. We have seen some issues where maybe not all of stone has to come off; right?
A. At the foundation walls, yeah.

Q. And are you willing to at least concede for the purposes of today that maybe there are some decks and some framing, based on some of the photographs that you've seen, that can be salvaged?
A. No.
Q. You're not willing to concede that?
A. No.
Q. Whatsoever?
A. No.
Q. Having never stuck your head up in any Rick Moore test cuts to determine the difference in scope that Rick Moore has prepared?
A. Correct.
Q. All right. So you're not relying to any degree on any other expert and their photographs and their reports, what they found out there, to formulate your scope?
A. No. I'm relying on my own personal observations, which we used the borescope and we've been out there for other experts' cuts. What I'm saying -- and I'm comfortable to a reasonable degree of certainty, engineering certainty -- is that there's enough damage in the open side of the balconies to justify our scope. I'm not willing to back off on that scope. If Mr. Moore wants to undertake the limited scope, he's more than welcome to do that.

Q. And as you said, you've respected his opinions in the past?
A. Sure.
Q. But you just simply just disagree on it?
A. It's something that I'm not comfortable on personally. If there's any damage and you're going to reframe it, you can't have a mixture of new pressure-treated joists and trusses. So it's kind of like an all or nothing situation as far as replacing it.
Q. We've talked about the forensic method?
A. Yes, sir.
Q. We've talked about the issues that you've identified?
A. Yes, sir.
Q. We've talked about the issues that we more or less agree upon?
A. Yes, sir.
Q. That are included in both scopes. And we've talked about where we disagree?
A. I believe so.
Q. All right. And perhaps we've formed some sort of an agreement on whether or not all this stone has to be taken off?
A. Correct.
Q. All right. And we have formed absolutely no

agreement -- we're not one step further in the agreement process as to what needs to be done to these balconies?
A. I think the balconies remain a big issue and the fire-rated walls. Those are about the two biggest things I can think of where Rick and I would disagree.
Q. And if you hear testimony from a building official later on, if you sit through the rest of this trial or your associate sits through the rest of this trial, might that change your opinions?
A. No. The building official couldn't tell me anything to trump my ethical responsibilities as a professional engineer to protect the public welfare and safety of the occupants. So I have a duty from an engineering standpoint to make sure that the fire-rated walls are proper.
Q. The contractor has that same duty, though, don't they, Mr. Hodgin?
A. Not to the same level that an engineer does, no.
Q. All right. Maybe we'll talk about standard of care in a minute, but I think I want to wrap up instead.
A. Okay.
Q. The contractor has a duty to build a fire-rated system; correct?
A. Yes.
Q. And if the building official tells him, "Do it this

way or you don't get your certificate of occupancy," isn't he required to do what the building official says to do?

A. Again, I think if that's the case, if the building official is telling him to deviate from a design professional's documents, I think the building official and to some degree the contractor are now accepting the duty and the role of the design professional. And they have now made a mistake in what was actually constructed. As far as liability, I wouldn't be able to answer that.

Q. Let's be linear about it.

A. Okay.

Q. All right. If a building official for Oconee County is the sole source of code interpretation, he decides what the code says and how it's to be implemented for everything built in Oconee County?

A. I believe that's correct.

Q. He tells the contractor, "Do it this way or it's not right." Plans and engineers and everything not withstanding. You're saying that the contractor was to deviate from what the building official specifically tells him to do when that building official is the sole source of code interpretation for this county?

A. Well, I get the hypothetical. It just doesn't make sense that you would leave combustible O.S.B. with a

weather barrier over part of the wall, and the code official is just going to tell you to take it off of the most moisture-sensitive material in the wall, which is the gyp, and say, "Don't put it there because it's combustible, but leave the other stuff over the combustible material," it makes no sense whatsoever. But I do say that they're not the design professional. Once they deviate from the contract documents, I think that then the contractor is going to have to turn to the design professional and say, "Hey, the code official is telling me to do this. What do I do?" Because they're not -- unless they're going to take the role of the design professional, they need some other guidance. You can't just listen to the building official.

Q. Okay. Can we agree -- back to the things we agree on, Mr. Hodgin. That's obviously something that we're just not going to agree on. Can you agree that the damage you found on certain locations is not universal throughout the entire project? Of conditions, maybe; damages, not.

A. I think the damage would likely exist in all similar locations. They would just vary in extent.

Q. Can you testify to a reasonable degree of certainty on your engineering license -- let's just use the standard, okay?

A. Yes.
Q. Can you testify to a reasonable degree of certainty that you are going to find damage in every single location of this building where you have identified something like a water table issue, something like a window issue, that needs to be addressed? Not likely; to a reasonable degree of scientific certainty.
A. My understanding, that's the same thing. It's more likely than not. So, yes, I can.
Q. All right. And if you see pictures during Rick Moore's testimony that suggests otherwise ---
A. Well, that's the forty-nine percent.
Q. The forty-nine percent?
A. Right. The more likely than not just means it's more likely that you're going to see it than not see it. So if you don't see it, that would be the lesser condition.
Q. So there's a fifty/fifty chance you're going to see it or forty-nine/fifty-one chance you're going to see it, and you're going to tell this jury that they should make Bostic Brothers tear down all the walls and all the porches and everything based on that standard of certainty?
A. No. I'm trying to explain that the certainty -- my certainty is much, much higher than that. I've seen the

way all the windows were installed. I know what the ten-year service life and water intrusion has caused in other areas. It's likely that you're going to find damage in most if not all locations. I'm saying if you saw an area without damage, that would be the anomaly.

Q. And, finally, sir, since we talked about contract administration, and setting aside all of your opinions in this case, you were asked a few minutes of testimony regarding contract administration?

A. Yes, sir.

Q. Are you serving to provide contract administration on the Traditions project?

A. What is that?

Q. The Traditions project, a fifteen-building project.

A. (No verbal response)

Q. It's not one you're working with Mr. Moore on?

A. (No verbal response)

Q. Fifteen buildings, scope of repair one point one million dollars. Sound familiar?

A. No. Could it be called something else?

Q. Okay. True Blue, seventy-seven buildings. Six point five million dollars worth of repairs?

A. We're working on that. Mr. Moore is not.

Q. Fairway is thirty buildings, two point one million dollars in repairs?

A. It started at one point one and ended at two point five million, yes.
Q. All right. For thirty buildings?
A. Right.
Q. All right. And those are those big apartment boxes at Fairways; right?
A. They're a three-story wood-frame construction, yes.
Q. So you're performing contract administration on True Blue; right?
A. Yes.
Q. Seventy-seven buildings, six and a half million dollars?
A. Correct.
Q. And Fairway's thirty buildings, two point -- what did you say it was?
A. Two point five. But that's completed. Rick and I finished that a couple of years ago.
Q. And y'all worked together on that?
A. Correct.
Q. All right. Thank you, sir. I don't have any further questions for you.
THE COURT: All right. Mr. Foreman, ladies and gentlemen of the jury, y'all have been there almost an hour and a half, well, almost two hours. I'm going to suggest that you take a break at this time. When you're

ready to come back, just knock on the door. And do not undertake a discussion of the case among yourselves.

(WHEREUPON, the jury exited the open court at approximately 10:44 a.m.)

THE COURT: All right. Anything from the plaintiffs before we take a break?

MR. LYLES: Nothing, Your Honor.

THE COURT: From the defense?

MR. BELCHER: No, Your Honor. Thank you.

THE COURT: All right. Very good.

Mr. Hodgin, you're still under oath. You may step down. Don't discuss your testimony.

THE WITNESS: Yes, sir.

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

THE COURT: All right. Anything from the plaintiff before we bring the jury back?

MR. LYLES: No, sir.

THE COURT: From defendants?

MR. BELCHER: None from Bostic, Your Honor.

THE COURT: Anyone else?

(No response)

THE COURT: Mr. Imhoff, are you going to be next?

MR. IMHOFF: It appears so.

THE COURT: What about Mr. Anderson? Do you have any ---

MR. ANDERSON: I am not going to have questions for this witness.

THE COURT: Well, that's why -- I just wanted to know.

MR. ANDERSON: Yes, sir.

THE COURT: I'm trying to find out whoever's next if they're ready. As they ever will be or ---

Mr. Imhoff?

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

THE COURT: Are you ready?

MR. IMHOFF: I am, Your Honor.

THE COURT: All right. Ask the jury to join us, please.

I didn't want to bring them out and we just sit here.

(WHEREUPON, the jury entered the open court at approximately 10:58 a.m.)

THE COURT: All right. Let the record reflect the jury and alternate are in the jury box.

We will now proceed with the cross-examination of the witness.

Mr. Imhoff?

MR. IMHOFF: Thank you, Your Honor.

THE COURT: Oh, excuse me. Mr. Anderson, I think you're next in line.

MR. ANDERSON: I have no questions for this witness at this time, Your Honor.

THE COURT: Very good. Thank you, sir.

Mr. Imhoff?

MR. IMHOFF: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. IMHOFF:

Q. Good morning, Mr. Hodgin.

A. Good morning.

Q. I'm going to try and help the jury a little bit. Let's see if we can agree on some things first, and we'll move it along a little bit faster. I think that I've got questions that you could agree with.

A. Okay.

Q. And I think they'll appreciate that, I hope at least. All right. How about this? What was the first day that you were on the site?

A. Sometime in May of 2009.

Q. Okay. All right. And when did you first do destructive testing in phase one?

A. I don't know specifically. It was shortly after we got retained by the H.O.A. when we did the borescope observations of the balconies.

Q. All right. Well, it would have been after at least May 2009?
A. Correct.
Q. Okay. So you were never on this site from 2005 to 2008?
A. That's correct.
Q. You were never on the site before 2009?
A. I don't know about 2009. When I did the borescope, it might have been 2009.
Q. Well, before 2009?
A. No. That's correct. I was not on the site before 2009.
Q. Okay. And you never observed the condition of these thirty-seven units before 2009?
A. That's correct.
Q. All right. And do you know when Marick and Rick Thoennes left the project?
A. I don't. I know there's a fellow that testified to that, but I can't remember what his testimony was.
Q. Okay. If I told you it was the spring of 2008, would you disagree with that?
A. No.
Q. All right. So you don't know what Marick and Rick Thoennes and Nathan saw between 2005 and 2008; is that right?

A. Not specifically, no.
Q. Okay. All right. Now, were you here for the testimony of Mel Morris?
A. Yes.
Q. Okay. Did you hear that Bostic Brothers Construction was either the second or tenth largest multi-family builder in the country at the time they did this project?
A. I don't recall that specifically, but I'd have no reason to dispute his testimony.
Q. Okay. And you understand that all of the units originally were permitted by Bostic?
A. Yes, sir.
Q. And you understand that all of the units for all of the at-fault construction, the stuff you're testifying about, were built by Bostic or their subcontractors?
A. To varying degrees, yes.
Q. Okay. All right. And at least -- we keep hearing different things. But ten or eleven of those units had certificates of occupancy?
A. That's right. I remember the other number which is twenty-six that were permitted by Marick.
Q. Okay. All right. So can we agree that all of the exteriors on all of these units were complete before Marick came on site?

A. I wouldn't have the direct knowledge. I have the testimony knowledge, which I think is substantially true. But there was some testimony about some problems with the stone veneer and having to do some waterproofing at the front walls, some problem with balconies and problems with windows and doors.

Q. Right. But all of those things are issues with the construction that was already there when they walked on site?

A. That's correct.

Q. Okay. I'm just trying to get us to agree that we're on the same page, that all of the exteriors of these buildings were complete when Marick got there?

A. As far as I know, yes.

Q. Okay. All right. Now, let's talk about this Oconee County building inspector. If a C.O. is issued -- well, why don't you tell the jury -- I think most of them probably know. But what is a CO?

A. A C.O. is once a building has a final inspection, then the building official will issue a certificate of occupancy basically just saying to the best of their knowledge that the completed unit would meet the building code.

Q. Okay. And so that requires the Oconee County building inspector to actually come to that unit; right?

A. I believe so.
Q. Okay. How many times would the Oconee County building inspector come to a unit?
A. You mean during the entire construction process?
Q. Well, let's start there, and then we'll go backwards.
A. I might not get all of them, but I know there's a foundation inspection. And there's a rough-in, a framing inspection. There's an electrical, plumbing and mechanical inspection. And then there's at least a final inspection.
Q. Okay. That sounded like about five inspections; right?
A. I think so.
Q. And I assume that if the building inspector on some occasions would say, "I don't like that. Change that. I'm not going to pass you this time," could come back a couple of times to look at different inspections?
A. That's correct.
Q. Okay. It depends on the building inspector, doesn't it?
A. It shouldn't, but, I mean, it could, I mean, as far as being how thorough they are. But as far as issues, they should be uniformly enforced.
Q. Okay. And at the end of that process, going out

there those five times at least, the Oconee County building inspector determines that the builder did things the way that the building inspector wanted them done. Is that fair?

A. As far as his inspections go. But unfortunately, I think there's not any kind of exterior cladding inspection. There's not what they call a building envelope inspection. So when they're out there looking for whatever they're looking for, it's specific to that inspection. So I wouldn't think that they would be looking at the whole building envelope. But I agree with you.

Q. Okay. All right. And he says, "Okay. Somebody can move in now." Right?

A. Yes.

Q. And he is the person, the ultimate authority, to make that decision; right?

A. Prior to occupancy, yes.

Q. All right. Now, I've heard you talking a little bit about fireproofing.

A. Fire-rated wall assemblies, yes.

Q. Okay. And this is -- if I burn a salmon stew in my unit and it lights my unit on fire, it's going to be delayed to burn into my neighbor's unit is the idea; right?

A. Not just delay. It'll actually be contained within your unit between the two rated wall assemblies.
Q. Right. My stew doesn't burn their house; right?
A. Right.
Q. Okay. And that's a very important part of the Oconee County building inspector's job; right?
A. It is. But like I said, in this case, it was actually delegated to the architect.
Q. Okay. All right. So that's an important part. And now you call it a life safety issue; is that right?
A. Yes, sir.
Q. Because if you're sleeping when I'm burning my stew, you could potentially, if it's not there and not done correctly, that could actually kill someone; right?
A. Yes, sir.
Q. Okay. Have you written a letter to any of the owners at Stoneledge telling them to move out because there's a life safety issue?
A. No. I think that would be unreasonable. I discussed it at length with the building department, and they did have me write an emergency repair letter for the one area that we identified at the breach. But the common walls of an interior, you know at least have one layer of drywall complete because they've got pictures hanging up and they're painted. Those are fine. The

part that we're concerned about is the exterior part that lacks the one-hour rating.

Q. And you have an ethical obligation, as you testified earlier ---

A. Yes.

Q. --- to tell homeowners when there is a life safety issue; correct?

A. Yes.

Q. And despite your testimony that this firewall is not correct and needs to be replaced, you've never told these homeowners that they have a life safety issue, have you?

A. It's in my report, yeah. So they've been notified. I don't know that it's reasonable to do the comprehensive repair in the absence of any funding to do so. So they're going to have to wait until the case is resolved before they can make that repair.

Q. If you thought these folks were in danger, you have an obligation to tell them to move out?

A. I've told them about the danger. I've not said the buildings are condemned.

Q. All right. So does the Oconee County building inspector -- we know that he looks at the firewalls; right?

A. Yes, sir.

Q. Or if he's not looking at them, he's delegating

somebody else to look at them?
A. Correct.
Q. Okay. Does he look at foundation waterproofing?
A. I don't know if that's a specific inspection or not.
Q. Okay. Now, it was reasonable when Marick walked onto this site -- knowing that the Oconee County building inspector had issued certificates of occupancy to those ten or eleven units, was it reasonable for Marick to rely on the Oconee County building inspector to have done his inspections?
A. I think to some degree. But if you're suggesting that the issuance of a certificate of occupancy is the indicator of a defect-free building, then that's -- C.O.s are issued in every one of the cases I've worked on for like hundreds of cases over the years. So I think there's some reliance on it, but certainly it wouldn't be something you could rely on and say there's no defects or there's no code violations.
Q. Well, was it reasonable when Marick walked onto this project in 2005 to believe that Bostic Construction's work was done correctly?
A. If not for the observed defects and damages, yes.
Q. Okay. And this is one of the things that I wanted to agree on early, Mr. Hodgin, because I expected that. You have no idea what Marick saw between 2005 to 2008;

correct?
A. No. My answer is totally on somebody else's testimony about the waterproofing and the windows and doors and balconies.
Q. All right. So not knowing what Marick saw about Bostic's construction other than it was completed and it had been inspected by the Oconee County building official, it was reasonable for Marick to rely on Bostic having performed their construction correctly; right?
A. Yes, with the same clarification I made a minute ago.
Q. All right. We're going down that same road. It was also reasonable for them to rely that the foundation subcontractor had done his work correctly; right?
A. I believe so.
Q. Okay. And that the waterproofing subcontractor had done his work correctly; right?
A. Correct. If not for those -- I mean, I don't want to keep saying if we agree. But not for what they knew or found when they got to the site and they thought they had fixed, yes.
Q. Right. That you don't know about?
A. Not directly.
Q. And it was reasonable for them to rely on the framing subcontractor to have done his work right;

correct?
A. Yes, sir.
Q. All right. And that the Oconee County building inspector inspected the framing of the framing subcontractor; correct?
A. Yes, sir.
Q. All right. And it was also reasonable for them to rely on the fireproofing that was supervised by the general contractor, installed by a subcontractor, inspected by the Oconee County building inspector or at least passed, and inspected by an architect; correct?
A. Yes.
Q. That's a lot of folks that they can rely on, isn't it?
A. Yeah. And I can't remember if I testified at the trial or if it was in a deposition, but the only places I would say you have issues where there are open and obvious issues -- like Marick, I believe, should have seen the same thing I saw in the one unit, the breach. That was open and obvious. So to the extent that any of those other units were not finished and there were things like that, those should have been taken care of. But you wouldn't have to deconstruct the building to go looking for issues. You would rely on the folks that you just described, that whatever came before you was done

correctly.
Q. Right. We're going to talk about those units, okay, in a minute.
A. Okay.
Q. But let me state, just to make sure the jury heard, because they're relying on all these folks and all these inspections to do it right, they don't have to go deconstruct the building; correct?
A. I think that's reasonable to a certain extent, yes.
Q. All right. Now, so let's see if we can agree on something.
A. Okay.
Q. So when Marick comes to the project, it can assume it was done right when it's walking onto the project; right?
A. Barring no other information, yes.
Q. And the only way to know that the work wasn't done right, as you just said, and as you said in your deposition, if it was readily observable?
A. Yes.
Q. Okay. You just see it?
A. Right.
Q. Okay. As a matter of fact, I think you testified -- actually it was last Thursday, I guess, when you were up here. You call it a latent defect. Tell these folks

what a latent defect is, Mr. Hodgin.
A. A latent defect would be something that's hidden from view and would not be readily observable.
Q. That's something that is hidden behind stone; right?
A. Yes, sir.
Q. Behind siding?
A. Yes, sir.
Q. Under roof shingles?
A. Yes, sir.
Q. Underground?
A. Yes, sir.
Q. And those are the defects that you found on this site?
A. Yes.
Q. Latent defects?
A. Yes.
Q. All right. And to find those latent defects, you had to do a lot of destructive testing; right?
A. Yes.
Q. And destructive testing -- again, we know all of these terms. But for the jury, destructive testing is pulling off shingles, pulling off stone, pulling off siding, digging into the ground; right?
A. Yes, sir.
Q. Okay. It's destructing the building; right?

A. Yes.
Q. And that took you -- I think we saw photographs -- if you got there in 2009 until 2013 to do that destructive testing and find those latent defects; correct?
A. Well, the full extent. I mean, the reason it goes to 2013 is because the homeowners have made some emergency repairs, and other damages have been discovered in the last few years.
Q. Of all that destructive testing, all those places where you took up shingles; right?
A. Yes.
Q. Took up underlayment. That's the felt, right, that goes underneath the shingles?
A. Yes.
Q. Took off siding, stone, dug up, all of that was destructive testing to find latent defects, hidden defects; right?
A. Well, they were hidden to some degree. At first, I'm doing destructive testing, yes. I'm somewhat randomly looking around the buildings at places I know that one percent that we talked about where the water intrusion would occur. Later, as emergency repairs are going on, there's a symptom that caused the emergency repair to be prompted. So it's not guesswork. I mean,

instead of being random, I know that there's a problem because an owner has complained about water intrusion. And then the repair is going to fix that problem.

Q. I'm glad you said that because that's where I was going next.

A. Yeah.

Q. A lot of, if not most of, your destructive testing was done because a homeowner called and said, "I have water in my basement. I have a water leak on my roof." Right?

A. Not the initial destructive testing. But as we go through the process over the last three or four years ---

Q. Right.

A. --- a lot -- in terms of volume, for sure.

Q. Right.

A. An area of wall is uncovered that would be -- the most substantial portion would be a series of emergency repairs; that's correct.

Q. That's right. And so that becomes not a latent defect, but a readily observable defect when the homeowner calls; right?

A. The symptom is readily observable. The defect is still a latent defect.

Q. And you testified -- I think it was Thursday. But you testified that that water intrusion could potentially

take years to develop; right?
A. It could.
Q. That it has to migrate through the siding or whatever, through the stone, whatever, and then through the sheathing and framing and insulation and then show up; right?
A. Yeah. In the finished unit in particular, there's more materials to pass through.
Q. So that took years to show up; right?
A. It did, yeah.
Q. To make it readily observable, years; right?
A. Yes.
Q. Okay. And now, of course, when you go out there and you do your destructive testing, you already know something's wrong; right, Mr. Hodgin?
A. In some cases, yeah.
Q. Well, if they brought you out and said, "I've got a leak on my ceiling," you already know something's wrong; right?
A. If that's expressed to us, yeah. But whenever we do a lot of the roof testing, there's no leak that was observed on the inside.
Q. Well, those times that you went out there and you did your destructive testing ---
A. Yes.

Q. --- because the homeowner called and had a leak, you took photographs of that; right?
A. During the emergency repairs; yes.
Q. All right. And so all of these photographs of damage that you've put up and put in your PowerPoint and you've showed this jury, there was already going to be a defect in damage there because there was water intrusion; right, Mr. Hodgin?
A. No. No. There's a mixture of photographs. In fact, the very top photograph that you're looking at was a random destructive test where there's no water intrusion reported by a homeowner, yet there's an extensive damage on the exterior wall.
Q. But the vast majority of your investigation the last three to four years -- I think this was your testimony just a minute ago.
A. Yeah.
Q. -- was due to a homeowner complaint of damage; right?
A. The emergency repairs, I would say, have outweighed ultimately over the last four years in terms of total observations the destructive tests that we initially did; that's correct.
Q. And common sense says if the vast majority of your calls in your destructive testing's because there's

already damage, the vast majority of your photographs are going to show damage for these jurors; right?
A. Yeah.
Q. Okay. But not every roof is leaking, is it, Mr. Hodgin?
A. No. Like I said a minute ago, it takes years for these same defects to show themselves within the interior of the home.
Q. And not every window, not every door is leaking; right?
A. We haven't looked at every window and every door. We did have that one open unit -- every window and door was leaking in that particular unit, so I expect that most windows and doors are leaking, yes.
Q. Okay. Well, you expect that, Mr. Hodgin. But if every window and every door was leaking of these thirty-seven homeowners, you wouldn't have time to come here, would you?
A. Sure. I think most of them are leaking today; they're just not all showing themselves on the interior of the unit. Because like I said, it takes a while for the path to develop.
Q. You think most of them are leaking. Do you know, Mr. Hodgin, as an engineer who has to testify to a reasonable degree of engineering certainty whether every

window at the Stoneledge project is leaking?
A. I wouldn't know that every one is leaking. I would say that most are to a reasonable degree of certainty.
Q. And not every unit has basement leaks; correct, Mr. Hodgin?
A. If they don't have a basement, they don't have a basement leak.
Q. Well, that's an issue that Mr. Belcher brought up.
A. Right.
Q. We need to knock that out of that scope of repair; right?
A. I don't know. If it's not adjusted to accommodate that, yes, we would.
Q. All right. But of the twenty-nine units that have basements, not every one is leaking, is it?
A. Not every one has physical water damage observed on the interior of the finished space; that's correct.
Q. All right. And now, you found these defects that you've testified about, showing all these photographs to the jury, after you began -- tore off shingles and stone and did your destructive testing; right?
A. Correct.
Q. And when Marick got there in 2005 and left in the spring of 2008, they would not have had the benefit of your destructive testing; right?

A. That's correct. They would have the benefit of the unfinished unit and then what they observed on the site.
Q. Let's talk about what your testimony is, saying that Mr. Thoennes should have known. Okay? Because I think that's what you've said.
THE COURT: Now, when you start taking it apart, be sure you put it back where it's supposed to be.
MR. IMHOFF: Okay. Yes. Thank you, Your Honor. I will.
A. I think it's upside down.
Q. Yes, it is, isn't it? All right.
Mr. Hodgin, this is the unit thirty-three that you relied upon to testify that Marick should have known that the windows weren't installed correctly; right?
A. Yes, sir.
Q. Let's see if we can educate the jury. I know you know a lot about windows?
A. Yes, sir.
Q. Let's educate the jury a little bit about the code.
A. Okay.
Q. Now the code, it's an international code; is that right?
A. Yes, sir.
Q. So there's an international group of framers, plumbers, electricians; right? There's all kinds of

different subsets of building; right? Subcontractors; right?

A. I'm just laughing because the international part is kind of joke. I mean, it's kind of a United States ego thing that we put "International Code" on our code book. Nobody else -- there may be some other countries that have adopted it. That's pretty much the code in the United States.

Q. Well, it's a bunch of builders that get together and try to think of the best practices; right?

A. No.

Q. They come up with the worst practices, Mr. Hodgin?

A. They came up with the most economical ways to build what I think is a functional building.

Q. All right. And our Legislature in South Carolina determined that whatever they came up with and discussed was how we were going to build buildings in South Carolina; is that right?

A. As a minimum, yes.

Q. Okay. Does it say this is a minimum code?

A. I believe so.

Q. It says on the code this is a minimum code?

A. I believe in chapter one it talks about these are the minimum standards.

Q. All right. But it is the code adopted by our

Legislature in South Carolina; right?
A. Yes, sir.
Q. And it sets the standard for how you build residential homes in South Carolina; right?
A. It sets the baseline standard, yes. The minimum standard.
Q. And it's what the Oconee County building inspector, hopefully, carries around with him to look at when he's inspecting these homes; right?
A. I don't know if they carry it around with them, but they should be familiar enough to enforce what it is they're inspecting, yes.
Q. And it doesn't tell a builder how to install a window specifically, does it?
A. No. Basically, it's kind of weak on the window section. Chapter seven is the exterior wall; 703.8 is the flashing. And it just says you shall install flashing in the manner to prevent water penetration. So the means and methods by which the contractor chooses to accomplish that intent of code is left up to the contractor.
Q. That's right. The code does not tell a builder how specifically to install a window; right?
A. Or to keep water out; that's correct.
Q. That's right. It has a standard that you can build

it any way you want as long as it's weather-resistant; right?
A. Correct.
Q. Okay. So if you were to walk up into this building, thirty-three, and just look at the way the window's installed, not seeing the water stains, a builder cannot determine if the window is not installed correctly unless they see that it's not weather-resistant; right?
A. No. You could see the gaps between the plastic that's put in every single opening and see that it would be not effective.
Q. That's not a code violation to have that gap there, is it, Mr. Hodgin?
A. I would certainly think it would not meet the intent of the code. You would know enough about construction to know that that's going to leak. But without the damage, you wouldn't know the extent of the problem.
Q. Right. So what a builder would have to know is that it wasn't weather-resistant to determine it's not installed right; right?
A. I can agree with that.
Q. Yeah. It's a damage standard. It's a letting-water-in standard. Not that he did it wrong, but it's not weather-resistant; right?
A. Right. Well, my point is even without the damage,

when you see these corners with the gaps, that that would be telling to a competent contractor that the window is going to have water intrusion problems.

Q. Do you have more photographs of this unit, Mr. Hodgin?

A. Yeah. I think I took a picture of every single window in that unit.

Q. Now, were all of the windows leaking, Mr. Hodgin?

A. Yes.

Q. In every unit in that -- in every window in that unit?

A. In every single corner of every single window, there's some staining on the back side of the O.S.B. sheathing.

Q. Did you bring those photographs with you for the jury, Mr. Hodgin?

A. I don't know if I have the whole file. There should be a CD with all the photographs that you can look at.

Q. Now, did you put a moisture reader on that wet area?

A. No.

Q. Isn't the easiest way to determine whether a window is leaking to determine if the wood around it is wet?

A. No.

Q. It's not?

A. No.

Q. So if -- do you know how those stains got there?
A. Water intrusion from the exterior wall assembly caused the O.S.B. to get wet and damaged.
Q. Could it be that the window was broken or left open?
A. No.
Q. Was the wood wet at the time you took these photographs, Mr. Hodgin?
A. I would doubt it. In 2009 we had -- I think we were still having a pretty good drought. I can't recall.
Q. So it didn't rain, I think your testimony now is, from 2005 to 2009?
A. No. I'm certain it would have rained during that time. What I'm saying is just because you put a moisture meter in the damaged O.S.B. and it's -- I mean, it may not be wet at the time you're looking at it. There's physical damage. I would say that it would not be necessary to check with a moisture meter. If it's freshly wet, then a moisture meter would be a good indicator that it's getting saturated. You wouldn't need a moisture meter to know that that's getting wet.
Q. If it's freshly wet, you could tell this jury that when you took that picture in December of 2009, that window was leaking, right, because it's wet?
A. Yeah, I can tell the jury that it's leaking today if it hasn't been fixed.

Q. Well, you don't know that it was leaking in December 2009 because you didn't check to see if it was wet?
A. I can see the gaps between the flashing at the jamb and the sill. And that's exactly where the damage is. To a reasonable degree of certainty, it's leaking.
Q. So you don't think the easiest way to determine if a window is leaking is to see if the wall is wet?
A. Not always. I think if you're destructing from the outside and it's freshly rained, we'll put the moisture meter in.
Q. Well, let's see if we can agree on this.
A. Okay.
Q. From 2005 to 2008 -- okay? Let's stick with that time period because that's when my clients are going to be judged.
A. Okay.
Q. All right. Wouldn't the best way to know if windows were leaking be all the homeowners are calling you saying I have wet windows and wet drywall?
A. No. If this unit had been finished, there'd be insulation between all these studs, insulation below the window and then drywall installed around it. So all of that would be hidden to the homeowner.
Q. Let's talk about that, Mr. Hodgin.
A. Okay.

Q. That's a photograph you used to implicate my client to say he should have done more investigation; right?
A. Yes.
Q. Who finished that unit?
A. I don't know if it's finished.
Q. Have you ever heard of John Ludwig?
A. Yes.
Q. Did John Ludwig buy many of these unfinished units and re-permit them and get C.O.s for them?
A. I don't know. He may have, but that's not what the facts show.
Q. Now, Mr. Hodgin, if I represent to you that that unit was sold to Mr. Ludwig in that condition ---
A. Yes, sir.
Q. --- and Mr. Ludwig pulled a permit for it and sold it in 2010, can you dispute that?
A. No.
Q. Were you on site in 2009?
A. Yes.
Q. What did you do when Mr. Ludwig purchased that unit and completed that unit to ensure that Mr. Ludwig repaired your claims of defects correctly?
A. I didn't have any knowledge of that. What I would think is that from Mr. Ludwig's standpoint, if he purchased a building with this known damage, he would

have a duty to disclose that during the real estate transaction process, and that should have been corrected. But that was out of my hands.

Q. Is it fair to say, Mr. Hodgin, that the photograph that you're using to implicate my client, you didn't even know that this unit was finished and sold by someone else?

A. Is that fair? Yeah, it's fair to say. But I don't know what relevance that has.

Q. Did you put a moisture meter on the floor in the unit by the door?

A. No. I think it was dry.

Q. It was dry?

A. Yeah.

Q. That there was dry?

A. Yeah.

Q. Isn't it possible, Mr. Hodgin, that the door was just left open?

A. On that particular damage pattern, it's possible. But then when you look at it closer and you see that there's no flashing or waterproofing below the threshold, I think it's also possible water comes underneath the door.

Q. Does the code require that there be flashing underneath that door?

A. No. It's the same weak section that we're talking about. Just that the intent of the code is to keep water out, but just says flashing shall be installed as necessary to prevent water penetration.

Q. But it is fair to say that that can simply be because the door was left open? Right?

A. Not entirely. I agreed a second ago that there's a contributing factor if the door was left open, but that wouldn't be the entire cause of the water intrusion.

Q. Let's talk about the other photograph that you used.

A. Okay.

Q. I think this is the extent of it. That's a hole in the foundation; is that right?

A. Correct.

Q. What's all this black stuff here?

A. I think that's a repair membrane. And the reason I say it's a repair is that it's not consistent with other units. It's called Bituthene, and it was put on the front wall of a building.

Q. Who did that repair, Mr. Hodgin?

A. I don't know specifically. But based on the testimony of the Marick fellow, I think it would be Marick.

Q. Somebody from Marick testified that they did a water repair, foundation repair, on unit thirty-four?

A. Oh, I don't think they said which units in particular. What they said was when they got on site that they observed water intrusion into the finished basement areas, and that the -- somebody at Marick had contacted a waterproofing contractor to come out and address those particular issues on a few units or several units. I'm not sure exactly what the testimony was. But there was -- not all the units were repaired, but some units were repaired. Stone was removed; waterproofing was installed. And they thought that that addressed the problems.

Q. Now, I don't mean to be disagreeable, but wasn't the testimony that it was one unit, Mr. Hodgin?

A. If it is, it is. I thought it was more than one.

Q. Now, you don't know who did this repair, do you?

A. Yeah. I think he said the name, but I didn't recognize the name of the contractor.

Q. I'm asking you on unit thirty-four, you don't know who did that repair?

A. That's correct.

Q. That's a terrible repair, isn't it?

A. It's ineffective, yes.

Q. Okay. That's like rolling your windows up on a convertible when it's raining and the top's off; right?

A. Sure.

Q. I mean, that's -- why would you take the time, the effort and the money to waterproof all of this wall and then leave a giant hole in the wall? Do you have any idea?
A. No, I have no idea. I would say that's a great analogy for the weather barrier as well. It's just incomplete.
Q. But you don't know that Marick did that repair, do you?
A. No.
Q. Mr. Hodgin, who sold that unit?
A. I don't know that information.
Q. What if I tell you that John Ludwig purchased that unit in 2008 and sold it later? Is it possible that John Ludwig did that repair?
A. Certainly.
Q. Homeowners have done their own repairs below grade, haven't they?
A. Yes.
Q. You have no idea, despite your testimony on Thursday, that Marick Home Builders did that repair?
A. No. I would say, to summarize my below grade testimony, it would be that the originally delivered buildings did not function adequately. And there's been several attempts to repair, some successful, some not.

Q. Well, you used photographs to implicate my client from unit thirty-three and unit thirty-four; isn't that right, Mr. Hodgin?

A. I mean, I understand your question. But when you say implicate your client, all I'm doing is trying to give the jury the facts of what we found during our destructive testing. As far as who did what, I mean, I don't know which project or which units Marick's repaired and which ones they haven't.

Q. Well, before you said Marick did an inappropriate repair to that foundation at unit thirty-four, shouldn't you have checked your file to see who actually permitted and C.O.'ed unit thirty-four?

A. If I testified about Marick, yeah. I don't remember saying specifically Marick. I agree it's an improper repair. To the extent that Marick did it, it would be their problem.

Q. Now, in talking about these basement leaks, all of these basements aren't from the same condition, are they?

A. I think there might be a couple of different conditions, but I think the predominant condition is just a general lack of waterproofing on the front below-grade walls.

Q. Well, there are leaks that are coming through pipe and wire penetrations, aren't they, Mr. Hodgin?

A. Right. I'm lumping all of that together. I mean, wire penetrations, dryer vent holes, gaps between the panels where they're joined together, the grade going above the waterproofing. So there are all kinds of ways that water's going around what was intended to be an effectively waterproofed wall.

Q. I'm going to mark off the ones that I was going to ask about because you're saying ---

A. Okay.

Q. --- it could be sewer or water backups in the basement; right?

A. I don't recall that happening, but that is possible.

Q. Grading issues; right?

A. Right.

Q. Where the dirt's laid too high?

A. Right.

Q. Punctures at pipes; right?

A. Not necessarily punctures at pipes. But one thing -- one testimony that did concern me and makes me feel stronger about the more comprehensive repairs, about the crushed pipes -- I wasn't familiar with that. And, you know, you can do all the waterproofing you want. If you're got crushed pipes that are not going to convey your water away from the building, now your waterproofing really has to be almost perfect because you're going to

collect all of this water against those walls. So that would be an issue as well.

Q. Okay. Crushed pipe. Okay. But the punctures that I'm talking about is where you take a drill and you make a hole in the wall so you can put your pipe or your ---

A. Oh, right. I'm sorry. I thought you were talking about the polyethylene, the drainage pipes on the outside. But, yeah, any pipe that penetrated would have to be sealed.

Q. There could be damaged waterproofing even from someone who's putting in a bush or a shrub or a tree; right?

A. It's possible you could have a shovel impact the waterproofing.

Q. All right. And maybe broken pipes and things; right?

A. I'm not familiar with that.

Q. It could be the cause of the leak in the basement; right?

A. It could be the cause of water in the basement, but it wouldn't be the cause of the water coming through the wall below grade.

Q. All right. So there's all those different ways that you could have a basement leak; right?

A. All the different ways you could have water in a

basement, yeah.
Q. And you need to know what the cause is of that leak to fix that leak; right?
A. I would say in general, yes. But from a scope standpoint, I think we've seen enough of the inconsistency and ineffectiveness of the original construction that we feel like a more comprehensive approach is needed.
Q. Well, Mr. Hodgin, I understand that you want to dig all of these things out; right? Every single one?
A. Yes.
Q. Okay. At least -- well, twenty-nine have basements; right?
A. Right.
Q. You put in the new french drain and re-waterproof; right?
A. To the extent that it's necessary, yeah.
Q. What if there are five they have that hole?
A. Then five holes will get patched.
Q. So you don't need to do all the waterproofing and french drain; right?
A. We just mentioned all of the host of ways that water gets in. That's one. So you need to excavate down to see the extent of gaps in the wall panels, extent of other penetrations that might not be sealed, the extent

of any damages, extent that the lines are crushed at the base of the wall. So all of those things would need to be addressed.

Q. Well, let's go back to your forensic investigation.

A. Okay.

Q. Is part of forensic investigation common sense, Mr. Hodgin?

A. Yeah, I would think so.

Q. And let's explain to the jury a little bit. Okay? What we're talking about waterproofing is one of four sides of a cube; right?

A. A cube has six sides.

Q. I apologize.

(Laughter)

A. I apologize.

MR. IMHOFF: I'm not going to move to strike, Your Honor.

Q. All right. It's not a cube. Sorry, rectangle. That's why I'm a lawyer; right? All right. Let's assume ---

A. A 2D rectangle surface here.

Q. Let's assume that that's a footprint of a townhome. Okay?

A. Okay.

Q. The lake's over there?

A. Okay.
Q. The front door is here?
A. Right.
Q. The neighbors are over here?
A. Yeah.
Q. And let's just say that this is an outside wall; right?
A. Yes, sir.
Q. Okay. You were talking earlier with Mr. Belcher about stepping down the foundation wall ---
A. Yes, sir.
Q. --- because the land actually slopes down to the lake; correct?
A. That's correct.
Q. The lake is lower than the front door?
A. That's correct.
Q. Okay. All right. So this is actually a walk-out patio; right?
A. In most units, yes.
Q. So there aren't foundations back here; right?
A. There's not a vertical foundation wall. There's a slab-on-grade foundation.
Q. And your testimony earlier was that they're not leaking along this side that slopes down to the lake; right?

A. There's been a little bit, but primarily the problematic wall is the ones that's closest to you across the front.

Q. The front door because the land sort of does this; right?

A. It shouldn't. It would be a code violation. It's supposed to slope away from the foundation six inches in ten feet.

Q. So we're not talking about waterproofing that wall, this tenant wall, with the neighbor's or this outside wall; right?

A. Right. We're just talking about the shorter wall across the front of the units.

Q. Now, have you been present for the testing that has been done out there on this vertical wall by Mr. Watkins?

A. Do you mean the repairs?

Q. Have you been present for the testing, Mr. Hodgin?

A. I believe I've been present for the repairs. When you say testing, I mean, the repairs are excavating large trenches to expose large surfaces of the wall. I've been available for that. But I'm not sure what you mean by testing.

Q. Have you been present when anyone has taken a hose and put it on the front wall and let water run down the wall to see if or where it would leak?

A. No, I did not see that.
Q. Do you know if Mr. Watkins or any of the other engineers out there found that those walls were leaking where wires and plumbing was going through the wall?
A. That would make sense.
Q. And if that's where it's leaking ---
A. Yes, sir.
Q. --- isn't the repair to caulk around those penetrations?
A. If that was the only issue, that would make sense. You would have to take -- are you suggesting that you excavate from the outside all the way down to that pole and caulk it on the outside?
Q. I'm suggesting that you run water down the wall to see where the wall is leaking, Mr. Hodgin. Have you done that?
A. I don't know that that would replicate all the in-service conditions. I think it would be helpful. But what you're suggesting is either you excavate all the way down to the -- where the penetration is on the outside of the wall and waterproof it like our scope requires, or you can tear off the drywall on the interior of the unit to get to the penetration and seal it from the inside. But I would say either one would be effective.
Q. That's assuming that all twenty-nine of those units

have problems though, isn't it?
A. Yeah.
Q. And since common sense is part of your investigation, if there's a hole in the wall ---
A. Yes, sir.
Q. --- wouldn't common sense dictate that you plug the hole in the wall to see if the leaking in that unit stops?
A. Sure. If you do that -- I guess what your assumption is that there's no other defects in the wall that would allow water to penetrate.
Q. Isn't it your assumption that there are defects in all of those walls which require an extensive and expensive repair without having done simple water testing on that wall, Mr. Hodgin?
A. I don't know that you need water testing when so many of the units have been identified as leaking. There's evidence on the inside of the units that you don't need a hose to figure out. But I agree that my scope requires all the walls to be waterproofed.
Q. Now, was your testimony on Thursday that all of your repair scope would have been necessary in 2005?
A. No. I think what my testimony was is that the same type of scope would be necessary but you wouldn't have the same allowances. In other words, certainly the

extent of damages are the most today than they've ever been because of time, the passage of time, and rain events and water intrusion. But if my repair scope -- and I've worked with many contractors on repairing buildings. If I have an allowance for a piece of O.S.B. to be replaced, it's a full sheet of four feet by eight feet -- that's thirty-two square feet -- the change in the damage, the delta between 2005 and 2009 probably wouldn't extend out beyond that full sheet of O.S.B. So the extent of damages would probably -- would definitely be more today, but it wouldn't substantially change the allowances in the scope. That would be the only thing that it would change would be the allowances.

Q. Okay. So you're going to take all the roofs off; right? Or at least all the low-sloped roofs?

A. Right.

Q. Okay. You're going to have to take all the siding off?

A. Right.

Q. In 2005; right?

A. Yeah.

Q. You have to take all the stone off in 2005; right?

A. Yeah.

Q. Okay. You have to do all those deck repairs that Mr. Belcher was asking you about in 2005; right?

A. No. The only -- on there, maybe at one point that the trusses would have been salvageable. That's possible. But I wouldn't know that for sure. But they're pretty damaged today, so ...

Q. And you would have proposed in 2005 to go dig up all twenty-nine of these foundations; right?

A. Well, if the same type of due diligence was performed in 2005 and you had the same types of water intrusion, I would imagine the same scope would be the result.

Q. So essentially what you're proposing is you're proposing to dig up all these foundations to investigate whether or not they're actually defective; right?

A. Well, every one I have looked at so far -- I don't know that we found one that's properly waterproofed that doesn't leak. They all have penetrations. They all have grade issues. Not all have grade issues. But they all have penetrations, and they all have the same type of wall. They just have varying existing conditions based on the extent of repairs that have been performed previously.

Q. And you're getting paid by the plaintiffs to be here and provide that testimony; is that right, Mr. Hodgin?

A. I'm getting paid for my time, yes.

Q. And, in fact, every case that you work on, you get

paid for your time and your opinions; right?
A. Right. Just like all experts.
Q. And you've actually worked for defendants before, haven't you, Mr. Hodgin?
A. I actually work for defendants probably more than I work for plaintiffs.
Q. And builders and developers; right?
A. Right. Engineers and architects, subcontractors.
Q. You worked for the contractor and developer in a case called Ravines at Creekside; is that right, Mr. Hodgin?
A. Yes, sir.
Q. And that was similar construction, wasn't it? Asphalt shingle roof, lap siding, stone?
A. Yes.
Q. Right? And you testified in that case that not all of the roofs, not all of the siding and all of the stone had to come off; correct?
A. That's correct.
Q. And you were paid by the defendant in that case for that opinion; correct?
A. It's not for the opinion. It's for the time, yeah.
Q. And, Mr. Hodgin, were you deposed in that case?
A. Yes.
Q. And when you testified that the shingles, roof,

siding and stone did not all need to come off, that was eleven days after I took your deposition in this case, wasn't it?

A. I don't know. If you say that's what it was.

Q. Thank you, Mr. Hodgin.

THE COURT: Ms. Brown or Mr. Vick?

MR. VICK: No questions, Your Honor.

THE COURT: Very good.

Mr. Hemphill?

MR. HEMPHILL: None, Your Honor.

THE COURT: Redirect, Mr. Lyles?

MR. LYLES: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. LYLES:

Q. Mr. Hodgin, you were in the courtroom for the testimony of Nathan Hornaday; is that correct?

A. Yes, sir.

Q. And you said earlier that you had learned during this trial about the crushed drain pipes?

A. Yes, sir.

Q. Who testified about the crushed drain pipes? Do you recall?

A. I thought it was Mr. Hornaday, but I'm not -- I don't know the names as well as you guys do.

Q. And who did you understand that he worked for?

A. Marick.
Q. And why did that testimony alarm or concern you?
A. Well, it was just what I'd mentioned to Mr. Imhoff was that, you know, I'd considered that the drain pipes that were installed originally would be there and functional, that if the drain pipe is crushed, that just makes the waterproofing that much more critical.
Q. Would you have expected a competent general contractor, licensed general contractor, to have an awareness of the result of crushed drain pipes?
A. Yes.
Q. You were just asked a question by Mr. Imhoff about a case called the Ravines?
A. Yes, sir.
Q. Were the conditions at the -- in the Ravines case relative to the roof and siding and stone the same as they are at Stoneledge?
A. To some degree the roofs were like our main roofs on Stoneledge where the conditions were more isolated on the edges and at roof/wall intersections. The stone issues were isolated to roof/wall intersections. And I don't recall much in the way of siding issues. But there is a much more distinct pattern. The damages were not as widespread, and there was certainly no fire-rated wall assembly issues in that case.

Q. Does the fact that you're requiring that the low roofs be replaced, re-roofed at Stoneledge mean that every case that you've got going forward you're going to have to require that the low roofs be replaced?
A. No. And, in fact, I mean, even in this case, there's a mixture. I mean, where we don't have as significant problems on the main roofs, we're going to try to salvage those, and we'll just replace the lower ones where the damages seems to be more significant.
Q. And does the fact that you're calling for all of the siding at Stoneledge to be removed and repairs to be made and then the siding be replaced mean that every case that you've got going forward you're going to require that all the siding be taken off?
A. No, sir.
Q. And would the same be true for the stone?
A. Correct.
Q. That your opinions would be different depending on the case?
A. Absolutely. I mean, just while we're on the subject, I defend a stone installer on a case called -- we call it Georgia Stone. And my testimony in that case, defending the stone contractor, is that all the stone has to come off.
Q. Mr. Imhoff asked you some questions about homeowners

complaining of leaks in windows?
A. Yes, sir.
Q. If a general contractor was aware of numerous homeowner complaints about window leaks in a project, does that put him on notice of potential problems with the window installation?
A. Yes, sir.
Q. And does it trigger on the general contractor's part a duty to investigate windows that even haven't been reported as leaking?
A. I would think so.
Q. So if the testimony in this case is that Marick was advised by several homeowners of several window leaks, would that, in your opinion, trigger an obligation on the part of Marick to thoroughly investigate window installation problems at Stoneledge?
MR. IMHOFF: Objection, Your Honor. Misstating testimony. I don't know that the evidence is in ---
THE COURT: Well, let's just remember that -- what is it? -- the jury is the judge of the testimony, not the lawyers and not -- what is it? -- the judge. So -- what is it? -- they will be the ones that determine what was said and not said.
MR. LYLES: Yes, sir.
THE COURT: Very good. Overruled. You may

proceed.
A. My answer is yes. I mean, let me say that it would give me some pause. I mean, they should have at least some investigation. But in terms of thoroughly, it depends on how the initial investigation goes whether they would continue to investigate it through the project or not.
Q. You were asked several questions by Mr. Belcher and Mr. Imhoff about the building official?
A. Yes, sir.
Q. And inspections?
A. Yes, sir.
Q. Does the approval or just the passing of an inspection by a contractor relinquish the obligation of the contractor from complying with the building code?
A. No.
Q. Does it relieve his obligation or her obligation to comply with the building code?
A. No.
Q. And is that something that is an industry standard, or is that something that's found in the code itself?
A. I think both.
Q. You were asked questions about the firewalls.
A. Yes, sir.
Q. The firewalls that you have observed at Stoneledge

-- and we're talking about exterior firewalls; is that right?

A. Yes.

Q. Do those firewalls as they were constructed comply with the requirements of the plans that were prepared by Miller Player?

A. No.

Q. Do the walls as constructed comply, to your knowledge and in your opinion, with any approved rated assembly for that type of firewall?

A. No.

Q. Do those firewalls as constructed comply with the building code that was applicable to this project when it was built by Bostic Brothers?

A. No.

Q. Does the fact that the building official or the architect approved in some way, shape or form those firewalls relieve the contractor from the obligation to follow the plans, approved assemblies and the building code with respect to the firewalls?

A. No.

Q. Are those firewalls, as they are constructed in your opinion, a life safety issue?

A. Yes.

Q. Do they need to be repaired?

A. Yes.
Q. Would you design a repair for Stoneledge that did not require a repair of the firewall to bring it in conformance with the code?
A. No.
Q. You were asked some questions about trusses for the porches and decks.
A. Yes, sir.
Q. Do you recall that?
A. Yes, sir.
Q. And there was a question about damage to the trusses and whether or not all the trusses were damaged and the degree to which they were damaged.
A. Yes, sir.
Q. Is the damage to the trusses the reason you are requiring replacement of the trusses under the exposed portion, that is -- let's say the deck as opposed to the roofed-in screened porch?
A. Not totally. There's other circumstances that I think is just a better repair to be followed.
Q. What other reasons are you aware of that dictate your requirement that the trusses be replaced in those locations?
A. Well, what we think is important is that not only that the decks be waterproofed but they have some kind of

a slope to the surface that would drain the water. The plans call for a one-eighth inch per foot slope. They may have got that in some places, but in many places they didn't. And there's ponded water on the surface of the balconies that seeps through the concrete and has caused damage. What we'll do is with the pressure treated framing on that one-half of the balcony, we'll be able to have a smaller depth to the framing. And that way we can slope that section and get it to drain.

Q. What is the purpose of slope?

A. It provides gravity to assist the discharge of water from the surface of the balcony. It makes your waterproofing details less critical. I mean, we'll still do a good job of waterproofing them, but we'll get rid of most of the water first before it even gets to the waterproofing.

Q. And regardless of damage to the trusses themselves, have you seen evidence that, in your opinion, has resulted from the lack of slope?

A. Well, I would say nothing that we both don't agree needs to be removed. I mean, there's cracks in the concrete, there's damage to the subfloor. All of that's being replaced by our scope and the defense scope.

Q. On the issue of W.R.B., did the plans call for the use of W.R.B.?

A. They don't, but that doesn't mean it's not required. I mean, the reason that they did -- they specified stucco which the code requires felt paper, a weather barrier behind stucco. It's not called for in the plans, but it's clearly required by the code. They called for shake, the cedar shake. Code clearly requires it behind the shake, but it's not shown on the plans. And when they switched to cedar siding, there was no -- as far as I know, there was no communication with the architect about W.R.B., but it's certainly required by industry standards to have W.R.B. behind the siding.

Q. And did you find evidence that Bostic or its subcontractors had, in fact, installed W.R.B.?

A. Well, to some extent. We saw it over the oriented strand wood but not the more moisture sensitive gypsum.

Q. And did they install it properly?

A. No.

Q. You have been discussing the Superior wall system. Can you describe the Superior wall system for the jury?

A. It's a pre -- it's a manufactured product that gets delivered to the site in panels. Basically, it's a concrete frame system that looks almost like two-by wall studs, but they're concrete. And they have an exterior-rated polystyrene insulation component. And you would just tilt those up or lay those in to the ground to

create your foundation wall. And they would have joints between the panels as you put them into place.

Q. And how are the joints to be treated?

A. Well, they should be waterproofed or sealed in some manner.

Q. Have you seen indication or evidence that that did not occur at Stoneledge?

A. Yes.

Q. Does that need to occur?

A. Yeah. If there's gaps between the walls and panels, then the water would be able to pass through joints in the panels.

Q. I'm going to take my turn at these photographs briefly. I'm trying to find one in particular. I can't put my fingers on that one, so I'll move on.

You were asked some questions about the photographs that Mr. Moore took and whether you actually relied upon those photographs in formulating your opinions?

A. That's correct.

Q. And did you?

A. To some degree. I mean, I think our repair scope had been written at the time Mr. Moore was on site. So certainly I would consider them in potentially changing our scope, but none of the photographs or observations that we made served to do that.

Q. And did you rely on photographs of other experts that were taken in connection with the investigation into phase one?
A. In the same manner, yes.
Q. If you will, let me show you one of the photographs in the presentation that you made the other day. Is this one of the Rick Moore photographs?
A. It is.
Q. And that would be test cut number two; is that right?
A. Yes.
Q. Okay. And then that one?
A. I'm sorry. I thought that was the same one. That was eighteen. This one says -- that's two. That's right. That's test cut two.
Q. And then that's test cut eighteen?
A. Yes, sir.
Q. Is that also a Rick Moore test cut?
A. Right.
Q. And do both of those photographs show extensive damages?
A. You can't see as well with the lights on, but it looks like there's a probe that's pushed into the rotted wood that shows extensive damage, yes.
Q. After the photographs that you saw today or were

shown today by Mr. Imhoff and Mr. Belcher, are you confident ---

MR. LYLES: Excuse me. Would you cut the lights on for us? Can you go back to the prior photograph?

Q. And this is test cut two. And what's depicted there?

A. It looks like significant damage to the framing at the balcony.

Q. After the photographs -- seeing again the photographs that you were shown today by Mr. Belcher and Mr. Imhoff, are you confident that your scope of repair is appropriate and necessary at Stoneledge?

A. Yes.

Q. And you've actually signed and sealed that scope of repair?

A. I believe so, yes.

Q. And the significance of that is what?

A. That I'm taking responsibility for it and stand behind it.

Q. Finally, you were asked about a number of other projects, including two that I wrote down. True Blue, is that down at the beach?

A. Yes, sir.

Q. And Fairway. Is it Fairway Villas?

A. At Fairways at River Oaks, I think is the technical name.

Q. Describe for the jury, if you will, just very briefly what your role and involvement in those projects was?

A. In both cases, I was the plaintiff expert for the homeowners. There are similar issues on both of those cases. I came up with a repair scope. The True Blue case settled, and so now we have a -- some funds to begin the repair process on seventy-two buildings. Our firm is overseeing all the repairs and certifying that each of the buildings is code compliant and the damages have been addressed.

Fairways is a little bit different. Same defendant contractor, but Mr. Moore and I came up with a joint repair scope that we both agreed to start the project with. Watkins, the same people that are making the repairs at Stoneledge, actually were hired to make the repairs. We started out the contract at one point one million dollars using some known conditions and allowances. We crossed the finished line at two point five million dollars later as we went through the process and we agreed on additional damages that were identified or defects that were identified that required repair.

Q. And did you -- or have you -- as you're testifying

in the Stoneledge case, have you incorporated into your opinions your experiences on True Blue and Fairway?

A. Absolutely.

Q. I think that's all the questions I've got for you, Mr. Hodgin.

A. All right.

Q. Thank you.

THE COURT: Mr. Anderson?

MR. ANDERSON: Thank you, Your Honor. One of Mr. Lyles questions brought up the necessity that I needed to ask ---

THE COURT: Very well. Yes, sir.

MR. ANDERSON: Thank you. His redirect.

CROSS-EXAMINATION

BY MR. ANDERSON:

Q. Mr. Hodgin, you've testified over several days now. And you just brought up the issue of the slope in your repair on the balconies?

A. Yes, sir.

Q. And you indicated that you're going to replace what is there currently which is, I believe, a flat deck surface. Is that the correct name?

A. Yes, sir. That's fine.

Q. That flat deck surface is what was originally called for in the plans; is that not correct?

A. That's not correct. All the exposed portions of the balconies were intended to have a one-eighth inch per foot slope.
Q. But that's on the surface; is that not correct?
A. That's right. So ---
Q. And originally, the slope was to be done in the concrete by sloping the concrete?
A. You can certainly infer that from the plans that don't show the slope on the framing that it would have to be accomplished above the framing; that's correct.
Q. Okay. So the framing being flat, there's nothing wrong with the framing being flat in the initial build according to those initial plans?
A. That's correct.
Q. And so you don't lay any blame on the framer for that condition?
A. No.
Q. That would be the architect's problem or the waterproofing concrete subcontractor's problem?
A. And the G.C. to comply with the contract documents requiring the slope, yes.
Q. All right.
MR. ANDERSON: With that, Your Honor, I don't have to show any more slides. Thank you.
THE COURT: All right. Very good.

All right. Anything else on the -- if you have not examined but cross-examined about anything brought out on redirect?

MR. BELCHER: None from Bostic, Your Honor.

THE COURT: All right. Mr. Imhoff?

MR. IMHOFF: Nothing, Your Honor.

THE COURT: Ms. Brown or Mr. Vick?

MR. VICK: Nothing, Your Honor.

THE COURT: Mr. Hemphill?

MR. HEMPHILL: No, Your Honor.

THE COURT: Very good. What do you want done with your witness?

MR. LYLES: Sir?

THE COURT: I said what do you want done with your witness?

MR. LYLES: I would say that you order him to buy me lunch.

(Laughter)

THE COURT: All right. Well, I've enjoyed having him here, but I'm sure he'd like to be somewhere else.

THE WITNESS: Yes, please.

THE COURT: Is he released?

MR. LYLES: I think that he is still under subpoena.

MR. ANDERSON: He's under subpoena.

THE COURT: Well, that's all I wanted to know.

MR. LYLES: Yes, sir.

THE COURT: But you can step down. But I do understand that you are under subpoena. Very good. But stay with us for a few minutes.

THE WITNESS: Okay. Thank you.

THE COURT: Let's see. Next witness how long?

MR. LYLES: Probably a couple of hours.

THE COURT: Okay.

Mr. Foreman, ladies and gentlemen of the jury, I'm going to suggest that we do take a lunch break at this time. Of course, I think it's actually -- because we have a clock over here that hasn't been changed -- one o'clock as it was last week. So it's probably closer to our lunch time. How long would you like to have today? Or do you need today is really what I'm asking.

MR. FOREMAN: We can be back by one-thirty.

THE COURT: One-thirty. Very good. All right. Again, please do not undertake the discussion of the case among yourselves or permit anyone to discuss it with you. And we'll see you at one-thirty.

Everyone else remain seated while the jury retires from the courtroom.

(WHEREUPON, the jury exited the open court at

approximately 12:06 p.m.)

THE COURT: I thought that there was some sort of, not hold -- but what is it? -- request for Mr. Hodgin later. Have y'all discussed that? Because I understand he's got another requirement? In other words, he lives ...

You live in Clemson; is that correct?

THE WITNESS: Yes, sir.

THE COURT: All right. And so he's available. But do you want him to stay here or ---

MR. ANDERSON: No, Your Honor, I do not.

THE COURT: All right. You're not releasing him from the subpoena so that if you need to get him, he can come back?

MR. ANDERSON: Exactly, Your Honor. He's a potential rebuttal for us.

THE COURT: Very good.

Do you understand that, Mr. Hodgin?

THE WITNESS: Yes, sir.

THE COURT: All right. Very good. Anything else before we break for lunch from the plaintiff?

MR. LYLES: No, Your Honor.

THE COURT: From any of the defendants?

(No response)

THE COURT: Very good. Thank you very much.

I'll see you at one-thirty.

(WHEREUPON, court stood at recess for a lunch break.)

THE COURT: All right. Anything from the plaintiff before we bring the jury back?

MR. LYLES: Nothing from the plaintiff, Your Honor.

THE COURT: From the defendants?

MR. BELCHER: Nothing from me, Your Honor, from Bostic.

THE COURT: All right. Very good. Ask the jury to join us, please.

(WHEREUPON, the jury entered the open court at approximately 1:40 p.m.)

THE COURT: All right. Let the record reflect the jury and alternate are in the jury box.

Mr. Foreman, ladies and gentlemen of the jury, we will now continue with the plaintiffs' case.

Mr. Lyles, you may call your next witness.

MR. LYLES: Yes, Your Honor. The plaintiff would call John Folk.

(WHEREUPON, the witness was duly sworn.)

THE COURT: If you would, please, sir, give us your full name and spelling your last name for the record.

THE WITNESS: My full name is John Perry Folk. The last name is spelled F-O-L-K.

THE COURT: Very good. Thank you, sir.

JOHN PERRY FOLK,

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. LYLES:

Q. Mr. Folk, good afternoon.

A. Good afternoon.

Q. You doing okay?

A. Yes, sir.

Q. Mr. Folk, have you ever testified before at trial?

A. I have not. I must confess I've spent my life trying to avoid that.

Q. Are you a little nervous?

A. No, not much.

Q. Well, if you need anything, need more water, just let me know. Okay?

A. Uh-huh (affirmative).

Q. Mr. Folk, if you will, for the jury, tell the jury about your educational background.

A. Yes. I'm a graduate of Greenville High School, and then a graduate, a 2002 graduate, of Clemson University's Construction Science and Management program.

Q. And when did you graduate from Clemson? 2002?

A. May 2002, yes.
Q. And if you will, tell the jury what you've been doing from an occupation standpoint since 2002.
A. I've been working professionally as a construction manager and primarily during that time as a construction estimator. I actually started in -- well, my construction career actually started in 2000. And I worked for a small general contractor in Six Mile some of you may know, Frank Kelly, Kelly Builders. And worked for him doing labor, carpentry work, that kind of stuff.

In 2001, I went to work for Durham Green as an intern and as an assistant project manager. And there I did estimating and project management. And since that time, I've worked for a couple of other firms as a project manager and as an estimator.
Q. And what firms have you worked for?
A. I've worked for -- let's see -- Durham Green and then Sisson Construction in Traveler's Rest. And then I spent five years at Able Constructors as their chief estimator. And then -- let's see -- about two and a half years ago, I took a job with Trehel Corporation as their senior estimator. And that's what I currently do.
Q. What kind of company is Trehel?
A. Trehel is a general contractor. We average -- this year we should average thirty-five, forty million of

annual volume. We're a commercial contractor. We do everything from condos, apartments, townhomes very similar to Stoneledge up to all types of commercial buildings. We do a lot of church work. We currently are doing the Walhalla High School. Some of you may be familiar with that.

Q. Now, you mentioned that you were an estimator; is that right?

A. Yes, sir.

Q. Would you tell the jury what an estimator does?

A. Well, an estimator really has -- out of all of the construction professionals, an estimator has the fun job. He's the guy who gets to figure out what it costs to build a project. And so normally the way that happens, my job every day, I'll take drawings and I will turn those into an estimate. I'll quantify the materials. I'll look at the labor required to build the project and also the equipment and overhead and material items. And then I'll arrive at a total number for that project.

Q. In order to do that, do you have to know about construction?

A. Yes, sir. You basically have to build the project in your head and on paper and interpret the drawings. And then from that point, once you know how all the pieces fit together, it's really a mathematical exercise

of just taking all of those components and the costs and adding them up in a giant spreadsheet.

Q. And is it important as an estimator -- well, let me ask you this. What are your estimates used for?

A. They're used for construction. That estimate -- in the case of Trehel specifically, we take that estimate. We meet with a client who wants to build a building. We give them a price. We guarantee that price. And then if we move forward to construction, that estimate becomes the budget. And so it's very -- it's critical to the success of the contractor that his estimate be accurate.

Q. And, again, why is that critical?

A. Well, because that forms your budget. Say, if we have a client who wants to build, just say, a church, I estimate it. I tell them, "Guys, to perform this scope of work, it's going to be, say, two million dollars. And here's the scope of work for that two million dollars." That's it. That becomes the contract value. And then all of the budgets are set up to manage the project based on that estimate. And there is no more money. That's it.

Q. And if you estimate a job too high, what can happen?

A. Well, if I'm too high, what normally happens is a owner will say, you know, "John, we would like to work with you, but we just can't afford it." That would be

very common in the negotiated realm. On a bid job where you might have several contractors competing for the work, obviously the major deciding factor is usually cost. So you're going to miss work, and you're going to be out of business as a contractor for lack of work. So it's critical that that estimate be accurate.

Q. And how many years have you actually been doing estimating work?

A. That would be since 2001, so going on thirteen years.

Q. And how many total jobs would you say you've estimated in your career?

A. Oh, it's in the thousands. In the thousands.

Q. And you're -- are you familiar with the Stoneledge project?

A. Yes, sir. Yes, sir.

Q. And how many jobs have you estimated that involve projects of construction similar to that like we have at Stoneledge?

A. Hundreds.

Q. And how would you describe that construction?

A. The construction of Stoneledge?

Q. Yes, sir. In terms of is it a multi-family project?

A. Right. Yes. Multi-family, wood-framed residential units.

Q. And are you a licensed contractor?
A. I have passed the state licensing exam, and I am a qualified party on Trehel's license. So what that means is personally, myself, I do not currently -- I'm currently not organized as a business entity to perform work, but I am qualified from a licensing standpoint.
MR. LYLES: Your Honor, I would like to have Mr. Folk qualified as an expert in the areas of contracting and construction estimating.
THE COURT: All right. Any voir dire, Mr. Belcher?
MR. BELCHER: None from Bostic, Your Honor.
THE COURT: Mr. Imhoff?
MR. IMHOFF: Yes, Your Honor.
THE COURT: You may proceed if you like.
MR. IMHOFF: Thank you, Your Honor.

VOIR DIRE

BY MR. IMHOFF:
Q. Mr. Folk, have you ever worked as a general contractor?
A. Worked as a general contractor myself ---
Q. Yeah?
A. --- or worked for a general contractor?
Q. As a general contractor?
A. No, I've never been in business for myself as a

general contractor.

Q. Have you ever pulled yourself a permit for a general contracting job?

A. No, sir.

MR. IMHOFF: Your Honor, I don't have any further questions for Mr. Folk on the general contracting aspect of his qualifications.

THE COURT: Well, let me see, now. What exactly are you seeking to have him qualified as?

MR. LYLES: As an expert in contracting as well as contract construction estimating.

THE COURT: And what is contracting?

MR. LYLES: The general business of contracting, securing jobs.

THE COURT: Well, he mentioned that he had bid on jobs ---

MR. LYLES: Yes, sir.

THE COURT: And he also had negotiated jobs?

MR. LYLES: Yes, sir.

THE COURT: Did you cover both of those?

MR. LYLES: Yes, sir.

THE COURT: And you have no objection to the estimating?

MR. IMHOFF: That's correct, Your Honor.

THE COURT: Anyone else want to voir dire? Mr.

Vick?

MR. VICK: No, Your Honor. We have no objection to the estimating, but we do as to the contracting.

THE COURT: All right. Mr. Anderson?

MR. ANDERSON: We would join in that, Your Honor.

THE COURT: Anyone else?

MR. HEMPHILL: I too, Your Honor.

THE COURT: All right, Mr. Hemphill.

Very well. He has testified that he has participated in different forms of contracting in the sense that agreements were reached, either by bid or negotiation. And he also mentioned that he had -- what is it? -- dealt with owners in their projects.

Well, I am going to find that he is qualified as an expert in the area of construction estimates and contracting.

Now, Mr. Foreman, ladies and gentlemen of the jury, as we've mentioned on another occasion, experts are those who are qualified by reason of their background, training and experience in particular areas. And that expertise gives them the ability to testify to things other than just what they know of their own knowledge or exercise of their own faculties. And more importantly, our rules

provide that expert witnesses are here to help jurors to understand technical testimony. In other words, an expert is not necessarily the final authority but is someone who knows more than the rest of us do about a particular area. At least have had some experience in that particular area. And that would qualify a witness to testify as an expert in that area.

So I have qualified this witness as an expert in constructing estimating and contracting, not -- but always remember that all witnesses' testimony, be it a lay witness or a fact witness, is for your evaluation.

All right. You may proceed.

MR. LYLES: Thank you.

DIRECT EXAMINATION

CONTINUED BY MR. LYLES:

Q. Mr. Folk, have you become familiar with the Stoneledge project?

A. Yes, sir.

Q. And when did you become familiar with the Stoneledge project?

A. In early 2010.

Q. And what were you -- who contacted you?

A. I was contacted by, I believe, by Burgess Metcalf. And at that time I worked for Able Constructors, and we were asked to perform an estimate for the repair scope

there.
Q. Okay. And did you do that?
A. Yes.
Q. Mr. Folk, I'm going to show you a couple of things that have been marked as exhibits for at least identification purposes. And I will hand you what's been marked as Plaintiff's Number 26.
A. Okay.
Q. Do you recognize that document?
A. Yes, sir, I do.
Q. And what is that document?
A. This is the repair scope of work that was provided to me by C.S.E. for the purpose of performing that estimate.
Q. And is that repair scope related to the building envelope of the phase one units?
A. Yes, sir.
Q. And then I'm going to show you what has been marked as Plaintiff's 28 and ask you if you recognize that document?
A. Yes, sir, I do.
Q. And what is that document?
A. Okay. That is the below-grade repair scope of work that was provided to me in 2011 for estimating the costs associated with the below-grade work.

Q. Okay. Thank you very much. I'm going to sit those over here.
A. Sure. Thank you.
Q. If you need them again during your testimony, if you'll let me know.
Did you review exhibits 27 and 28 in developing your estimates?
A. Yes, sir.
Q. And is it typical and customary for a contractor like you who is doing an estimate to review the, in this case, repair plans?
A. Absolutely.
Q. And the information that you glean from those plans that related to your estimate is what?
A. You're speaking of the architectural drawings?
Q. Yes. Well, whatever is in those exhibits.
A. Yes, those form the basis for my estimate, so they're vitally important. And it's vitally important that I understand the scope of work developed because that's what I'm using to develop my costs.
Q. And did you rely on anything else in the development of your estimate?
A. Yes, sir. At the same time I was given the original repair documents book there, I was also given a roll of drawings showing the three typical units in phase one. I

was also given a binder of Eagle View reports which show the building arrangement as they're arranged on the site and show the roof areas.

Q. And what was the significance of those plans and Eagle View reports?

A. Well, the plans and the Eagle View reports allowed me to quantify all of the quantities involved with roofing, siding, stone. That formed the basis for my estimate.

Q. And when you say the quantities involved, what are you referring to?

A. I'm referring to the quantities that were then input into my estimate spreadsheet.

Q. And by quantities, you mean the amount?

A. Correct, the amount. Yes, sir. Yes, sir.

Q. And that would be the amount of what?

A. The amount of the various materials in question. For instance, on the roof, how many square feet of asphalt shingles? On the siding, how many square feet of siding? How many square feet of stone? All of that, you know, becomes very important when you're determining the cost. You have to start with the quantity.

Q. And did you review or do anything else to develop information that formed the basis of your estimate?

A. With the repair document scope, I was provided with

a disk of photographs. I was provided with the drawings. And I also visited the site to become familiar with the actual conditions on site.

Q. How many days were you at the site?

A. I've probably been at the site a total of ten days.

Q. And did you go into some units in phase one?

A. I have been into one unit, yes.

Q. Did you do anything else to gather information relative to your estimate for phase one?

A. No, sir.

Q. What's a change order in the construction business?

A. Well, a change order is almost just what it sounds. I can give you probably a good example of one better than I can give you a formal definition. After a contract is signed -- let's say that a set amount is agreed upon for the cost of the work. And then if there's a change -- if, for instance, the owner might want to change something, he might want to change a finish material, say, from carpet he might want to upgrade to ceramic tile. That would constitute a change order. So he would ask the general contractor, hey, before I agree to proceed with this change, could you advise me as to the cost. And we'll prepare a formal document called a change order. There's any number of actors that could constitute a change order.

Q. Have you been involved in repairs to, remedial repairs to multi-family projects?
A. Yes, sir, I have.
Q. Have you estimated jobs for the remedial repair of multi-family projects?
A. Yes, sir.
Q. In the context of remedial projects, that is repair projects; is that right?
A. Yes.
Q. Is it unusual to find conditions that are unexpected?
A. Absolutely. Absolutely.
Q. So that often happens when you're doing repairs?
A. It does. You know, no matter how much we've heard the phrase destructive testing -- I've heard it a lot just this morning since I've been in the courtroom. But no matter how much destructive testing is done, the reality is you don't see what's hidden until you pull it all off.
Q. And do you have some experience in the estimating job of anticipating some of that?
A. Yes, sir.
Q. And did the scope of work that C.S.E. provided to you, did it provide you information relative to things that you might uncover during the course of construction?

A. It did. It did a very thorough job of identifying areas that needed to be addressed in the estimate.
Q. When you prepared this estimate, did you prepare this estimate in such a way that the risk of unknown or unforeseen conditions would be on the contract?
A. I did, yes. And to respond and to help mitigate that risk, I included a contingency in the estimate.
Q. So the price that you set forth in your estimate, that is a price that an owner knows is going to be the final price?
A. It should be, yes. Yes.
Q. And in order to provide the owner with that level of confidence, again, you've done what in your estimate?
A. I've included a contingency to deal with that. Another way to approach it would be to remove that contingency and say, okay, I priced only this exact scope. However, the moment I find something that differs, we'll stop work and estimate a cost and agree upon a change order.
Q. And when there's -- if a situation like that occurs, you find something that you haven't anticipated in developing your estimate and you issue a change order, what does that do to the price of the job?
A. Oh, that increases the price, yes.
Q. Are you familiar with that occurring on repair jobs?

A. Absolutely, yeah. Unless an adequate contingency is budgeted, it's a certainty.
Q. And you have prepared your estimate in this case to eliminate or at least greatly minimize the chance of that occurring?
A. Correct, yes.
Q. So as we begin to look at your estimate, are you confident that the amount you've estimated is sufficient to complete the scope of repair that was priced by C.S.E.?
A. Yes.
Q. And, finally, in preparing your estimate, do you check construction prices?
A. Absolutely. Every day.
Q. Literally, every day?
A. Just about every day. We get updates all the time. And it seems that -- and you guys know if you've ever been to Lowe's or even a grocery store, prices are always on a constant -- they're always in a constant state of change.
Q. And did you satisfy yourself that you knew the prices when you prepared your estimate?
A. Yes, sir.
Q. In reviewing the scopes of repair that were done by C.S.E. and going out to the site, are you aware of any

betterments or enhancements that C.S.E. has included for these owners? That is things that are different and better than what they purchased?

A. I am not. It appears to be the exact same materials that were originally specified. However, they would just be installed in the proper manner.

(WHEREUPON, Plaintiff's Exhibit Number 29 was marked for Identification only.)

Q. Mr. Folk, I'm going to hand you what has been marked for identification as Plaintiff's Exhibit 29.

A. Okay.

Q. And I'll ask you if you recognize that?

A. I do, yes.

Q. And what is that?

A. That is my estimate for repairs for phase one.

Q. Okay. And does that estimate contain the cost to implement the scopes of repair that are referenced in exhibits 27 and in 28?

A. Yes, sir.

Q. And, Mr. Folk, have you made changes to your estimate as you have worked on phase one in this case?

A. Yes, sir, I have, yes.

Q. And tell me about those changes.

A. Well, the first major change was the below-grade estimate. That was updated in 2011. Again, I started in

2010. I've also made changes to correct the quantity of elevated balconies. It's my understanding that there are thirty balconies. The original -- or the drawings that I had when I prepared the estimate are typical drawings which show balconies on every unit. So originally, when I first looked at it, I thought there were thirty-seven. So I've corrected that. And I've also corrected the below-grade quantity of units. There are actually only twenty-nine units with basements.

When I went to the site to investigate, I found one building containing four units that was clearly on a slab on grade, no basement. So I knew that those did not have basements. But it later came to my attention that a few of the other units were built on a crawlspace. So it looked to me as though they did have basements. But after further review, I learned that they did not. So it was a simple matter of just adjusting the quantity.

Q. And to your knowledge, are the quantities that are referred to in exhibit 29 accurate quantities?

A. Yes, sir.

Q. Based on what you know?

A. Yes, sir.

Q. In fact, based on testimony you heard today in this case?

A. Yes.

Q. Mr. Folk, I'm going to -- let me see. If you don't mind, I'm going to take that back from you.
A. Sure.
Q. And I'm going to try to put it up on the screen.
A. Okay. No problem.
Q. And there's a pointer right there.
A. Okay.
Q. And what I will tell you about the pointer is it needs to stay on the witness stand. Okay?
A. Okay. All right.
Q. Thank you.
A. No problem.
Q. Mr. Folk, we'll do our best with this exhibit up on the screen.
A. I should have it memorized by now.
Q. You should.
A. Yes, sir.
Q. You should.
A. Yes, sir.
Q. If you will -- and the jury's not going to be able to really see this, but they'll have a copy of your exhibit, I believe. If you will, walk through this document and show us how you got this laid out.
A. Okay. Well, it's a very simple spreadsheet. You could do the same thing with a calculator and a legal pad

there. But basically, what I have, this column is quantity. And I call that the take-off quantity. And that just means the quantity that I've literally taken off from the drawings or from the Eagle View reports. So I've got a quantity. And then I have unit pricing. I have pricing for labor, pricing for material, and then I have subcontractor pricing. And then these next three columns just multiplied the quantity by the unit price to arrive at a total for that line. And then in this column we're just adding up the total labor, material and subcontract numbers.

Now, just a quick definition. A subcontractor number, that would be me as a general contractor hiring someone to help me get the work done. So in this case, you can see a quantity there in the roofing. Remove existing shingles. I have a quantity and a subcontractor unit price. So what I'm telling you is, is that I would hire a subcontractor to remove and then replace shingles. And that subcontract number would include labor, material, taxes, equipment and supervision from that subcontractor. So I just want you to understand what's in those numbers.

And then it's just a very simple mathematical, you know, just adding up all the line items until you get to a bottom line.

Q. If you will, Mr. Folk, go all the way to the left.
A. Yes, sir.
Q. And all the way to the left ...
A. Uh-huh (affirmative).
Q. ... and describe what's over on the far left-hand side of your estimate, if you will.
A. The far left-hand side, I just have a -- basically, it just says line. I'm just trying to get some order to my thought process. And I've broken down the work by categories so that -- I tried to make this document very easy to understand so that everyone could look at it and know -- not just see a number but also know my thought process in arriving at that number.
Q. Okay. Well, the first number you've got under -- the first word you've got underlined is what?
A. That's roofing, and that's line one.
Q. Okay. And then what your pointer is on right now, can you tell the jury what that ---
A. That says remove existing shingles.
Q. And so those following lines ---
A. Right. Right. And so this is the quantity of shingles that need to be removed. And S.Q. -- this is just a units column. And we like to be as confusing as possible in construction, so we come up with all kind of different units. But S.Q. just means square. And that's

a roofer terminology for a hundred square feet. And I believe that number -- you can probably read it better than I can. I don't know if that's a hundred and eleven or -- I can't see it there.

Q. Yeah. And going back over to the left below roofing, are those a description of the things that you'll be doing under the roofing category?

A. Yes, sir. Yes, sir. Absolutely. So I've got -- under roofing I've got, "remove existing shingles, remove roof sheathing." That's your O.S.B. or plywood roof deck that supports the shingles. "Replace roof sheathing. Install new felt paper, install new shingles and flashings and structural truss repair allowance."

Q. And then your category beneath that is what?

A. Beneath that I have a large category entitled, "exterior wall cladding systems."

Q. And what does that relate to?

A. Well, that's basically anything on the exterior of the building. Siding and stone primarily.

Q. Okay. And then below that you've got some subsections?

A. Yes, sir. I've got a section for removal. And then I've got a section for replacement. You know, obviously in a new building, new construction, I'm just concerned with building once. In this case, I have to remove those

materials and get rid of them before I can put it back.
Q. And then for each category, you've got your various quantities and your costs?
A. Yes, sir. Yes, sir.
Q. Associated with that activity?
A. Correct, yes.
Q. And then below your exterior wall cladding systems, what is that?
A. Below that I have the rear elevated concrete balconies. And I've got a couple of sub-categories there. I've got a demolition category because, again, I have to take down what's there. Then I have a replacement category for replacing that and rebuilding it.
Q. And all of these activities that you're doing, those activities correspond to the work that C.S.E. says needs to be done?
A. Yes, sir. Yes, sir.
Q. And if an area of the building isn't called out for a repair by C.S.E., then you're not including it; is that right?
A. Right. Absolutely. My costs -- the scope of work for this estimate is based on C.S.E.'s report. So I wasn't asked to go investigate anything or come up with my own idea about what needed to be done.

Q. Okay. And ---
A. I think you're upside down there.
Q. Okay.
A. Okay. And this page picks back up with the elevated balconies. This is the replacement of items on those elevated balconies.
Q. Okay. And then below that, you have what?
A. Below that, I have four line items for interior finish work to the inside of the units themselves.
Q. And what's that related to?
A. That is related to -- I've got a line item for drywall repairs, flooring, trim carpentry, and painting. And those are items that are identified in C.S.E.'s report. But it's pretty common sense that if I'm going to remove all the windows, okay, that's great. But there's going to be some items on the inside that have to be put back whether it's a drywall return where the drywall meets the inside of the window jamb, whether it's trim carpentry. And that stuff's going to have to be painted as well.
Q. And your category beneath that?
A. Below that is fire protection. And that is for repairing the firewalls.
Q. Those exterior firewalls that you heard discussed?
A. Yes, sir. Yes, sir.

Q. And then below that, what category do you have?
A. Okay. Below that, I have my allowance for unforeseen conditions. As we discussed a moment ago, things that we can't see right now and we cannot accurately quantify them. But as a professional, you know, I know they're there.
Q. And when you charge a number like that, is Trehel assuming responsibility for those unforseen conditions?
A. Yes. Yes.
Q. And so the owner doesn't have to worry about those unforeseen conditions?
A. That's right.
Q. Now, below that category, you've got what?
A. Okay. Below that, some people call these indirect costs, or some people call them general conditions or ---
Q. Go back up.
A. Okay. Yes, sir.
Q. What is that?
A. Okay. That is the direct cost subtotal. So if you just add up all these line items, total labor, total material, total subcontract, and then what I would call total direct costs.
Q. Okay.
A. Okay. And then this category is, again, what most people would call indirect costs. And I like to think of

an easy way to explain it, when we leave a job site after we've completed a scope of work, whether it's a repair or a brand new building, these are all the things that were part of the costs, yet you don't see them when we leave. And that is things like supervision, field management, temporary toilets, job site continuous cleanup, job site safety. All those kind of things go into the general conditions number. You've also got sales tax. You've got payroll burden, which is just a function of your total labor. That's Workers' Comp, payroll taxes. You've got a subcontractor liability insurance which is just a function of the total subcontract number. And then you come to your general contractor's fee. And obviously, you know, I don't know any general contractor that is not in business to earn a small profit. That also includes your home office expense. People like me who do estimating, project managers, you know, all of the costs associated with keeping up a home office, that is part of your fee. And then we have a general contractor's contingency, which, again, on a project like this, that is there to mitigate risk to ensure that the contractor is able to do the job for the price he's quoted. And then I have a line for performance and payment bond.

Q. What's are performance and payment bonds?

A. Well, that is basically -- it's a form of insurance which no contractor ever hopes they're going to use. For instance, if you have vehicle insurance, you know that at sometime in your life you're probably going to have an accident and need that insurance policy. This is an insurance taken out on a general contractor in case he defaults on the job. If he just wakes up one morning and says, "You know what? I started this job, but I don't want to finish it," the bonding company would then step in and finish that job. So it's insurance on your general contractor. It's normally required by some lending institutions. So if you're going to build a building and borrow money to do so, your financing source or bank, your lender, might or might not require that.

Q. But that's in there for the protection of the owners?

A. Yes, sir.

Q. Is that right?

A. Yes, sir. Yes, sir.

Q. And you have a total estimated value?

A. Correct. I do, yes.

Q. Right there?

A. Yes.

Q. And this is on -- or the subjects above that are related to the building envelope and the porches and

decks; is that right?
A. That's correct, yes.
Q. And what is your total estimate for the repair of the building envelope based on C.S.E.'s scope of repair?
A. Total estimate value is four million four hundred and nine thousand dollars, two hundred sixty-one dollars and fifteen cents.
Q. Now, what are these lines, these last few lines beneath the estimate total?
A. Okay. The line items below this says, "below grade remediation and waterproofing." And basically I've got another detailed estimate, a couple of pages, just very similar to this same format where I've itemized all the costs associated with the below-grade work. And so all this is is a summary. There are twenty-nine units with basements that need the waterproofing below-grade scope. And then I've got cost associated per each. And then, again, a total. And then below that, I have, "costs associated with rebuilding the garages." And it's very unfortunate that we're having a problem with below-grade waterproofing because you guys may or may not know, but the garages are so close to the front of the buildings that in some cases, I'm going to have to tear them down to actually be able to excavate that and fix the waterproofing. So that's what that line item is for.

Q. And what's the total for the below-grade work and its associated work?
A. Yes, sir. Total below grade is one million three hundred twenty-nine thousand seven hundred and thirteen dollars.
Q. Okay. Thank you very much.
A. Yes, sir.
Q. I'm going to hand you back ---
MR. LYLES: You can cut the lights back on.
Q. Let me swap out with you.
A. Sure.
MR. LYLES: Your Honor, I would move to have Plaintiff's Exhibit 29 admitted into evidence.
THE COURT: Any objection?
MR. BELCHER: Not from us, Your Honor.
THE COURT: Mr. Imhoff?
MR. IMHOFF: May I just see it for one moment, please? I think we're going to submit a photocopy, a copy of it.
MR. LYLES: Okay. But you don't have an objection to it?
MR. IMHOFF: Otherwise, I don't have an objection.
THE COURT: All right. Without objection, Plaintiff's Exhibit Number 29 is admitted.

(WHEREUPON, Plaintiff's Exhibit Number 29 was admitted into evidence.)

Q. Mr. Folk, earlier today you heard some testimony about contract administration services. Are you familiar with those?

A. Yes, sir. Yes, sir.

Q. In your experience of working on projects such as this, repair projects such as this, is it appropriate to have contract administration services?

A. It is, especially with a project of this magnitude and nature. You know, you want a third-party engineer there to certify and verify and document that the work has been fixed correctly.

Q. And would you anticipate having questions of the design professional during the course of the repair?

A. I would. I think you're going to encounter -- you know, as you remove cladding, you remove siding and stone, I think you're going to encounter unique problems that needs someone on site to help you find the best solution.

Q. And in your experience, what sort of fee is charged by design professionals in performing those sorts of services?

A. I would think somewhere in the five to ten percent range would be appropriate.

Q. Is Trehel qualified to do the work that's reflected in the C.S.E. scope of repair?
A. Yes, sir.
Q. And has Trehel discussed or have you discussed doing the repair at Stoneledge with these owners?
A. I have not discussed with the owners.
Q. And is this work that Trehel is interested in doing?
A. We are, yes.
Q. And you mentioned bidding earlier. What's the bid process?
A. Well, the typical bid process, you know, for new construction -- I would call it the traditional way, or some would call it the old fashioned way or the way that doesn't work all the time -- is for an owner to hire an architect. The architect develops drawings. Okay. So you end up with a roll of drawings that an owner pays, in some cases, tens of thousands of dollars for. Okay. And they don't know -- the owner doesn't know. They want a building or a remodeling project, but they don't know until you go to the bid market what the costs are. Okay. So a traditional method is an owner hires an architect. The architect does working drawings and, you know, put those out for bid. And usually three or more, you might have ten or twenty contractors bid on a project. And then the low bidder is awarded the job. Okay.

Normally, Trehel operates under a different environment. Over thirty years ago, Neil Workman, our founder, he started Trehel with the idea that there's a better way to build. And now we call it our 3D process. You're welcome to log onto our website, and you'll get a better explanation than what I'll give you. But basically, it's a partnering approach ---

THE COURT: Just a moment. I think I need to say something.

THE WITNESS: Yes, sir.

THE COURT: Mr. Foreman, ladies and gentlemen of the jury, you're not to do any outside research. In other words, what you make your decision on in this case is what you hear from the witness stand subject to all of the qualifications by reason of direct exam and cross-exam. And so do not do any sort of outside research no matter how technical it might be or how -- what is it? -- available it is. That's not going to have the same qualifications as testimony and exhibits that are subject to review before they're given to you.

Very well. You may proceed.

THE WITNESS: I apologize, Your Honor.

A. But basically our process is one of partnering with an owner. We like to get involved early before any design is done. We like to hire the architect, and we

like to be responsible for both the design and construction. And then my job as an estimator -- very early on, once we know and once we have a concept of what our client wants, we'll put a budget to it, and then we'll work together with the owner until we have a building or a project that functions and looks the way it's supposed to and meets their budget. So it's more of a partnering arrangement. And most of our work, I would say ninety percent, is negotiated. It's using this process. So we try to avoid the bid market. And the reason for that is just because you have so many -- especially with the economy in recent years, you have so many contractors who are just out there to get a low bid. And then once they get the job, they find all kind of reasons to -- you know, issues that -- well, your drawings are incomplete. This wasn't included, you know. And they find all kind of reasons to seek change orders and additional costs from the owner.

So I guess what I'm saying is in order to be a low general contractor on a competitive bid job, you have to borderline on unethical. And we just don't play that game.

Q. But you're aware obviously here that an architect or design professional has been engaged?

A. Yes, sir.

Q. And is Trehel still comfortable discussing performing this repair with the owners of Stoneledge?
A. We are, absolutely. And I also understand the owners need to get competitive bids. And, you know, we're happy to be part of that process if they wish for us to. We're very competitive. And I do estimate jobs competitively. It's just that the majority of our work comes from negotiated business, repeat clients. That's what we've built our business on. And when you have the opportunity to work under that process, honestly, you don't enjoy the bid world.
Q. Have you given some thought to how Trehel would go about actually implementing these repairs in phase one?
A. Yes, sir, I have.
Q. And how would you do that?
A. Well, that would start with putting together a very detailed schedule and a plan to get the work done. Obviously, we're talking about complete cladding removal. So we're talking about mobilizing on the site, setting up scaffolding, removing siding and stone, removing and replacing windows, fixing associated damage to the exterior sheathing, and then putting it all back. So it's quite a process.
Q. And would you do it unit-by-unit or building-by-building?

A. We would tend to work building-by-building. But we would have multiple buildings under construction simultaneously in different phases of construction. And I think that's necessary with the volume of work that has to be done, that needs to be done just to -- you know, our goal would be to get in, get the work done and get out with minimal disruption to the owners. We know it's going to be disrupting, but we want to minimize the time. This isn't something that you want to hire a contractor who shows up with two men and you're there for the next twenty years.

Q. How long do you think it would take to complete the work that's called for by the C.S.E. scope?

A. I think it could be done in a year.

Q. And what sort of equipment would you have on site?

A. Well, we would have a -- we would have Lull, an all-terrain forklift, or several, for moving materials around. We'd have a lot of scaffolding to access these -- you know, these units, the siding and stone and whatnot. We would have a temporary job site trailer. Of course, a fleet of trucks. And then all manner of small tools.

Q. Is your job site, is it a hard hat area?

A. Yeah, absolutely.

Q. And how are you going to get the stone off?

A. The stone would come off -- pneumatic hammer, pry bar. It's a labor-intensive job. And ---

Q. Is it loud?

A. It's loud, yes.

Q. Dusty?

A. Absolutely.

Q. And the porches and decks, are they going to have to be substantially removed?

A. Yes, sir.

Q. Those that are exposed and not under roof?

A. Yes, sir.

Q. And when you remove those porches and decks to rebuild them, are you going to have to block off or block ---

A. We are. You know, obviously that would present an overhead hazard for anyone in that area. We would be very concerned, especially during demolition about those trusses and materials falling and hurting our workers, but, of course, anyone else. So that area would be off limits.

Q. Are you going to have people in units?

A. That's debatable. I have not fully investigated that. My preliminary thoughts were that during some parts of the work, you certainly could occupy the unit. Whether or not you would want to ---

MR. BELCHER: Your Honor ---

THE COURT: Just a moment.

MR. BELCHER: --- I object. This testimony exceeds his qualifications as an expert and is a new opinion that we have never heard before, ever in considerable deposition testimony.

THE COURT: Well, let's do this. Why don't you restate your question so that it would cover a foundation that the witness is qualified?

MR. LYLES: Yes, sir.

THE COURT: By reason of his qualification.

MR. LYLES: Okay.

Q. As part of developing your estimate, did you consider how this work is actually going to have to take place?

A. Yes, sir. Yes, sir.

Q. And did those considerations go into, for example, how much labor was going to be necessary?

A. Yes.

Q. And did you anticipate in performing your estimate how you were going to accomplish certain tasks?

A. Yes, sir.

Q. Tasks like removing and replacing windows?

A. Yes.

Q. And tasks like doing interior sheetrock and trim

work?
A. Yes.
Q. And are you familiar with those types of activities in your experience in the construction area?
A. Yes, sir.
Q. And is that a necessary part of knowing how to do your job as an estimator?
A. Absolutely.
MR. LYLES: My question was simply whether or not people are going to have to go into the units during the course of the repairs to accomplish those tasks?
THE COURT: That's what you're talking about?
MR. LYLES: Yes, sir.
THE COURT: All right. Very good. I overrule your objection.
But also remember, Mr. Foreman, ladies and gentlemen of the jury, all testimony, expert or otherwise, is for your evaluation, and it comes down to credibility and basis for it.
Very well. You may proceed.
Q. Mr. Folk, in your experience, is it good to have children around a construction site?
A. No, sir.
Q. How long would you anticipate that the owners would be without the use of their exterior decks?

A. I would say per unit, I would say at least two to three weeks.
Q. And you mentioned scaffolding earlier. What is the purpose of the scaffolding?
A. Just to provide access to the elevated work areas.
Q. Do people get on scaffolding?
A. Absolutely.
Q. And would that be necessary for the siding removal and replacement?
A. It would be, yes, sir.
Q. So there would be workers up on the side of the buildings?
A. Correct.
Q. And how long would you anticipate that would be the case?
A. Per building, several months.
Q. And windows that are up on the side of the building would be exposed?
A. Yes, sir.
Q. So the workers could look in the units?
A. That's possible.
Q. Mr. Folk, you did your initial estimate, I guess, a couple of years ago; is that right?
A. That's correct, back in 2010.
Q. And in preparation for this trial you've had an

opportunity to review it?
A. I have, yes, sir.
Q. And have you reviewed the scopes of repair again?
A. Yes, sir.
Q. And are you comfortable that you have provided an estimate for the C.S.E. scopes of repair, both the building envelope and to the below-grade areas, that is accurate and reasonable?
A. I am, yes.
Q. And would Trehel be willing to sign a contract with these owners to implement those scopes of repairs for the total sum of your estimate?
A. We would, yes.
Q. I think that's all the questions I've got for you right now, Mr. Folk. Thank you.
A. Thank you.

THE COURT: All right. Mr. Belcher?

MR. BELCHER: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. BELCHER:

Q. Good afternoon, Mr. Folk. Just a couple of questions. I apologize for the interruption earlier, but it's my understanding that you're here to testify solely as to how much it's going to cost to implement the Hodgin scope of repair; is that correct?

A. Yes, sir, that's correct.
Q. All right. You prepared an estimate or a series of estimates over the course of time with regard to what it's going to cost to repair, according to your company, one particular scope; correct?
A. That's correct.
Q. And you're not here to weigh in on the credibility or quality of any other scope or how long it's going to take compared to do it one way as opposed to another?
A. I have not -- and I would further say that I have not studied extensively these other scopes of work, so I'm not prepared even to comment on that.
Q. So you have not prepared, as we sit here today, what we would call an apples-to-apples estimate of what it would cost to complete a scope prepared by Rick Moore or Moore, Hackney and Associates?
A. No, sir. I have not been asked to do that.
Q. Have your clients even showed you -- have your clients shown you or asked -- in any way retained you to take a look at any alternative scopes?
A. I have seen some estimates. I believe I saw a Watkins estimate some time ago. But, no, I've not been asked to evaluate any other estimate or scope in detail.
Q. Sir, I'm going to have your -- and I understand that these numbers may have changed. But just for

clarification, we have made an exhibit to your deposition, which is the estimate which is exhibit number -- do you still have the exhibit?

A. I do. Twenty-nine, yes, sir.

Q. All right. The date that I have on this, which is a blowup, is October 22nd, 2013, which is just a matter of, what, ten days ago?

A. Correct. Yes, sir.

Q. Has anything changed on that estimate other than your below-grade repairs?

A. Yes, it has.

Q. All right. Hang on just a second. So I think this is the same thing that you've provided that's an exhibit here. We have below-grade repairs down here which you originally spec'ed at one point four seven four five oh one; is that correct?

A. I believe so, yes, sir.

Q. What's that number now?

A. That is one point three two nine seven one three.

Q. One point three two nine seven?

A. Seven one three, yes, sir.

Q. Okay. Now, so that number went down a hundred thousand dollars?

A. That's correct.

Q. And that's for a deletion of how many different

balconies now?
A. Could you tell me how many are listed there? I have twenty-nine on this update.
Q. Thirty-three here.
A. Thirty-three, yes, sir.
Q. So you're only charging twenty thousand dollars a balcony? Twenty-five thousand?
A. Oh, I'm sorry. I apologize. I was looking at the below-grade. Are you looking at the ---
Q. I'm sorry. For below-grade you're charging twenty-five thousand dollars a unit?
A. Is that the number on your document?
Q. You started at thirty-three on 10/22. Now, what number are you down to on quantity?
A. Okay. I have twenty-nine, and I have a total of one three two nine seven one three. So to answer your question, I would need a calculator to divide that.
Q. Okay. Well, you went down four units?
A. Uh-huh (affirmative).
Q. All right. About a hundred thousand dollars. Fair to say?
A. That's correct.
Q. Okay. So about twenty-five thousand dollars a unit is what you're charging for below-grade repairs?
A. Yes.

Q. And that's pursuant to the scope of repairs provided to you by Derek Hodgin?
A. Yes, sir. Yes, sir.
Q. Now, just before I get into it too much deeper, where else have you changed numbers on your estimate?
A. I have changed the quantity of the rear elevated concrete balconies. There's a total quantity of thirty. And I believe that document shows thirty-seven.
Q. Okay. So this whole section ---
A. Yes, sir.
Q. --- demolition and everything ---
A. Uh-huh (affirmative).
Q. --- changes; right?
A. That's right.
Q. All right. What does that section break out to now?
A. I do not have a subtotal for that section.
Q. All right. Well, we may have to give you a calculator and let you add that up.
A. Okay. No problem.
Q. You don't have one handy?
A. I do not, no, sir. See, I thought I had the day off from estimating.
Q. If you can, tell me what your current number is on that now.
A. Okay. It's going to take just a few minutes. Okay.

You ready?
Q. Yes.
A. I have four one one four six four. So four hundred and eleven thousand four hundred and sixty-four dollars.
Q. And is that the sum of these in-line items here?
A. And the category below that. Yes, sir, all of those.
Q. And so that number has gone down or up now?
A. It's gone down.
Q. Okay. Because there's fewer balconies than you originally thought?
A. Absolutely. Yes, sir.
Q. And when did you find out that there were seven less balconies out there, nine less balconies out there, than you had originally estimated?
A. I actually found that out today.
Q. Are there any other numbers that have changed since I got that report a couple of weeks ago?
A. No, sir, not to my knowledge.
Q. Okay. So your current grand total, according to your exhibit -- can you just give us what your grand total is since it's two different numbers there?
A. Yes, sir. If I can just have one second to add those up again. Okay. That's five million seven hundred thirty-eight thousand nine hundred seventy-four dollars.

Q. All right. And that's the number you want to implement Derek Hodgin's and C.S.E.'s scope of repair?
A. Yes, sir.
Q. Is that a number that you have spoken with the unit owners at Stoneledge about them paying for you to implement those repairs?
A. I have not.
Q. All right. When was the last time you were out there?
A. It was when I did the below-grade scope of repair estimate. So it's been quite some time ago. That would have been back in ---
Q. January of 2012?
A. Yes, sir. I've not been out there this year.
Q. So almost two years since you've been out to the project?
A. Correct.
Q. And almost two years since you have any contact with anyone other than the homeowners' attorneys?
A. That's correct.
Q. All right. So no homeowners called you up and said, "Hey, come fix my foundation"?
A. No, sir.
Q. Or fix my roof or fix my balcony?
A. No, sir.

Q. Do you have any indication at this time from any single homeowner that they're going to hire you or your company to do this work if they get enough money from this jury to do it?
A. No, sir.
Q. You're being proffered as a cost-estimating expert for the plaintiffs though?
A. That's right.
Q. Okay. But you haven't talked to them?
A. I've been working through their attorney and responding to his requests.
Q. Thank you. You've been working through their attorney to come up with a five point seven million dollar number to repair these buildings; right?
A. That's right.
Q. Okay. And you haven't reviewed any alternative scopes?
A. I have not.
Q. You haven't priced any alternative scopes?
A. No, sir.
Q. Now, you remember that you and I sat down and I took your deposition for a few minutes probably a year and a half ago; right?
A. I don't believe it's been quite that long ago. But I do remember, yes, sir.

Q. And you and I talked about surgical repairs?
A. Yes, sir.
Q. And your company has done surgical repairs before?
A. We have.
Q. All right. And you've done them with great success?
A. Yes.
Q. All right. But you haven't offered to, the lawyer or the homeowners, of any alternative surgical repair that would be more affordable than this that would fix these buildings?
A. Correct.
Q. You've never worked with J.L. Watkins, have you?
A. I have not, no, sir.
Q. Have you ever worked with his company or his daddy's company?
A. I don't believe so.
Q. All right. You made some reference about unethical or low bidder fly-by-night contractors. You wouldn't suggest that Mr. Watkins' company is either of those things, would you?
A. No, sir.
Q. All right. You know he's out there doing work right now?
A. I do not know that.
Q. Okay. So you don't know that he's out there

repairing the basement foundations of the homeowners that are in this courtroom?

A. No, sir. And I don't live at Stoneledge.

Q. Well, I understand that, sir.

A. And I don't frequent the site.

Q. You don't?

A. No.

Q. Okay. I'm just asking you if you understand that Mr. Watkins is making those repairs right now.

A. I do since you've informed me of that, yes.

Q. All right. We've talked a little bit about scope of repairs. We've talked a little bit about contingencies. Should the homeowners decide for some reason now to use your company, will you sign a contract at five point seven three eight nine seventy-four guaranteeing that every problem out there at Stoneledge whether seen or unforeseen will be corrected?

A. No.

Q. Okay. Let's take a look at some of your cost items here. You have -- you're going to remove -- under this estimate, you're going to remove seven hundred eleven squares of roof shingles?

A. Yes, sir.

Q. That equates to seventy-one thousand square feet?

A. Yes, sir. Seventy-one thousand one hundred.

Q. How many square feet of roof are out there total?
A. Seventy-one thousand one hundred.
Q. Do you understand that Mr. Hodgin has testified that less than all the roofs have to be removed here earlier in this trial?
A. Yes.
Q. Okay. So this number is going to come down too, isn't it?
A. I'm not aware of that.
Q. Well, if he has testified that less than all of the roofs have to come off and your estimate suggests that you're going to charge them for taking all of the roofs off, doesn't that number need to come down to comport with Mr. Hodgin's scope of repair?
A. Well, his scope of repair that the estimate is based on has me removing all the shingles.
Q. Okay. So if he's changed his opinion, you're going to have to change your estimate to go with the scope?
A. Yes. If he instructs me that not all of them have to come off, that's fine. That quantity could change.
Q. Okay. Tell me about your pricing. What kind of roof sheathing are you putting on these buildings where you have to go back and replace it?
A. Five-eights O.S.B.
Q. Is that the same as nineteen thirty-seconds? I'm

not as good at math. I'm sorry. About the same; right?
A. It's close.
Q. Okay. What are you charging per sheet for the materials, just for materials for that O.S.B.?
A. Materials, it's about twenty dollars per sheet.
Q. All right. Now, your company is -- what did you say? -- thirty-four, forty million, fifty million dollar company a year?
A. Yes, sir.
Q. All right. And you have access to all kinds of supplying resources and wholesalers for materials and all that stuff?
A. Absolutely.
Q. So you don't have to go to Lowe's like I do and get a piece of plywood to put on a roof; right?
A. That's right.
Q. You get a better price?
A. Well, sometimes.
Q. You get it wholesale?
A. Yes, sometimes.
Q. You get a contractor discount?
A. Sometimes.
Q. Even when you go to Lowe's, you would get a ten percent contractor discount because that's just the way they do it there; right?

A. Right. Right.
Q. Have you looked on Lowe's dot com lately to see how much a piece of O.S.B. sheathing cost?
A. I have not.
Q. Would it surprise you that a four by eight sheet of nineteen thirty-seconds O.S.B. sheathing cost fifteen dollars and ninety-six cents at Lowe's?
A. Not at all.
Q. And you could get that for a dollar fifty, a dollar sixty, less than that because you've got a general contractor's license; right?
A. If you say so.
Q. Well, have you ever used your contractor's license at Lowe's?
A. No, sir. I don't shop at Lowe's for large projects.
Q. Right.
A. But ---
Q. You can get them for a better deal at wholesale; right?
A. --- I'll take your word for it.
Q. All right. But, now, what's the price that you're going to charge these homeowners? Twenty dollars a sheet?
A. Well, yes. And the difference is, if I might explain that, the O.S.B. market varies wildly. A few

years ago you probably could have got that for twelve dollars a sheet. So if you can tell me exactly when we would be released to start work, I could put an exact today's price.

Q. Well, today, sir, we're here because the jury has to decide how much money the Bostics and these other people have to pay to fix these buildings.

A. Absolutely.

Q. So we don't have that luxury. And if I tell you that you can get this same piece of plywood for about four dollars more [sic] than you're telling the homeowners you're going to charge them for it, are you going to get that cheaper piece of plywood even if you have to go to Lowe's and shop for your big project?

A. No, because I won't be buying it today. I'll be buying it in a year or whenever I have a contract to proceed with the work.

Q. Okay. So you can't sit here today and say whether the plaintiffs are going to have to pay twenty dollars or fifteen dollars or twelve dollars for O.S.B. sheathing?

A. I can't. Based on the O.S.B. market, I don't see it being much cheaper than that.

Q. But you think it's fair for Joe and Jeff Bostic to pay top dollar under your estimate for a piece of sheathing that these people may or may not buy a year

from now?
A. Yes.
Q. You do?
A. Yes.
Q. Okay. Well, let's go to the next one. How much fluctuation is there in the shingle market?
A. Not as much. There are increases.
Q. What's your cost per square for shingles? Material?
A. I have one twenty-five a square.
Q. All right. Three bundles to a typical square?
A. Correct. Yes, sir.
Q. All right. I went to Home Depot dot com this time. Lifetime Timberline natural shadow charcoal shingles. You're familiar with that brand?
A. I'm familiar with Timberline, yes.
Q. It's one of the most widely-used shingles in the world -- in the country, if not North America?
A. Right.
Q. All right. Twenty-nine ninety a bundle at Home Depo?
A. Right.
Q. Okay. Times three for a square?
A. Yeah.
Q. So that's less than a hundred dollars a square.
A. Right.

Q. For materials?
A. Correct.
Q. But you're going to charge them how much a square? One twenty-five?
A. One twenty-five. Okay. What about all of your fasteners, your flashing, all those other items that ---
Q. We don't have a lot of rules, but one of them is is that I ask the question, sir. Do you understand that?
A. Yes, sir. Yes, sir.
THE COURT: If you will, let's ...
MR. BELCHER: All right.
Q. Now, down here you have installing thirty-pound felt, flashing. And I'm not going to pick on you too much about your unit cost because I think it's pretty clear that it's high. But I do need to spend a little time with you with your contingencies. Okay?
THE COURT: Also, one of the things we don't have in questioning is editorializing. You can save that for argument.
MR. BELCHER: I'll try to limit myself, Your Honor. I apologize.
THE COURT: Thank you, sir.
Q. All right. We need to -- what I'd like to do is I'd like to ask you about the contingencies that you have in this estimate. Can you pull those up, please?

A. Sure. Yes, sir.
Q. All right. You have two contingencies in this estimate. Fair?
A. I haven't counted them recently, but ---
Q. I'm not talking about allowances, just contingencies.
A. Yes, sir. Yes, sir. Correct.
Q. All right. You have what we would call in this business, an above-the-line contingency; correct?
A. Correct.
Q. And what is your current above-the-line contingency?
A. That is for unforeseen conditions.
Q. And on this document, it says, three seventy-nine seven forty-three. Has that changed?
A. It has. It is now three sixty-nine zero seven five.
Q. Okay. So you've got three sixty-nine in above-the-line contingencies; correct?
A. Correct.
Q. All right. Now, you also have what we call below-the-line contingency?
A. Correct.
Q. And that number will have changed as well; correct?
A. That is correct.
Q. So what is the total of those two contingencies?

Cash dollars, not percentages.
A. I'll need my calculator again. That's asking for your pass code.
Q. It's my anniversary.
A. I'm glad I don't know that.
THE COURT: Let's see, Madam Clerk, do you have a ---
THE CLERK: I do.
THE COURT: It looks like it's more my style.
THE WITNESS: Yeah, I like that a little better anyway. Yeah.
MR. BELCHER: Thank you, Madam Clerk.
A. Okay. Let me just add these two numbers for you. Okay. The total is four seven nine seven nine seven.
Q. All right. So you have a total of four hundred seventy-nine thousand dollars in contingencies?
A. Yes, sir.
Q. On a five point seven three eight nine seven four million dollar estimate?
A. Yes, sir.
Q. And even at that, with all that contingency and all that extra price and this number, you're unwilling to sign a contract saying that you will fix every single issue at Stoneledge seen and unforeseen for these people?
A. Yes.

Q. All right. Thank you, sir.

MR. BELCHER: No further questions.

THE COURT: Mr. Anderson?

MR. ANDERSON: I have no questions, Your Honor. Your Honor, I have Mr. Martin here. May I step out of the courtroom for a minute?

THE COURT: Certainly.

MR. ANDERSON: Thank you.

THE COURT: Well, let's see. We've been here about an hour and a half. Do we need to take a break? Let's do that.

Let's take a very short break, and when you're ready to come back, knock on the door. Again, please do not undertake the discussion of the case among yourselves in any way.

(WHEREUPON, the jury exited the open court at approximately 2:58 p.m.)

THE COURT: You understand you're under oath, sir?

THE WITNESS: Yes, sir.

THE COURT: You can stand down and stretch your legs.

THE WITNESS: Yes, sir. Thank you.

THE COURT: Do not discuss your testimony with anyone.

THE WITNESS: Yes, sir.

THE COURT: Very good. Thank you, sir.

All right. Anything from the plaintiff before we take a break?

MR. LYLES: No, sir.

THE COURT: Anything from the defendants?

MR. BELCHER: No, Your Honor.

THE COURT: All right. Let's take a short break.

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

THE COURT: All right. Anything from the plaintiff before we bring the jury back?

MR. LYLES: No, Your Honor.

THE COURT: From the defendants?

MR. BELCHER: None, Your Honor. Thank you.

THE COURT: Very good.

Ask the jury to join us, please.

(WHEREUPON, the jury entered the open court at approximately 3:15 p.m.)

THE COURT: All right. Let the record show or reflect that the jury and alternate are in the jury box.

Mr. Foreman, ladies and gentlemen of the jury, we'll continue with the examination of the witness.

And who is it? Mr. Imhoff? Let's see. Mr.

Anderson? I think it is Mr. Anderson.

MR. ANDERSON: We have no questions, Your Honor.

THE COURT: Now I think it is Mr. Imhoff. Anything from this witness?

MR. IMHOFF: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. IMHOFF:

Q. Hello, Mr. Folk.

A. Hello.

Q. Let me make sure that I understand. And I think the jury understands the scope of what Mr. Hodgin is asking for. I want to make sure the jury understands what you've quoted. And that is to remove every exterior component of these buildings from the very tippy top all the way down to the very, very bottom; is that right?

A. That's correct, yes.

Q. Okay. Roof shingles, siding, stone, windows, doors, all the way down to the below grade; right?

A. That's correct.

Q. All right.

MR. IMHOFF: What was the ruling on moving this? Can I move this? I don't think the jury can see this, Your Honor. Can I move it?

THE COURT: That would be fine.

Q. Do you have this estimate in front of you that you could sort of follow along?
A. Yes, sir. Yes, sir.
Q. Now, you have what I consider to be removal of the exterior component, which would leave the structures complete naked, bare; right? Down to plywood or O.S.B.?
A. Correct, yes.
Q. And then under each category, roofing, exterior, balconies. Then you have places which I consider to be a little bit different which is when we get it off we're going to evaluate what's there and fix that. Is that fair?
A. That's fair, yes.
Q. For instance, at two under roofing you have, "remove roof sheathing." And that's a repair; right?
A. That's correct, yes.
Q. All right. And, again, for the benefit of the jury -- I don't know if the jury knows all these construction terms -- sheathing is what?
A. The sheathing is the structural surface of the actual roof. So you peel the shingles off, remove those, peel off the felt paper, underlayment. And then you're left with plywood or O.S.B. In this case, O.S.B. which is just oriented strand board. And it is nailed or sometimes screwed to the actual roof framing trusses. So

it forms the structural deck for the roof.
Q. Okay. It's those big pieces of plywood that are flat, about that thick ---
A. Yes, sir.
Q. --- and then you put on the stuff? Okay.
A. Yes, sir.
Q. All right. And so where you have two, "remove roof sheathing, fifteen percent."
A. Uh-huh (affirmative).
Q. That is your guess at what is damaged up there and needs to be removed; right?
A. That's correct.
Q. You don't know that that needs to be done; right?
A. I know the roof sheathing needs to be removed. The exact quantity is an unknown.
Q. Okay. So you're guessing at that fifteen percent?
A. It's an educated guess, yes.
Q. All right. And I thought I heard you say earlier that you're charging twenty dollars per sheet of that board; is that right?
A. That's correct.
Q. But the first time you did this estimate, you said you could have got it for twelve dollars?
A. No. And I may have been talking out of turn. What I'm telling you is O.S.B., oriented strand board, in

particular, the price of O.S.B. is a function of the economy and the supply and demand. Okay? As the housing market continues, you'll see the price of -- continues to rebound, you'll see the price of O.S.B. skyrocket. The same is true if a hurricane blows through. You'll -- in fact, you might not even be able to find it when you need it.

Q. I think the jury understands, Mr. Folk, that prices change. Have you ever changed this twenty dollar material cost here for roof sheathing in any of the times that you have prepared this estimate?

A. I don't recall changing that, no.

Q. Okay. So if it was cheaper the first time you did this, you were actually up-charging these homeowners more on your first estimate than it actually cost to get that material; right?

A. I disagree.

Q. Well, I understand. I'm relying on your testimony where you said a couple years ago it was twelve dollars a sheet.

A. Right. What I'm doing is trying to -- what I'm trying to do -- and this is what makes my job as an estimator difficult. I'm trying to arrive at the price of a sheet of O.S.B. at the time I'm going to need it on the job site based on the market. So for me, twenty

dollars is a safe number. It could be less; it could be more when I actually go buy it.

Q. But as far as you know since you've been estimating this, it's never been twenty dollars, has it, Mr. Folk?

A. No.

Q. All right. So the next one, replace roof sheathing. And that's fixing damage to that deck and that roof decking up there if you find that it needs to be done. Again, you've guessed that fifteen percent of the roof decks are going to be done; right?

A. Yes.

Q. Okay. All right. And then I'm going to go through these a little bit faster.

A. Sure.

Q. But you've got, once you remove everything, we're talking about the damaged stuff you expect to find. So roofing you've got two and three, remove and replace roof sheathing. And then as you go down -- well, I've lost my notes. Hold on. There's structural truss repair allowance?

A. That's correct.

Q. At six. And that's -- you take the sheathing off, and then there's a roof truss, a two-by-four that holds up the this whole thing?

A. Correct, yeah.

Q. And you put twenty-three thousand dollars there?
A. Correct.
Q. Is that another guess of what you're going to find?
A. It's an educated guess, yes.
Q. All right. And we move down a little bit. We've got exterior wall cladding systems. And number eight -- well, let me ask you this. One through seven, now, that's all to remove the exterior components of these buildings; right?
A. That's correct.
Q. And then the fix is remove damaged O.S.B. sheathing, twenty-five percent wall area?
A. Yeah.
Q. So you did some calculation of how many walls and how big they are out there; right?
A. Correct.
Q. And then you took that number and you reduced it twenty-five percent?
A. Correct.
Q. And gave a cost for that of twenty-two thousand dollars?
A. That's correct.
Q. All right. And, again, you guessed at twenty-five percent wall?
A. Well, it's an educated guess based on the evidence

that I was provided. That's what we have to remember.
Q. All right. And then you go down. And under B, replacement repairs to wood stud framing; right?
A. Uh-huh (affirmative).
Q. And two, replace wall sheathing; right?
A. Correct.
Q. And now, number one is actually an allowance of forty-six thousand dollars. Is that another guess of how much -- how many repairs you're going to need to do?
A. It's an educated estimate, yes.
Q. Okay. And replace the wall sheathing, same thing. As you say, an educated guess; right?
A. Correct.
Q. You could find less; you could find more?
A. Correct.
Q. All right. And then I'm going to move down a little bit faster. I'm going to try to get through this. Down at rear elevated concrete balconies, two, three and four.
A. Uh-huh (affirmative).
Q. Two, three and four, remove damaged subfloor; right?
A. Correct.
Q. Inspect and remove damaged framing; right?
A. Correct.
Q. And then demo rotten T&G ceiling?
A. Correct.

Q. Okay. Now, it looks to me that you've got the same amount, twelve thousand square feet, as you do for concrete topping and damaged subfloor; is that right?
A. That's correct.
Q. Okay. Now, what kind of material is that, this tongue and grove ceiling, that we're talking about?
A. That's like a pine one-by-six or one-by-eight ceiling.
Q. It's pine, Mr. Folk?
A. I believe it's pine.
Q. Is it cedar, Mr. Folk?
A. Honestly, I don't recall.
Q. If it's cedar, why do you use cedar on buildings, Mr. Folk?
A. Why do I use cedar on buildings?
Q. Why would a builder use cedar?
A. Well, it turns gray and looks nice after it's out in the weather for some period of time, if you like the look of cedar.
Q. Cedar stands up to the weather better than pine, doesn't it?
A. It can, yes.
Q. But you've estimated that you're going to have to remove that entire or all of those entire cedar tongue and grove ceilings; right?

A. Well, it has to be removed to fix the framing.
Q. Do you not replace it?
A. That's right.
Q. So you're going to throw it all away?
A. Well, you know, you can try to pull all the nails out of the splintered, broken pieces, and you may be able to use some of it.
Q. All right. So -- and then you have down here similar -- and I apologize to the jury. I keep standing in front of it -- install new treated subfloor at two and install -- that's right. Install new tongue and groove ceiling; right?
A. Uh-huh (affirmative). Correct.
Q. All right. And if you add all of those items up, you get about two hundred and fifty thousand to do those repairs?
A. That's sounds right.
Q. Okay. So to repair the damage underneath these exteriors is only about two hundred and fifty thousand dollars; right?
A. Correct.
Q. Okay. Now, every one of those things that we just talked about is something that you're not sure is there; correct? Or how much is there. Is that fair?
A. With the rear balconies? Or can you repeat the

question?
Q. Every one of the things we're talking about, fixing wall sheathing, roof sheathing, tongue and groove, framing, trusses, all of those things are guesses, according to you, of what you are going to find when you actually take the exteriors off; right?
A. Well, they're based on the photographs and repair documents that show issues with those items. You're correct in that we don't know the exact quantity.
Q. And those are called contingencies; right?
A. You could call it a contingency, or you could call it an allowance.
Q. An allowance, contingency, whatever you'd like to call it.
A. Sure.
Q. It's your estimate?
A. Yes, sir.
Q. All right. And you have them in, these contingencies or allowances, in every one of these categories; right?
A. That's correct.
Q. So you factored that contingency or allowance or unknown into every one of these categories; right?
A. That's correct.
Q. And then you did it again at the bottom? Unforeseen

conditions allowance ten percent. Right, Mr. Folk?
A. That's correct.
Q. So you did it twice; right?
A. Right. Would you like for me to elaborate on why?
Q. Well -- so you know from your best guess of what you're going to find underneath the roof, underneath the siding, underneath the stone. And then you put an additional ten percent on top of it; right?
A. That's correct.
Q. Now, Mr. Folk, in doing this estimate you relied on Mr. Hodgin's investigation; right? His forensic investigation?
A. Yes, sir.
Q. And his repair scope; right?
A. Yes.
Q. And you've been out there ten times, I think you said, in three years; right?
A. At least.
Q. At least?
A. Right.
Q. And you've even looked at aerial photographs; right?
A. Yes, sir.
Q. Took measurements when you were out there?
A. No, not necessarily.
Q. You didn't take any measurements while you were out

there?
A. I did my quantity takeoffs from the Eagle View reports and from the drawings.
Q. All those things went into your estimate; right?
A. Yes, sir.
Q. The estimate that you just testified about that this is what Trehel would charge to do these repairs; right?
A. Yes, sir.
Q. And that this is a fair estimate that this jury can consider and those homeowners to pay; right?
A. Yes, sir.
Q. And all of that work, all of the four-year investigation done by Derek Hodgin, all the times he was on site, all the times you were on site, the aerial photographs, is it your testimony this afternoon, Mr. Folk, that until today you and Mr. Hodgin have missed seven twenty-feet-high ten-thousand-square-feet decks?
A. Again, that information was not provided to me when I did the original estimate. I was provided the drawings which showed decks on all units, and that's how I proceeded with the estimate. And, no, I did not -- when I went out there, I did not count them all.
Q. Mr. Folk, did you revise this estimate today to remove several decks?
A. I have, yes.

Q. Some four years after Mr. Hodgin's investigation and three years after yours, you missed ten-thousand-square-foot decks; correct?
A. If you want to state it that way, yes.
Q. Thank you, Mr. Folk.
THE COURT: Mr. Vick? Mr. Vick?
MR. VICK: No questions, Your Honor.
THE COURT: All right. Mr. Hemphill?
MR. HEMPHILL: No questions, Your Honor.
THE COURT: Redirect?
MR. LYLES: Yes, sir. Thank you very much.

REDIRECT EXAMINATION

BY MR. LYLES:
Q. Mr. Folk, you were asked if you were given scopes of work by the defendants developed by defense experts to price. Do you remember that?
A. Yes, sir.
Q. And you were not asked to do that?
A. I was not asked to price any other scopes of work, no.
Q. Would Trehel be willing to price a scope and willing to sign a contract with these owners to do a scope of work that Trehel knew did not fix life and fire safety issues at the project?
A. No, sir.

Q. Mr. Belcher asked you some questions about Watkins Services and foundation work out there. Do you recall that?
A. I do, yes, sir.
Q. Do you know whether or not anyone at Trehel was called by these owners and asked if Trehel would come out and do temporary repairs to four foundation walls?
A. I do not, no, sir.
Q. Is that something that you think Trehel would be interested in doing at this time, emergency repairs to four foundation walls?
A. We would consider that work if that were requested by the homeowners, yes.
Q. You were asked a question about the price for shingles.
A. Yes, sir.
Q. And I think Mr. Belcher indicated that he had seen some prices at Home Depot?
A. Yes, sir.
Q. In your estimate under roofing, you have a price for shingles; is that right?
A. That's correct.
Q. And that price includes what?
A. That includes all items necessary to install those shingles. You've got flashings, drip edge, counter

flashings, sealants, nails and so forth. You've got ridge vent. There's a lot more that goes into it than just buying three bundles of shingles from Lowe's.

Q. And have you priced this job as you estimate other jobs for Trehel?

A. Yes, sir.

Q. And as you did for Able?

A. Yes, sir.

Q. And in a manner that's customary in the industry?

A. Yes, sir.

Q. And what you've prepared, it's an estimate; is that right?

A. That's correct.

Q. It's not an invoice?

A. No, sir.

Q. Do you recall going to Stoneledge and actually meeting the members of the homeowners association board?

A. I do, yes. Yes.

Q. And do you recall when that was?

A. I remember an initial meeting shortly after the original estimate for the original repair scope was completed in 2010. And I believe that was with Bob and yourself out on site.

Q. Now, you were asked a question of whether or not of the estimated price of over five million dollars you

would guarantee that all of the repairs, that all of the problems in these building would be completely fixed. And I think you said that you would not guarantee it; is that right?

A. Let me be clear. We're willing to perform the scope of work per C.S.E.'s documents. I believe -- the question led me to believe that would I do anything necessary, anything anyone wanted. The answer is, no.

Q. For the price that you have estimated, if Trehel was selected to do this work, would you guarantee that all of the damages associated with improperly installed shingles was repaired?

A. Yes, sir.

Q. Would you guarantee these owners that all problems associated with improperly installed flashing were repaired?

A. Yes, sir.

Q. Would you guarantee to these owners that all problems associated with deck-to-wall intersections have been repaired?

A. Yes, sir.

Q. Would you guarantee to these owners, if they selected you to do this work for the sum that you've estimated, that their foundation walls would be properly waterproofed?

A. Absolutely.
Q. Would you guarantee to these owners that all of the windows at that project would be properly installed when you left the job site?
A. Yes, sir.
Q. And would you guarantee to these owners that all damages that resulted from improperly installed windows would be repaired?
A. Yes, sir.
Q. And would you do the same thing for the doors at this project?
A. I would.
Q. And then would you guarantee to these owners that the shingles that you have installed have been properly installed?
A. We would.
Q. And would you guarantee to these owners that the siding that you've installed has been properly installed?
A. Absolutely.
Q. And that the stone that has been installed by your company was properly installed?
A. Yes, sir.
Q. And would you represent and guarantee to these owners that the flashing that you install was properly installed?

A. Yes, sir.
Q. And would you guarantee to these owners that the waterproofing that you install is properly done?
A. Yes.
Q. And would you represent and guarantee to these owners that the firewalls at their units have been properly constructed and comply with the code?
A. We would.
Q. I think that's all the questions I've got for you. Thank you.
A. Thank you.
THE COURT: Any recross?
MR. BELCHER: Nothing else, outside of what we've already talked about, Your Honor.
THE COURT: All right. You may step down. Thank you, sir.
All right. You may call your next witness.
MR. LYLES: The plaintiff calls Bob White.
Is Bob here? Did he step out?
I surprised Mr. White. He didn't realize he was next. But the time he's got to get home today, I need to call Mr. White.
(WHEREUPON, court stood at ease.)
MR. LYLES: Your Honor, since we can't find Mr. White ---

THE BAILIFF: They're checking downstairs.

THE COURT: Yes, sir.

MR. LYLES: --- I'm happy to call J.R. Watkins.

THE COURT: Very well.

Mr. Watkins?

MR. LYLES: Is he here? There he comes.

We call, J.R. Watkins, Your Honor.

(WHEREUPON, the witness was duly sworn.)

THE COURT: All right. If you would, please, sir, give us your full name, spelling your last name for the record.

THE WITNESS: Steve Wayne Watkins, II.

THE COURT: Very good. Thank you, sir.

STEVE WAYNE WATKINS, II,

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. LYLES:

Q. How are you doing, Mr. Watkins?

A. Doing fine.

Q. Good deal. You dress up pretty nice. Your dad would be proud.

A. Thank you very much. It happens from time to time.

Q. Mr. Watkins, two in row. This is your first trial to testify in too, isn't it?

A. Yes, sir.

Q. Just relax.
A. I'm nervous.
Q. Mr. Watkins, where are you employed?
A. Watkins Services Incorporated.
Q. And how long have you been employed by Watkins?
A. By a Watkins company?
Q. Yes, sir.
A. Since I was a teenager.
Q. And who started Watkins?
A. Actually, my grandfather, Jesse James Watkins. And he, sort of like the mafia, he pulled my dad into it, and my dad pulled me into it.
Q. How long was your dad with the company?
A. Since 1978.
Q. And you've been doing work for Watkins Services since, I think you said, you were sixteen?
A. Yes, sir.
Q. I suspect your dad probably started you well before that you just don't want to say it?
A. Yeah, he did.
Q. I figured he probably did. What type of work does Watkins Services do?
A. We are -- I'm a licensed unlimited general contractor. But we mainly -- we can do anything. We've done new builds. But we primarily specialize in multi-

family, multi-building, large repair projects and restorations.

Q. And has that typically been the work of Watkins?

A. Yes, sir.

Q. And are y'all known in the area for doing remedial repairs?

A. Which area?

Q. Well, in the area of South Carolina.

A. Yes, sir, we are. And beyond. And beyond.

Q. Meaning repair to buildings in distress?

A. Yes, sir.

Q. And have y'all worked on lots of multi-family projects?

A. We have.

Q. Have you worked on lots of projects like Stoneledge?

A. We have.

Q. And that's something that you've been involved with the entire time that you've been with Watkins Services?

A. Yes, sir.

Q. And were you hired as an expert in this case?

A. I was.

Q. And who hired you?

A. Alan Belcher. My dad was originally hired, and, as you know, he passed back in January. So I took over for him.

Q. So you were retained by the lawyer for Bostic; is that right?
A. Yes, sir.
Q. Or your firm was retained by Bostic?
A. Yes, sir.
Q. Now, have you worked with Mr. Belcher before, or had your firm?
A. I'm sure he has. I'm sure my father has, yes, sir.
Q. Okay. And how about Mr. Imhoff's firm? Do you know if Watkins Services did any work for Mr. Imhoff's firm?
A. I believe my dad has also, yes, sir.
Q. Okay. And Mr. Anderson's firm, J.J. Anderson's firm?
A. Yeah. My dad and myself, yes, sir.
Q. Okay. And have y'all done work for my firm?
A. Yes, sir.
Q. And for me?
A. Yes, sir.
Q. Do you know how long I did work with your dad?
A. I think it's been more than fifteen years.
Q. A long time. How would you describe the type of project that Stoneledge is?
A. It's a eight-building multi-townhome unit repair project.
Q. And are y'all familiar with the codes that are

applicable to projects like Stoneledge?
A. Yes, sir.
Q. And the type of construction that exists at Stoneledge?
A. Yes, sir.
Q. And the products and materials that were utilized to build Stoneledge?
A. Yes, sir.
Q. And are y'all familiar with things like fire rating requirements and other unique aspects of townhomes?
A. Familiar with it. I usually have to look it up. But, yes, sir.
Q. And is that something that you do?
A. Yes, sir.
Q. When you have a question, you look things up?
A. Before we start a project, usually we have a design professional that assists us. But we also like to contact the local building official and explain to them what we're doing before we pull our permits. Walk into it and make sure there's nothing that was overlooked before we begin as far as making sure everything is code compliant.
Q. Is pulling a permit a significant event to you as a general contractor?
A. Yes, sir.

Q. What's significant about that to you?
A. Well, the town or county likes to get paid, and it's the law. And it's important for us when we're doing projects to make sure that everything is legal. We try to make all of the repairs. We try to stick to the scope that the design professional lays out and make sure that we do everything within the code, and the code official assists us in doing that.
Q. Pulling a permit, in your experience, obligates you as a general contractor in certain ways to the county?
A. Yes, sir.
Q. And to the public?
A. Yes, sir.
Q. In your work at Watkins Services, have you gotten some experience being an estimator?
A. Yes, sir.
Q. And tell me about that.
A. Well, my dad did the construction litigation side with -- I think everybody knows Robert Ayers. He's our in-house estimator. And what a lot of people may not know is that the numbers that Robert Ayes and my dad used were numbers that I put together for bids. So those are real-world historical numbers that we use.
Q. Is your role in the company more on the bidding side or the construction side?

A. Up until my dad passed, I was director of field operations, and I helped manage all the projects that we had. And I also submitted all the bids. I put the bids together, and I submitted them.

Q. And how many jobs would you say that you've estimated in your career? And I would limit that to jobs like Stoneledge, multi-family projects that need repair.

A. Dozens and dozens.

Q. And it's a process you're comfortable with?

A. Yes, sir.

Q. And typically when you estimate a job, do you estimate a job -- if you're doing the full scope of repair, estimate a job in a way that at the end of the day you could submit a contract to the owner and say, I'm willing to do the work for that amount of money?

A. For the construction litigation?

Q. Yes.

A. Yes, sir. We look at them as bids, yes, sir.

Q. And have you been successful in actually getting people who have distressed buildings and buildings that leak and who are in lawsuits hire you, hire Watkins Services?

A. Well, my dad always said that's why we suffer through this process because at the end of the day we would like to at least get an opportunity to perform the

work.
Q. And do you feel qualified to do the type of work that you know has to be done at Stoneledge?
A. Yes, sir.
Q. And is the work at Stoneledge work that Watkins Services would ultimately like to do? That is, the repair work.
A. Very much, yes, sir.
Q. As I understand, you've been out there doing some emergency repairs in phase one; is that right?
A. We have, yes, sir.
Q. Describe for me, if you will, the type of work that you've been doing out there.
A. The work we've done has been limited to the -- can I drink this water? I'm sorry. When I talk, my mouth gets dry.

THE COURT: Sure. That's what it's there for.

MR. LYLES: Is that yours?

THE CLERK: It's his.

THE WITNESS: All right. Thank you very much.

THE COURT: We don't pass it around.

MR. LYLES: I looked at it first. I didn't know who sat it up here.

A. The emergency repairs -- first of all, those that know me know I'm long-winded. And I try to keep things

short. But we were asked to make some repairs. And I think the owners at Stoneledge -- I think you endorsed us, and they talked to some other folks. They had some problems with water entering basements between the slab and the wood frame walls and asked us if we could help. And they hired us to do a unit. And I think we performed to their expectation. And then they asked us to do some more work out there. But it's limited to the base of the wall. We excavate down several feet, and we remove whatever the cladding is. Typically where we've worked it has been the Owens Corning -- we call it the stick-on stone. And we remove that stone. We excavate down, clean everything, make any necessary repairs of damage that we find. And we're installing a liquid applied membrane.

Q. And in phase one you've done that to how many units?

A. Four.

Q. And that's the extent of the work that you've done in phase one?

A. In phase one, yes, sir.

Q. And have you become familiar with the units in phase one at Stoneledge?

A. I have a general familiarity with the layouts. I'm pretty familiar with the buildings, if that's your question. Yes, sir, I know how they're laid out. I know

how they're constructed.

MR. LYLES: Your Honor, I would ask that Mr. Watkins be qualified as an expert in the areas of construction and remedial repair and construction estimating, cost estimating.

THE COURT: Any voir dire?

MR. BELCHER: No, Your Honor. That's my witness.

THE COURT: I don't know if we need to hear from Mr. Belcher or Imhoff or Lyles, of course. Anybody else, though? Does anyone have any voir dire for this witness?

(No response)

THE COURT: All right. Very well. I do find that the witness is qualified in construction, remedial repairs and cost estimating.

MR. LYLES: Thank you.

THE COURT: Again, in his testimony he'll be permitted to give his opinion as well as any other information he might have that's familiar with his area of expertise.

You may proceed.

Q. Who at Watkins Services was first retained by Bostic Brothers? Do you know? Was that your father?

A. Yes, sir. I believe it was, yes, sir.

Q. And when did you actually personally become involved with the Stoneledge project?
A. I can't give you an exact date. It was earlier this year. Probably in late spring maybe.
Q. I'm going to ask you some questions about some estimates that you've done at Stoneledge. You may be testifying about what your father did; is that right?
A. Yes, sir.
Q. Do you know what your father was originally asked to do?
A. No, I don't.
Q. Do you know whether or not your father was ever asked to give a price for the C.S.E. scope of work that is reflected in exhibit 27?
A. Yes. We have an apples-to-apples estimate for phase one. So, yes, sir, I assume that he did. Yes, sir.
Q. And when you say apples-to-apples, what do you mean?
A. It's a term that we use, I think most estimators use. We try to stick to the scope. We try to maintain the exact line item. We may have different quantities. We may have different unit costs. But we try to include all the different line items. So they're very comparable, so you can see what our number is to do that work and what a different estimator's number is.
Q. In this case, that would be John Folk?

A. Yes, sir.
Q. And are you familiar with or was your father familiar with John Folk's estimate when he did his apples-to-apples number?
A. I believe so. I believe we based it on his. We try to keep the same format if we can.
Q. And do you know what information your father had? Well, let me ask you. Did your father prepare the apples-to-apples estimate, or was that done by somebody else?
A. Robert Ayers would have prepared it. What Robert Ayers does, he does the basic work. And then he and my dad, they talk after that. And they continue to make changes until they have something that they feel is adequate.
Q. Do you know what your father did in order to prepare the apples-to-apples estimate? What information he got?
A. I can't tell you specifically. I know he -- I know this case was important to him because he normally doesn't make a lot of on-site visits. You know, at the time he was sixty-four years old. And I remember he wanted to spend a couple of days at Stoneledge. I asked him if I could go help him. He said, no. He said he wanted to take his time, walk around and get familiar with the layouts. And because the buildings were cut up

and they're staggered and there's three different types of townhomes that are linked together in the different buildings, he wanted to make sure that he felt like he had good takeoffs or good quantities for the different lineups.

Q. So do you know if your dad looked at exhibit 27?

A. I don't know if he did. I'm not sure if he did. I assume he did. Probably, but I don't know if he did or not.

Q. Okay. Have you looked at it?

A. No, sir. I've seen parts of things, different reports that Derek Hodgin has put together. But I don't know if I've seen everything that he has. I may have.

Q. Well, when you prepared the apples-to-apples estimate, what scope of work was anticipated or contemplated by your company?

A. Well, what I assume my dad did, because it's typically what we do, is that we like to refer to the expert that developed the scope that the estimate that we're doing the apples to apples to -- I know that was a mouthful. We try to -- we look at that. We refer back to that report as much as we need to, but we try to look at the estimate to see that, okay, we have a line item here. Well, we're going to replace all the shingles. Okay. If we're replacing all the shingles, then what we

have to do is we have to find out how many shingles out there need to be replaced. We do our takeoff to do that. If there's something more specific, like if we're doing structural repairs or something like that, we try to dig into the expert -- I guess you can say the other side's expert's reports, see how he wanted it done and make sure that we stay consistent with that.

Q. So you don't know the extent to which your father reviewed exhibit 27?

A. No, sir.

Q. And you have not looked at exhibit 27?

A. If exhibit 27 is a binder of all of C.S.E.'s reports -- I've seen a lot of them. I don't know if I've seen every one.

Q. Exhibit 27 was referred to as the repair documents. That's Mr. Hodgin's scope of repair and details, specifications.

A. Can I look through it?

Q. Certainly.

A. Yeah, I've seen the first section.

Q. And that's the narrative? That's what he wrote?

A. Yes, sir. I haven't looked at the next section with the drawings. I haven't looked at those.

Q. Okay.

A. He's got code references in there.

Q. And manufacturer's references?
A. Yes, sir. I don't know if it's in here. There's two or three other reports that he had, I guess, put together. One was in '09. And I think there might have been two '09 reports, things like that, that I did look at.
Q. So you read that?
A. Yes, sir.
Q. And you're familiar, at least familiar, with the narrative that he wrote explaining what he needed to have done in the way of a repair?
A. Yes, sir.
Q. And you've worked with Derek Hodgin before?
A. Yes, sir. And I've talked to him about the -- about Stoneledge and the repairs and things like that from time to time.
Q. Have you asked him questions about what he needs or what he's requiring from a repair standpoint?
A. A few times over the last several months just to make sure that -- when I went back to review what my dad and Robert had put together, I wanted to make sure that I was comfortable with it. And based on the answers that Derek gave me, that I was comfortable with it.
Q. Have you worked with Derek before?
A. Yes, sir.

Q. Have you done projects that were done -- repaired pursuant to scopes of repair that Derek developed?
A. Yes, sir.
Q. Do you have an appreciation for or an understanding of his methodology in repairing problems?
A. Yes, sir.
Q. And what his expectations are?
A. Yes, sir.
Q. Have you found those to be reasonable from your experience?
A. Yes, sir.
Q. So are you comfortable as you're testifying today that you have an understanding of the repair that is required at Stoneledge by C.S.E.?
A. Yes, sir.
(WHEREUPON, Plaintiff's Exhibit Number 30 was marked for identification only.)
A. Can I add something to that also?
Q. Of course.
A. The apples-to-apples that we did, we only did one. And that was everything that was above grade. There's a -- I know that the other estimator has put together an estimate that has below-grade work. I think the number one point four. We weren't asked to put a number on that, so we have not done that work.

Q. Okay. Thank you.

Let me show you what I've marked as exhibit 30 and ask if you recognize that?

A. Yes, sir.

Q. And what is that?

A. This is the apples-to-apples estimate that Watkins Services prepared based on the other estimator's scope.

Q. And that's what your father put together?

A. Yes, sir.

Q. And what's the date on that?

A. April 30th, 2012.

Q. And have you satisfied yourself during your review process that that is an estimate that you can testify about today since you didn't prepare it?

A. Yes, sir.

MR. LYLES: Your Honor, I'd move to have that exhibit admitted as Plaintiff's Exhibit 30.

MR. BELCHER: No objection from Bostic, Your Honor.

MR. IMHOFF: I don't think I have an objection to it, but I haven't actually seen it, Your Honor.

THE COURT: Well, let's go ahead ---

MR. IMHOFF: Can we just move it in for right now and let me look at it after?

MR. LYLES: You've had it for two years, but

I'll be glad to show it to you.

THE COURT: Well, let's just go ahead and ...

(WHEREUPON, Mr. Imhoff reviewed exhibit.)

MR. IMHOFF: No objection, Your Honor.

THE COURT: Anyone else?

(No response)

THE COURT: All right. Then that's exhibit number 28?

MR. LYLES: It's 30.

THE COURT: Number 30. Excuse me.

MR. LYLES: And it's two pages.

THE COURT: Plaintiff's Exhibit Number 30 is admitted without objection.

(WHEREUPON, Plaintiff's Exhibit Number 30 was admitted into evidence.)

Q. I'm going to try this one more time. You've got the pointer?

A. I've got the pointer, yes, sir.

Q. You've got the pointer.

THE COURT: Do you want the lights off?

MR. LYLES: Yes, sir, that would probably be helpful. Thank you.

Q. Okay. Production quality excuses. My fault. Is this a copy of the front page of your apple-to-apple estimate?

A. Yes, sir.
Q. And, again, this is to implement the scope of work on the building envelope, not the foundations, that was required or is required by C.S.E.; is that right?
A. Yes, sir.
Q. And you were in the courtroom for the testimony for Mr. Folk?
A. Yes, sir.
Q. And Mr. Folk reviewed his estimate with us. Did you and your father -- did your father set this estimate up in a similar fashion?
A. Yes, sir.
Q. And it starts with roofing; is that right?
A. Yes, sir.
Q. Goes down to exterior wall cladding systems. And the other topics are similar to those that Mr. Folk has in his estimate?
A. Yes, sir.
Q. And so the jury can compare the prices; right?
A. Correct.
Q. By activity or component; is that right?
A. Correct.
Q. They can look at Mr. Folk's roof cost and your roof cost; is that right?
A. Yes, sir. Because we look at it like a bid process.

So it's just like submitting a bid on a common scope. So we try to -- usually, you have bid documents that everything is laid out for you. So we try to keep it consistent like that.

Q. Okay. I'm going to show you now the second page of your apple-to-apple estimate. Can you see that?

A. Yes, sir.

Q. And does it simply carry on just as Mr. Folk's estimate did?

A. Yes.

Q. With rear elevated concrete balconies, interior finishes, fire protection, so on and so forth?

A. Yes, sir.

Q. You have number eight, unforseen conditions allowance. Do you see that?

A. Yes, sir.

Q. And over to the far right, you've got in contingency?

A. Yes, sir.

Q. We'll come back to that in a minute. Can you tell the jury the total for the building envelope repair in your apples-to-apples estimate?

A. Three point nine -- I believe that's eight five.

Q. Well, let me give you a ---

A. I can't remember. If I could look at it ---

Q. I'll give you this. How about that?
A. I always call it the three nine nine estimate.
Q. Okay.
A. Three million nine hundred ninety-five thousand one hundred and six dollars and thirty-four cents.
Q. And it's your testimony that that would be Watkins' Services costs to implement the building envelope repair that Mr. Hodgin has called for?
A. Above grade, yes, sir.
Q. And so that's about four hundred thousand dollars less than Mr. Folk's estimate; is that right?
A. I think so, yes, sir.
Q. From what you saw today?
A. Yes, sir.
Q. Have you tried to figure out why there is that discrepancy in price?
A. The few things I noticed when I went through it, our quantities are a little different. I think our roofing quantity or our takeoff is a little above his. We have some lower quantities on the stone and the lap siding. I think one of the biggest differences is our quantities for the stone and the shake are a lot less because there's very small areas of the shake out there, the shake siding. And it's usually, I think, above -- I think second floor, you know, bump-out dormer gable-type

areas. And, also -- you were getting ready to talk about it -- contractors put these together in different ways. There's really no right or wrong way that they do it. But we put our contingency after the subtotal and not before. So we don't mark up -- we don't mark up our contingency before. We include it as a line item at the bottom.

Q. Okay. Well, first of all, let's look and see what you're talking about. And, again, I'll show you the second page, which is where I think your contingency is located; is that right?

A. Yes, sir.

Q. You see your contingency in there?

A. Yes, sir. Right here.

Q. Okay.

A. Oh, well, no. Our contingency is down here. Yes, sir.

Q. Okay. So your contingency is down near the bottom of the estimate; is that right?

A. Yes, sir.

Q. And so it's below your permit and licenses, below your overhead, below your profit?

A. Yes, sir.

Q. Okay. Now, Mr. Folk's contingency -- I'm going to put up what was marked previously as exhibit 29 and ask

you if you see Mr. Folk's contingency? Do you see it?
A. I know where it's supposed to be. I'm trying to -- yeah, right there. Yes, sir.
Q. Okay. And that's the unforseen allowances?
A. Yes, sir.
Q. Or unforseen condition allowance; right?
A. Yes, sir.
Q. And so it's above these numbers?
A. Right.
Q. And your contingency on this form would be somewhere down in here; is that right?
A. Exactly. His contingency is before the markups, and it gets marked up. Ours is actually a markup.
Q. Okay. And as you say, contractors do things differently?
A. Exactly, yes, sir.
Q. Well, first, let's talk about contingency. His contingency is ten percent; is that right?
A. Yes, sir.
Q. And your contingency is ten percent?
A. Yes, sir.
Q. Is a ten percent contingency a number that Watkins Services typically uses for repair work like this?
A. Yeah. It's our baseline number, yes, sir.
Q. So that number is not in your apples-to-apples

estimate because it's what Mr. Folk use; it's in there because that's what Watkins Services used?

A. Yes, sir.

Q. So the use of a ten percent contingency on a project like this is customary and reasonable in your experience?

A. Yes, sir.

Q. Now, other than a difference in how you go about putting your estimates together, is there anything that you think is wrong by Mr. Folk putting his contingency higher up in his estimate?

A. No. I mean, all contractors mark things up different ways. We just have a standard way that we do it.

Q. And you said that you found some quantity differences between y'all's estimate and Mr. Folk's estimate?

A. Yes, sir.

Q. And is it the quantity differences and then the placement of the contingency that you think results in the four-hundred-thousand-dollar gap between your estimate and Mr. Folk's estimate?

A. I believe that it is. The unit costs are pretty similar throughout the estimate, as far as I can remember. I think those are the biggest differences. A little bit of a quantity difference and then where the

contingency was put.
Q. You wouldn't think that the price charged for a piece of plywood would account for that difference?
A. No, sir.
Q. Or how much a stack of shingles cost?
A. I wouldn't think so. Because if I remember right -- I mean, I can go through the exercise now. But I think the -- like I said, I think on the apples-to-apples, the unit costs were pretty similar.
Q. Now, there's been some discussion today about C.A. services, contract administration services. Are you familiar with that term?
A. Yes, sir.
Q. And in your opinion, is a design professional performing A and E services appropriately?
A. Yes, sir.
Q. For a project like this?
A. Yes, sir.
Q. Would you recommend that to the owner?
A. I would.
Q. And why would you recommend it to the owner?
A. Well, a project of this size you would want -- the design professional you hire, he's not only going to do the C.A. services. Normally they'll provide engineering services, design services, things like that, as well as

the contract administration. And typically what we find is the firms that we work with, they'll have a representative go out and look over our work and make sure that we're conforming to their scope of work and also see how much progress that we've made. So when we apply, when we turn in a pay application, they either approve it or deny it.

Q. There's another line item in Mr. Folk's estimate that I don't think was in yours. And that's the performance and payment bond?

A. Yes, sir.

Q. Do you remember that being a distinction between your estimate and his?

A. Yes, sir.

Q. Is it your belief that a performance and payment bond would be necessary on a project like this?

A. Not on -- we typically don't need them or use them on repair projects. If we do start work or if -- like the owner's borrowing money and part of the agreement with the bank is that they have it, then the owner purchases the bond or pays for the bond. But, you know, in repair projects, especially with our company, the reputation we have -- we pay our creditors, we pay our subcontractors -- we've had a longstanding good reputation in business. And it's typically not required

for us.
Q. So that could be a price difference as well between you and Mr. Folk's estimate?
A. Yes, sir.
Q. In your estimate -- and I just want to review these as quickly as possible. Y'all are replacing -- removing the shingles and replacing them?
A. In apples-to-apples?
Q. Yes.
A. Yes, sir.
Q. In your apples-to-apples. And y'all are removing most of the siding at the project?
A. Yes, sir.
Q. And ultimately y'all are going to repair the damage to the building wall components in this estimate; is that right?
A. Yes.
Q. And you're going to remove and reset all of the windows. Is it three hundred sixty-two?
A. I think it's three eighty-two.
Q. Three eighty-two? You're going to remove and replace and reset three hundred and eighty-two windows?
A. Yes, sir.
Q. And you're going to repair all of the fire-rated walls?

A. Yes.
Q. And you're going to reinstall the W.R.B.?
A. Correct.
Q. And you're going to do it properly?
A. Yes, sir.
Q. And you're going to reinstall the siding?
A. Yes, sir.
Q. And re-shingle the roofs?
A. Yes, sir.
Q. And you're going to make the same guarantees to my clients that you heard Mr. Folk guarantee, that the work that you've done is done properly?
A. Yes, sir. Everything -- all the work that we perform, we'll stand one hundred percent behind it.
Q. And the damages that resulted from the faulty work is all going to be repaired?
A. Everything that we find, yes, sir.
Q. Sure. And with an estimate of this breadth and scope, you would hope that you find it all?
A. Yes, sir.
Q. Which is the purpose of the scope of repair?
A. I would assume.
Q. And you're going to make some minor interior repairs; is that right?
A. Yes, sir.

Q. Would Watkins Services sign a contract with Stoneledge H.O.A. to implement C.S.E.'s scope of repair today for -- let's just round it up to four million dollars?
A. Yes, sir. The above grade, our apples-to-apples, yes, sir. We consider it a bid. Yes, sir.
Q. And how long would that project take?
A. I'd like to have -- probably eighteen months. I think we can get it done sooner than that. But to be safe, I'd say eighteen months.
Q. And I think you heard Mr. Folk's testimony. Are you going to have to use scaffolding for the project?
A. Yes, sir.
Q. And are you going to jackhammer that stone off?
A. Yeah. The hammers we'll use, we'll use smaller hand-held hammers. Some of the stone will come off easier if it's installed over -- from what I've seen out there, if it's installed over the drywall areas. So, yes, but there will be noise.
Q. Explain that to me. Some stone will be removed easier for what reason?
A. What we've encountered out there in some of the repairs that we've made is when the lathe is installed on the drywall areas, it tends to come off a little bit easier.

Q. And lathe, that's a wire mesh?
A. Yes, sir.
Q. And that's actually put up on the wall before the stone is applied; is that right?
A. Yes, sir.
Q. And then you stick the stone to that?
A. Right. Well, basically, you're putting on a stucco scratch coat. And when it cures, then you mortar the stone to the wall. Yes, sir.
Q. And the stone manufacturer's specifications and recommendations require that lathe be nailed into the framework?
A. Most of the time; not all of the time. It depends on the type of fasteners that you use. But we put ours into framing.
Q. But you've seen instances out there where this lathe was actually nailed into drywall?
A. Yes. But there is sheathing behind it.
Q. Now, you're also going to remove portions of the porches and decks pursuant to the C.S.E. scope of repair?
A. Yes, sir.
Q. And the owners are not going to have the benefit and use of those components while they're removed; is that right?
A. While we're working on them, they won't be allowed

out there, no, sir.
Q. And the doors are going to have to be locked so nobody can come out or walk out onto a porch that is not there?
A. Correct. We'll secure it where nobody can go out, yes, sir.
Q. Now, you said several times in your testimony you've been careful to limit your apples-to-apples number to the building envelope and it does not include the foundation; is that right?
A. Yes, sir, because I recently saw a revised estimate that had below-grade repairs where it didn't before. And we haven't priced that yet.
Q. I'm going to show you what was marked previously as Plaintiff's Exhibit 28 and ask you if you have seen that document?
A. Yes, sir.
Q. And I provided that document to you last evening?
A. Yes, sir.
Q. And that's the first time you saw it?
A. Yes, sir.
Q. So you were never asked or your dad was never asked, as far as you know, to actually provide a price for the foundation repair that C.S.E. is calling for?
A. As far as I know.

Q. And so you want to be careful and tell the jury that your three point nine nine five estimate does not include this foundation; is that right?
A. Correct.
Q. Have you, in your experience involved in phase one of Stoneledge -- have you seen evidence that the foundations leak?
A. Yes. We've repaired four of them. Yes, sir.
Q. And do you have any opinions about whether or not the scope of repair that Derek has specified for those foundation walls is appropriate or not?
A. You know, Robert, we were hired to basically bid both scopes. And I read that quickly this morning. And there's nothing wrong with his repair. Nothing wrong with it. I just can't testify to whether or not -- all the balconies might be -- well, all the basements might be leaking, none of them. I just don't have firsthand knowledge of that.
Q. Well, you know none of them -- you know it's not right to say none of them are leaking because there are some?
A. Well, we've repaired four. We haven't been asked to fix any others yet.
Q. And you're familiar with code requirements for damp-proofing foundation walls?

A. Yes.
Q. And you think that's a good idea?
A. Yes.
Q. So you don't -- you can't offer an opinion about whether or not this repair is necessary. But if it is, it's not included in your three point nine nine five estimate?
A. Correct.
Q. If we focus then on the building envelope repair, would you agree with me that if Watkins Services implements that repair, again, exhibit 27 which is Derek's building envelope repair, that these owners at the completion of the repair, excluding the foundation issue, would have a building that's safe?
A. (No verbal response)
Q. Not subject to fire or the firewalls are properly constructed.
A. Correct. All the life safety issues that are included in that scope, we will repair, yes, sir.
Q. And, again, you will correct and repair the rot and deterioration that results from the conditions that are being repaired?
A. Yes, sir.
Q. And you'll give the building -- the owners a building that is dry or at least manages water properly?

A. Yes, sir.
Q. And you'll give them a building that complies with the code?
A. Yes, sir. On the areas that we work.
Q. Sure. If you implement the scope of work that's called for by C.S.E. on the building envelope and in a year or two years window leak, will Watkins Services go out and make a repair?
A. Number one, that won't happen. But, yes, sir, we will.
Q. So the owners can be confident in that?
A. Yes.
Q. And if you make these repairs and they find a leak coming through a porch door, will Watkins Services take care of that?
A. After I find somebody to fire, yes, sir.
Q. And if the owners report a roof leak in a roof that you repair, will Watkins Services come out and make the repair?
A. Yes, sir.
Q. And to implement the C.S.E. scope of repair that was priced by Mr. Folk, but also priced by your father, to implement this building envelope scope of repair is going to cost in round numbers four million dollars if Watkins Services does it?

A. Yes, sir.
Q. And you'll sign a contract to do that work for my clients?
A. Yes, I will.
Q. That does not include the foundations?
A. Not -- you were waiting on that. Not the foundations, no, sir.
Q. Okay. I think that's all the questions I've got for you, Mr. Watkins. Thank you.
THE COURT: All right. Mr. Belcher?
MR. BELCHER: Your Honor, given that he's my witness, I'm going to have a considerable amount of questions. Do you want me to start now, or do you want to take a break for a few minutes?
THE COURT: We can take a break, but it will be just for a few minutes. All right.
MR. BELCHER: Thank you, Your Honor.
THE COURT: Do you need the lights on to begin with?
MR. BELCHER: That'd be nice.
THE COURT: All right. Let there be light.
All right. Very good. Just take a few minutes and stretch your legs and come back. I think from what Mr. Belcher says this witness might go beyond five. So if anybody needs to make any telephone calls or

arrangements, let me know or let the bailiff know and we'll make the necessary phones available.

(WHEREUPON, the jury exited the open court at approximately 4:19 p.m.)

THE COURT: All right. Mr. Watkins, you are under oath so you can't discuss your testimony with anyone, but you may step down if you'd like.

THE WITNESS: Thank you, sir.

THE COURT: Very good.

All right. Anything from the plaintiffs before we take a break?

MR. LYLES: No, Your Honor.

THE COURT: From the defendants?

MR. BELCHER: Your Honor, I had planned to call Mr. Watkins in my case-in-chief. I'd like to call him in my case-in-chief. And if he wants to move on to his next witness and let me just call Mr. Watkins after -- see, the thing is, is I've got a different scope of repair that has to come into evidence ---

THE COURT: I understand.

MR. BELCHER: --- before I ask him ---

THE COURT: Well, you could still do that as a reply to it, I guess, if you put in the other testimony. But what do you think? Well, let's see. Any other defendants, do you have any thoughts about how we might

proceed with this witness?

(No response)

THE COURT: In other words, I think I do know what Mr. Belcher is saying is he doesn't want to take him up at this time. He has his direct. You'll all be protected on your cross. And I guess if you put him up as your witness, there would not be any cross from you?

MR. BELCHER: Correct.

THE COURT: But now, that puts it in -- Mr. Lyles will be able to cross him because he's your witness.

MR. LYLES: Well, I'm fine. I mean, if -- so what you're asking is to recognize your right to cross-examine him when you call him up in your case? No. You just want to call him up in your case?

MR. BELCHER: Yeah, I just want to call him as a witness.

MR. LYLES: Okay. That's fine.

MR. BELCHER: I mean, I'm reserving the right to ask him whatever questions I want. I'm not going to ask him leading questions, but ---

THE COURT: Well, that's the only thing we're talking about, leading.

MR. LYLES: Okay.

THE COURT: Y'all haven't been too bad about

that at all.

Yes, sir?

MR. IMHOFF: The only thing I would I suggest, can we talk about it over this break and then decide?

THE COURT: Sure. Well, that'll be a good topic of conversation.

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

THE COURT: All right. Have y'all made a decision?

MR. BELCHER: Yes, Your Honor. As requested before, I would like to go ahead and reserve the right to question him in my case-in-chief as my witness. He'd be subject to cross-examination from the defendants over here, of course.

THE COURT: All right. But during your case?

MR. BELCHER: I'm going to call him during my case, yes, sir.

THE COURT: All right. But they are reserving their cross-examination of the witness until that time?

MR. BELCHER: Correct, Your Honor.

THE COURT: All right. Any objection, Mr. Lyles?

MR. LYLES: No, sir.

THE COURT: All right, sir. You may step down.

THE WITNESS: Thank you, Your Honor.
THE COURT: Now, how long do you think it'll be before you'll be back into your case?
MR. LYLES: Your Honor, I think we will finish by midday tomorrow.
THE COURT: Okay. Well, the reason I ask, you know, as I mentioned, you're under oath so you can't discuss your testimony with anyone, with your attorneys or anyone else.
THE WITNESS: Yes, sir.
THE COURT: All right. Very good. And then you'll be subject to recall.
THE WITNESS: Yes, sir.
THE COURT: All right. Thank you very much.
And then I guess, Mr. Belcher, you'll be in charge of him now.
THE COURT: Well, Your Honor ---
THE COURT: I mean, in other words, staying in touch with him.
MR. BELCHER: Yes, I'd like to stay in touch with him, but he's also my expert witness. And I ---
THE COURT: Well, no, if he's going to be here, that's easy to stay in touch with.
MR. BELCHER: Right.
THE COURT: But I'm saying if you -- you know,

if you don't need him in the courtroom ---

MR. BELCHER: Uh-huh (affirmative).

THE COURT: --- then -- what is it? -- and if he goes, rather than looking at Mr. Lyles to get your witness here.

MR. BELCHER: My concern is that the instruction to the witness prejudices me ---

THE COURT: Oh, you mean you can't talk to him?

MR. BELCHER: --- to discuss what has happened over the last couple of days and what'll happen over the next couple of days. Now I've got my witness completely prejudiced as to what's going to happen. But if there's exception to me talking to him, I guess I just have to take my lumps for not crossing him. To me, I think I ---

THE COURT: Well, to be very candid with you, I'm not sure because some of his testimony was such that it would suggest that it does need exploration in the sense that he had not considered the below-grade elements and things of that nature. I'm going to relax the rule as far as preparing your case. In other words -- but I don't want anyone talking to him about something else. In other words, it's as if you're talking to a juror or something like that. Let's don't talk about anything that might not be involved in just what his testimony is going to be. In other words, I don't want to retry a

case later or something like that about something that was taken up that was not anticipated.

MR. BELCHER: All right. Thank you, Your Honor.

THE COURT: All right. In other words, he can talk to his other lawyer inasmuch as the party that's calling him.

MR. LYLES: Okay.

THE COURT: Because he hasn't been called on that part of the case yet.

MR. LYLES: So -- and I am not somebody who normally makes issues like this except I went three days without talking to my expert about -- Mr. Hodgin, who was under oath, as of last Thursday because they wanted to wait and do their cross. And I just want to make sure I ---

THE COURT: Well, what I'm doing is, you want me to bring Mr. Hodgin back?

MR. LYLES: No, sir, I don't. I just want to make sure I understand.

THE COURT: Let's just say this. I'm going to permit him to be available to, particularly, Mr. Belcher. And I don't know. He said that he was also retained by Mr. Imhoff and Mr. Anderson. Is there anyone else?

(No response)

THE COURT: All right. In other words, I'm going to permit him to discuss his testimony this time. And I apologize for you having to ---

MR. LYLES: That's okay. I didn't make ---

THE COURT: Were you going to take him to Charleston with you or ...

MR. LYLES: Who's that?

THE COURT: Mr. Hodgin, since you said it was three days?

MR. LYLES: Well, it was three days. It's okay. I just didn't even think to request for relaxation of the rules. I just want to make sure -- I understand how bad I messed up.

THE COURT: All right. Very good. Anything else?

MR. LYLES: Nothing from the plaintiff, Your Honor.

THE COURT: Very good. If it was error, it's harmless error. Let's say that.

All right. Let's ask the jury to join us.

Now, you're going to call Mr. White?

MR. LYLES: Yes, sir. And he'll be our last witness today, and I think he'll be a little quicker.

THE COURT: Now, will we be able to complete him as far as ...

MR. LYLES: I think so.

THE COURT: All right. It's getting close to five o'clock.

All right. Ask the jury to join us, please.

(WHEREUPON, the jury entered the open court at approximately 4:38 p.m.)

THE COURT: All right. Let the record reflect the jury and alternate are in the jury box.

Mr. Foreman, we've decided to sort of move things along, and Mr. Watkins is going to be called by another party later in the week. In other words, not today. And so we're going to continue with the plaintiffs' case. I believe he has another witness to call.

MR. LYLES: Yes, sir.

THE COURT: Mr. Lyles?

MR. LYLES: Mr. White, Bob White.

(WHEREUPON, the witness was duly sworn.)

THE COURT: All right. If you would, please, sir, give us your full name spelling your last name for the record, please.

THE WITNESS: My full name is Robert Reed White. Last name is spelled W-H-I-T-E.

THE COURT: Very good. Thank you, sir.

ROBERT REED WHITE,

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. LYLES:

Q. Good afternoon, Mr. White.

A. Good afternoon.

Q. How are you doing today?

A. Good.

Q. Mr. White, I'll try to be as brief as I can so that we can let the jury go and get out of here.

Would you tell the jury a little bit about you? Are you married?

A. Yes, I'm married. My wife and I reside here. We have two children and six grandchildren.

Q. How long -- when you say you reside here ---

A. Yes.

Q. --- where's here?

A. At Stoneledge.

Q. And how long have you been a resident of Stoneledge?

A. Since June of 2006.

Q. And what brought you to Stoneledge?

A. We were attracted to Stoneledge by some marketing material that my wife had received in the mail. And then we actually came up here to take a look at it. We liked the idea of not being responsible for exterior maintenance. I travel a lot in my job. And so consequently, one of the things I don't want to do on the

weekend is any kind of outdoor maintenance and that type of thing. So that's how we found out about Stoneledge, and we came up here to look at it in April of '06 and purchased and closed in June.

Q. And who did you purchase it from? Do you remember?

A. I.M.K. was the entity that we purchased the unit from.

Q. And what did you know about I.M.K.?

A. Nothing really. I mean, we just knew that they were the developer and that they were completing the Stoneledge project. They had taken over -- we knew that they had taken over the phase one part of Stoneledge, which is where we purchased. But that's really what I knew about it.

Q. Okay. When you say they had taken over, what did you know about that?

A. We had understood that Bostic Brothers had started Stoneledge and that I.M.K. had purchased it.

Q. And did you know what I.M.K. or who I.M.K. was comprised of?

A. We knew -- not at the time that we purchased we didn't know, but we knew later on that it was a combination of Integrys and Marick and some other entities.

Q. Are there any individuals or were there any

individuals that you associated with I.M.K. in your dealings?

A. I.M.K., to me, in terms of the faces of the folks that were part of I.M.K. were Rick Thoennes and his son and Tim Roberson.

Q. And anyone else from I.M.K.?

A. There were other names like Lollis and Cox and some folks like that, but not people that I dealt with.

Q. After you purchased, did you deal with anybody from I.M.K. or Mr. Thoennes or anybody else relative to punch list items in your unit?

A. We did have a quite hefty list of punch list items. My wife pretty much dealt with all of that. And she worked at the time with Nathan -- I forget his last name. And some of his folks actually addressed the punch list items. We did have some leak issues that came to mind pretty quickly or came to sight pretty quickly. And we continued to deal with the I.M.K. folks for those.

Q. When you say Nathan, do you mean Nathan Hornaday? Does that name ring a bell?

A. Yes, that's him.

Q. And do you know who Mr. Hornaday worked for?

A. I do not.

Q. Describe, if you will, some of the problems. You said you had leak problems?

A. Yes, we did. We had -- one of the first leaks that we had was around a bedroom window upstairs that actually came into that bedroom and stained the walls in the bedroom. And then eventually, pretty quickly I should say, it, along with other issues at the place where the window was, resulted in a leak in the master bedroom. That was a fairly serious leak that took quite a bit of time to get rectified.

Q. And did you report that to somebody?

A. Yes. The I.M.K. folks worked on that for a number of months actually before it was eventually stopped, the leak was eventually stopped.

Q. Who specifically? Do you remember?

A. Nathan did a lot of the work. Nathan and his folks did a lot of the work. Eventually, the leak was solved and resolved by, I believe, a contractor, if I remember correctly, that they brought in to take a look at the issue.

Q. If Nathan Hornaday worked for Marick, would you say that Marick was aware of that roof leak?

A. I would think so, yes.

Q. Or that window leak?

A. Yes.

Q. Did you have other window leaks?

A. Yes. We had a leak around the window in the second

bedroom upstairs that actually showed up in the ceiling of the living room. That leak probably -- it took a while for that leak to show up. We had to wait for the rains to come before that leak ever showed up. We had a leak in the powder room bathroom on the main level. We had a leak in the -- a fairly serious leak that still exists today in the crawlspace downstairs in the basement. We had a leak in the basement bathroom. We had a leak around the french door that goes out on the lower-level patio.

Q. And did Marick or was Marick aware of all of those leak conditions?

A. Marick would have been aware of the leak conditions in the first bedroom that I mentioned, the master bedroom and the leak around the door in the basement. And they were aware of the leak in the crawlspace. I don't remember if the leak in the living room showed up in time for Marick to be involved in that or not.

Q. You indicated that you have leaks in the basement. Was that through the lakefront door or was it through the foundation wall?

A. It was through the lakefront door.

Q. And did you have any other leaks into your basement that you're aware of?

A. No, just the leak around that door and then the leak

in the crawlspace. And that leak in the bathroom.
Q. And the leak in the crawlspace, is that something that has been ongoing?
A. Yes. It's been since day one, and it still does it today.
Q. And is it coming through the foundation walls?
A. It is not at this time.
Q. And has that been repaired?
A. No, it has not.
Q. So when you said it's not at this time, what does that mean?
A. Well, it's an unfinished crawl space. We've seen water pouring into it in sufficient quantities that I kind of wonder whether or not it was going to come out the -- there's a little door, access door, to it. And I kind of wondered if it was going to spill out of that door, but it hasn't so far.
Q. You've been in the courtroom all day today; is that right?
A. Yes.
Q. And you heard some discussion about foundation wall repairs?
A. Yes.
Q. Is that something you think is necessary at your unit?

A. We have not seen any issues about foundation leaks in our unit.
Q. Do you recall when I.M.K. turned over control of the homeowners association board?
A. That occurred in the September 2008 time frame.
Q. Okay. What do you remember about the weeks or days or months leading up to that? Anything?
A. I knew that I.M.K. was preparing to turn the leadership of the H.O.A. to the owners. I was involved in some of the discussions around that because there's only -- at that time, there were only a few of us that actually lived here full-time. So I was involved as a, quote, a full-timer, and discussions around the composition of the new board and that type of thing.
Q. And so the discussions related to what was going to take place after I.M.K. turned over control?
A. Yes. You know, how we're going to form the new board, et cetera.
Q. And who were you having those discussions with?
A. At the time, most of those discussions were internally with us owners. It was Steve Taylor, John Wilson, those folks. We were working together to figure out what the new board was going to look like. Most of the conversations that were had with I.M.K. I was not a party to directly.

Q. And who were the representatives of I.M.K. that you understood met with other owners?
A. That would have been Rick Thoennes and Tim Roberson primarily, I would imagine.
Q. Is that who you believed to be in control of the board immediately prior to turnover?
A. Yes.
Q. Does the name Bill Cox ring a bell?
A. Yes, it does.
Q. Do you know if Mr. Cox was a board member immediately prior to turning it over?
A. He was an I.M.K. board member when I.M.K. ran the board, yes.
Q. Now, are you familiar with a company that went by the name of S.D.I.?
A. Yes.
Q. And what do you know about S.D.I.?
A. We knew at about the time that the H.O.A. was conveyed to the owners that S.D.I. was involved in some fashion with I.M.K. I remember at the time not really understanding what the nature of the relationship was, and I didn't really think that it impacted us at all. Our dealings were primarily with I.M.K. S.D.I. was identified as an entity that I.M.K. was working with to continue the development of Stoneledge, but I don't

remember much of anything beyond that.
Q. Until the time of turnover, do you remember ever meeting with anybody who you understood to represent S.D.I.?
A. No.
Q. Do you know if any of the other homeowners met with somebody representing S.D.I. about turnover of control?
A. Not to my knowledge.
Q. After control, were you elected to the board?
A. Yes, I was.
Q. Did you hold a -- what sort of position did you hold?
A. I was considered director at-large. We had four officers and three directors at-large.
Q. I think when they give you the director at-large title, you're in trouble. It always felt that way.
As a member of the board, did, at any point, you become aware of systemic and pervasive problems in phase one at Stoneledge?
A. I was aware of those problems. It took some time for the board to grasp the enormity of the issue. We were dealing with complaints of leaks from a couple of homeowners or a few homeowners. As the board got sort of jelled and started to actually do its work, we got more and more complaints about leaks and what have you in

phase one. And we eventually realized -- and I don't remember the time frame. I mean, it took some number of months before we realized that we had a big problem.

Q. When would you say that you sort of realized that you had a big problem?

A. That would have been in probably early 2009.

Q. And what did you do in response to that problem?

A. We -- the board decided that the best course of action was to see if we could get our hands on an expert to come figure out what kind of problem we might be looking at. I remember one of the first problems was the deck railing issue. I believe somebody testified to that today. That occurred fairly early on with Jim Logan's unit. And as a result of that, we hired an expert -- I don't remember the name of them -- to come out and take a look at that issue. I remember that caused the first sort of major repair effort that we started as an H.O.A. in phase one to bolster or to shore up the outdoor decks and screened-in porch areas because we were worried about the support for those structures.

Q. What were you worried about happening?

A. We were worried about them falling.

Q. Were you a part or do you recall being a part of the retention of C.S.E.?

A. Yes.

Q. Do you know when that occurred?
A. No, I don't remember exactly. It probably would have been mid 2009.
Q. Do you remember what you asked C.S.E. to do for you?
A. Yes. We asked C.S.E. to come in and take a look at the project and to determine what problems we had and what we needed to do to fix them.
Q. And in your observation and experience, is that what C.S.E. has done?
A. Yes.
Q. And is the board or is the association relying on C.S.E. in that regard?
A. Yes.
Q. Counting on them to do a full repair for you, a full scope?
A. Correct.
Q. There was a reference made earlier in this trial to the owners' appreciation of I.M.K. and Marick when they arrived at the project. Do you remember that?
A. I don't. I.M.K. had arrived at the project prior to the time that we purchased.
Q. What was your personal experience with representatives of I.M.K. and representatives of Marick?
A. My wife and I had social dealings with Tim Roberson on a few occasions. We never ever socialized or saw the

Thoenneses or any of the rest of those folks.
Q. Were you ever asked to go out on the motor boat with Mr. Thoennes?
A. No, I was not.
Q. Did Mr. Thoennes own a unit?
A. Yes, he did.
Q. And was Mr. Thoennes current with his dues and obligations?
A. No, he was not.
Q. And what ultimately occurred with respect to Mr. Thoennes' unit and his arrearage?
A. I don't know what the actual disposition was of his unit. I know he's not there any longer. And I do remember that due to lack of payment of dock dues, we took his boat slip.
Q. Are you going to be involved in the process for selecting a repair contractor for Stoneledge?
A. I probably will be. I am a member of the litigation committee and have been since its inception. I know the board itself will be responsible for the process to select a contractor. I would think that as a member of the litigation committee, I would be involved, yes.
Q. Is it your intent to do the scope of repair that C.S.E. has specified?
A. Yes.

Q. The foundation and the building envelope?
A. Yes.
Q. And how will the board and the litigation committee go about selecting a contractor?
A. I don't know that we've developed that full process yet. But the intent is to socialize our scope of work, our statement of work, to effect the repairs among qualified contractors in the area and to solicit bids from them and evaluate those bids and their approach and award to the best solution.
Q. And who's going to ultimately make that decision?
A. I would imagine the board would make that decision.
Q. Is that something that you personally are going to -- a decision that you're personally going to make?
A. I personally will not make that decision, no.
Q. Do you know if Trehel will be considered by the board?
A. Absolutely.
Q. Do you remember at some point in time thinking that Trehel was too expensive to do your repairs?
A. Yes, I do. There was a period of time in there where we obviously had to effect some type of emergency repair protocol. We couldn't just let people continue to take on water without addressing it. And during that emergency, some of the early days of that emergency

repair protocol work, while I wasn't necessarily personally involved in all of the decision-making and the interaction with the contractors about that, my understanding was, incorrectly, that Trehel was an expensive proposition. But the issue was around the scope of what they were doing. So in other words, they were looking to conduct a full scope replacement or repair around the problem in question versus sort of just plugging the dike and keeping it to -- you know, keeping it from taking on water until we actually got to a full scope of repair.

Q. Did the association at that time have the money to effect the scope of repair that Trehel wanted to implement?

A. No. That was the problem. We didn't have the money to do that.

Q. An so once this lawsuit is resolved, is there any reason that you can think of that you wouldn't consider Trehel to do the repair work?

A. There is no reason that we wouldn't consider Trehel to do the repair work.

Q. What is the association seeking to recover in this lawsuit, Mr. White?

A. We want to get -- we want to obtain the necessary funds that we need to correct our buildings to the point

where we have what we thought we purchased, and that we don't have houses that leak and have drafty holes and firewalls that don't exist and those types of things. We just want to get -- we want to get our property fixed.

Q. And is it your belief that the fix that you need is reflected in C.S.E.'s scope of repair?

A. It is my belief, yes.

Q. And do you seek reimbursement for repair expenses that have already been made in phase one?

A. I believe that the phase one repair scope that has been priced or has been scoped out from a cost perspective and includes everything that needs to be done -- I don't know personally if any kind of recovery of previous repair is within that scope.

Q. I think that's all the questions I've got for you, Mr. White. Thank you.

THE COURT: Mr. Belcher?

MR. BELCHER: Very briefly, sir.

CROSS-EXAMINATION

BY MR. BELCHER:

Q. You came to the property in 2006; right?

A. Correct.

Q. All right. From since day one with windows leaking?

A. Correct.

Q. Basement leak?

A. Correct.
Q. All right. You are aware that your unit sat empty for probably a year or more before you moved into it?
A. I know it was empty before I moved into it, yes.
Q. All right. How far along was your unit when you contracted with the ---
A. The unit had been drywalled.
Q. No cabinets?
A. No cabinets.
Q. No floors?
A. No trim, no floor.
Q. No fixtures?
A. No.
Q. All right. Windows leaking?
A. At the time, no, I didn't notice that, no.
Q. They started leaking immediately after you moved in?
A. Yes.
Q. All right. And that was in June of 2006?
A. Correct.
Q. And Marick or I.M.K. or I.K. or somebody came in and fixed all those windows?
A. Not all of them, but they did work on the ones that we had identified early on, yes.
Q. Do you have any leaking windows now?
A. Yes, we do.

Q. Which one?
A. I'm not exactly sure which one it is. There's one upstairs that's feeding the leak apparently in the basement. I don't know how. I'm not an expert at that, but we do have a leaky window.
Q. You haven't asked anybody to make repairs to that?
A. No, not yet.
Q. Have some of your windows been repaired to your satisfaction?
A. Pardon me?
Q. Some of your windows have been repaired to your satisfaction?
A. Yes, they have.
Q. And Marick or I.M.K. or one of those groups that came in after Bostic, they honored warranties?
A. I.M.K. did as long as they were around, yes.
Q. All right. And they made repairs to your unit?
A. They did.
Q. All right. If this jury awards you two point five million dollars or some less amount, are you going to hire J.R. Watkins to do the scope prepared by Rick Moore?
A. I don't know that. That won't be my decision.
Q. But it's your decision to determine whether or not you proceed with a contractor who has already testified here today about how expensive his scope of repair is

going to be. Fair enough?
A. Would you restate the question?
Q. Now, you heard Mr. Folk testify here today; right?
A. I did.
Q. He's got that big huge estimate; right?
A. He has an estimate, yes.
Q. And if the jury were to award that estimate, you would use him?
A. I don't know. I wouldn't be making that decision. His organization would be considered, yes.
Q. All right. If the jury awards two point five million for the scope of repair issue by some other contractor, are you going to go with J.R. Watkins who says he's going to do it for that amount?
A. I don't know. I don't know.
Q. Is he going to be considered?
A. Yes.
Q. Thank you. No further questions.

THE COURT: Mr. Anderson?

MR. ANDERSON: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. ANDERSON:

Q. Now, Mr. White, this isn't the first H.O.A. you've belonged to, is it?
A. That I've been a member of?

Q. Or a member of, yes, or a property owner within an H.O.A.?
A. No. I've been involved in other H.O.A.s, yes.
Q. All right. And that would include the villa that you have in Hilton Head; is that correct?
A. That's correct, yes.
Q. And how about your house in Roswell, Georgia? Did that belong to an H.O.A.?
A. Yes, it did.
Q. All right. And do you have one other residence?
A. Yes, in Hilton Head.
Q. Okay. So you have two residences in Hilton Head?
A. Yes.
Q. Okay. And is that one within an H.O.A.?
A. Yes, it is.
Q. All right. And you're familiar with the mechanics of an H.O.A. because I believe that you bought your villa in 2002; is that correct?
A. That's correct.
Q. Now, you indicated that you had problems with your unit since the day you moved in?
A. Correct.
Q. And you noticed water leaks at that time?
A. Correct.
Q. All right. And you knew, having been a resident in

an H.O.A. before, that the H.O.A. had responsibility on the exterior building in taking care of leaks, did you not?

A. I knew that the H.O.A. was responsible for maintaining the exterior of the building.

Q. All right. And did you know that as a homeowner you, at that time, had a lawsuit against somebody to take care of that problem if it wasn't repaired?

A. There was no lawsuit that I was aware of when we purchased.

Q. No. Did you know that you had the ability to bring a lawsuit at that time in order to ---

A. That never would have entered my mind.

Q. Well, my question goes more to what your knowledge level is as opposed to what your intentions would be, if I could make that distinction.

A. Okay.

Q. Okay. You knew that you had the ability at that time to bring a lawsuit if you had wanted to?

A. I suppose on some level I guess I would have known that, but it's not something that would have entered my mind, as I said.

Q. All right. No. I understand what you're saying.

A. Right.

Q. Now -- and you are currently on the litigation

committee; is that correct?
A. That's correct.
Q. Thank you very much.
THE COURT: Mr. Imhoff?
MR. IMHOFF: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. IMHOFF:
Q. I'll try to be brief, Mr. White. I just heard your testimony that when you were -- that your window leaks that you were aware of through 2008 was rectified to your satisfaction by Marick; is that right?
A. The window that Marick worked on primarily was the window in the first bedroom that caused the leak there and in the master. And that window was repaired to my satisfaction, yes.
Q. And Marick actually hired an outside contractor to come in and fix it?
A. An outside contractor was involved at the end, yes.
Q. And do you know why that window was leaking?
A. I do not.
Q. Even to this day, you have no idea why?
A. No, I don't know specifically what was fixed, no.
Q. Was your unit one of the units -- well, was your unit painted after you moved in on the outside?
A. It was painted on the outside when we purchased it,

yes.
Q. And was it painted by the homeowners association or I.M.K. or anybody else after you moved in?
A. The building has been painted since we moved in, yes.
Q. When did that happen?
A. I don't remember. I don't. It would have been in probably 2009 or '10.
Q. Are you sure it wasn't before Marick and I.M.K. left?
A. I don't believe it was, no. And the reason I say that is because the H.O.A. was responsible for doing the painting.
Q. I believe your testimony is when you took over and became a board member in 2008, despite the fact that you had these leaky windows, you weren't particularly concerned about this leaking window issue and the crawlspace. Is that fair?
A. It's fair to say that I wasn't aware of the extent of the leaking window problems.
Q. And, in fact, when you and Mr. Taylor were on the board, S.D.I. or John Ludwig or whoever, they held a big auction to sell off a bunch of units out there, didn't they?
A. That did occur, yes.

Q. That happened over 2009 and 2010?
A. Somewhere in there.
Q. And the H.O.A. didn't do anything to stop that auction to some of the homeowners and sell to some homeowners that live out there today; isn't that right?
A. I don't believe we did anything, no, legally to stop that auction from occurring.
Q. Well, the reason you didn't do anything at that auction is because neither you nor the homeowners association in 2009 or 2010 believed there was a pervasive issue with the windows out there. Isn't that right, Mr. White?
A. I don't believe that's correct, no.
Q. So you allowed an auction to happen where these units were sold to unsuspecting homeowners knowing that you believed there was a pervasive window issue out there and did nothing to warn those people that were buying?
A. We made sure that S.D.I. knew that they had to provide some type of disclaimer to anybody that bought saying that they were buying those units as is and that the H.O.A. would not be responsible for any issues that normally it would be responsible for because of the way they were being sold.
Q. Do you know if that was done?
A. If what was done?

Q. If these homeowners were told that they were buying potentially leaking units?
A. I don't know. I don't know for sure, no.
Q. Mr. White, isn't it true that some of the homeowners have come to you and complained that that happened and they were not warned about these problems?
A. Not to me.
Q. You've never heard that, Mr. White?
A. Not to me.
Q. Have you read any of the depositions of your neighbors?
A. I have not.
Q. Well, let's talk about the leak in the crawlspace. I really don't even understand that. And again, for the homeowners, your crawlspace is actually up a wall and there's like a little door up there?
A. Correct.
Q. So you have to either get out a ladder or something to look in there; right?
A. That's correct.
Q. Okay. And it's a dirt or stone floor up there?
A. It's not stone. It's dirt.
Q. Dirt, okay. And you said it was leaking from the time you moved in all the way until today?
A. Correct.

Q. And then I heard you testify that it's not leaking to Mr. Lyles and it doesn't need a repair; is that right?
A. I don't believe that's what I testified to, but ---
Q. I really didn't understand. Please explain.
A. The crawlspace, you know, where the building meets the foundation, it leaks through there. It's leaked since day one, as I said. It still leaks today. And it's just never been designated an emergency situation because it's never come inside the basement.
Q. Water is getting over the concrete wall?
A. Yes. I don't know what the situation is. All I know is I open the door, there's water running in there, and it smells. And I don't know what the mechanics of the leak are. I have no idea.
Q. You don't know why it's leaking?
A. I do not know why it's leaking, no.
Q. You don't know what's leaking?
A. Nope.
Q. You don't know how the water's gotten in there?
A. No, I don't.
Q. You reported that to yourself, the H.O.A.?
A. Yes. Yes.
Q. And who has decided, Mr. White, that you don't have a problem with your foundation wall that requires repair?
A. Essentially, the litigation committee makes that

call. And as a member of that litigation committee, I would have said, it's not coming in, so there's no reason to call it an emergency repair.

Q. You would have said that, or you did say that?

A. I did say that.

Q. So you haven't asked for that to be repaired?

A. Not yet, no.

Q. Is water actually getting into that crawlspace?

A. Yes.

Q. Have you talked to Mr. Watkins about that?

A. I have not, no.

Q. Did anybody put a hose to the side of your house to see where it's getting in?

A. I don't know.

Q. Now, the H.O.A. was turned over to you and Mr. Taylor and a couple of other folks out there. And you testified that Mr. Roberson was on the board of the H.O.A.; is that right?

A. The previous board.

Q. Previous board. Immediately prior to your getting on; is that right?

A. As I remember, yes.

Q. And the homeowners association has decided to sue every member of the homeowners association board prior to its turnover to y'all except for Mr. Roberson; is that

right?
A. That's correct.
Q. Because he's your neighbor; right?
A. Correct.
Q. So every other member of the homeowners association board did something wrong except for your neighbor Mr. Roberson; right?
A. The board decided at the time that Tim Roberson would not be included primarily because of the relationship that he had with the community.
Q. Everybody but Mr. Roberson; right, Mr. White?
A. That's correct.
Q. Now, I assume being on the litigation committee and the H.O.A., you trust Mr. Watkins and the work that he's doing out there; is that right?
A. That's correct.
Q. And you've hired Mr. Watkins and his company to do these repairs to your foundations; is that right?
A. That's correct.
Q. And you're comfortable enough with Mr. Watkins that you would hire him to fix your own problem; is that right?
A. My particular personal unit problem?
Q. Yes.
A. He would be considered, yes.

Q. But you wouldn't give all your neighbors someone different that you wouldn't trust for yourself, would you?
A. I would assume that the H.O.A. would make the right choice and fix the problem. That's the H.O.A.'s responsibility, not mine.
Q. Okay. And he is the one out there doing the repairs now; is that right?
A. That's correct.
Q. And Trehel has not been to the Stoneledge project since 2010; is that right?
A. I don't know. I have not been involved with the actual day-to-day repair issues for a while.
Q. And despite your testimony here just a little while ago, you testified to me under oath that the H.O.A. would not hire Trehel because they were too expensive; isn't that right?
A. Yes, in my deposition I did state that. As I said, I was operating with incorrect information.
Q. All right. Thank you, Mr. White.

THE COURT: Mr. Vick?

MR. VICK: Yes, Your Honor. Thank you.

CROSS-EXAMINATION

BY MR. VICK:

Q. Good afternoon, Mr. White. How are you?

A. Hello. Fine.
Q. I'm going to jump around just a tad, but I don't have too many questions. Now, you said you've been a resident at Stoneledge since June of 2006; correct?
A. Correct.
Q. What are your monthly homeowner association dues currently? What's the amount?
A. Three thirty per month.
Q. Pardon?
A. Three hundred thirty dollars per month.
Q. And has that increased or decreased while you've been an owner there?
A. Yes, it has increased one time.
Q. Okay. What was that increase? What was it, and what was it changed to?
A. At the beginning when we first moved in, it was three hundred per month, and it increased to three thirty.
Q. When was that?
A. Probably 2009.
Q. Okay. Now, do you know what it means to testify based on your personal knowledge as opposed to what someone, some third party, has told you such as your attorney?
A. I think I understand that concept, yes.

Q. You do? Okay. So if you're testifying based on your personal knowledge as to what you know to be true from your own personal experience, your first-hand experience, do you understand that?
A. Yes.
Q. And I believe when you were asked who I.M.K. was comprised of, you initially answered that you don't know; is that correct?
A. I don't remember what I said.
Q. Well, is that accurate that you don't, in fact, personally know what I.M.K. is comprised of or who I.M.K. is comprised of?
A. I do know -- I know now what I.M.K. was comprised of. You're talking about individuals?
Q. Do you know that from any way other than your attorney telling you that?
A. Yes. I knew that when we took over the board.
Q. Okay. And when Mr. Lyles asked you a little broader question, individuals that you associated with I.M.K., you answered Tim Roberson and Rick Thoennes and Rick Thoennes, III; is that right?
A. Correct.
Q. Okay. And those are the individuals that you associated with I.M.K.; correct?
A. Correct.

Q. Okay. And then Mr. Lyles asked you further were there anyone else that you associated with I.M.K.? And I believe you said others like Lollis and Cox, but not persons I dealt with; is that right?
A. That's correct.
Q. Okay. So you have no personal knowledge of Larry Lollis or Bill Cox's involvement; correct?
A. I have no personal knowledge; you're correct.
Q. Okay. And I think later on you said something to the effect of Bill Cox was an I.M.K. board member.
A. That's correct.
Q. Do you recall saying that?
A. Yes.
Q. Do you know if Bill Cox is even a member of I.M.K.?
A. I don't know.
Q. Okay. So what did you mean by he's an I.M.K. board member?
A. What I meant was when I.M.K. was the board, that they were the board, that Bill Cox was on the board.
Q. He was on the board of the H.O.A.?
A. Of the H.O.A.; correct.
Q. All right. And Larry Lollis, he never was a member of the H.O.A. board; correct?
A. I don't know. I wouldn't know that.
Q. To the best of your knowledge?

A. I don't -- I don't know.
Q. As far as you know, he was not?
A. To the best of my knowledge, I don't remember if he was a board member, an H.O.A. board member, or not.
Q. So as far as you know, he was not; is that right?
A. As far as I know, he was not.
Q. Okay. I believe that's all the questions I have. Thank you.

THE COURT: Mr. Hemphill?

MR. HEMPHILL: No questions, Your Honor.

THE COURT: Redirect?

MR. LYLES: Yes, sir. Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. LYLES:
Q. Mr. White, in the months following the purchase of your unit, you indicated that there were some window leaks and whatnot?
A. Correct.
Q. How did you respond or address those problems?
A. Well, when we discovered the first leak, we contacted Nathan and his folks, and they came over to take a look at it.
Q. Did they try to fix it for you?
A. They did.
Q. Did you have any indication at all that you needed

to file a lawsuit over that leak?
A. No.
Q. And then did you have any appreciation or comprehension that you needed to file a lawsuit over any of your window leaks in 2006 or 1007?
A. No, not at all.
Q. At what point in time did you have a realization that you had a need or even a right to file a lawsuit over the conditions in your unit?
A. Well, that would have occurred in late '08, '09 time frame when were -- as a member of the board and we were beginning to understand the extent of the issues that we had in the subdivision.
Q. And prior to that time in your unit in particular, was I.M.K. trying to fix -- excuse me -- Marick trying to fix the leaks in your unit?
A. They were.
Q. And were you satisfied with that?
A. With what they did, yes.
Q. The leak in the basement -- I asked you earlier if you needed to have your foundation wall repaired as a result of the leaks, and you said, no. Were you referring to an emergency repair?
A. We are not taking on water in the basement, in the basement finished area. The reason that the leak in the

crawlspace has never been designated an emergency is because the water has yet to infiltrate the finished part of the basement.

Q. The water into the crawlspace is coming through your foundation wall?

A. It appears to be coming from where the wall meets the foundation, yes. It's a little complicated and convoluted in there, so I don't know exactly what's happening.

Q. Is that a condition that you ultimately want to have repaired at your house?

A. Absolutely.

Q. But it's not the subject of an emergency?

A. That's correct.

Q. And there was a reference to a sale of these units, an auction. And I want to be clear. Who was selling Stoneledge units at auction? Do you know?

A. That was S.D.I.

Q. And who owned the units that S.D.I. was selling?

A. I don't know. I don't know. It was complicated, there again. I don't know if it was I.M.K. or S.D.I. I don't know the nature of the relationship that they had.

Q. Those units, were they owned by the H.O.A.?

A. They were not owned by the H.O.A.

Q. And did you know of anything that the H.O.A. could

have done to prevent S.D.I. or the owner of those units from having an auction?

A. No.

Q. Do you know whether or not the H.O.A. demanded that S.D.I. provide a disclosure with regard to the sale of those units?

A. To the best of my recollection, we did demand that that notice be provided, yes.

Q. And this lawsuit was filed in May of 2009?

A. Correct.

Q. At any point in time has the board authorized any sale of any unit without the disclosure about the condition of the units or the lawsuit?

A. No.

Q. I don't have any further questions, Mr. White. Thank you.

THE COURT: Yes, sir. Wait a minute.

Mr. Belcher?

MR. BELCHER: No, Your Honor.

MR. IMHOFF: Just -- maybe two questions, Your Honor.

THE COURT: Yes, sir.

RECROSS-EXAMINATION

BY MR. IMHOFF:

Q. Mr. White, the disclosure that you gave these new

purchasers, new neighbors of yours, that was a disclosure that they were buying an as is?

A. I don't remember exactly what that disclosure was meant to convey to any potential new owner, but it was as is. I remember us having a conversation around the fact that anybody who bought those units at auction were buying them as is.

Q. And so if they bought those units as is, have you gone back to those homeowners and told them that they are not going to have their units fixed as a result of this litigation?

A. Have I?

Q. Has anyone in the homeowners association?

A. I don't know. I have not. I don't know if anybody else has.

Q. Have you gone back and attempted to determine who those people are that bought those units after they were told about these defects and the as-is requirement?

A. I don't know.

Q. Are you asking for every unit in phase one, all thirty-seven units to be fixed despite the fact that many of your neighbors bought their homes at a reduced price because of that as-is designation?

A. I don't know.

Q. Thank you, Mr. White.

THE COURT: Anyone else?

(No response)

THE COURT: Very well.

All right. You may step down. Thank you, sir.

All right. Mr. Foreman, ladies and gentlemen of the jury. Obviously, this is a good time to break for the day. We've made some progress today, and so hopefully we'll be able to finish the testimony and evidence soon. What time would you like to start in the morning?

MR. FOREMAN: Nine o'clock is fine with us.

THE COURT: Nine o'clock. Very good. Be here at nine o'clock. Come back to the jury room that we've been using. Again, do not let anyone discuss any of the cases with you or you discuss it among yourselves. Very good. Thank you very much. See you in the morning. Have a good evening.

(WHEREUPON, the jury exited the open court at approximately 5:21 p.m.)

THE COURT: All right. Anything from the plaintiff?

MR. LYLES: No, Your Honor.

THE COURT: From the defendants?

MR. BELCHER: None, Your Honor.

THE COURT: All right. If the plaintiff does finish by noon tomorrow, what's the plan after that? I

mean, unless y'all have settled on some scheduling of witnesses or something like that. You don't need to tell me, but I certainly don't want any dead time, so ...

MR. IMHOFF: Your Honor, we're going to talk about who we're going to call.

THE COURT: Well, that's what I'm just trying to do is give you a little incentive.

MR. BELCHER: I would say rest assured that amongst us, we will have at least a witness to go after the plaintiff rests and we go for our post trial or our motions and all of that. We won't waste any time. We'll definitely go until five o'clock.

THE COURT: All right. Very good. Well, thank you. Because the jury's been working and working early and sometimes late. So very good. I'll see you in the morning at nine o'clock.

MR. BELCHER: Thank you, Your Honor.

MR. LYLES: Thank you, Your Honor.

(WHEREUPON, court stood at recess for the day at approximately 5:22 p.m.)

November 5, 2013

(WHEREUPON, court convened with all parties present and the following proceedings were had commencing at approximately 9:12 a.m.)

(WHEREUPON, Plaintiff's Exhibits Number 31 through

41 were marked for identification only.)

MR. LYLES: Judge Macaulay?

THE COURT: Yes, sir.

MR. LYLES: The first witness today will be Larry Lollis. Larry was a member of Integrys Keowee, which was a member of I.M.K. He's a defendant in the case.

THE COURT: Yes, sir.

MR. LYLES: And the purpose of this testimony is obviously to establish the personal liability of Mr. Lollis and the corporate liability of Integrys. Some of the exhibits that I have that are relevant to his testimony are emails to an owner, a couple by the name of Hayes. The Hayes unit is in phase two. They're not addressing unit problems. This is simply email correspondence back and forth between them about the purchase of the unit. And so I just wanted to alert the Court to the fact that these are phase-two owners. Like I say, it's irrelevant as it relates to defects, but it does establish the manner in which Integrys was dealing with these owners.

THE COURT: All right. Now, when you say Integrys, you're talking about the board, when Integrys was part of the board?

MR. LYLES: Well, Integrys was a member of

I.M.K. I.M.K. was comprised of two members, Marick Home Builders and Integrys Keowee. And what these emails establish is that the sales group of I.M.K. was, in fact, Integrys. We have salesmen communicating with owners under the Integrys name. You know, we've asserted these amalgamation of interest theories against Integrys and as well against the individuals as well who are members of Integrys Keowee. And so that's the purpose of these emails.

THE COURT: All right. Ms. Brown, anything?

MS. BROWN: Your Honor, obviously those emails mention Integrys Keowee. And you know my position on Mr. Lyles' personal liability as well as I.M.K.'s liability. I mean, it's only a member, a fifty percent member of I.M.K. Mr. Lollis is a twenty percent member of I.K. He has no control. So the emails, he can ask him what he knows about them.

THE COURT: All right. Well, just as long as we keep it generic rather than -- what is it? -- specific to either phase.

MR. LYLES: And I don't even think you can tell from the emails which phase. It's just I know that the Hayes live in phase two, and I didn't want to raise an issue.

THE COURT: Well, let me ask you, are you

seeking to introduce those?

MR. LYLES: Yes, sir.

THE COURT: Are they his emails?

MR. LYLES: They are emails sent on behalf of Integrys by an Integrys representative.

MS. BROWN: Not Mr. Lollis.

THE COURT: Well, how are you -- what's the foundation for them?

MR. LYLES: Well, the foundation is he's a member of Integrys, and I think that these emails establish that you have representatives of Integrys corresponding with and engaging in the sales process with these owners.

THE COURT: How about the emails? Do the emails themselves mention anything about which phase the units are in?

MR. LYLES: They don't. They just mention the name of the Hayes. And I know that they live in phase two, so I didn't want anybody to be surprised.

MS. BROWN: Well, my only objection to that would be is if we're using a phase-two sale in a phase one trial, I would object to that.

THE COURT: Well, that's just it. That's why I asked if they were generic to the entire development, not to either phase. If he is not the author or communicate

-- I guess that's what you'd call it -- the only thing I can think of would be -- and he stands only in the position of the calling entity -- is it might be used for impeachment. In other words, I think -- what is it? -- 613 or whatever that if you ask him about the contents of the emails and, therefore, you control, you know, what the question is and what goes to the jury. And, of course, if he denies that that was something that his corporate entity did or said, then, of course, you can read it. I wouldn't necessarily put it into the record, but I think it could be read.

Let's do that. I think it just -- because that's what you're trying to do is to establish some sort of connection as well as direction from the corporate entities, board or members?

MR. LYLES: Yes, sir.

THE COURT: All right. Anything, Ms. Brown?

MS. BROWN: No.

THE COURT: Do you see what I'm saying?

MS. BROWN: Yeah, I understand. And like I say, I'm not consenting that these -- obviously these exhibits coming in.

THE COURT: That's why I asked if you objected. Because as of right now, I'm going to leave them in for identification only to be used for impeachment if he

should deny that, oh, no, this never happened or something like that.

MR. LYLES: Yes, sir. Okay.

THE COURT: Because that puts him in the corporate position. And that's what they are, corporate communications.

MR. LYLES: Yes, sir.

THE COURT: All right. Unless there's something else, that's how we'll proceed with that.

MR. LYLES: Yes, sir. The only other thing I need to do is grab a chart from behind the little thing over here. I forgot to get it this morning. Excuse me.

THE COURT: Are we ready?

MR. LYLES: Yes, sir, I'm ready.

THE COURT: Ms. Brown?

MS. BROWN: Yes, sir.

THE COURT: All right. Ask the jury to join us, please. Oh, wait a minute.

(WHEREUPON, the jury entered the open court at approximately 9:25 a.m.)

THE COURT: All right. Let the record reflect that the jury and alternate are in the jury box.

Mr. Foreman, ladies and gentlemen of the jury, we'll now continue with the plaintiffs' case.

Mr. Lyles?

MR. LYLES: Yes. The plaintiff would call Larry Lollis.

(WHEREUPON, the witness was duly sworn.)

THE COURT: All right. If you would, please, sir, give us your full name for the record spelling your last name.

THE WITNESS: It's Larry Dean Lollis, L-O-L-L-I-S.

THE COURT: Very good. Thank you, sir.

LARRY DEAN LOLLIS,

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. LYLES:

Q. Good morning, Mr. Lollis.

A. Good morning.

Q. How are you today?

A. I'm good. How are you, sir?

Q. I'm doing okay. Thank you very much. I appreciate it.

Mr. Lollis, are you familiar with the project that we've been trying for the last week, Stoneledge at Lake Keowee?

A. Yes, sir.

Q. How are you familiar with Stoneledge?

A. I was a minority investor in I.K., and I think I.K.

was an investor in I.M.K.

Q. And I.M.K., is that an L.L.C. or a corporate entity that you're familiar with?

A. An L.L.C.

Q. Are you familiar with it?

A. Only from the standpoint of -- not in the day-to-day business, but I am familiar with who the partners were.

Q. And who were the members of I.M.K.?

A. Members or managers? I was the only member.

Q. Of I.M.K.?

A. Yeah.

Q. Well, let me back up. How did the Stoneledge project come to your attention, Mr. Lollis?

A. Tim Roberson called. And at the last minute, an investor who was a friend of his decided to do something different. Tim called me and asked me if I was interested. And after much thought and prayer, I decided to invest.

Q. And what was described to you about the project when Tim called?

A. It was a condo project on Lake Keowee.

Q. And did he tell you anything about it, any of the details, other than that?

A. That it had been left unfinished and that it was a good -- he thought it was a good bargain and that it

would be -- offer a good return down the road.
Q. And what was Mr. Roberson's plan? What plan did he pitch to you in terms of your involvement?
A. My involvement was just an investor.
Q. And did you invest in the project?
A. Yes, I did.
Q. And did you understand when you made that investment that -- well, what did you understand you were investing in exactly? What corporate entities?
A. I.K.
Q. And does that stand for Integrys Keowee?
A. Yeah.
Q. Were you a member, or are you a member of Integrys Keowee?
A. Yes.
Q. And are there other members of Integrys Keowee?
A. Yes. Well, no.
Q. Were there ever other members of Integrys Keowee?
A. Members or managers?
Q. Members. But if you want to refer to them as managers ...
A. Well, there were other people involved, but I'm not sure what their title was. I think they were managers.
Q. Did you own a portion of Integrys Keowee?
A. Yes.

Q. And what portion did you own?
A. Twenty percent.
Q. And did anyone else own an interest in Integrys Keowee?
A. Two other people.
Q. And who were those people?
A. Bill Cox and Tim Roberson.
Q. Now, so between the three of you, y'all owned a hundred percent of Integrys Keowee?
A. I owned twenty percent, and they owned forty percent each.
Q. Now, you mentioned a company called I.M.K.?
A. That's correct.
Q. Do you know who owned I.M.K.?
A. Integrys Keowee and I.M.K.
Q. Was Marick also an owner of I.M.K., or do you know?
A. Yes.
Q. And do you know what percentage of I.M.K. I.K. owned?
A. Fifty percent.
Q. And do you know what percentage of I.M.K. Marick owned?
A. I assume fifty percent. That's Marick and Marick. And again, I'm not familiar with the day-to-day business but I assume it was the two Maricks or the two

Thoennneses.
Q. And did you have any involvement in the day-to-day operations of I.K.?
A. None.
Q. Did you have any involvement in the day to day operations of I.M.K.?
A. None.
Q. You were simply an investor?
A. Yes, sir.
Q. Did you ever go to the project?
A. I've been on the property twice.
Q. And when was the first time you were there?
A. Probably before I made the investment in 2005 or somewhere around in there.
Q. And the second time?
A. I rode by in my boat.
Q. What did you understand the business of I.M.K. to be?
A. I really don't know what the business of I.M.K. was. I mean, I thought they were operating I.M.K. That's really -- I don't know what their business was, to be honest with you. I know Mr. Thoennes and his son were in the construction business.
Q. And they were part of I.M.K.?
A. Yes.

Q. And what did you understand -- how did you understand I.M.K. related to the corporate entity that you had an interest in?
A. My understanding with I.M.K. related to I.K.?
Q. Yes, sir.
A. My understanding was that they were taking care of the business. And I was getting most of my information from Mr. Roberson.
Q. Did you understand that I.M.K. was going to be in the business of selling the townhomes on Lake Keowee?
A. That was my assumption.
Q. And you mentioned a moment ago that you expected when you invested in I.K. to get a return on your investment; is that right?
A. Yes.
Q. And did you understand that that return was going to come from the sale of those condominiums or townhomes at Lake Keowee?
A. Yes.
Q. And did you understand that you were affiliated corporately with Marick Home Builders?
A. Affiliated from the standpoint of I was a minority shareholder with no control in I.M.K.
Q. Do you know of any other business that I.M.K. ever conducted other than the development of the Stoneledge

community?
A. It built the clubhouse at Keowee Vineyards.
Q. Any other business?
A. They were in the construction business. And I invested some money in a project several years ago that they had been a part of, but I don't think they were when I got involved.
Q. You're talking about Marick Home Builders?
A. I think this was Rick.
Q. Okay. Do you know somebody by the name of Chip Albert?
A. No.
Q. Did you ever meet anybody by the name of Ty Savage?
A. The name sounds familiar, but I don't remember.
Q. Do you have any recollection of Integrys Keowee being involved in the sales part?
A. No, sir.
Q. Do you know whether or not Integrys Keowee was actively involved in the sale of the units at Stoneledge to the public?
A. No, sir.
Q. Were you aware that there are construction defects and problems out at the project in phase one?
A. Yes, sir.
Q. When did you become aware of that?

A. Two years ago, two and a half years ago.
Q. After the lawsuit was filed?
A. Yes.
Q. You had no knowledge of that at the time that you owned an interest in I.K.?
A. No.
Q. Were you aware that -- have you been in this courtroom for at least periods of time over the last week?
A. Yes.
Q. Have you heard some testimony about the condition?
A. I have.
Q. And you were not aware of any of those conditions until approximately two and a half years ago?
A. No, sir.
Q. Neither Marick or any of the other partners in I.K. told you about construction problems in phase one?
A. Not until I realized I was being sued.
Q. Do you recall I.M.K. selling its interest in the Stoneledge project to a company called S.D.I.?
A. I recall a sale. I don't have a clue who S.D.I. is, but I do recall the sale.
Q. Do you recall the name Ludwig?
A. Is that the guy that ran into the house? Yes, I do. I recall that name.

Q. And is the fact that -- did you understand that I.M.K. sold its interest in Stoneledge to Mr. Ludwig and his corporate entities?
A. I had no idea.
Q. Were you involved at all in the sales transaction other than ---
A. No, not in any way, shape or form.
Q. Did you look at the sales information or the sales contracts before they were signed?
A. No, I did not.
Q. Have you seen them since?
A. No.
Q. Do you know whether or not I.K. received money as a result of the sale of I.M.K.'s interest in Stoneledge to Mr. Ludwig?
A. I didn't know who it came from, but I know we received money from the sale of some of the units.
Q. How about the sale of the property generally to Ludwig? Do you recall that?
A. No. I don't recall what date any of that happened. I know we sold a block of units to somebody.
Q. And do you remember what I.K. received as a result of that sale?
A. No, sir.
Q. And you haven't seen any of those sales documents?

A. No, sir.
Q. Prior to that sale, do you recall receiving money from the sale of I.M.K. units?
A. Yes.
Q. And that would have been the time period 2006/2007? Do you recall that?
A. I would say generally that time. It might have been some into '08, but I think it was '06 and '07 was the majority of it.
Q. Mr. Lollis, I'm going to hand you what was previously marked as exhibit 38. And it's a compilation of one, two, three, four, five, six pages. And I'll just ask you if you recognize the documents that are contained in that exhibit 38?
A. I recognize the amounts of the checks, but I don't really remember -- for some reason, S.D.I. funding doesn't stick in my mind.
Q. Okay.
A. But I do remember the amounts of the checks.
Q. And if you will, Mr. Lollis, these are emails; is that right?
A. Yes, that's correct.
Q. And these emails reflect disbursements from I.M.K. to various parties?
A. That's correct.

Q. Do you remember receiving these emails?
A. I do remember seeing the emails, yeah. I remember -- mostly I paid attention to the amount of my check.
Q. Sure.
MR. LYLES: And, Your Honor, I'd move to have Plaintiff's Exhibit 38 admitted into evidence.
MS. BROWN: No objection.
THE COURT: All right. Without objection, Plaintiff's Exhibit Number 38 is admitted.
(WHEREUPON, Plaintiff's Exhibit Number 38 was admitted into evidence.)
Q. Mr. Lollis, exhibit 38, these are sums or money that was distributed from I.M.K. to S.D.I. funding, Integrys and then to Mr. Cox, Mr. Roberson and you; is that right?
A. These checks?
Q. Yes, sir.
A. I assume that the checks -- you don't have a copy of the check here, so I really don't know who the check came from. So if you'll give me a copy of the check, I'll tell you who it came from.
Q. Well, on the first email, it says, "Subject, I.M.K. distribution checks." Do you see that?
A. Yes.
Q. And that reference ---
MS. BROWN: Your Honor?

THE COURT: Yes, ma'am.

MS. BROWN: Your Honor, can we approach for just a second?

THE COURT: Certainly.

(WHEREUPON, a bench conference was held off the record.)

THE COURT: All right. You may proceed.

Q. Mr. Lollis?

A. Yes, sir.

Q. I'm going to take that back from you if that's okay.

THE COURT: It's into evidence, isn't it, as far as identification?

MR. LYLES: It was actually moved into evidence without objection, so I wanted to make sure that we clear that up.

THE COURT: All right. But if you would, please, use it for the purposes that we discussed at sidebar.

Q. Mr. Lollis, before the time that I.M.K. sold its interest in Stoneledge to Mr. Ludwig and his entities, do you recall receiving funds from the sale of units at Stoneledge?

A. Yes.

Q. And those were funds that were paid to you and to the other members of I.K. and not left in I.M.K.; isn't

that right?
A. I'm not sure. What was paid to me was paid to me. Whether it was anything left, I'm not sure. I think -- you know, I'm not sure about that. I don't know.
Q. Well, if it was paid to you, we know that it wasn't in I.M.K.?
A. That's right.
Q. Okay. And if it was paid to Mr. Cox, it wasn't in I.M.K.?
A. That's correct.
Q. And it if was paid to Mr. Roberson, it wasn't in I.M.K.?
A. That's correct. But ---
Q. Yes, sir.
A. Pardon me.
Q. Now, at the time of the sale to Mr. Ludwig, do you recall ---
A. To who?
Q. To Mr. Ludwig and his companies. And that was in the summer of 2008. Do you recall that?
A. I know that there was a sale. I don't know the exact date of when it was. Whatever date was on those checks probably pretty well clears it up.
Q. And you recall -- or do you recall what was being sold to Ludwig and his entities was I.M.K.'s interest in

Stoneledge?
A. I really didn't know that. I assumed that. But I didn't know exactly how that transaction occurred. I had really nothing to do with the day-to-day business of how they operated that part of it.
Q. Do you remember that as part of that sale of the assets of I.M.K. to Mr. Ludwig and his companies, that I.K. received consideration of a million dollars?
A. I'm assuming that's from the part of the units that were sold to us at the same time.
Q. Do you remember that being the case, that I.K. received a million dollars from Ludwig's companies?
A. I didn't know it was a million dollars. I just knew how much my portion was, which was twenty percent after all the other deductions had come out of it.
Q. Okay. And the million dollars that was paid to I.K., was part of that sale as money that was left in I.M.K.?

MS. BROWN: Your Honor, I move -- I object. This is leading this witness.

THE COURT: Well, I think he's probably associated with an adverse party. In fact, I think he is an adverse party. So I think the rule provides for leading. Overruled.

MR. IMHOFF: Your Honor ---

THE COURT: Yes, sir.

MR. IMHOFF: --- may we have just a brief sidebar, Your Honor.

THE COURT: Certainly.

(WHEREUPON, a bench conference was held off the record.)

THE COURT: All right. You may proceed.

Q. Mr. Lollis, you don't have a specific recollection of the terms of consideration that was made to I.K. Is that what you're telling me?

A. No.

Q. Do you recall as a part of the sale to Mr. Ludwig and his companies, I.K. received as part of that consideration a note for three hundred and fifty thousand dollars?

A. No.

Q. Do you recall that in order to secure that note, I.K. actually received or actually entered into an agreement that was called a promissory note and a consulting agreement where I.K. agreed to perform consulting services for Mr. Ludwig and his company?

A. I do remember that we were due some money from someone else, but I have no clue who it was with -- who it was from. I just don't remember whether it was a bank or -- I thought it was a bank, but maybe it wasn't.

Q. And after the sale, do you remember receiving money as a result of the sales, of continued sales of Stoneledge units?
A. No. We might have received some, but it wasn't -- I don't remember it.
Q. Do you remember receiving money or a promise to pay any money from the sales of Stoneledge units that occurred actually after this lawsuit was started?
A. I know there was an agreement that someone was supposed to pay for some service or something that was part of a -- I'm not sure exactly what the terms of the agreement were, but some sales service or something that I.K. did to generate some additional income down the road.
Q. Now, Mr. Lollis, I'm going to show you what's been marked -- what I marked before you got here as exhibit 39.
A. Okay.
Q. And ask you is that the agreement that you were referring to?
THE COURT: That's number 45?
MR. LYLES: It's 39.
THE COURT: Oh, excuse me.
MR. LYLES: I'm sorry.
A. I honestly don't remember this agreement.

Q. Okay. Do you remember I.K. actually ever performing any consulting services for Mr. Ludwig or his company in relation to sales?
A. No.
Q. You don't?
A. No.
Q. Do you know who was on the board of the Stoneledge H.O.A. up until the time the board was turned over to the owners in September of 2008?
A. No.
Q. You never went to any board meetings yourself?
A. No.
Q. You never got any minutes?
A. No. Well, wait a minute. Yeah, I think I did get copies of minutes.
Q. Did you understand that Mr. Thoennes and Mr. Cox were on the board?
A. If their names were listed as president or vice president or some officer of the board, I would have probably gotten that, but I didn't know which office was which or anything like that.
Q. But you don't have any independent or personal recollection of them serving on the board?
A. No.
Q. Do you remember that at the time of the sale to Mr.

Ludwig and his corporation that they didn't -- that they, being Mr. Ludwig, didn't want control of the board?

A. No.

Q. Mr. Lollis, do you think that these buildings need to be fixed?

A. Yes.

Q. And completely fixed?

A. Yes.

Q. And properly repaired?

A. Yes.

Q. Do you feel any responsibility or obligation to do that?

A. I actually have a place out there, and I would like to see them fixed. But I don't feel personally responsible for it. I feel like the construction company and the architect and the people that were contracted to do the work should do it.

Q. And fix it properly?

A. Exactly.

Q. Mr. Lollis, I think that's all the questions I've got for you. Thank you.

A. Okay.

Q. Somebody else may have some for you. Don't run off yet.

THE COURT: All right. Ms. Brown?

MS. BROWN: I don't have any questions for Mr. Lollis.

THE COURT: All right. Mr. Hemphill?

MR. HEMPHILL: None, Your Honor.

THE COURT: Mr. Belcher?

MR. BELCHER: None, Your Honor.

THE COURT: Mr. Anderson?

MR. ANDERSON: No, Your Honor. Thank you.

THE COURT: Mr. Imhoff?

MR. IMHOFF: None, Your Honor.

THE COURT: Now you may step down, sir.

All right. Can this witness be excused?

MR. LYLES: Yes, sir.

THE COURT: Any objection?

MR. IMHOFF: No objection.

THE COURT: All right. Without objection, the witness may be excused.

You can stay, sir. I was just thinking that you'd like to ---

THE WITNESS: Thank you, sir.

THE COURT: Yes, sir.

Yes, sir. You may call your next witness.

MR. LYLES: Bill Cox.

(WHEREUPON, the witness was duly sworn.)

THE COURT: All right. You may proceed.

Whoa. Excuse me. I'm sorry. I do have something to do here. Your name, please, full name, spelling your last name for the record.

THE WITNESS: William Cledus Cox. My last name is C-O-X.

THE COURT: Very good. Thank you, sir.

WILLIAM CLEDUS COX,

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. LYLES:

Q. Good morning, Mr. Cox. How are you today?

A. I'm good.

Q. Good. Good. Mr. Cox, when did you become involved in the Stoneledge project?

A. 2005.

Q. And how did that come about?

A. Tim Roberson got a contact from somebody who was trying to sell Stoneledge, the Townhomes of Lake Keowee project.

Q. And what was your role in that process?

A. The process of what?

Q. Well, you indicated that Tim Roberson got a call where somebody wanted to sell it, so ...

A. Tim Roberson was a partner of mine in Integrys Holdings.

Q. And what was the business of Integrys Holdings?
A. Primarily the software business.
Q. And so did Mr. Roberson pitch the purchase of the what ultimately became the Stoneledge project to you?
A. He did.
Q. As an Integrys venture?
A. No, not a sole Integrys venture, no.
Q. And ---
A. It was something we might want to invest in.
Q. And did you ultimately decide to do that?
A. Well, Integrys Holdings did not.
Q. Well, tell me -- go ahead. Who did?
A. Well, Integrys Holdings was made up of three partners. One of the partners decided he didn't want to invest in it, so Tim knew Larry Lollis and invited him to participate. So we formed Integrys Keowee, which is a completely separate entity, to be the investment -- provide investment capital for the project.
Q. And was Integrys Keowee owned with you and Mr. Roberson owning forty percent and Mr. Lollis with twenty percent?
A. Yes.
Q. And what was your investment?
A. My personal investment?
Q. Yes, sir.

A. Three hundred thousand dollars.
Q. And then, Mr. Roberson, did he have an equal amount in it?
A. He did.
Q. And Mr. Lollis had a hundred and fifty?
A. That's correct.
Q. And the investment, what was that investment used for?
A. It was used to purchase and fund the project.
Q. And did you create a company to hold title to the project?
A. We did.
Q. And was that I.M.K., L.L.C.?
A. It was.
Q. And who owns I.M.K., L.L.C.?
A. Marick Home Builders was a fifty-percent owner, and Integrys Keowee was the other fifty percent.
Q. And how did Marick become involved in the project?
A. Through Tim Roberson.
Q. Had you ever worked with Marick before?
A. No, not directly.
Q. Were you a managing member of Integrys Keowee?
A. Yes.
Q. And were you a managing member of I.M.K.?
A. I was.

Q. What does it mean to be a managing member?
A. My understanding, it's like being on the board of directors.
Q. And what does that mean?
A. Responsible for making the decisions of the business subject to the members' interest.
Q. Did I.K., that is Integrys Keowee, have any other business other than being a member of I.M.K.?
A. It did not.
Q. Did I.M.K. have any other business other than developing Stoneledge?
A. It did not. That was not necessarily the intent, but that's the way it turned out.
Q. Can you describe how I.K. and Marick Home Builders operated within the I.M.K. umbrella?
A. Marick Home Builders was to provide the construction at their cost, and I.K. provided the investment. And we did the books for I.M.K. And the agreement was we would split the profits.
Q. So Marick would do the construction but do it at only its cost, not put a profit on that?
A. That's correct.
Q. And Marick would be paid its profits the same as you'd be paid your profits which was by the sales of units; is that right?

A. Right.
Q. Do you recall being on the board of the Stoneledge Homeowners Association?
A. I do now.
Q. You've seen exhibits in this trial?
A. I did.
Q. And you wouldn't deny that you and Rick Thoennes from Marick Home Builders were on the board up until the time of turnover?
A. I believe that's correct, yes.
Q. What do you recall about the condition of phase one at Stoneledge when you purchased your interest in the project?
A. Well, I am not a construction person, and I wouldn't know a defect if I saw it unless it was just blatantly obvious. But I know it was -- the property didn't look good, and there were erosion problems. And, you know, there were thirty-seven units there and in various stages of completion. No boat slips.
Q. Did you walk through those units when you got there?
A. I went into some, but mostly to look. I was planning to buy one to help fund the project as other members of the two entities did to help fund the project.
Q. But you ultimately didn't buy one?
A. I did.

Q. You did? What were your expectations of Marick Home Builders with respect to the unfinished units in phase one?
A. That they would finish them and make them ready for occupancy, for sale.
Q. Was your expectation that if they found problems with those units that they could fix them?
A. Yes.
Q. Were you expecting Marick Home Builders, if they found a problem, to fix it properly?
A. Yes.
Q. Did Marick Home Builders at any time come to you and report that they had found problems in units in phase one?
A. I don't know that they came to me personally, but they came to I.M.K. meetings and reported that, yes.
Q. And what sort of problems did they report at the I.M.K. meetings?
A. Well, I don't remember all of them. I do remember problems with the decks that they said they needed to fix.
Q. And how did he -- did he tell you how he fixed it?
A. I know he hired some consulting company, and they had some kind of product they were going to put on top of the decks to stop the problem.

Q. And when you say he told you he'd fix them, you're referring to Mr. Thoennes?
A. Yes. I believe he was the one that told us about the proposed fix, yes.
Q. Did anyone at the I.M.K. meeting suggest or consider retaining an expert to actually do a more thorough investigation of the water infiltration problems?
A. I assumed that Marick would do that.
Q. If it was necessary?
A. If it was necessary. And I know they did look them over before we purchased them as well as afterwards when the homeowners reported issues.
Q. Were you aware of leaks into the basements in phase one?
A. No, I wasn't.
Q. Did you hear the testimony of Nathan Hornaday?
A. I did.
Q. And were you surprised to hear that they had had to do some basement wall repairs?
A. I wasn't surprised at this point, but I did hear that, yes.
Q. Had you -- did you hear of any problems with window leaks in phase one?
A. I had not heard about that. I don't recall hearing about that until this trial.

Q. Did you go into that unfinished unit that we've seen pictures of for the last week, unit thirty-three?
A. I don't think so.
Q. You didn't observe those conditions yourself?
A. I don't think I've ever been in unit thirty-three that I recall.
Q. Did you observe similar conditions in any other unit in phase one?
A. I have not. I have not made an attempt to observe them. I wouldn't recognize problems, I don't think, generally. It's not my expertise.
Q. When you were on the board of the homeowners association until September of 2008, do you remember receiving phone calls from owners about problems that they had in their phase-one units?
A. I never received any phone calls. Tim Roberson was the primary interface with the homeowners.
Q. Was it ever reported to you that homeowners were calling about leak complaints in the decks or basements?
A. I mean, I don't remember specifics that long ago. That's been six or seven years, so I don't remember specifics. But I know that anything that was brought to us we made the decision to fix.
Q. Do you know how much money you spent on repair and maintenance in the 2008 year?

A. I don't know about 2008, no.
Q. Do you remember any discussion about roof leaks in phase one?
A. Not until recently, no.
Q. Or any discussion about problems with the grade in phase one? This is while you were on the homeowners association board.
A. I don't remember anything of that, no.
Q. Who was Chip Allen?
A. I don't -- I mean, I've met him. He was, I believe, a salesman.
Q. And did he work for Integrys?
A. He did not.
Q. Do you remember him using an Integrys email address in communicating with purchasers at Stoneledge?
A. We housed some of the salespeople at our office, Integrys Holdings office, as a matter of convenience because we had space. And that made it easy for them to use our email, but they were not part of Integrys Holdings or Integrys Keowee.
Q. In other words, they weren't owners?
A. They were not owners nor were they employees. They were contractors of I.M.K.
Q. So Mr. Albert and Ty Savage, is that another name that you recognize?

A. Yes.
Q. It's your testimony that they were representatives of I.M.K.?
A. Yes.
Q. And if they were using email ---
A. They were contract salespeople through Marick. Marick would primarily supervise them, but they were contract salespeople.
Q. When you say Marick supervised them, what do you mean?
A. They managed their activities.
Q. So Marick was not only the construction arm of I.M.K.; it was also in charge of managing the sales team at I.M.K.?
A. They did do that, yes.
Q. Now, Integrys dot com, is that a domain name that belongs to the Integrys companies, or did it?
A. I don't remember any -- I don't think Integrys dot com was available. Integrys dot net, Integrys Holdings dot com were.
Q. And if Chip Albert and Ty Savage were using email addresses with the Integrys website name, would that surprise you?
A. Not necessarily, no.
Q. And if owners were receiving those emails and

believed they were dealing with somebody who was affiliated with Integrys, would that seem to be reasonable to you?

A. I mean, I think owners clearly knew that when they signed a contract, it was with I.M.K..

Q. Sure.

A. And any sales literature did not mention Integrys.

Q. Do you remember negotiating a sale of I.M.K.'s interest in this project to John Ludwig and his company, S.D.I.?

A. I did.

Q. You did that?

A. I did.

Q. Why did you sell I.M.K.'s interest in Stoneledge to Mr. Ludwig and his companies?

A. Well, we were almost forced to.

Q. Why is that?

A. Either that or we were going to have John Ludwig as a partner.

Q. And how did that come about?

A. You know, I don't know all the details, but I knew that Marick Home Builders owed John Ludwig some money. And they had pledged the profits from their share of I.M.K. or Stoneledge as collateral or something. And we didn't know that until there was a problem between them

and John Ludwig's company, whoever that was.
Q. Okay. And so you understood S.D.I. in some capacity or Mr. Ludwig to be a creditor of Marick?
A. Yes.
Q. Is that right? And at some point, did Mr. Ludwig come knocking on the door say, I'm here to get my profits?
A. Sort of, yeah.
Q. And, ultimately, who decided it was in your best interest to sell I.M.K.'s interest to S.D.I. Funding or Ludwig?
A. Well, I guess it was I.M.K.'s decision.
Q. And you negotiated the terms of that deal?
A. I did.
Q. Mr. Cox, I'm going to show you what I previously marked as number 34 and ask you do you recognize that?
A. It's an email from me to John Ludwig.
Q. And does that email -- did you draft that email?
A. I did.
Q. And in that email, are you generally outlining for Mr. Ludwig the terms of the transaction between I.M.K. and Mr. Ludwig's companies?
A. Well, this was almost six months before the closing, so these were the terms we were generally discussing at the time, yes.

Q. Yes, sir. Okay. As part of the consideration for that sale on number three of that exhibit, there's an indication that the consideration for Integrys Keowee's fifty percent would be one million dollars in cash at the closing plus ten percent of the gross sales price for any Stoneledge townhome sold in the future paid at the closing of each sale; is that right?

A. That's right.

Q. And ultimately, Integrys Keowee was paid by Ludwig properties at the time of the closing; is that right?

A. They were not paid this amount.

Q. They were paid something less?

A. Right.

Q. So that was a negotiated portion of the agreement; is that right?

A. What was the negotiated portion?

Q. The consideration that I.K. would receive as part of that sale?

A. To represent its ownership in I.M.K., yes.

Q. And then number five in this email, the last provision is that S.D.I. will assume responsibility for the Stoneledge H.O.A. until it is turned over to the owners. You see that?

A. I do.

Q. And that was your expectation at least when you

started negotiating with S.D.I.?
A. That's right.
Q. And that didn't happen either; is that right?
A. They didn't take responsibility for it, no. The decision was made that we would, as quickly as possible, turn it over to the owners.
Q. And ultimately, you agreed with S.D.I. that I.M.K. would remain in control of the board until it was turned over to the owners?
A. That's right.
Q. And I.M.K.'s representation on the board until it was turned over to the owners was you and Mr. Thoennes?
A. No, that's not true.
Q. Okay. Who were I.M.K.'s representatives on the board until it was turned over to the owners?
A. I don't remember the -- my understanding is that all of the managers of -- at least from the document you showed originally that -- I was not an officer; I was just a board member. But Tim Roberson and Rick Thoennes and myself and Matt Smith, who was an employee of Integrys Holdings, were on the board up until the time. Rick III Thoennes may have also been on the board.
Q. Okay. Now, you mentioned a moment ago that Integrys Keowee did not receive a million dollars cash at the time of closing ...

A. That's right.
Q. ... for the sale. Would you agree with me that Integrys Keowee did receive six hundred and thirty-nine thousand dollars at the time of ---
A. No. No, it didn't.
Q. Is that what Integrys Keowee was supposed to receive at the time of the closing under the terms of the agreement that was signed between Integrys -- excuse me -- I.M.K. and Ludwig Properties?
A. It could have been. I don't remember the exact amount. But there were, you know, lots of offsets that happened. And the net was about five hundred and eighty thousand, if I remember correctly.
Q. Okay. And that is money that was paid to I.K. by Mr. Ludwig's companies at the time of closing?
A. Yes.
Q. And money -- and that transaction was for the sale of assets of I.M.K.?
A. That's right.
Q. So that's money, five hundred and eighty thousand dollars or so, that was not put into I.M.K.?
A. Well, it was -- I.M.K. was selling all of its assets -- or not all of it. We still owned two townhomes. But it was selling the remainder of its inventory to the, and the proceeds were distributed to the owners of I.M.K.

Q. And when the owners [sic] were distributed to the owners of I.M.K., it left I.M.K. insolvent?
A. Not at the time, I don't think.
Q. But ultimately I.M.K. became insolvent?
A. It did.
Q. And it was unable to pay its bills, which is the definition of insolvency; right?
A. Well, it has continued to pay its bills, but it owes more on its assets than they're worth.
Q. And I.M.K. does not have cash available to it to satisfy a judgment that my clients might get against I.M.K. in this case?
A. It does not have any cash, no.
Q. In addition to the cash that I.K. was paid at the time of closing, I.K. also received a promissory note from Mr. Ludwig's companies; is that right?
A. Yes.
Q. And that was a promissory note in which Mr. Ludwig's companies agreed to pay I.K. the sum of three hundred and fifty thousand dollars; is that right?
A. That's right.
Q. And, again, that's money that went to I.K. rather than to I.M.K.?
A. But it was for the assets of I.M.K., and it was just I.K.'s consideration for its share.

Q. Sure. As part of the promissory note, I.K., Integrys Keowee, actually agreed to also perform consulting services for Ludwig's companies; is that right?
A. Technically, yes.
Q. Well, when you say technically, I mean, that -- there's a document called promissory note and consulting agreement?
A. Right. It was a -- we sold the units for a very low price, and that was a way that they profited from them, and we would get additional consideration.
Q. And when you say you sold them, you mean I.M.K. sold them to Mr. Ludwig at a very low price?
A. That's right.
Q. And then I.M.K. was going to realize a profit from the future sale of those units by Mr. Ludwig's companies; is that right?
A. That's right.
Q. And so in a sense, you remained in some sort of relationship with the person who owned and was selling those units after I.M.K. got out of the development?
A. That's right.
Q. And, in fact, I.K. and its principles, you and Mr. Lollis and Mr. Roberson, actually stood an opportunity to make money on the sale of these Stoneledge units after

this lawsuit got filed?
A. I think we -- I mean, we had the possibility we would never be paid all we were owed.
Q. Sure. And Mr. Brad Seckinger, who ultimately obtained this project after Mr. Ludwig sold it, Mr. Seckinger entered into an agreement with you and I.K. to pay you commissions or proceeds from units that were sold after this lawsuit was started?
A. He did.
Q. And you're saying that those sums were never paid?
A. Not all of them, no.
Q. But it was your expectation that you'd be paid if everything worked out?
A. Yes.
Q. Even after the lawsuit was started and I.M.K. was the defendant in the lawsuit, it was your intent for I.M.K. -- excuse me -- for I.K. to receive profits or receive proceeds from the sales of these Stoneledge units?
A. We hoped to because we -- you know, we made an investment. We certainly had no intention of profiting off of peoples' problems, but that was the responsibility of the ones who created the problems.
Q. And those are who?
A. Well, I am not an expert to say who caused all the

problems in phase one, but the builders were Bostic Construction and Marick.

Q. Have you seen anything over the course of this trial that suggests to you that Marick Home Builders didn't do what you expected them to do in phase one?

A. I don't know if I'm qualified to say that.

Q. Do you want to see these buildings fixed?

A. Sure. Yes, I would. We own two of them.

Q. And fixed properly?

A. Yes.

Q. I think that's all the questions I've got for you, Mr. Cox. Thank you. Somebody else may have.

THE COURT: Yes, ma'am?

MS. BROWN: I don't have any questions of this witness.

THE COURT: Mr. Hemphill?

MR. HEMPHILL: No, Your Honor.

THE COURT: Mr. Belcher?

MR. BELCHER: Just a couple, Your Honor, if I may.

THE COURT: Very good.

CROSS-EXAMINATION

BY MR. BELCHER:

Q. Good morning, Mr. Cox. I don't think you and I have ever had the pleasure of meeting. I just have a couple

of quick questions for you here.
A. Sure.
Q. Have you reviewed the amended bylaws to the Stoneledge Townhome Community?
A. I have not.
Q. If I may, I'll pull them out here. I believe they're already an exhibit. I think that's exhibits number 3 and 4.
MR. BELCHER: Your Honor, may I approach the witness?
THE COURT: Certainly.
MR. BELCHER: Thank you.
Q. And just to be clear, it looks to me like bylaws were originally in place under Townhomes of Keowee as of August of 2003. Does that sound about right to you?
A. It could be. I'm sure that they were in place when we bought the project.
Q. And you all, you or I.K. or whatever company you're affiliated with, purchased around April of 2005?
A. That's correct.
Q. And the bylaws were readopted, reincorporated and amended, according to that document 11/1/2005?
A. What date did you say?
Q. 11/1/2005. If you'll check the signature block on exhibit 4, it should be at the back.

A. If that's the date that's on there, yes, I'm sure it is. I see signatures that are dated 15 March 2007. That's a notary.

Q. Those may be attachments.

A. Maybe you can help me find what you're talking about.

Q. We're talking about this on exhibit 3.

A. Oh, okay. I thought you said four. I'm sorry.

THE COURT: What is that exhibit? It has a number on it there, sir?

THE WITNESS: Number 3, yes, sir.

THE COURT: Number 3?

MR. BELCHER: Yes, Your Honor.

THE COURT: Is it Plaintiff's Exhibit Number 3?

MR. BELCHER: Plaintiff's 3, Your Honor.

THE COURT: Very good.

Q. Is there a signature place?

A. It does say the 1st day of November 2005.

Q. And your signature is on that document?

A. Yes.

Q. So you are one of the individuals who pushed through the adoption and amendment to the bylaws which basically put control of the association in the hands of the new regime. Fair?

A. Yes.

Q. All right. And that would be the change from Townhomes on Keowee to Stoneledge at Lake Keowee?
A. Yes.
Q. Now, what was your role in Stoneledge at Lake Keowee on the homeowners association?
A. I was just a board member.
Q. Which -- did you hold a specific occupation?
A. No, I didn't.
Q. You were an at-large?
A. I'm not sure exactly what the term is, but I was not an officer.
Q. Officer being you weren't a president, vice president, secretary, treasurer?
A. That's right.
Q. But you were a board member?
A. That's right.
Q. So you had the authority to act on behalf of the board as a group? On behalf of the association as a member of the board?
A. I believe that's right.
Q. How long did you sit on the board?
A. I assume it was until it was turned over to the homeowners in September 2008.
Q. 2008?
A. Yes.

Q. And I think your testimony was that when there was this changing of the guard and I.M.K. and Marick and all of those companies came on to complete this project, there was some inspections of the units?
A. I would assume that Marick did inspections, yes.
Q. Do you recall the circumstances of the change in ownership from Townhomes of Keowee, L.L.C., to I.M.K.?
A. I'm not sure what you mean by circumstances.
Q. All right. Were you involved in the negotiation of the sale from Townhomes of Keowee, L.L.C., to I.M.K.?
A. I was.
Q. And you understand that your company basically pulled it out of foreclosure?
A. That's right. I think what I was told by Bobby Carpenter that the bank was about ready to foreclose, yes.
Q. And your company or the group that purchased from Townhomes of Keowee basically bought it for the balance on the bank note plus a couple of mechanics liens?
A. Yeah, there were several -- I'm not sure how many mechanics liens, but there were a lis pendens. There were from a few people trying to take advantage of the situation.
Q. Some of the subcontractors that just Townhomes of Keowee didn't pay?

A. Apparently, yes.
Q. And did your company or the group that purchased from Townhomes of Keowee do any type of due diligence with regard to the value of the units that were unfinished out there?
A. I'm sure we did to some degree. I mean, Marick was very experienced in the building industry and told us that there was a lot -- could be a lot of value there.
Q. Were there any conversations between your company or within your company and Marick with regard to what would need to be done to bring the unoccupied unsold units up to a place where they could be sold?
A. Well, there certainly was -- from time to time there were -- Marick gave us costs with what they thought it would take to finish the units, yes, preparing those for sale.
Q. And I want to go back to some of your testimony when Mr. Lyles was asking you questions about your observations of the site when you first went on site. You testified that you saw all kinds of erosion issues?
A. I did see some erosion issues, yes.
Q. Where the final grade had not been placed down on some of the unsold units or ---
A. I wasn't looking at the grading. There was someplace where the lake was intruding into the property,

and the sod was collapsing.
Q. And the buildings looked like they were in a state of disrepair?
A. Well, like I said, that's not my field of expertise. I'm a numbers person. I couldn't draw a good stick man. But the property in general, you know, it wasn't well maintained, the landscaping and what have you. But I don't know that I noticed any construction issues personally.
Q. But people started coming to you with complaints early on?
A. They didn't come to me. They would have -- you know, Marick or Rick Thoennes was our primary interface on the property, and Tim Roberson to some degree.
Q. Did anybody come to you -- any of the owners out there come to you as a board member of the H.O.A.?
A. No.
Q. Was Mr. Thoennes also a member of the H.O.A.?
A. Yes.
Q. Was he a board member?
A. Yes.
Q. Do you know if Marick, the construction company itself, had any membership on the board?
A. The corporate entity?
Q. Yeah.

A. I don't think so, no.
Q. So other than Mr. Thoennes, who was the owner of Marick?
A. I think he and his son both were on the board.
Q. And you were aware early on in your capacity as a board member that people were coming to Mr. Thoennes or to Marick with leaking issues, window issues?
A. I certainly knew there were some. I didn't know of anything that was really pervasive. But, you know ...
Q. So you knew that there were issues; you just didn't know the extent of those issues?
A. Right. And we made an effort to the existing owners anything that they had a problem, you know, punch list items or whatever, to fix them.
Q. You assumed warranties?
A. I don't know exactly what that means.
Q. Well, you honored warranties?
A. We fixed problems that they reported, yes.
Q. And we've heard a little bit of testimony earlier -- it's been a while now -- about Coleman Waterproofing having to come out and do some balcony waterproofing. Do you recall that testimony?
A. I do recall the testimony, yes.
Q. Did you have anything to do with commissioning their repairs to those balconies?

A. I did not.
Q. Do you know when that happened?
A. It would have been 2005, I believe.
Q. So right as soon as you took -- as the new homeowners association took over?
A. Well, you mean, like when I.M.K. bought the property?
Q. Right.
A. It was sometime shortly after that, I would assume, yes.
Q. Sometime in the 2005 time range?
A. Yes.
Q. All right. Thank you.

MR. BELCHER: I don't have any further questions.

THE COURT: Ms. Brown?

CROSS-EXAMINATION

BY MS. BROWN:

Q. Mr. Cox, isn't it true that when I.M.K. took over the property and the erosion problems were reported that I.M.K. paid to have the erosion problems fixed?
A. That's correct.
Q. Thank you. And did I.M.K. pay to have the repairs made to the construction issues that were brought up to I.M.K. after they purchased the property?

A. They did.
Q. Were there any unfinished construction issues when you sold the property that you're aware of?
A. None.
Q. On the -- you mentioned boat slips in your testimony just a minute ago. Were there any boat slips out there when I.M.K. purchased the property?
A. No.
Q. Did I.M.K. pay to have boat slips built on the property?
A. We did.
Q. Okay.

MS. BROWN: Nothing further.

THE COURT: I didn't ask. But Mr. Anderson, any questions?

MR. ANDERSON: No, Your Honor. Thank you.

THE COURT: All right. Mr. Imhoff?

MR. IMHOFF: Just two questions, Your Honor.

THE COURT: Very good.

CROSS-EXAMINATION

BY MR. IMHOFF:
Q. Mr. Cox, Mr. Belcher asked you about due diligence and what was done to look at the property. Did you have to get a loan or any loans to purchase this property?
A. We did.

Q. Okay. And did the bank commission an appraisal of the property?
A. They did.
Q. Do you recall the name Stone and Associates?
A. I don't.
Q. Okay. You don't remember the name of the appraiser who went out there?
A. I really don't. I'm sorry.
Q. Did you get a copy of that report?
A. I don't know if I got a copy. I mean, I certainly probably heard what the appraisal was, but I don't remember ---
Q. Do you remember that report reflecting that the units were of good construction quality when you bought the property?
A. I don't remember. I'm sorry. I don't recall reading the appraisal.
Q. Okay. If an appraisal returned and either said the property wasn't worth what you were paying or there were pervasive construction issues on the property, would that have given you pause?
A. Absolutely.
Q. And you don't recall that happening?
A. No.
Q. Thank you.

THE COURT: Mr. Lyles?

MR. LYLES: No further questions, Your Honor.

THE COURT: Very good. You may step down.

All right. Let's take a short break and then come back. Again, do not undertake a discussion of the case among yourselves. But when you are ready to come back, knock on the door.

Everyone else remain seated while the jury retires from the courtroom.

(WHEREUPON, the jury exited the open court at approximately 10:41 p.m.)

THE COURT: All right. Mr. Lyles, what do you believe as the schedule today?

MR. LYLES: I think we'll finish by lunchtime. I've got Mr. Thoennes next. I've got -- I thought somebody was talking to me. I've got -- you want me to hand this up?

THE COURT: We've had a discussion on those. If you haven't noticed, I think it's on the door to the courtroom is a -- it's more than an admonition. It's an Order by the Chief Justice of the Supreme Court of South Carolina that no electronic devices are to enter a courtroom unless they're turned off, of course. But now we have all of these new things that I have to ask my law clerk, "Exactly what are those?" He says, "They're kind

of like a telephone and kind of like a laptop and all that." But the thing is we do not want interruptions. And so if you do have -- and you -- well, I would ask just as a courtesy, maybe not as an order of the Court, that if you do need to use them -- other than the attorneys who are involved in the trial of the case, of course. They need their sources. But if you have private matters to take up, do take them out into the lobby somewhere and use them there. The reason not only are they sometimes disconcerting, but also they sort of interfere with the flow of things in the courtroom. As I mentioned or tried to mention earlier today, there are certain things we just have to have in the courtroom. One of them is order. As you've noticed, the court reporter takes down everything that is said in the courtroom. She can't take down things over -- people speaking over each other, nor can she take down things that are said in -- I won't say chaos, but let's just say confusion. So we try to keep that down to a minimum if not eliminate it if we can.

All right. With that sermon, I'll now ...

Mr. Belcher, how do y'all wish to proceed, or have you even thought about that yet?

MR. BELCHER: Yes, Your Honor, we certainly have given it a considerable amount of thought. After

Mr. Lyles rests today ---

THE COURT: We'll probably go to lunch if that's in the neighborhood and then take up the Defendant's case.

MR. BELCHER: That's fair, Your Honor.

THE COURT: All right.

MR. BELCHER: And as far as witnesses, we'll figure out who's going to call a witness.

THE COURT: That was the other thing. If you could -- and I know that you all have your own parties and issues, but if you could somehow get sort of a schedule of witnesses. All right.

MR. BELCHER: If we can't agree, we'll call a witness anyway.

THE COURT: All right. I think you'd rather call the witnesses than -- what is it? -- the Court. So at least -- what is it? -- not involved in it.

All right. Very good. We'll take a short break until the jury is ready to come back.

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

THE COURT: If they're ready -- well, just a moment.

Anything from the plaintiffs before we bring the jury back?

MR. LYLES: No, sir.

THE COURT: Defendants?

MR. BELCHER: No, Your Honor.

THE COURT: Very good. Ask the jury to join us, please.

(WHEREUPON, the jury entered the open court at approximately 11:10 a.m.)

THE COURT: All right. You may call your next witness.

MR. LYLES: Yes, sir. Your Honor, the plaintiff calls Rick Thoennes.

(WHEREUPON, the witness was duly sworn.)

THE COURT: If you would, please, sir, give us your full name for the record, spelling your last name.

THE WITNESS: Frederick Richard Thoennes, T-H-O-E-N-N-E-S.

THE COURT: Thank you, sir.

FREDERICK RICHARD THOENNES,

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. LYLES:

Q. Good morning, Mr. Thoennes.

A. Good morning.

Q. How you doing?

A. Good.

Q. Good. Mr. Thoennes, you're a licensed builder in South Carolina; is that right?
A. I am.
Q. And you have a general contractor's license?
A. I do.
Q. And how long have you had that license?
A. Probably since 1971 or '2.
Q. And have you been continually in the business of building and constructing residential homes or residential construction since that time?
A. Not continually, no.
Q. How long have you been in the business of building homes?
A. On and off all that time. Probably a year or two that I did not.
Q. And you're currently doing business as what? What's the name of your company today?
A. I don't have a company. My license is in my name.
Q. So you're not doing business in any way, shape or form now?
A. No. I help my sons in some construction, but I'm collecting social security now.
Q. Okay. You were the license holder for Marick Home Builders, L.L.C.; is that right?
A. Correct.

Q. And is that an L.L.C. that you started?
A. No. My son and myself.
Q. And which son was that?
A. Rick.
Q. And he's Rick III.
A. Rick III.
Q. And you're Rick Thoennes, Jr.?
A. No.
Q. You're Rick Thoennes?
A. II.
Q. II, okay.
A. Well, my legal name is Rick Thoennes period.
Q. Okay. All right. I just wanted to make sure.
A. It's senior. They just call me senior to differentiate between senior and III. So it's either senior or III.
Q. Okay. And who have been members of Marick Home Builders, L.L.C.?
A. When we first formed Marick, it was Mark Hutcherson, myself and my son.
Q. And at some point, did Mr. Hutcherson leave the company?
A. Yeah, with less than a year.
Q. When he left, he left in less than a year?
A. Yes, after we started.

Q. And how long did you and Rick III operate Marick Home Builders, L.L.C., without Mr. Hutcherson?
A. That would have been, I guess, from sometime in '99, which is when it was formed. And he left in '99, I believe. So it would have been from that time forward.
Q. And Marick Home Builders, L.L.C., ceased operations in 2009; is that right?
A. I thought it was 2008, but ...
Q. Okay. And at the time Marick Home Builders ceased operations, it was insolvent?
A. Yes.
Q. And that means it was unable to pay its bills in the ordinary course of business?
A. That's correct.
Q. And at that time, you and Rick III started another company, is that right, called the M Group?
A. Not immediately, but shortly thereafter.
Q. Okay. And the M Group started at a time when Marick Home Builders was insolvent?
A. Correct.
Q. And M Group started because Marick Home Builders was insolvent?
A. No.
Q. Why was M Group started?
A. M Group was started because we needed to continue to

generate some kind of income personally for myself and for Rick. So we asked two investors to come in and invest in a new company so that we could build some small houses.

Q. And the reason you needed M Group to serve the function of providing you with some income is because Marick Home Builders was insolvent?

A. Yes.

Q. And it had a lot of debt?

A. Yes.

Q. Who were the two new investors who came?

A. My other son Mark and Mark Hutcherson.

Q. And is M Group still in business?

A. No.

Q. How long did M Group stay in business?

A. I would guess two years, a year and a half.

Q. Did M Group actually do any work?

A. Yes.

Q. What did it do?

A. Build some smaller houses in Simpsonville.

Q. And M Group had a fine homes division, as I recall; is that right?

A. Yes. We didn't do any -- we didn't build any fine homes, though.

Q. And you and Rick III were members of both Marick

Home Builders and the M Group; is that right?
A. Correct.
Q. And you were the license holder for Marick Home Builders and the M Group?
A. Correct.
Q. Matthew Gooch was a superintendent for Marick Home Builders and the M Group; is that right?
A. Not at the same time.
Q. At different times?
A. Yes.
Q. At some point, he worked for Marick Home Builders and then began working for M Group?
A. Yeah. There was a lag in between.
Q. How long was the lag?
A. I don't know.
Q. And when you started the M Group, do you recall that the M Group website was linked to the Marick dot com website?
A. I wouldn't have any idea.
Q. You've heard the testimony today of Mr. Cox earlier. Did you?
A. Yes.
Q. And he described the role of Marick Home Builders and I.M.K. as being the member of I.M.K. responsible for construction activities; is that right?

A. Correct.
Q. And you charged I.M.K. for your construction hard costs; is that right? You didn't charge I.M.K. for overhead and profit?
A. Correct.
Q. And then you -- Marick Home Builders was to take ---
A. Well, we didn't charge them. They actually paid the bills. I mean, we'd give a bill to I.M.K., and they would write a check for that so that Marick could pay that bill.
Q. And the bills that were paid were subcontractor bills?
A. Among other things.
Q. And material supplier bills?
A. Yes.
Q. And how about labor for Marick Home Builders? Did y'all have laborers in-house, or was all your work subcontracted?
A. Yes. We had -- I think we had cleanup laborers out at Stoneledge that would sweep and keep the place picked up. They were employees, and so was Nathan.
Q. And those bills were paid directly by I.M.K., not by Marick Home Builders?
A. To Marick Home Builders.
Q. So I.M.K. -- you would submit a bill, I.M.K. would

write a check to Marick Home Builders, then you would pay your suppliers and employees?

A. Correct, except we actually submitted invoices from the suppliers and subcontractors. We didn't just give them a Marick bill that said you owe us a hundred thousand dollars. We would actually submit the invoices.

Q. Okay. And when an invoice was submitted, say, by a lumber company or materials delivered, would I.M.K. simply pay that invoice directly ---

A. No.

Q. --- or would I.M.K. issue a check to Marick Home Builders in that amount?

A. To Marick.

Q. And then Marick would pay the bill?

A. Yeah, because I.M.K. had no -- they didn't have any credit at the time, so they couldn't have had an account anyway.

Q. And was Marick Home Builders responsible for the management of the sales team, Chip Albert and Ty Savage?

A. For the most part, I.M.K. had some responsibility in that too. I mean, the sales was -- all had to be approved by I.M.K. and what we were doing, and then sales materials and all of those things. So certainly I.M.K. had some responsibility for the sales.

Q. But Marick Home Builders also had responsibility for

the sales team?
A. Yes.
Q. We go back to the point in time when Marick Home Builders began working on phase one. Was that in about 2005?
A. Yes.
Q. Was it mid to late 2005?
A. Mid.
Q. And how long had it been since Bostic had been on the site? Do you recall?
A. How long what?
Q. Since Bostic had been on the site.
A. I have no idea.
Q. Did you hear the testimony earlier this week that they left the site in October of 2004?
A. I heard that.
Q. And when Marick Home Builders started doing work at -- let me back up a little bit further. Who decided what work Marick Home Builders was going to do in the unfinished units in phase one?
A. Who decided?
Q. Yes, sir.
A. I guess I would have. I mean, in conjunction with Rick III who was -- he was more the marketing-type person; I was more the hands-on person. So together we

would decide what needed to be done in the units and if we needed to make any changes or any esthetic changes to the units.

Q. How about completing units from the foundation up? Do you remember seeing some of those building permits that were pulled the other day?

A. Yes.

Q. And in terms of creating a plan for Marick Home Builders to complete those units, was that completely within your discretion?

A. Well, first of all, it's impossible to complete a unit from the foundation up with the roof already on it. All the roofs were on, and the stone was on. Siding was on. All the framing was done. Stone was on. Paving was in. Landscaping was in. Garages were in. So I'm not sure where the -- what "the foundation up" means, to tell you the truth. That was something evidently Oconee County wrote down. But that's an impossibility.

Q. Who gave Oconee County the values that were used in the building permits that were pulled by Marick?

A. I did.

Q. So that was an assessment that you made about the value of work you would do with respect to each of the units ---

A. Yes.

Q. --- on which you pulled the permit?
A. Yes.
Q. And, again, in terms of establishing that unit -- excuse me -- that value in deciding what work Marick was going to perform, that was something within your providence?
A. For the most part. Like I said, we would -- I would talk to Rick and Tim, for that matter, about any changes or anything that needed to be added or taken away, or doors differently or whatever. But for the most part, I would, yes.
Q. And you and Nathan, when Marick Home Builders became involved on the site, you and Nathan actually walked the project and inspected the work that had been done by Bostic; is that right?
A. I don't remember who walked it. I know I did.
Q. And were you assessing the quality of the work that was done by Bostic?
A. Yes.
Q. And were you making sure that the work that had been done by Bostic was done in conformance with the building code?
A. No.
Q. Would you have been able to do that?
A. No.

Q. Did you find it, or did you think it was necessary to have somebody else come in and make some sort of assessment about the quality of work that had been done by Bostic?

A. No, because I have been in multi-family -- I'm sorry. I need to go back to your previous question.

Q. Sure.

A. I'd built a lot of multi-family construction. You said residential. I consider multi-family residential ---

Q. Yes, sir.

A. --- as opposed to this building, for instance, is commercial. But I built a lot of multi-family units and had been aware of Bostic through that construction, knew that they were a large company that had a lot of integrity. So I assumed that the project was built like it was supposed to be. And I had understood that this project was not the reason they had filed for bankruptcy. So I had no reason to believe that they would have shortcut anything.

Q. What did you understand the reason to be that Bostic Brothers filed for bankruptcy?

A. Other multi-family projects. They had dozens, I guess.

Q. When you say you're familiar with Bostic, do you

know of another multi-family project that they had done for sale?

A. No. I just knew them like I know now that Lyles and Lyles is an attorney firm in Charleston. Being in the business, I knew that Bostic was a multi-family contractor. That's all. And developer. But as far as specific units or projects that they would have done, I had absolutely zero knowledge of that.

Q. But it's your testimony that you assumed or you were relying on the quality of Bostic's construction when you got to phase one?

A. To a great part, yes.

Q. Do you recall the photographs ---

A. And they looked nice. That was a good looking project, so ...

Q. When did you become aware of the decks and the porches leaking?

A. I don't remember who the first person was that told me about it. It may have even been Nathan for that matter. It's eight years ago now, so it's -- I have enough trouble with eight months ago. So it could have been Nathan; it could have been a homeowner that said that they were getting water underneath the deck.

Q. And did you assess that problem?

A. I had Nathan look at it first.

Q. And then did you ultimately do it yourself?
A. Yes.
Q. And did you find a pattern of leaking problems with the porches and decks in phase one?
A. No.
Q. You just found it isolated in a couple of units?
A. Yes.
Q. Did you ever hire any sort of forensic investigator or other qualified person to investigate the source of the leaks?
A. To tell you the truth, I wouldn't have known what a forensic investigator was at that time. Never in my forty or fifty years have I been involved with anything like that, so I wouldn't have known to do that. But we hired a consultant to look at the decks that were leaking. It was a waterproofing company that I had dealt with for several years.
Q. And they ultimately put the topping on the decks; is that right?
A. Yes, an elastomeric coating of some kind.
Q. And did they assure you that that would take care of the problem?
A. Yes.
Q. And did it appear to take care of the problem?
A. Yes.

Q. At the time you got off of the board, were you aware of any failures in the deck leak repairs that you performed?
A. I don't remember any. I do recall that there was oil, an oil spot or a gas spot or something like that, under the elastomeric in one place, so it didn't stick. So they redid that. That's all I recall.
Q. Do you recall any evidence of water infiltrating down through the basement walls or the foundation walls in phase one?
A. I don't recall any. It seems to me we had one that Nathan brought to my attention.
Q. Do you remember the testimony about unit thirty-three that we looked at the photographs of?
A. Yes.
Q. Do you remember that unit?
A. Do I remember that unit?
Q. Yes, sir.
A. Somewhat.
Q. Do you remember going in it and seeing the conditions that were reflected in the photograph that we showed the jury on last Tuesday?
A. No. I remember going in it, but those pictures were taken five years later.
Q. 2009?

A. Well, I assume. I don't know the dates on those pictures, but I assume that's five years later.
Q. And it's your testimony that you didn't see the conditions that appeared like that at the time you went in there?
A. They didn't appear like that when I saw it, no.
Q. Did you see any evidence of window leaks throughout phase one?
A. We couldn't tell in that -- now, are you asking me about that unit?
Q. Well, that unit to start with.
A. That unit, we saw what looked like the stains on the floor. The water stains on the floor, yes.
Q. And did you try to figure out where those water stains were coming from?
A. Yeah.
Q. And where were they coming from?
A. We felt like they were coming through open, broken windows.
Q. And did you see any evidence, the evidence of water leaking in the corner of the windows in that unit?
A. We couldn't tell where it was coming from. Those pictures were much different in 2010 than they were in 2005. You didn't have those dark spots in the corners. And windows are installed differently at that time than

they are now too.
Q. And which window? You talking about the windows ---
A. Any window.
Q. The windows installed by Bostic?
A. Any window.
Q. It's different today than it was then?
A. Yes.
Q. Do they install it better today?
A. What's that?
Q. Do they install them better today?
A. I hope so. I think they do, yes.
Q. Okay. Well, how about the firewall? Do you remember seeing pictures of the firewall in that unit?
A. The hole you looked through?
Q. Well, the whole tenant separation wall. There was no drywall in the interior face of unit thirty-three?
A. I -- no, I don't remember that.
Q. Okay. You don't remember seeing studs in that photograph?
A. I remember seeing a hole about this big, if that's what you're talking about, between the two units five years later.
Q. Okay. And did you -- you heard Nathan testify that the building official in Oconee County demanded that y'all complete or repair that firewall?

A. Yes, I heard him say that. But what's strange to me is that hole would have been there when we saw it in 2005. It's really weird. I mean, it's so glaring and so against everything that I would see. I mean, it just makes no sense to walk into an apartment, me see into the next apartment and say, "okay." It just doesn't work that way.

Q. Sure.

A. So if I had seen that in 2005, it would have been fixed. It could have been made after that time to fix something, to fix an electrical wire or a plumbing pipe or anything.

Q. Okay.

A. I don't know what happened after 2005 or '6.

Q. And why is that?

A. Because I didn't go back in the units.

Q. Mr. Thoennes, during the period of time that you were at Stoneledge and on the board from 2005 to 2008, in addition to serving as the contractor, you were also in the business of selling those units; is that right?

A. Was I in the business?

Q. At Stoneledge?

A. What does that mean?

Q. That means that you were in the business of selling those units.

A. I.M.K. was.
Q. Yes.
A. Yes. As the owner, I.M.K. was to sell the units. They owned them. They're the only ones that could sell.
Q. And you profited from the sale?
A. Yes.
Q. And you, at least in part, managed the sales team?
A. I did what?
Q. Managed the sales team.
A. In part. Like I said, marketing was not and is not my strong suit.
Q. You've been here all week; is that right?
A. Yes.
Q. Have you read the C.S.E. report? That is, the report that Derek did?
A. I have skimmed it. I have not read it.
Q. When did you skim it?
A. What's that?
Q. When did you skim it?
A. In the last year, maybe year and a half. Could be two years now. I don't honestly remember.
Q. Were you surprised by the photographs that you've seen this week of the conditions in phase one?
A. Yes.
Q. Are you disappointed?

A. Yes.
Q. In your observation, who's responsible for the conditions, the rot and deterioration, that we've seen in the photographs this week?
A. I would think the general contractor would have been.
Q. And that would have been Marick Home Builders?
A. Bostic.
Q. Bostic? Would you agree with me that the conditions that we've seen in these photographs needs to be repaired?
A. Yes.
Q. And needs to be repaired properly?
A. Yes.
Q. And do you think that the owners in phase one deserve that?
A. Absolutely.
Q. I don't have any further questions for you at this time, Mr. Thoennes. Thank you.
A. My pleasure.

THE COURT: Mr. Belcher?

MR. GRESH: Thank you, Your Honor.

THE COURT: Oh, Mr. Gresh.

MR. GRESH: Thank you.

CROSS-EXAMINATION

BY MR. GRESH:

Q. Mr. Thoennes, my name is Jack Gresh. You and I have never met in this case. I've got just a few questions for you, if I could this morning.

A. Sure.

Q. You told the jury a little bit about your background and expertise. You actually began construction on multi-family apartment units in ---

A. I'm sorry. You're going to have to say that again.

Q. Sure. You began construction in multi-family apartment units around 1969. You've been doing this for a while?

A. That's correct.

Q. Okay. And ---

A. I didn't begin with -- I began with a duplex.

Q. Okay. But you've been doing this a long time, though. Is that fair to say?

A. Yes, that's fair.

Q. All right. And you had heard about the Stoneledge project from a friend; correct?

A. Correct.

Q. And became interested in it and eventually had your construction company join up with a capital group to form I.M.K. for the purpose of purchasing this project; right?

A. Correct.

Q. And your contribution to this I.M.K. would be the construction part. Anything that's construction related, Marick is going to handle. Is that fair?
A. It would be a little more fair to say that my contribution would be the profits that I would not charge to construct it. That was my -- they put in money; I put in hard labor.
Q. Got you. Okay. And before you would have invested in this kind of company and put your construction company out there on the line like that, you would have done some due diligence in the project that you're going to buy?
A. Correct.
Q. Is it fair to say you wouldn't walk into a multi-million dollar construction deal without doing some homework before you got into it; right?
A. I guess, yeah.
Q. Do you routinely spend multi-millions of dollars without knowing what you're getting into?
A. No. I mean, the point -- I'm just losing the track of your question.
Q. I guess what I was driving at is your coming on site and you're wondering, "Is this a good deal for Marick? Is this a good deal for I.M.K.?"
A. Correct.
Q. We need to know what we're getting into.

A. Correct.
Q. Because if these things are falling down or they're built on fault lines, that's something you need to know before you plunk down millions of dollars?
A. Absolutely.
Q. So when you're coming in, you're doing your investigation, you see ten units that are completely built and sold; correct?
A. Ten or eleven.
Q. Ten or eleven units. And you've got twenty-seven other units that are in various stages of completion; true?
A. True.
Q. And what you would have done is you would have said, okay, pick any one of those units that's unsold. Thirteen. Let's make it up. Number thirteen. All right. What condition is number thirteen in? It doesn't have cabinets. It doesn't have this. And you would have determined what needed to be done to bring that particular building up to code and get your C.O. so you can get it sold out to the next unit?
A. No. You added one little phrase there that I disagree with, and that was bringing it up to code. I couldn't do that with something I couldn't see.
Q. Okay.

A. And, secondly, I wouldn't have just looked at one unit. Number thirteen, for instance.
Q. That's right. You would have looked at all of the units?
A. I would have looked at all of them.
Q. All of the unfinished units, you would have personally inspected with Nathan Hornaday?
A. That's right. And even went into some that were sold.
Q. Because you wanted to make sure you knew what you were getting into?
A. I wanted to see what they looked like.
Q. In fact, you did some checking for code compliance at least on the exterior of the units; is that fair?
A. You've got to be more specific.
Q. Did you check for code compliance on some of the units on the exteriors?
A. Well, what kind of code on the exterior are you talking about?
Q. The International Building Code.
A. Yeah, but there's a lot of codes. Now, I can't say, yes, I checked every code. The International Building Code is as big as that notebook sitting to your left.
Q. Do you remember telling us in your deposition when you were under oath that you had checked the exterior of

these units for compliance with the applicable building code?

A. I don't remember that, but I would have looked to see if there were any code violations, yes.

Q. And, in fact, when you looked, you didn't notice any of those exterior code violations?

A. That's right.

Q. Okay.

A. In fact, somebody showed a picture a couple of days ago where the nail popped through the shingles.

Q. Right.

A. There are probably two million nails in that project, and there's just no way that you would see a nail popping in a roof. It's the same color as the roof, first. I mean, there's a lot of things you cannot see.

Q. And kind of going back, when you're about to enter into this deal, you understood that the Bostic Brothers Construction was unable financially to complete this project; right? Y'all knew that when you were going into it?

A. Well, yes. There were a couple of entities, so I'm not -- I wasn't at the time -- I guess I'm still not sure what the relationship was between Bobby Carpenter and Bostic. So I don't -- you know, it could have been that Bobby Carpenter couldn't have continued, and he couldn't

pay Bostic so Bostic could continue. I don't know all the intricacies of that. I just know that Bostic had filed bankruptcy, and I don't know whether Bobby Carpenter stopped it or whether Bostic stopped it or who stopped it. That was beyond me.

Q. And I appreciate that point of clarification. The developer, Bobby Carpenter, you don't know whether he had stopped paying Bostic Brothers for their construction on the project?

A. I have no idea.

Q. That's fine.

A. I do know that there were some liens on the project.

Q. Sure. And because the project was unable to be completed due to financial difficulties, I assume that raised your antenna a little bit when you went in to purchase this?

A. Like I told you be -- like I told Mr. Lyles before, I knew Bostic Brothers to have a good reputation. I had no reason to think differently. And when you drove on the site, that's what you saw. You saw what looked like a good, reputable project. So I had no reason to say, okay, these guys shortchanged or tried not to do something to code or didn't pay somebody on purpose. I had no reason to believe that.

Q. So fast forward a little bit. The due diligence is

done, and I.M.K. purchases the remaining townhomes and the land there at the Stoneledge project; fair?
A. Uh-huh (affirmative). Let me back up just a second. The time we had to do our due diligence was a little bit compressed too because, as I recall, Bobby was under pressure to do something prior to the bank foreclosing. And I don't know whether the bank was foreclosing on Bostic or Bobby Carpenter or on Townhomes at Lake Keowee. But that's what we were told, as I recall, that something had to be done quickly. So we were a little bit limited in how much time we could spend on due diligence.
Q. Okay. But after the due diligence period was over, however long or brief it ended up being, I.M.K. purchased these unsold townhomes, incomplete townhomes, and the land, et cetera; correct?
A. Correct.
Q. And then upon taking over this project, it's now I.M.K.'s development. And so I.M.K. would have redone the bylaws and otherwise so that it could control the ownership, the board, of the Stoneledge property; right?
A. I don't recall bylaws being redone. But, you know, I didn't have anything to do with that part of it.
MR. GRESH: Your Honor, may I approach?
THE COURT: Certainly.
Q. Earlier, you had heard reference to Plaintiff's

Exhibit Number 3 -- which was sitting right over there -- Plaintiff's Exhibit Number 3. And it's called Amended and Restated Bylaws of Stoneledge at Lake Keowee Owners Association, Inc. Do you see that?

A. Yeah, I see it.

Q. And it goes along with, hand-in-hand, Plaintiff's Exhibit Number 4, which is essentially where these bylaws are filed with the Oconee County?

A. Okay.

Q. I may from time to time reference these, so I'll leave them here in front of you.

A. Okay.

Q. These amended and restated bylaws were prepared, it looks like, November 1st of 2005; is that right?

A. That's right. That's what it says.

Q. And you actually have -- you had signed it -- on the last page here of Plaintiff's Exhibit Number 3, you had signed that as a director of the board November 1st, 2005; correct?

A. That's correct.

Q. Okay.

A. That's my signature.

Q. And from the time that you signed this as a member of the board of directors out there at Stoneledge until the project was ultimately sold to S.D.I. or whoever, Mr.

Ludwig, whoever came in later, you were a member of that board of directors out there at Stoneledge. Fair?
A. That's correct.
Q. And as a member of the board, whenever an owner of a townhome had an issue, they would bring -- particularly if it dealt with the common areas, they would bring those issues to the board so that the board could address those. Is that fair?
A. Incorrect.
Q. The board ---
A. That is not correct.
Q. Why is that not correct?
A. They came to Nathan mostly. Or if I was -- I owned a unit out there. As part of our investment to raise money, I bought a unit. And so I was out there a lot on the weekends. So they would -- it wasn't -- you're making this sound like this was a formal process where a homeowner would call a director to make a complaint. That's just not the way it was.
Q. And if I characterized it that way, I didn't mean to. What I was trying to impart is ---
A. Well, that's what you said.
Q. Okay. Well, right here in the bylaws, does it not say that as the property owners association that you all have the ultimately responsibility for the exterior

envelope of the building and the maintenance; correct?
A. I couldn't possibly tell you what's in there. I would assume that's correct. It's just that I don't know.
Q. And that's what you'd expect to be in here; right?
A. Yes. I would expect that all the exterior, the grounds, landscaping, the exterior of the buildings.
Q. Because those would be the common elements, what they call common elements?
A. That's right.
Q. And, in fact, here on Plaintiff's Exhibit Number 4, we have a discussion about the Stoneledge Property Owners Association responsibility is to take care of exterior maintenance; is that right?
A. Yes.
Q. And there's actually some in the amended bylaws ---
A. I'll be glad to grant you your wish that the H.O.A. is responsible for the exterior maintenance and upkeep of the building.
Q. And that's what I was trying to drive at. That when a townhome unit owner had a problem with the exterior of the maintenance, it would be their expectation that they could take those issues to the association to be addressed. And whether they did that through you or Nathan or verbal or email, that would be their

expectation?
A. You'd have to ask them what their expectation was as to who they would take it to. I think if you asked any of those people there, they would have said they'd have taken it to me or Nathan.
Q. Because y'all were in construction?
A. Because we were out there and accessible.
Q. And, in fact, we heard from a lot of them, Mr. Taylor, the mayor of Stoneledge, how he had these issues early on and that he would bring them to you and Nathan about various leaks and et cetera; right?
A. Correct.
Q. And, in fact, the board as a whole out there at Stoneledge had notice of various leaks, whether it was with the decks or some windows from lots of different homeowners; correct?
A. You keep saying the board. And I want to make that distinction again. I mean, we didn't meet as a board and take these complaints or, say, call Marick and have them fix these complaints. It was a very informal thing. It wasn't a formal, we've got a -- you fill out this form and submit it to the board, and the board will meet and decide what to do or what not to do. That's just not the way it was.
Q. But from the time y'all took over in 2005 and up

until 2006 and into 2007, if a homeowner had an issue regarding the exterior of their unit, they would have forwarded it on, however informally, to the board so that it could be addressed as a common area; correct?

A. Say that again?

Q. From 2005 to 2006 and into 2007, if a townhome unit owner had a complaint or an issue regarding the exterior of their home or any other common element feature, that they would bring that to the board, no matter how informally, so that the board could do what it's supposed to do?

A. It wasn't brought to the board, and I don't know why you ---

Q. You were a member of the board.

A. I'm not sure what the importance of that is, but ...

Q. And I guess what I was driving at, you're a member of the board; correct?

A. Yes.

Q. Okay. So they would bring it to the attention of a member of the board so that it ---

A. It depends on which hat I had on on that particular day. I've been -- Mr. Lyles said I sold them. Somebody else said I built them, and somebody else said I'm a director on the board.

Q. And now you're on the board.

A. So I guess it depends on which hat I had. You know, on some days I would go out and jump somebody's car, so I guess I was a mechanic too. But I just -- you know, I didn't have the pleasure of being able to say, I'm a director now. At seven o'clock, I'm a contractor. At eight o'clock, I'm a marketing person. I didn't have that luxury. So you're trying to put words in my mouth that I don't want you to do. It was very informal. I mean, this was not a multi-national company out there trying to build this complex. This was me and Steve Taylor or me and Jessie Grasso or me -- you know, it was a very informal thing. So I don't want people to think that this was a formal thing that people took to the board. It wasn't at that time. I can't speak to it after I left. I do know if somebody came to me with a complaint and I could fix it, I fixed it. It's that simple. It wasn't a matter of deciding yes or no.

Q. Homeowners like Mr. Taylor and Ms. Furnari ---

A. Uh-huh (affirmative).

Q. --- and others who had issues regarding the exterior of their home or common elements would bring to you, regardless of which hat you were wearing; correct?

A. Me or Nathan and sometimes Tim. Tim lived out there a whole lot more than I did. So ---

Q. And Tim's also a member of the board?

A. That's right.
Q. He signed that same exhibit we were just talking about that you had signed?
A. He did.
Q. And so whether it went to you or to Tim or to Nathan, the information that the homeowners were complaining about was conveyed to members of the board; fair?
A. Yes, or others.
Q. Or others.
A. And you have to remember too that the homeowners association had no money to do anything when we got there.
Q. Right.
A. They could not keep up what they had, so we ended up doing that. So instead of the homeowners association repainting the buildings, we did it. Instead of the homeowners association getting the sewer plants in shape, we did. Instead of somebody putting sod where it needed to be put, being the H.O.A., we did. They didn't have any money to do that, and we wanted the project to look nice. It was that simple. I lived there. My partners lived there. We wanted to sell the units, and it made sense to make it look as good as it could. And that would include the exteriors.

Q. And any of those complaints, whether they came in from units that Bostic had sold or units that I.M.K. was selling, those issues, whatever they were, would have been addressed by Marick as the construction people; right?

A. For the most part.

Q. That's all I have. Thank you very much.

A. You're welcome.

THE COURT: Mr. Anderson?

MR. ANDERSON: No questions, Your Honor. Thank you.

THE COURT: Mr. Imhoff?

MR. IMHOFF: Just briefly, Your Honor.

CROSS-EXAMINATION

BY MR. IMHOFF:

A. Nice to see a friendly face.

Q. I'm not going to ask you very many questions, Mr. Thoennes. Let me just ask you a couple of questions. You've seen and heard testimony this week repeatedly about unit thirty-three. And you said that you didn't go into unit thirty-three until -- or after 2005. Will you tell the jury why? Why didn't you go into unit thirty-three after 2005?

A. Why didn't I?

Q. Yes.

A. It was unsold. I think that was the units we sold to S.D.I.
Q. You never worked in that unit; is that right?
A. I don't believe so, other than to close the windows and make sure there was -- that kind of thing.
Q. And that was the one ---
A. Now, Nathan could have. I don't know. But I didn't.
Q. And that is -- the photograph that has been shown to this jury throughout this trial to infer that you knew all of these water leaks were happening; right?
A. That's what the inference is, yes.
Q. But you didn't work in that unit; right?
A. Right.
Q. And ultimately it was sold, and someone else got a permit and got a certificate of occupancy and sold it to one of these homeowners?
A. That's right.
Q. You don't know what they did with those leaks or any of that?
A. No.
Q. All right.
A. That was the case in several units. I mean, we sold several units in phase one to S.D.I.
Q. But that's the photo they keep showing?

A. Yeah. That's the baseline, I guess you could call it.

Q. And when the homeowners, Mr. Taylor and everybody else, would come to you, did you repair their units or instead of making repair to their units, hire someone to repair their unit?

A. Yes. I can only think of a rare instance where we didn't, and that would have been some kind of cosmetic thing inside the unit that we probably would not have tackled. But even inside, we did warranty work. We fixed doors and sump pumps and those kinds of things. It was more the cosmetic stuff that we didn't feel like we should fix.

Q. I think what everybody's looking to hear from you, Mr. Thoennes, were there so many complaints of leaks out there that it became clear to you at some point that these units were defective or constructed improperly?

A. No. In fact, I made the cardinal mistake. Rule number one for any developer is don't live where you develop. But I lived where I developed, and we enjoyed our neighbors. We had -- my seven grand kids spent a good part of their life growing up there in the summertime. So it was a very friendly, easygoing place. So these problems were not as pervasive as what I've heard throughout this whole time. They just were not

there. If they were, we would have fixed them.
Q. And did?
A. And did.
Q. How many units are out there?
A. How many units? Thirty-seven.
Q. You lived in one or had a unit out there?
A. I lived in one. Not full-time.
Q. So you would have seen your windows, your roof, your -- all those things, right?
A. Yes. And I had a toilet leak in my unit.
Q. Did you have all of those other leaks?
A. No.
Q. Even in your own unit?
A. No. I coated the deck the same way as everybody else. We gave the people the option to do that.
Q. Let's talk about that. So the deck issue, what did you understand the deck issue was in 2005?
A. I understood that the concrete had cracked. They'd poured concrete over it. And that concrete had cracked, and water was permeating through it and going down into the patio underneath.
Q. You actually saw cracks in the concrete?
A. Yes.
Q. Right on the deck?
A. Yes.

Q. What else led you to believe that it was the cracks in the concrete that was causing the leaks?
A. Well, Coleman Waterproofing we asked to take a look at it, and they told us the same thing. And that's what they recommended.
Q. So at that time, you believed that the water was getting through the cracks in the concrete and into the tongue and grove cedar ceiling below?
A. Yes.
Q. Did Nathan do an investigation to support that at that time?
A. I think he cut a hole or -- didn't cut a hole. He took a part of the board out underneath. If you're standing in the patio down in the basement and look up, there's tongue and grove cedar there. I think he took one of those boards out. And that's where he saw -- he took it out underneath -- if I recall, he took it out -- and I couldn't tell you which unit. But he took it out underneath where the water was coming, which would have been the obvious thing to do. And that's when we took a hose and ran the hose, sprayed the building. And that's where it was coming through.
Q. Where?
A. Through that crack.
Q. In the middle of the deck?

A. Yes.
Q. And was there a water stain on the middle of the underside of that deck?
A. Yes.
Q. Was it the outboard edge? Outboard, lakeside edge?
A. Was there a stain?
Q. It wasn't outboard?
A. No.
Q. Was it underneath the sliding glass door?
A. No. Mostly in the middle.
Q. Is that why -- well, is that why you waterproofed the cracked concrete?
A. Yes.
Q. Do you understand that these decks leak now?
A. Yes.
Q. And how do you know that, Mr. Thoennes, that they're leaking at the outboard edge and underneath those doors potentially?
A. Well, I've seen the pictures, and I've heard testimony from -- I've forgotten the engineer's name -- Derek Hodgin. So, yeah.
Q. And those pictures show the decks?
A. Yes. And we asked each homeowner if they wanted us to -- we recommended that they coat it. In fact, we asked the mayor to ask each of those current homeowners

if we could coat their decks. And I think they all did except one.

Q. Somebody actually refused that?

A. Yeah. And I don't remember why. I do know there were some that had -- I do not know how many had tile. But there was at least one that had tile. And we were -- at the time, I remember being amazed that somebody didn't want us to waterproof the deck. And I don't remember why.

Q. Do you know what unit that was?

A. No.

Q. All right. No more questions. Thank you, Mr. Thoennes.

A. You're welcome.

THE COURT: Ms. Brown?

MS. BROWN: No questions, Your Honor.

THE COURT: All right.

MR. LYLES: Your Honor, I've got two follow-up questions. Is it my turn?

THE COURT: Mr. Hemphill?

MR. LYLES: Oh, sorry.

CROSS-EXAMINATION

BY MR. HEMPHILL:

Q. Mr. Thoennes, did something happen in the national economy in the 2008/2009 time frame?

A. The national economy and the construction industry in particular, yes.
Q. And you've been a home builder for more than forty years; is that correct?
A. That's correct.
Q. Did you feel the effects of that?
A. It's the worst recession in construction that I had ever been through since 1968.
Q. Okay. Now, Marick Home Builders is still an existing corporation; is that correct?
A. It's an L.L.C.
Q. Okay. And it did multi-family construction and larger home construction for those forty years. Let me rephrase that. You've done multi-family and larger home construction over forty years; is that correct?
A. As well as smaller homes and some commercial as well, yes.
Q. Okay. And Marick Home Builders came into being in the late 1990s?
A. That's correct.
Q. All right. And so in 2008/2009 when this recession occurred -- let me ask you this. Are there a lot less homebuilders now than there were before that?
A. Probably forty percent less.
Q. Okay. Now, as it relates to Marick Home Builders,

it came into being in the late 1990s; is that right?
A. That's correct.
Q. And you had an original investor named Mark Hutcherson; is that true?
A. That's true.
Q. And he was in for a while but was out of Marick in a year or so; is that right?
A. That's correct.
Q. Okay. So were you ready to get out of the home building, your passion, in the 2009 time frame or ---
A. No.
Q. You were not? So what did you decide to do?
A. We decided to keep building houses. And at the -- in the early 1990s -- I mean, 2000s -- it was very strong. And our company grew. Rick III, that's the reason I partnered with him was because of his marketing expertise.
Q. But, now, you started a new corporation in 2009; isn't that right?
A. That's right.
Q. Do you recall that being the February to March time frame of 2009?
A. I don't remember the month.
Q. Okay. And did you decide to try to build different homes, different types of homes than you had been

building?
A. Yes.
Q. Why?
A. We felt like -- larger homes were not selling period. We had built up in the Cliffs and Montebello and Kilgore, which are larger subdivisions in Greenville. And those sales were completely flat. So the only thing that was selling at that time -- and we had to wait to get through a little bit of that recession even to start selling the smaller homes. But we felt like the hundred and twenty to two hundred thousand dollar home was the only thing that was going to sell.
Q. So did you form a new corporation to sell that priced home?
A. A new L.L.C., yes.
Q. And did you call it something new?
A. We called it M Group.
Q. Why did you call it M Group?
A. Mark and Mark were the two new partners we brought in, so we named it M Group.
Q. All right. And Mark Hutcherson had been with Marick but ten years earlier; is that correct?
A. Yes.
Q. And the other partner was your other son, Mark Thoennes; is that correct?

A. That's true.
Q. Had you ever been in business with your son Mark in home building?
A. No.
Q. Okay. What did each of those two fellows bring into the new company?
A. Money and the ability to borrow some money.
Q. What did they contribute in terms of money?
A. I think they initially put in seven thousand dollars each.
Q. Okay. Now, when you started this new company, did you -- did Marick sell any assets or any of its stock over to M Group?
A. No.
Q. Let's talk about assets of Marick at this time frame. What sort of assets within the group? You talking trucks? We're talking buildings? What type of assets?
A. No. We had some shovels and brooms. And like I said earlier, the only people we hired were maybe laborers to sweep out the homes or something like that. So we had to supply a broom or a shovel or something like that. And since we subcontracted everything, we had no need for assets. We had some office supplies, that kind of thing.

Q. Did you have a laptop computer?
A. I don't think I had a laptop until later on.
Q. Okay. And then did M Group get any new assets of its own? New shovels or a laptop?
A. Yes, we bought some shovels and new brooms. We bought a computer for the office for the girl that was in the office, our administrative assistant. And we bought -- later on, we opened a model and furnished that model. M Group did.
Q. Is that a model home?
A. Yes.
Q. Was that in the particular subdivision where you were building?
A. Yes.
Q. And so did you have a different office location from Marick when you started -- when you started M Group?
A. Yeah. Marick shut down, and it was a while later when M Group opened.
Q. So you didn't merge anything from Marick over to M Group?
A. Myself and Rick.
Q. Okay.
A. Rick III.
Q. All right. And did you form this corporation to defraud your creditors in any way?

A. No. I've never done anything like that. Never would. My reputation isn't for sale.
Q. All right, sir. Thank you for answering my questions.
A. You're welcome.
THE COURT: Mr. Lyles?
MR. LYLES: Yes, sir, Your Honor.

REDIRECT EXAMINATION

BY MR. LYLES:
Q. Mr. Thoennes, you indicated in your responses to Mr. Imhoff's question that the homeowners association had no funds. And so you and the other people at I.M.K. funded some efforts of the H.O.A.; is that correct?
A. I may have misstated it a little bit. There was a bank account. And there was some money in it, but it was very small because there were only ten or eleven people contributing monthly to that fund.
Q. And that's the point I wanted to make. When y'all arrived, there were only ten or eleven homeowners?
A. That's right.
Q. And then as I.M.K. evolved in the process of Stoneledge, it sold a number of other units. And the homeowners association finances improved with the additional homeowners?
A. Every time we sold a unit, it went up by -- I think

he said three hundred dollars a month.
Q. You indicated also to Mr. Imhoff about the problems at the unit. And I think you said that you were not aware of pervasive problems at the unit when you were there; is that right?
A. Correct.
Q. And throughout phase one?
A. Correct.
Q. Would you agree with me that based on the information and the photographs that you've seen this week that the problems were, in fact, there; they just weren't apparent?
A. Some of them were there. Certainly, some of them were not in 2005, '06 and '07. Obviously, as Derek said, they got worse as time went on. Some got worse. Some just showed up. Does that answer your question?
Q. Sure. I mean, you've seen evidence in these photographs and heard the testimony this week that suggests to you that the construction problems existed from the time that Bostic left the site?
A. I guess so.
Q. And whether or not those problems manifested themselves -- that is became apparent to you -- is the question of discussion; is that right?
A. That's true.

Q. You couldn't see what was going on behind the stone?
A. That's right.
Q. And in large part, you couldn't see what was going on behind the cedar siding?
A. That's true.
Q. And under shingles?
A. That's correct. All of those things.
Q. Okay.
A. I'll save you some ...
Q. Yes, sir. And in response to Mr. Hemphill's questions, he asked you about your intent to defraud creditors. And I heard your answer loud and clear. But would you agree with me that when Marick ceased operations, it ceased the ability to generate income?
A. And expenses, that's true.
Q. So if Marick wasn't in business or wasn't building houses, it couldn't generate an income; is that right?
A. That's true.
Q. And without income, it can't pay its bills?
A. That's true.
Q. And after the creation of M Group ---
A. But you're kind of getting in reverse there. We couldn't pay our bills because we didn't have the income to do it. And I think you kind of reversed that, yes.
Q. Okay. All right. I think that's all I've got.

Thank you.

THE COURT: All right. Anything else?

(No response)

THE COURT: You may step down. Thank you, sir.

THE WITNESS: You're welcome.

MR. IMHOFF: Your Honor, we ask that Mr. Thoennes be released from his subpoena.

THE COURT: Certainly, but remain with us?

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

THE COURT: I say, you asked Mr. Thoennes to remain with us?

MR. IMHOFF: I will ask him to stay here. He does have a surgical procedure tomorrow. We'll take that up.

MR. LYLES: Thank you, Mr. Thoennes.

THE COURT: Very good then.

All right. Mr. Lyles?

MR. LYLES: Mike Furnari.

(WHEREUPON, the witness was duly sworn.)

THE COURT: If you would, please, sir, give us your full name for the record, spelling your last name.

THE WITNESS: Michael Vincent Furnari, F-U-R-N-A-R-I.

THE COURT: Thank you, sir.

MICHAEL VINCENT FURNARI,

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. LYLES:

Q. Mr. Furnari, good afternoon.

A. Hey, Robert.

Q. Are you nervous?

A. A little bit, but I'm okay.

Q. Okay. Have you ever testified in trial?

A. No, sir.

Q. Okay. It'll be all right.

Mr. Furnari, if you will, tell the jury where you're from.

A. I'm twenty minutes outside of Cleveland, Ohio.

Q. And are you married?

A. Yes.

Q. And who are you married to?

A. Donna Furnari.

Q. And did Donna testify on Tuesday of last week?

A. I guess she did.

Q. And how long have you and Donna been affiliated with Stoneledge?

A. We bought in 2008.

Q. And I believe Donna's testimony was that she was on the first board that was controlled by the homeowners?

A. Yes.

Q. And have you ever been a board member?
A. No.
Q. Have you ever served on any sort of committee at Stoneledge?
A. I volunteer for the architectural committee.
Q. Are you active in the homeowners association at Stoneledge?
A. Yes.
Q. And you participate in meetings?
A. I don't really participate. I just sit in on them because I'm not an official board member.
Q. So you sit in on board meetings?
A. Yes. I listen in.
Q. Are you familiar with the business of the board of the Stoneledge H.O.A.?
A. Yes, sir.
Q. And do you discuss that business with Donna?
A. Yes, daily.
Q. How long have you been on the architectural committee?
A. Approximately four and a half years now.
Q. And as a member of the -- are you -- have you held an office on the architectural committee? Are you the chairman of that committee?
A. Yes, sir, but I have no help.

Q. Okay. So you're the only person on that committee?
A. Yes.
Q. What does the architectural committee do?
A. Well, I volunteered originally to help the board when there were issues with owners wanting to make changes to the exteriors of their unit. The function of the committee is supposed to keep the grounds and the buildings -- not regimented, but supposed to be pleasing to the eye when you're looking at them. So you don't want someone to put a red tarp on their decks, for instance. Or, you know, residents don't want to drive in there and see twenty different flags representing different issues. So that's the purpose of the committee.
Q. And that is to keep some esthetic uniformity on the project?
A. Well, for example, if somebody wanted a storm door put on the front door, we would spec out a storm door that would blend with the architecture. So the committee would be there to talk the owner through the selection of the proper door so as not to make one owner have one door and another owner have a different door.
Q. Do you have a background in construction at all?
A. I ran a roofing company for a few years.
Q. And what sort of roofs did you do?

A. I would only do walkable ranch homes. I wouldn't touch church steeples or anything like that. It was more of a -- I would just cherry pick the jobs. I wasn't out there because I had to do the work. So I was just out there to do roofs that were very easy to do, and I had a couple of guys who were helping.

Q. In the course of your marriage to Donna and your life at Stoneledge and your position as the architectural committee, have you been active with the association relative to the building defects that are at issue in this trial?

A. Yes, sir.

Q. And have you worked, for example, with C.S.E. as part of their work?

A. Yes, sir.

Q. And what do you do for C.S.E. or with C.S.E.?

A. We would consult with C.S.E. for any repairs that we had to enact on our buildings because of water intrusion to the interiors. I would review their scope of repair. I would call a contractor out. Well, let me back up. Are you looking for the procedure that we enacted?

Q. Not the emergency repair. I'm just curious bout your interaction with C.S.E. generally?

A. Okay.

Q. Have you met with C.S.E.?

A. Yes, sir.
Q. Have you been on site with C.S.E.?
A. Yes.
Q. Have you given them or helped give them access to units?
A. Yes.
Q. Have you observed the work of C.S.E.?
A. Yes.
Q. Have you reviewed their reports?
A. Yes, sir.
Q. Did you review or have you reviewed the scopes of repair that C.S.E. did?
A. Yes, all of them.
Q. Do you understand those scopes of repair?
A. Every one of them.
Q. And have you made it your business to understand it?
A. Yes, sir.
Q. Have you assisted C.S.E. with coordinating the data that they generated? Reports. Photographs. Things like that.
A. Yes. If there were photos taken, we would forward those to C.S.E. and vice versa. They would also send me photos of what they have observed on the site. And I would put all of that information with each and every unit's permanent file for reference should we need it

down the road.
Q. Do you feel as though based on your interaction with C.S.E. you have a thorough understanding of the investigation that they did at phase one and the work that they've performed?
A. One hundred percent.
Q. How about the other experts? Have you worked with other experts that were retained by defendants, for example?
A. Yes. We contracted with the Watkins Group to come in and do some below-grade repairs.
Q. Was that an emergency repair?
A. Yes, sir.
Q. Let's talk a little bit about the emergency repair. What is an emergency repair procedure?
A. Well, due to the numerous requests, verbal, email, work order requests, we had to start identifying which repairs we were going to act on because we didn't have the money to fix all of the units that were leaking, that are leaking. So the litigation committee in conjunction with the board came up with a repair document that stated we would try to preserve the defendants' rights to come on site and make repairs as they arose. But we weren't going to labor the defense with every single request. So what we decided to do -- well, not me, the litigation

committee -- was to come up with a document that would act on water intrusion that was damaging the interiors of the homes. So it would start with an owner submitting a work order. I would receive that, and I would talk with the homeowner, or I would ask the onsite resident to take a look and verify if it was water intrusion into the unit. Once it was determined that we would classify it as an emergency, I would notify Robert who would notify C.S.E.

MR. ANDERSON: Objection, Your Honor. Could we have a sidebar, please?

THE COURT: Certainly.

(WHEREUPON, a bench conference was held off the record.)

THE COURT: All right. You may continue.

Q. All right. Mr. Furnari, let me back you up a few steps.

A. Okay.

Q. At what point was an emergency repair procedure deemed necessary by the homeowners association?

A. I believe it was when we contracted with C.S.E. to start enacting some repairs. It was after they came on site, did their analysis and suggested that we have them on site when we were doing repairs so they could document information for you.

Q. At any point did the homeowners association determine that it could not keep up with the number of repair requests that were being made by the owners?
A. Yes.
Q. And when did that occur?
A. I don't remember the year, but I would guess it was in 2000 -- early 2009.
Q. And when I say ---
A. Well, wait. Maybe I can tell you if I can just look at my ...
Q. Okay.
A. I'm going to say it was 2009.
Q. Now, did the homeowners association at that time in 2009 have enough money available to it to effect all of the repairs that people were wanting?
A. No, we didn't.
Q. And so did you enact or create an emergency repair procedure in an effort to prioritize the requests for repair?
A. Yes, sir.
Q. And do those repairs that were most important that you could afford to do?
A. Well, the board decided that we had to fix any unit that had water intrusion coming into it. That was the responsibility of the board. So whether we had the money

or not, we had to do those repairs.
Q. Okay.
A. And we only fixed the repairs to the extent that it stopped the water from coming and doing more damage to interior components.
Q. And who made the decisions about what repairs were going to be made by the homeowners association and which repairs would have to be deferred until later?
A. I guess that would be me.
Q. And to do that, did you evaluate requests for repairs that had been made to you by the owners?
A. Yes, sir.
Q. And starting in 2009, how many requests for repair would you say you have evaluated for phase one owners?
A. Over fifty.
Q. And of those fifty, how many repairs have you determined needed to be made emergently?
A. Twenty-two.
Q. And those twenty-two -- was it twenty-two -- do you need some more water?
A. Yes.
Q. Would you describe for the jury the nature of those twenty-two repairs that you have had to make?
A. You want specific details on one or two of the units?

Q. Well, is it -- let's do it this way. Have you repaired or made repairs to twenty-two separate units?
A. Yes, sir.
Q. And have the repairs all been related to the roof?
A. No.
Q. Have you done some roof repairs to those twenty-two units?
A. Yes, sir.
Q. And what other types of repairs have you done to those twenty-two units, just generally?
A. Well, we have a water management issue with the units. And by that, I mean when it rains, we have water that sheds off the upper-level roof. And on many of the units, they don't have any gutters. So what happens, they overload the lower gutters, and it tends to overflow and it taxes the take-away drains. So people have water pooling around their foundations. So when we would call a contractor out, we start at the top of the roof and we work our way down until we can figure out where the water's coming in from. If a unit owner says they have a skylight problem, sometimes it's the flashing. Other times, it's water that finds its way down the siding and goes down the roof slope. So it looks like it's a -- from the inside, it looks like it's a skylight problem, but it's really a roof-to-wall intersection.

Other issues are -- you would think it's a roof problem, but it turns out to be a foundation issue where the water finds itself coming up over the sill of the foundation, but it appears that it's coming down from the wall. Until you get in there and remove the drywall, you have no clue.

Q. Are you still having -- or are there any units out there where the porches and decks are reporting leaks?

A. Yes, sir.

Q. And are there units out there where the basements are flooding?

A. Yes.

Q. And are there units out there where it appears there are leaks at the foundation walls?

A. Yes.

Q. And do you have units out there that have leaks in windows?

A. Yes, sir.

Q. And under porch doors?

A. Yes.

Q. When you hire a contractor to make a repair, are you doing the repair that Mr. Hodgin says you have to do to do a complete fix?

A. No, sir. We're only doing the scope of repair to the extent that it stops the water from coming into the

unit. We can't afford to do the full scope of repair right now.

Q. And you hired the contractors to do that?

A. Yes, sir.

Q. And do you set the budget for that work, or do you take prices from the contractors?

A. Well, when I got involved in this, I used to try and get two to three estimates. And as the years went on, we couldn't rely on the estimate because every repair that has been made out there exceeded the estimate. For example, unit four ten -- I believe it's Sunset Point. It's on a slab. And originally the unit or the work order stated that the upstairs bedroom was getting water. So I called the contractor out and I asked him to go up and do the roof repair. I got an estimate. It was like two hundred and fifty dollars. And when the contractor got up there, they said that there was extensive damage to the sheathing ---

MR. IMHOFF: Objection, Your Honor. Hearsay.

THE COURT: Sustained.

Q. As a result of the work of the contractor, did you pay for repairs that exceeded the repairs you thought you were going to have to pay for?

A. Yes, we paid more than what the estimate was.

Q. And did you observe damages in that unit that

exceeded what you thought you were going to have to repair?

A. Yes, sir.

Q. And how far down the unit did those damages go in your observation?

A. Well, this unit has been -- this unit as of today is still leaking. So when I was on site back the last holiday we had -- I don't remember what it was, Labor Day, Memorial Day -- I went into the unit. And when I walked in the front door, the hardwood floors in the hallway were floating because of the water. And we asked -- well, this is getting back to where I say every time we enact a repair, it turns out to be more money. We had J.R. Watkins out there performing a repair for us.

Q. Was he doing the roofing work?

A. No, sir.

Q. Something else?

A. We called him out there because we took care of the roof, the upper-level roof, a couple of years ago. And it was fixed, but -- in the bedroom. And six to nine months later, I got another work order request that stated there was ---

Q. Don't tell us what it stated. But what did you do when you got it?

A. When I got the work order request ---

Q. That's right.
A. --- I asked the contractor to go in and find the leak that was beginning to stain -- well, it was water coming through the ceiling at this point. I asked him to go in there and fix it. And it turned out it was a wall-to-roof intersection leak. Supposedly -- so now that is fixed, but then I got another work order request because they were still getting water intrusion into their bathroom.
Q. Okay. And is that an example of what it's been like for you to try to effect these emergency repairs?
A. Yes, sir.
Q. And have you had problems similar to that in units throughout phase one?
A. All twenty-two units have issues like that. You think it's one thing, and it's not. When the contractor gets there, they're doing two or three other types of repairs to the unit.
Q. Of the -- there are thirty-seven units in phase one; is that right?
A. Yes.
Q. Okay. You say you've done emergency repairs to twenty-two of those thirty-seven?
A. Yes, sir.
Q. Are the other fifteen units not reporting any

problems?
A. We are getting work order requests from those other units, but we're not able to act on them because they're not falling into the guidelines of our emergency repair.
Q. You arrange for the contractors -- is that right -- as far as the emergency repair?
A. Yes, sir.
Q. Have you attempted or have you actually used Trehel to do emergency repairs?
A. Yes, we have.
Q. Okay. And have you called Trehel recently to get Trehel or to see if Trehel is interested in doing emergency repairs?
A. Yes. I called them to see them if they would be interested in coming out and quoting for some repairs that we needed done, and they said they were too busy and they weren't interested.
Q. And when was that phone call?
A. I made that phone call probably five months ago.
Q. Okay. And is Trehel somebody that you think that the homeowners association would consider to effect the full repair that Derek Hodgin has specified?
A. Yes, sir.
Q. Were you here yesterday for the testimony of Bob White?

A. Yes, sir.
Q. And did you hear some questions asked about sales of units in as-is conditions?
A. Yes, I heard them.
Q. And do you know anything about units being sold in as-is condition?
A. Yes, I do.
Q. And what do you know about that?
A. These units were auctioned off. And they -- some of them were auctioned off with the stipulation that the owners had purchased them as is meaning they could finish off the interiors of the units because they were not finished at that point. So when they were buying them as-is -- for example, if you bought the unit for a hundred thousand dollars and it didn't have the cabinets installed, you would get some kind of a discount for buying it as-is.
Q. Are you aware of any unit in phase one that the homeowners association has not been willing to fix the exterior of the unit?
A. No, sir.
Q. Are you aware of any unit in phase one where the homeowners association doesn't intend to effect the C.S.E. repair?
A. No, I don't.

Q. Are you convinced the homeowners association is obligated to and intends to effect the C.S.E. repair throughout phase one?
A. Yes. We have to fix every unit.
Q. Mr. Furnari, have you become aware of what the homeowners association has paid for the emergency repair procedures in phase one?
A. To date, I think it's a hundred and thirty-nine thousand dollars.
MR. LYLES: Let me mark this.
(WHEREUPON, Plaintiff's Exhibit Number 42 was marked for identification only.)
Q. Mr. Furnari, I'm going to show you what's been marked as Plaintiff's Exhibit 42 and ask you if you recognize that document.
A. Yes, I do.
Q. And what is that?
A. It's a spreadsheet of the unit numbers and dates and how much the H.O.A. has paid to have these units repaired for what we consider emergency repairs only.
Q. And is that a document that was put together by you and Donna?
A. Yes, sir.
Q. And does that reflect the amounts that the homeowners association has paid in phase one for the

emergency repair procedures?
A. Yes, sir. One hundred and thirty-nine thousand eight hundred dollars.
Q. And the number on that's 42?
A. Yes, sir.
MR. LYLES: Your Honor, I'd move to admit Plaintiff's Exhibit 42 into evidence.
MR. GRESH: Your Honor, perhaps if we could talk at sidebar about that, please?
THE COURT: Yes, sir.
(WHEREUPON, a bench conference was held off the record.)
THE COURT: All right. The objection is overruled. You may proceed.
MR. LYLES: Thank you, Your Honor.
(WHEREUPON, Plaintiff's Exhibit Number 42 was admitted into evidence.)
Q. Does the H.O.A. seek to recover the sums that are reflected in exhibit 42 in this lawsuit?
A. Yes, sir.
Q. You indicated earlier that J.R. Watkins has done some work at the project?
A. Yes, sir. They are currently today.
Q. Okay. Can you very briefly describe how many units is Mr. Watkins working on?

A. Four.
Q. And what type of work was he doing, just very generally?
A. Below-grade repairs which one unit turned into a roof repair.
Q. Is it your intent that Mr. Watkins' repair be a full repair of the foundation walls in those units?
A. No. We're not able to do the full repair we would have want done.
Q. So that's an emergency repair?
A. It's considered an emergency repair.
Q. Did you hear the testimony of Mr. Watkins yesterday ...
A. Yes, sir.
Q. ... when he indicted that he would be willing to sign a contract with the H.O.A. for approximately four million dollars to implement the C.S.E. scope of repair?
A. Yes.
Q. And is that something that you think the H.O.A. would consider?
A. Yes. But that doesn't take care of the whole problem. That is only the above-grade repairs.
Q. So in addition to that, you'd have to have somebody do the foundations?
A. Yes, sir.

Q. And is it your intention that the association effect the repair that C.S.E. has specified for both the building envelope and the below-grade?
A. Yes.
Q. And as part of that repair, is it the intention or your intention of the H.O.A. to retain C.S.E. or another design firm to perform contract administration services?
A. Well, we already have C.S.E. retained for ongoing emergency repairs.
Q. So you're paying them for that?
A. Yes, sir.
Q. And what you'll do -- and so you will continue to employ them as the full repair is implemented?
A. Yes.
Q. I think that's all the questions I've got, Mr. Furnari. Thank you.

THE COURT: Mr. Belcher or Mr. Gresh?

CROSS-EXAMINATION

BY MR. GRESH:

Q. Good afternoon, Mr. Furnari.
A. Hello.
Q. I'm Jack Gresh. Just real briefly. The emergency repair protocol that was put in place once the homeowners took control of the board wouldn't have been necessary back when I.M.K. and Marick had control of the board;

right?
A. It probably should have been enacted back then.
Q. But it wasn't?
A. No, sir.
Q. All right. And over the course of time, y'all have -- excuse me -- the board had requested that Trehel come out from time to time and make some repairs; correct?
A. Yes.
Q. And you know, because you have a background in roofing, that some of the time when Trehel would come out to make repairs, you thought that the prices that Trehel was charging were excessive; fair?
A. Yes.
Q. In fact, you said they could have redone the whole roof in that thing for the price they charged us for that little fix; right?
A. Well, there were engineering concerns involved when they came out. So, yes, a standard roof repair should not have cost what we paid for. But ...
Q. And I think a lot of what your testimony went to was the reason we have engineers working hand-in-hand with contractors to determine what the scope will be and how to fix it; right?
A. Yes.
Q. For instance, you talked about that you would think

it's one thing because you see a leak in the skylight. And you might say, well, that's because it's not flashed right. But an engineer who came in and did a scope of repair might look and say, you know what, it's not really the flashing. It's the roof-wall intersection over here. True?

A. True.

Q. And so you have to have both. You have to have the engineer and then the person coming in to make the repairs?

A. Yes.

Q. And here you've had a lot of interaction with C.S.E. Have you had any interactions with Rick Moore? Do you know that name?

A. Yes, sir.

Q. He's another licensed engineer in South Carolina. Do you know that to be true?

A. Yes.

Q. Okay. Have you heard of a fixed-price contract? Does that mean anything to you?

A. No.

Q. Okay. I'll save that for somebody else. Thank you very much for your time.

A. Okay.

THE COURT: Mr. Anderson?

MR. ANDERSON: Excuse me, Your Honor. May I have half a minute to confer with co-counsel?

THE COURT: Certainly.

MR. ANDERSON: Thank you.

(Pause while Mr. Anderson conferred off the record with co-counsel.)

MR. ANDERSON: Your Honor, could we have a sidebar, please?

THE COURT: Yes, sir.

(WHEREUPON, a bench conference was held off the record.)

THE COURT: All right. Mr. Anderson?

MR. ANDERSON: Your Honor, I have no questions for this witness.

THE COURT: Very good.

All right. Mr. Imhoff?

MR. IMHOFF: Yes, Your Honor. I'll try to be brief.

CROSS-EXAMINATION

BY MR. IMHOFF:

Q. Mr. Furnari, did you testify earlier that you'd had approximately fifty homeowner repair requests since 2009?

A. Over fifty.

Q. Okay. And so between 2009 to 2013 November, we're talking about, what, four or five years now?

A. Yes.
Q. Okay. So doing the math, that's somewhere between ten and twelve repair requests a year over thirty-seven units, Mr. Furnari?
A. Yes.
Q. And they're all different types of repair requests? Some are foundation, some are window, some are deck, some are skylight, some are roof; right?
A. They all involve water.
Q. But they're in different places and due to different reasons?
A. Yes, sir.
Q. So of those ten to twelve a year, there are a couple that may implicate roof issues and a couple that may implicate foundation issues; right?
A. Those are only the requests that homeowners are aware of.
Q. That's right. Otherwise, if they were unaware of them, they wouldn't make those requests; right?
A. No. Our experts have told us and showed us that every unit has water intrusion into the interiors of the walls, the floors, foundations.
Q. Mr. Furnari, you're testifying as to what somebody else told you. But I'm going to ---
THE COURT: I think you asked him ---

MR. IMHOFF: Well, Your Honor, I'm ---

Q. Your expert has told you that every single unit has water intrusion through the roof and windows and the foundation?

A. Yes, sir.

Q. Every one?

A. Every one.

Q. But these homeowner requests, these ten to twelve over the last four or five years, whatever the numbers work out to, those have increased while you have been aware of these issues; is that right?

A. The requests you're talking about have increased?

Q. The number of homeowners calling you and asking for repairs.

A. Yes, sir.

Q. Now, Mr. Furnari, I think you want your home fixed; is that right?

A. Yes, sir.

Q. And you want all of these homes fixed for all of the folks that live out there; is that fair?

A. That's correct.

Q. And that's what you're here asking for?

A. Yes, sir.

Q. And you want it done correctly so that they stop leaking; is that right?

A. That's correct.
Q. But as a member of the board, you also want it done economically; is that true?
A. We are not looking for the cheapest price in town. We're looking for a contractor that's going to come in, stand behind their work and guarantee us that we will not have these issues down the road. So we're not looking to hire the least expensive contractor. If we need to pay a little bit more, that's fine. We need a guarantee, and that's what we want.
Q. But price will come into consideration, won't it?
A. Price?
Q. The cost to do these repairs. The board will take that issue up. You'll get bids and think about who's going to do it and how much it's going to cost is one of the things you'll consider; right?
A. Yes, sir.
Q. And have you looked at the alternate repairs proposed by Mr. Moore?
A. Yes, I have.
Q. Are you willing to listen to alternative proposals?
A. Yes.
Q. And when you and the rest of the litigation committee that's going to make that decision listen to them, are you going to stay here in the courtroom and

listen to what those proposals are?
A. I plan on being here every day for it. I don't live here full-time. I live in Ohio, as you know. And I took two weeks off from my company that I have twenty-some people working. So I'm dedicated to seeing this through, if that's what you're asking.
Q. How many people actually live there in phase one at Stoneledge?
A. I don't know the exact number that reside there.
Q. Would you say that most of the units are summer lake homes?
A. I don't know the reason why other people bought there. I bought it as a retirement home.
Q. Do you know how many people actually live there full-time?
A. No, I don't.
Q. Obviously your committee or you, I think, in fact, Mr. Furnari, you have some faith in J.R. Watkins; is that right?
A. Yes, we do.
Q. And you trust what he's doing and what knowledge he has and experience?
A. Yes, sir.
Q. And so you've hired him to do at least these repairs you're testifying about today?

A. We hired him to do the emergency repairs for us.
Q. Were you here for the testimony of Mr. Hodgin?
A. Yes, sir.
Q. Did you have any concern in hearing that Mr. Hodgin has proposed a more surgical repair when working for defendants? Has he offered that proposal to you, Mr. Furnari?
A. I lost your question along the way. Sorry.
Q. Did you hear him talk about the ninety/one rule? Do you know what that is?
A. No, I don't.
Q. Oh. I'll ask the question again. Did you have any concern hearing that Mr. Hodgin in the past, while working for general contractors, has proposed more surgical, localized repairs?
A. He was talking about other projects. I wasn't concerned that he would make that statement.
Q. Did you have any concern in his recommendations to the board that he had apparently missed the fact that seven of the units out there do not have decks?
A. No, I wasn't concerned with it.
Q. And we talked about Trehel a little bit earlier. Did you have any concern that Mr. Folk -- the method in which and the prices in which he proposed to charge the homeowners association?

A. I looked at both estimates, and they were pretty close to each other.
Q. Did you have any concern with Mr. Folk's measurements in that he included seven decks that don't exist?
A. I really -- I'm not concerned with the quantities or the omission of decks. My only concern is when the H.O.A. enters into an agreement that we get a guarantee that we're going to have dry units at the completion of the complete scope of repair. And it doesn't matter what contractor we award the work to; they're going to be handed Derek Hodgin's full scope of repair, and we are going to make sure that the whole scope of repair is enacted on our buildings. And we are going to be looking for a contractor to stand behind the work that they do. So if they missed seven decks in their proposal, that's not a concern of mine.
Q. But Trehel refused to come out and help you with these repairs just recently; is that right, Mr. Furnari?
A. Yes, sir, they did.
Q. And you haven't hired Trehel in three years; is that right?
A. That's correct.
Q. And did you hear Mr. White's testimony that he thought Trehel was too expensive?

A. Whose testimony?
Q. I believe it was Bob White, Robert White.
A. I don't remember hearing him say that yesterday.
Q. And Trehel -- when did Trehel tell you they wouldn't come out? How recently?
A. It was approximately five months ago I spoke with Brian Miller. I called him.
Q. And he told you they were too busy and didn't want to help you?
A. No. He said they would like to do the work, but they were just too busy to come out right now and do some estimating and/or get involved in the project.
Q. And despite that, the homeowners association called Mr. Folk to testify about the costs for Trehel to do the work they're too busy to do?
A. Well, that probably happened a couple of years ago when this got started that they asked Mr. Folk to do the estimating. This has been going on for over three years now, so ---
Q. But Trehel ---
A. Go ahead.
Q. But Trehel isn't going to do that work, is it, Mr. Furnari?
A. I think they will because I had a discussion yesterday with Mr. Folk.

MR. BELCHER: Hearsay, Your Honor.

THE COURT: I'm sorry. He asked the question. He's entitled to an answer.

A. I had a chance to talk with Mr. Folk yesterday. And I asked him if he would -- you know, we talked. And I told him that Brian Miller told me that they couldn't come out. They were too busy.

MR. IMHOFF: Your Honor, I understand I asked the question. But now we'll have double hearsay.

THE COURT: The thing is, first, Mr. Folk was here and is subject to recall as well as cross-examination.

MR. IMHOFF: Okay.

THE COURT: But let's do be careful if we're going to try to make -- if we don't get the answer we want, that doesn't necessarily mean that we can attempt to silence the witness.

MR. IMHOFF: I understand. I don't have any further questions, Your Honor. Thank you.

THE COURT: All right. I think that's probably a good idea.

All right. Let's see. Ms. Brown?

MS. BROWN: Nothing of this witness.

THE COURT: Mr. Hemphill?

MR. HEMPHILL: No, Your Honor.

THE COURT: All right. Mr. Lyles?

MR. LYLES: No further questions.

THE COURT: Very good. You may step down. Thank you, sir.

THE WITNESS: Thank you.

THE COURT: All right. Do you have another witness?

MR. LYLES: No other witnesses, Your Honor.

THE COURT: That's it?

MR. LYLES: That's all the witnesses.

THE COURT: Okay. Very good.

Mr. Foreman, ladies and gentlemen of the jury, that, I understand, will conclude the morning's testimony. So lunch now. How much -- when would you like to ...

MR. FOREMAN: Probably two thirty. Would that be too much?

THE COURT: Not at all because I think -- what is it? -- we probably have some things. I can use the time.

MR. FOREMAN: We'll be back in here ready to go by then.

THE COURT: Very good. Yes, sir, we will be. Thank you.

Again, do not undertake the discussion of the case among yourselves in any way or permit anyone to discuss

it with you.

(WHEREUPON, the jury exited the open court at approximately 1:00 p.m.)

THE COURT: Was that summary actually introduced?

MR. LYLES: We moved to admit it as an exhibit.

THE COURT: I mean, has it been introduced?

MR. LYLES: It was 42, I think.

Madam Court Reporter?

THE COURT: I know it was marked for identification as 42, but I don't remember actually ...

Has it been admitted?

COURT REPORTER: Yes, sir.

THE COURT: Yes, ma'am. All right. Very good. So it is in.

The reason I ask, there are two rulings that were made at the sidebar. One was as to Plaintiff's Exhibit Number 42, which I understood was a summary of the costs for emergency repairs. I overruled the objection to the summary, first of all, under Rule 1806 as to summaries. But also, I think it was entitled to come in under the business record rule of 803(6), and that it was -- obviously, he's the custodian of that record. He prepared the record along with his wife. And he was familiar with the information that is reflected in there.

And then as far as the responses to the question as to not having enough money to repair, undertake the repairs, an objection was made that, of course, there have been settlements in the case and that, therefore, there would be money available to do that. The Court views that as a collateral source in the sense that if there is money available, it's not coming from anyone who's still in the case. And moreover, it could be interpreted as some sort of an admission from liability by someone else other than your party which would be another objection.

I just put those on the record not to invite any more argument. It's just to protect the record for you if that was necessary.

All right. Two-thirty, now. Are you resting now?

MR. LYLES: Well, Your Honor, we still have -- that there were some exhibits that were made -- that were marked for identification that we discussed with witnesses. Specifically, the scopes of repair that Mr. Hodgin testified about as well as those standards that were applicable to him. I understood that the Court was going to consider the admissibility of those exhibits.

THE COURT: Those are the two notebooks?

MR. LYLES: Yes, sir. The scopes of repair are exhibits 27 and 28.

THE COURT: Now, when you say, "scopes of repair," is one above grade and one below grade?

MR. LYLES: Exactly. 27 is above grade, and 28 is below grade.

THE COURT: It's almost like a Georgia court. I was talking to a Georgia judge over there. He was very quick to remind me that he was a superior court judge. I said, "What's the other?" He says, "An inferior court judge." So this is above grade and below grade?

MR. LYLES: Yes, Your Honor.

THE COURT: All right. Mr. Belcher?

MR. BELCHER: Yes, Your Honor. Well, with regard to those two exhibits, we would renew the same argument that we made before the Court earlier, that this is a continuing witness. Not only that, those scopes of repair are full of hearsay documentation. Just because he relies on it to form the basis of his opinions on the witness stand does not make them independently admissible, does not make the contents of these documents or these compilations independently admissible because they are hearsay. The case that the Court cited us last week with regard to the admission of estimates ...

THE COURT: Right.

MR. BELCHER: ... that we are not -- we are not fighting about that. We believe that the estimates that

they put forth, whether they be hearsay or not, they're fine to move those into evidence. We're going to move those into evidence, and so are they. But that case deals specifically with estimates, which are not hearsay, but it is something that a contractor has testified to saying, "This is how much it will cost me to do the work, and I will do the work for this price." That is a document that is welcome into evidence. What is not welcome into evidence is all of the testimony and documentation associated with some scope of repair of how he's going to do something. That is the continuing testimony. He's already testified what he's going to do to fix these buildings. His report has the documentation in it as to what he's going to do. But that's all -- that should not go back there with the jury and allow him to continue to talk to the jury about what he's going to do.

THE COURT: Well, by the way, admittedly, the Court might not have found the -- what is it? -- smoking gun as to the rule, but I also couldn't find -- and I was looking for your continuing argument rule. And I think I did find something. But both of them, they didn't reach it.

MR. BELCHER: I think the Fourth Circuit has ---

MR. GRESH: Yeah. Your Honor, the continuing witness rule generally -- and the Georgia judge would tell you. It's a Georgia rule that's been applied in Florida, Tennessee and North Carolina and other districts ---

THE COURT: Not even in this circuit.

MR. GRESH: --- in which I have tried cases. And so I think that's generally ---

THE COURT: But those are all in the Fifth Circuit or one in the Fifth Circuit.

MR. GRESH: I believe in North Carolina would be ---

THE COURT: Well, North Carolina, it would be.

MR. GRESH: The foundation behind the adoption of that rule, I think, is applicable here. The scope of repair, what Derek Hodgin spent three days telling this jury I want to have done on these buildings, is in evidence. What these books intend to do is say, here's the foundation for why I want that scope of repair in. And it talks about 2009 building codes and things that were not even in existence in ---

THE COURT: All right. I understand.

MR. BELCHER: So to finalize the discussion, the estimates, which the Court picked up on, are, in fact, admissible. We have no exception to those.

THE COURT: All right. Now, are the estimates separate documents?

MR. BELCHER: They are. They're separate exhibits altogether because they're prepared by ---

THE COURT: All right. Thank you.

MR. BELCHER: Thank you.

THE COURT: Anybody else wants to be heard? Be careful. You're getting close to snapping defeat.

MR. IMHOFF: My counsel has directed me to sit down.

THE COURT: All right. All right. Mr. Lyles, do you have anything further?

MR. LYLES: Well, only this. With regard to the standards that are included in there -- I think I mentioned several days ago when we first talked about this -- I am happy to remove the current standards which would be applicable to avoid any confusion for the jury. What's important about ---

THE COURT: Well, the only thing is, the current standards have to be met for any work done.

MR. LYLES: Yes, sir. And what I suggested to the defense lawyers was that in lieu of actually putting in the current standards where the jury could be confused, which would include the current code and the current manufacturer's information, we just put a sheet

in there that says current codes and manufacturer's standards are applicable. And the significance of this and the relevance of this document ---

THE COURT: Well, let me say this.

MR. LYLES: Yes, sir.

THE COURT: Looking at -- as I mentioned, I think the Jenkins verus Dixie Specialty Company case that I cited for reference was a pre-adoption of the Rules of Evidence in South Carolina. And we now have -- and that case relied on the Business Records Act, Section § 19-5-510. Now, we do have the Rules of Evidence. And just as I mentioned earlier, Rule 803, the records of regularly conducted activity or business. And one of the differences in the state rule as compared to the federal rule -- so I don't know how much you want to rely on your federal rule -- is that the state rule requires that subjective opinions and judgments found in business records are not admissible. Now, you want to go back to the Fourth Circuit or the Fifth Circuit? The federal rule doesn't have that limitation. The point is I do see that that could violate our rules, state rules, as far as -- because obviously they are subjective opinions. It's more than just a recitation of what was going to be done or would be done.

I'm going to grant your motion to -- what is it? --

I won't say suppress, but not admit the records -- I mean the two exhibits 27 and 28. But, now, that does -- now, as far as any estimate based on those, they are admissible.

MR. LYLES: Okay.

THE COURT: I think they're already in, aren't they?

MR. LYLES: The estimates are, yes, sir.

THE COURT: All right. Anything else? I just did that to clear the record. Is there anything else you want me to put on the record from the sidebars?

(No response)

THE COURT: And I can't remember. Ms. Brown, you had an objection or something, did you not?

MS. BROWN: Recently?

THE COURT: Ma'am?

MS. BROWN: Not recently.

THE COURT: Yeah. As I say, sidebars are very effective in the sense that you can do things without having to send the jury out, but at the same time, you want to have a complete record.

Yes, sir?

MR. LYLES: The last thing was this, Judge. We have discussed these repair scopes. But then there were also a number of standards that were applicable to the

construction in this case that were marked for identification. They were various industry standards. I think the Western Red Cedar Association, AMMA, several other standards, and they were all applicable to the work that was done. And under the holding in that Elledge case that the Court found the other day and I had the opportunity to read, these standards, I think, relate directly to and are relevant to the duty of care that was owed by Bostic at the time this building was constructed. And under that Elledge case, which allowed the admissibility or admission of these standards and allowed them to go to the jury, on the same basis I would request that these standards, again, which were applicable to Bostic, be admitted into evidence.

THE COURT: All right. Thank you.

All right. Who wants to be heard on this?

MR. BELCHER: Yes, Your Honor. Several things. One, those documents are not learned treatises. They are, in fact, hearsay. Two, they're cumulative evidence. Mr. Hodgin sat up there on the stand for about five hours and testified to breaches of the standard of care with regard to various industry standards. And it's our position that his testimony alone is sufficient to establish for the jury or provides at least the evidence necessary that a jury would need to conclude that we --

that Bostic or its subcontractors or any defendant breached a standard of care. So to admit those documents back into evidence to a jury of people who are not construction professionals, it would be confusing, it would be cumulative, it would be hearsay and it shouldn't be admitted.

THE COURT: All right. Anyone else?

Oh, yes, sir, Mr. Imhoff?

MR. IMHOFF: Your Honor, Marick would just join in the same objection.

THE COURT: All right. All right. As they did in Lexington or at least -- what is it? -- the Supreme Court on the Lexington case, they did admit the standards at issue there. I think they were the Consumer Protective Safety Commission Guidelines and the American Society of Testing and Material Standards. "Evidence of industry safety standards is relevant to establishing a standard of care in negligence cases. Instructions, safety manuals and codes were properly admitted. It's objective standards of safe construction. The modern trend ..." I like this. I've always liked this. "... is to admit safety codes on the issue of negligence. This kind of evidence is admitted not because it has the force of law but rather as illustrative evidence of safety practices or rules generally prevailing in the

industry." And, of course, you do have a foundation requiring that they were in effect at the time. And I understand that you have -- what is it? -- made only those that were applicable to and that they would have applied to the industry involved or the activity involved. And finally that, "We find this evidence is highly probative on the issue of defining," in other words, "403, duty of care under Rules 401 and 402, not 403. And evidence is relevant and admissible if it has any tendency to make existence of a fact or consequence to the action are more or less probable than it would be it without the evidence. Evidence of industry standards, customs, and practices are often highly probative while defining a standard of care."

The objection is overruled, so the standards will come in.

By the way, that's Elledge, E-L-L-E-D-G-E versus Lexington School District 352 S.C. 179, 573 S.E.2d 789, 19 -- or excuse me -- 2002. It's still in the last century. All right.

Now what? Are you ready to rest?

MR. LYLES: Yes, sir, Your Honor.

THE COURT: All right. Well, let's -- it's one fifteen. And to be candid with you, we all had a long morning. So why don't we go to lunch and come back about

two fifteen to hear your motions. Is that enough time, you think?

MR. IMHOFF: For lunch, Your Honor?

THE COURT: Not only lunch, but for your motions. But if you're going to do one, you're going to take away from the other.

MR. BELCHER: Well, Mr. Lyles -- will you need to bring the jury back in and allow Mr. Lyles to rest in front of the jury?

THE COURT: Well, yeah. Well, I would rather go ahead and hear the motions if he is going to rest. And that way, we can go forward after we do bring the jury back. In other words, we'll let him rest on the record in front of the jury. And then -- if I don't grant all of your motions for directed verdict, that is. Either way, we can go forward rather than ---

MR. BELCHER: Do you want to give us a few minutes to -- we could -- whatever you wish to do. I mean, if the Court wants to go ahead and ---

THE COURT: I was going to give you a little time to think about what you might say.

MR. BELCHER: That's a luxury. We'll take that.

THE COURT: All right, sir. But I don't think you're going to have -- I'm not trying to do anything to

suggest my ruling, but the thing is I don't think we're going to have a voluminous argument. If there's any to go forward, that decision will have to be made now and then again at the close of all the evidence. Either way. What do you want to do? You want to argue them now, or you want to come back at one fifteen? I mean two fifteen, two o'clock.

MR. BELCHER: We could be back by two fifteen, I would imagine.

THE COURT: Very good. All right. We'll see you at two fifteen.

MR. BELCHER: Thank you, Your Honor.

THE COURT: And, also, I'm not saying that -- you know, I'm not giving you any sort of -- what is it? -- advisory opinion, but I would be ready to go forward with your case if you have something to go forward with.

MR. BELCHER: Yes, Your Honor.

(WHEREUPON, court stood at recess for a lunch break.)

THE COURT: All right. We're back on the case of Stoneledge versus others. As I understand it, the plaintiffs are resting now?

MR. LYLES: Yes, Your Honor.

THE COURT: All right. We'll rest on the record in front of the jury.

Is there anything else from the plaintiff before we proceed?

MR. LYLES: No, Your Honor.

THE COURT: All right. The reason I ask that question -- y'all are good lawyers. I mean, experienced lawyers. Just as you were mentioning about exhibits, in other words, if there's anything you haven't put in or -- what is it? -- has not been admitted that you want admitted, this is the time to do it.

MR. LYLES: Yes, sir.

THE COURT: And you're satisfied you have everything?

MR. LYLES: Yes, sir. The standards that you admitted into evidence, the court reporter has asked me to put those on the record, just the number of the exhibit numbers.

THE COURT: Please.

MR. LYLES: I saw her looking over. And they were marked for identification as Plaintiff's Exhibit 17, 19, 20, 21, 23, 24, and -- let's see -- 25 and 26.

THE COURT: All right. Over the objection of the defendants as to Plaintiff's Exhibits 17, 19, 20, 21, 23, 24, 25, and 26 are admitted; is that correct?

MR. LYLES: Yes, sir.

(WHEREUPON, Plaintiff's Exhibits Number 19 through

21 and 23 through 26 were admitted into evidence.)

THE COURT: Well, all right. Is there any thing from the defendants Bostic Brothers?

MR. GRESH: Yes, Your Honor. Are you ready for motions?

THE COURT: Yes, sir. Well, I mean, anything.

MR. GRESH: At this time, Your Honor, at the close of the plaintiffs' case, the Bostic Brothers would move for a directed verdict generally and specifically. On the specific grounds, Your Honor, we would move for a directed verdict as to the issue of statute of limitations. The statute of limitations in a construction defect case is three years from the discovery of when something, a claim, could have been filed.

If your Honor will permit me, I created a time line that's based on all the evidence that has been coming in this week thus far. Your Honor, Bostic Brothers took over in 2002, and it ended in October of 2004. Marick and I.M.K. began running the H.O.A. and others as of April of 2005. And that persisted until approximately September of 2008 at which time the Stoneledge Property Owners Association became run by the homeowners themselves. And that persists out until today.

Suit was filed against the Bostic Brothers in

February of 2010. Now, when we back that up three years under the discovery rule, those causes of action which were discovered before that time and could have been filed are beyond the statute of limitations applicable in this case. So this is kind of your, if you will, Your Honor, your line in the sand on which we must do our analysis is in that time frame there.

And what we've seen through the testimony offered so far by at least three witnesses, they talked about complaints having been made to the Stoneledge Property Owners Association. Well, the property owners of Stoneledge started right here in April of '05. And they could have filed suit against Bostic, against Mr. Nino, and Everado, everybody, as soon as they started getting complaints from the homeowners as to leaky windows, roofs and others.

And so what we know is that, you know, Mr. Taylor, the mayor of Stoneledge, as soon as Marick came on site, the savior's here. He came to them with all the problems. Now they're on notice of problems.

After Mr. Taylor comes through, here comes the decks. We heard testimony today from Marick saying, "We knew we had leaky decks," not in '05 when Mr. Taylor said, but then later in '05 when Coleman Waterproofing came out and put a membrane over the decks. That is

notice of a defect in the 2005 time frame.

Then we have other people that have come in and talked about it. Mr. White testified yesterday. Bob White came in and said, "From moment one, moment one when I moved in in 2006, I had leaky windows." It's not important that Mr. White knows that. Mr. White has to give that information, as did Mr. Taylor, to members of the board. And that's why I was talking today with Mr. Thoennes and Mr. Roberson and Mr. Cox. That's their board members as of the 2005 time frame. At that point in time, those gentlemen in their capacity as board members could have filed a lawsuit against the Bostic Brothers for construction defects that have existed up until that time. That would be the same plaintiff that's here today. This is the Stoneledge -- this case is being brought by the Stoneledge Property Owners Association. That came into existence when all of these were already known. And instead of filing suit here, they wait until 2010 to file suit after control had been turned over to the plaintiffs.

THE COURT: It's a 2009 case.

MR. GRESH: It's a 2009 case. But as to Bostic, it was first amended to add the Bostic Brothers in February of 2010. So what we have is it's not constructive notice. This isn't something that we should

or shouldn't be aware of. This is actual notice being given to the property owners association who has the sole legal obligation, Plaintiff's Exhibit 3, Plaintiff's Exhibit 4, to maintain and repair the exterior building envelope. All of the siding, the foundation issues, the deck, the roof. That's why that particular property owners association has filed suit in this case, because that's their obligation. It was their obligation today, just as it was in 2005. Their failure to file in 2005 precludes them now from coming in in a 2010 lawsuit and claiming that Bostic should be responsible for things that happened more than six years -- six years, not three -- six years prior to when they took over the regime.

Constructual (phonic) notice, all that's required -- not actual. All that is required for constructive notice is that some right has been invaded or that there is some claim against another party that could be brought. It doesn't mean that they have to know all the claims. It doesn't mean they have to know the entire extent of their damages. Just that the property owners association in 2005, 2006 and anytime before 2007, to the extent they were on actual or constructive notice of a claim, that they could have sued Bostic, Nino, and all the other subcontractors and they didn't, that failure stops the statute of limitations.

As far as case law, this isn't -- I don't think this is a widely contested issue. But I would point the Court to the Barr versus City of Rock Hill case. That's 330 S.C. 640, a 1998 case that talks about when somebody has actual or constructive knowledge to the extent that's required. Understanding if there wasn't full knowledge of the defects until they had Mr. Hodgin come in is irrelevant. They were put on notice of some claims that had been invaded, some claims they could have sued for, and they didn't do it timely.

Besides the general issue of statute of limitations applicable to the entire case, Bostic Brothers would also move at this time for directed verdict on the issue of loss of use. There are numerous phase-one plaintiffs that have brought individual claims in this case from whom we have not heard. Anybody who didn't take the witness stand and testify as to their individualized loss of use has waived their opportunity to prove their case. This jury cannot now speculate or conjecture as to what their loss of use might have been, so those claims are waived.

Those that did present testimony, there's been no testimony that these plaintiffs will have to move out or anything of this sort. Instead they will be inconvenienced with associated hard hat areas, the

scaffolding, of course. But to have these part-time residents who may or may not live there who might experience inconvenience, that's insufficient to get that particular part of the case to the jury of those involved homeowners.

I believe on that, Your Honor, that concludes Bostic's motion for directed verdict at this time.

THE COURT: All right.

Mr. Lyles, what do you say?

MR. LYLES: Yes, sir. On the issue of the statute of limitations, I think that the testimony, the compelling testimony, was that these owners were aware of window leaks. They were aware of the porch and deck leaks. And the testimony for the last five days has been when a window leak or a deck leak was reported, Marick came out to the site and fixed the problems. Everybody testified to that effect, including Mr. Thoennes today when he said he believed that they had fixed everything with the Coleman Waterproofing people. Importantly, Marick's not making a claim for those damages.

These homeowners, I think, testified consistently that they were not aware of the necessity of a claim or the right to a claim against anybody until after they had taken over control of the board and began to realize the pervasive and systemic nature of the problems at the

project. So I don't think that there is any evidence which establishes that the H.O.A. was on notice of a claim in 2005/2006. Certainly not notice of this claim.

I would also point the Court to the Magnolia North case, which dealt with the issue of the statute of limitations relative to an H.O.A. and the date that the H.O.A. was turned over to the owners at which time the owners could actually protect themselves and assert claims on their own behalf. And the court did that using the equitable tolling power of the court. And basically what the court said in the Magnolia North case is it would be unfair to say that the statute of limitations was running on a claim that belonged to a homeowners association when it was under the control of the developers. And it wasn't until the date of turnover when these owners were given an opportunity to manage the association themselves that the statute began to run. Or at least it was equitably tolled during that period of time where it was under the control of the developers.

Now, admittedly in the Magnolia North case, the claim at issue was a claim against the developers. But the same reasons would apply here. These owners didn't control the association. They had no ability to file a claim on their own behalf until the association was turned over.

I might also point out to the Court as you consider that argument that the people who were in control of the association up until September 2008 were selling units. They had an incentive not to file a claim. They had an incentive not to become involved in litigation since their objective was to get rid of units. So I think that the equitable tolling argument also supports a denial of the motion for summary judgment even as to Bostic and its subcontractors.

And these owners acted expeditiously. They filed this lawsuit roughly a year after control of the association had been turned over. A couple of months after I was retained by the association, we amended the complaint and asserted the claim against Bostic. And so they've acted, I think, with haste and appropriately with respect to that claim.

MR. GRESH: Briefly, Your Honor?

THE COURT: Yes, sir.

MR. GRESH: I think Mr. Lyles and I pretty much agree on some things. Marick fixed issues that it could have sued over. As part of its being on the board, it could have filed suit against Bostic for these issues. Instead they tried to fix them. But the Magnolia case is even more telling. What the Magnolia case said was that we're going to equitably toll the statue of limitations

because you can't turn a homeowners association over to individual homeowners and then say, ha, got you. You can't sue us because we've tolled it for more than three years because otherwise you would have forced the board to sue itself. And that's the holding of Magnolia. We're not going to force the board to sue itself, itself being the developers. The key issue in this case, and what I think is dispositive of the issue, is that the board as of the '05 time frame is not Bostic. Bostic's not there. It's the I.M.K. people. It's Mr. Roberson. It's Mr. Hollis (phonic) -- I mean, Mr. Cox. It's Mr. Rick Thoennes. Those people in their capacity could have filed a suit on behalf on the same plaintiffs that we have today against Bostic, and they didn't do it. Whatever claims these homeowners may or may not have against the board for the failure of the board to timely pursue a claim against Bostic is an issue that is reserved, but it is not Bostic's issue. Their failure to act timely may be disposed of in another case or in a different part of this case. But as to Bostic -- and the board was on notice of several defects in windows, in siding, and in foundation in the 2005 time frame.

THE COURT: Just a moment, please.

Could I have exhibit 6?

(Off record discussion)

THE COURT: All right. Go ahead. I'm sorry.

MR. GRESH: Your Honor, the only thing I was going to finish up with this is the board that was created when I.M.K. took over was a legal corporate entity, not-for-profit corporate entity, that has existed throughout. It is the same board when they started it in '05 as it persists today. It's just made up of different board members. But the legal entity who was charged with the responsibility of filing suit, hiring attorneys and maintaining and fixing the outside has been the same since '05 as it persists today. I think that that's what's dispositive of this case.

THE COURT: All right.

MR. GRESH: Thank you, Your Honor.

THE COURT: Mr. Anderson?

MR. ANDERSON: Thank you, Your Honor. I have two bases for a motion for directed verdict. One is to join in the statute of limitations. We have one additional fact, though, that needs to be modified. And that is Jose Nino was not brought into this case until -- the pleadings against him were filed in October of 2011, and he was not served until February of 2012. And we believe that the ---

THE COURT: Do that again for me, please.

MR. ANDERSON: Okay. On an amended complaint,

Jose Nino was brought in on October 7th, 2011. He was not served, though, until February of 2012. And so we believe that the statute cannot be considered tolled until February of 2012, which would make the controlling date on events February of 2009 for Jose Nino. And I believe that there is clear evidence and testimony, specifically from Mr. Taylor, that he and the board knew that they had causes of action in September of 2008.

And that goes -- and the reason I believe that that's important is if Your Honor should look at the issue of equitable tolling, we believe that that would not apply to Jose Nino specifically because he had no participation in the board either by Marick or Bostic.

The second basis of our motion for summary -- excuse me -- our motion for directed verdict is that the plaintiff has not presented any evidence that Mr. Nino did anything wrong or that any of his work is the proximate cause of any of their damages or that it violated any of the standards. And we believe that without any of that evidence that Jose Nino should be dismissed.

THE COURT: All right.

Mr. Lyles?

MR. LYLES: Yes, sir, Your Honor. I think that the rule allows us to file a complaint if we file it and

get it served within a hundred and twenty days. And I do believe we got Mr. Nino finally served within a hundred and twenty days of filing. So I think the operative date for him would be October the 7th of 2011. Mr. Nino's -- the claims relative to Mr. Nino are a little bit different than the claims of Bostic in that the testimony in this case was that Mr. Nino was a framer. In fact, I think that some of the testimony from Jaramillo and others is that by a certain point in 2003, all of Mr. Nino's work was completely covered up by the work of others. The evidence in this case about Mr. Nino's delicts includes, among other things, improperly installed roof sheathing -- there were of plenty of photographs and testimony about that and the effect of that on this project -- as well as improperly constructed firewalls. The testimony being that Mr. Nino applied the framing and sheathing material that went in the firewalls. And Mr. Hodgin, of course, has testified that that was improperly done and that's a fire hazard.

I would also point out to the Court's attention or bring to the Court's attention the Graniteville case which says that where expert testimony is required to establish a claim, the statute of limitations begins to run in certain circumstances when that information is gathered by the plaintiffs. And in this case, while

water leaks can certainly be things that a normal, average, everyday person would understand could give rise to a claim or water infiltration problems, things like improperly constructed firewalls certainly are not. And all of that was hidden until Mr. Hodgin and C.S.E. did their investigation in the 2010 time frame.

And then finally, going back to this equitable tolling argument from the Magnolia North case, again, these owners served Mr. Nino with this lawsuit just three years -- excuse me -- filed this lawsuit against Mr. Nino just three years after they took over control of the board. The equitable tolling language in the Magnolia North case, I think, applies to this as well, which is that the statute of limitations should be tolled while these people weren't even in control of their board. They proceeded, again, expeditiously and with due diligence and understanding this claim, retaining experts, figuring out what's wrong and ultimately bringing in the parties that need to respond to that.

THE COURT: All right. On your time line, let me see if I've got it straight.

MR. LYLES: Okay.

THE COURT: Where is the ---

MR. ANDERSON: Your Honor, could I respond to a couple of things?

THE COURT: Oh, certainly.

MR. ANDERSON: Okay. I'm sorry. I thought -- Mr. Lyles was telling you about framing issues and so forth. None of those were specifically addressed to the work of Jose Nino. Mel Morris indicated that as far as the fire-rated walls, that they're -- that basically he did only the fire-rated wall in which the sheetrock was sandwiched between framing. The pictures and the allegation they are making go to exterior sheetrock. And he specifically testified that any sheetrock put exterior of the wall was the drywaller, not the framer. And so that is a red herring.

In addition, all materials and specific direction was given to Jose Nino by Bostic very specifically. And he said that was part of their corporate plan. So as far as materials go, there should be no liability to Jose Nino.

And the other area -- and there was no testimony that his work in any way was the proximate cause of any of the damages. One thing I would like to correct is that we did have testimony of one witness that he knew -- that was Mr. White -- who spoke specifically on knowing that he had the right to bring a cause of action in 2006.

Further, on the -- we would ask you and invite your attention to Dean versus Ruscon in looking at what

knowledge is needed in a construction case for tolling of the statute. In that case, a crack was discovered. And then six years plus some months later they brought the lawsuit. And they said that the fact that the crack was recognized and could have been caused by a specific party was enough notice. And we believe that that's the type of situation we have here. You don't need to know the full extent of your claim in order for it to be tolled.

Your Honor, Jose Nino was not served until February 19th of 2012. And that was done by publication. The complaint was filed on October 7th of 2011. So ---

THE COURT: What was the date again? October the what?

MR. ANDERSON: October the -- I'm sorry. October the 7th, I believe. Yes, October 7, 2011. And he was not finally served until February 19th of 2012 which places him outside the hundred and twenty days.

THE COURT: All right. Let me go back. Who -- Mr. Gresh, you've got the time line. Let me -- help me with that because that's the first time I've seen the time line here.

All right. What's -- 2002?

MR. GRESH: That's when Bostic began construction on the property.

THE COURT: October 2004?

MR. GRESH: Yes, Your Honor. I believe is the date on when Bostic was last on the property.

THE COURT: All right. Had they declared bankruptcy or gone insolvent at that time?

MR. GRESH: It was on that way for sure.

THE COURT: Pardon?

MR. GRESH: I don't know if they had particularly at that date or not. I don't think they probably have any evidence ---

THE COURT: Well, what I'm just asking is what's the October of 2004 date based on?

MR. GRESH: That's the date that we heard from Mel Morris and others that Bostic left the property because it was not being paid by the developer.

THE COURT: All right. They weren't being paid, so they left?

MR. GRESH: That's right.

THE COURT: And then the next date is what ---

MR. GRESH: I have April of 2005.

THE COURT: April of 2004 -- '5?

MR. GRESH: Yes, Your Honor.

THE COURT: What's that?

MR. GRESH: That's when Marrick -- excuse me -- I.M.K. purchased the unfinished buildings, the land, et cetera.

THE COURT: Okay. And at that time, it was all dried in?

MR. GRESH: I think there's been conflicting testimony as to that.

THE COURT: I don't think any of them said they didn't have a roof.

MR. GRESH: That may be, but I don't recall.

THE COURT: I mean, I don't know. 2007? February of 2007?

MR. GRESH: Would be three years before Bostic was named as a defendant in the lawsuit.

THE COURT: All right. Bostic was named in February of 2010?

MR. GRESH: Yes, Your Honor.

THE COURT: All right. Going back to September 2008.

MR. GRESH: Is when I believe we heard testimony today that the homeowners took over the management of the Stoneledge Property Owners Association.

THE COURT: And February 7, 2007?

MR. GRESH: Your Honor, that date just represents a mythical point in time.

THE COURT: Dates back from February 10, 2010?

MR. GRESH: Correct.

THE COURT: Well, until September 2008 -- well,

first of all, Bostic didn't have any homeowners, did it? There was no homeowners association or anything? Bostic was it. Is that correct?

MR. BELCHER: I understand it's Mr. Gresh's motion, but I ---

THE COURT: I know. I'm going to relax the rules.

MR. BELCHER: All right. There had been one established by the bylaws, by the key point where these red arrows are here is that in this 11/05 -- in this April '05 through 11/05 time frame, that's when Marick and I.M.K. came to the place, re-adopted and re-amended the bylaws to state that it's now Stoneledge at Keowee. Those three red arrows show the day when Marick, I.M.K. were there on site, were on the board, were hearing complaints from homeowners, were, by virtue of their construction background whether being Mr. Cox or being a neighbor charged with actual knowledge of issues at Stoneledge as board members and failed to sue Bostic until 2010.

The board is the board is the board. It doesn't matter who's on it. The equitable tolling may stand as to Marick, but it does not stand as to Bostic because at any day prior to February 7th -- I'm sorry, February of '07, Marick, Rick Thoennes, any individual board member

or the board itself could have sued Bostic even if they were afraid. And the reason they didn't is because they were selling units. They were making money. They were doing whatever they were doing. They didn't put a lawsuit on the place. They wanted to bandage it up, make the repairs and do whatever they wanted to do. That's all been part of the testimony as well. So those three red arrows show when Bostic -- when the claims were clear to the board, the board should have made those claims as to Bostic.

The claims as to Marick are probably still ripe because Marick didn't turn it over to the homeowners. That's the Magnolia case. But the Magnolia case would still require the board who has been the board since it began being a board to sue Bostic.

THE COURT: Well, when did it begin to be a board?

MR. GRESH: Plaintiff's Exhibits 3 and 4, Your Honor.

THE COURT: How about giving me a date. I mean, just tell me.

MR. GRESH: The board, I think, was began in August of '03, and the transfer into the Townhomes of Lake Keowee -- okay, this board, the Homeowners Association of Stoneledge at Keowee began November of

2005. No. I'm sorry.

MR. LYLES: It's actually September of ---

MR. GRESH: September of '05 it was enacted and then filed in November of '05.

THE COURT: All right. In other words, I.M.K. came in on April 2005, and September 2005 the homeowners association was created?

MR. GRESH: Yes, Your Honor.

THE COURT: And that actually took effect and the members were appointed by November 2005?

MR. GRESH: I think they were elected in that September meeting because minutes in the actual declaration was filed with Oconee County on November 1 of 2005.

MR. BELCHER: Bearing the signatures of Mr. Thoennes, Mr. Cox, witnesses who have testified here today and as to their knowledge, their actual knowledge, of issues at Stoneledge.

THE COURT: I only smile because we were going to do this in fifteen minutes.

MR. GRESH: I'm sorry, Your Honor.

THE COURT: All right. And then you have no evidence as to negligence on behalf of -- as to Nino? That's your other ground?

MR. GRESH: That was Mr. Anderson's ground.

THE COURT: I mean, Mr. Anderson.

MR. ANDERSON: Yes, sir, that is correct.

THE COURT: Mr. Lyles, what about the evidence as to negligence on Nino?

MR. LYLES: Well, the testimony -- and I guess Mr. Anderson and I heard the testimony a little bit differently. I think Mel Morris testified pretty explicitly that Jose Nino put up all the drywall that was associated with the firewalls. I know there was a discussion about the interior firewalls which were constructed differently than the exterior firewalls. But the notes that we got from Mr. Morris' testimony was that Mr. Nino put those firewalls up including the sheathing that was put up, the O.S.B. sheathing.

We also saw photographs from Derek Hodgin in his report of the roof sheathing that was improperly installed, which had been damaged and contributed to the roof problems. So that's the evidence that we have with respect to Mr. Nino.

THE COURT: All right.

Mr. Imhoff?

MR. IMHOFF: Yes, Your Honor.

THE COURT: Anything?

MR. IMHOFF: Well, I have several directed verdict motions, Your Honor. I don't know that I have an

opinion on ---

THE COURT: No. I'm asking for your directed verdicts.

MR. IMHOFF: All right.

THE COURT: I need to hear you now. I'm not going to decide them this afternoon.

MR. IMHOFF: The directed verdicts, Your Honor?

THE COURT: I will take them under advisement and decide eventually without prejudice to -- what is it? -- the case. Go ahead.

MR. IMHOFF: Starting backwards a little bit, Your Honor, I'm going to join in -- and I think all of the defendants are probably going to join in -- on the directed verdict as to loss of use. The plaintiffs designated a loss of use expert, so to speak, Judy White, whose deposition we took. And she testified about how long they'd have to be out, how much money they wanted and those types of things. They did not put in this case, so the jury does not have anything to consider as to an amount for loss of use, how much the unit -- how much they would be entitled to if they weren't allowed to use it. You know, comparable lodgings, those types of things. I don't know. I haven't heard from Mr. Lyles on this, but I'm guessing they've abandoned that loss of use because there isn't any evidence of what it is other than

there might be some. But it would leave it up to the jury to speculate as to what that is.

He's not jumping up to agree with me, so he may have a response on that. Would you like me to wait for his response or continue, Your Honor?

THE COURT: All right.

MR. LYLES: Your Honor, we decided not to put up any evidence of loss of use.

THE COURT: All right. So without any evidence ...

All right.

Next?

MR. IMHOFF: Your Honor, the next directed verdict motion -- and I think I may be joined on this by several different folks as to the breach of fiduciary duty. And the breach of fiduciary duty, as I understand it, Your Honor, goes to these individual members of the homeowners association, Mr. Thoennes, Mr. Roberson, Mr. Cox -- I think there was another one; I don't remember their name, but members of the board -- as they sat on the board, the decisions that they made.

And the breach of fiduciary duty, especially when it comes to a nonprofit corporation, Your Honor, where the members of that board, the directors of that board, are making decisions is governed by the business judgment

rule, Your Honor. And the business judgment rule requires that the plaintiff carry the burden of proof to prove that while sitting on the board of a nonprofit corporation and making judgments in business, that the plaintiffs must prove fraud, self-dealing or unconscionable conduct. And so as to those members of that board and the decisions that they made -- and, frankly, the members of the board that are on it today -- the business judgment rule applies. There has been no evidence. First of all, there's been no expert who sat on that stand and testified, this is what the standard is for making decision as a director.

But even further than that, Your Honor, there has been no evidence submitted that there was fraud in those nine elements that you have to prove to prove fraud. Self-dealing somehow. You're doing things and you are self-dealing to yourself or unconscionable conduct. The evidence and testimony to this point at the very most is that there may have been, you know, a lack of or a negligence-type of standard, but certainly not unconscionable self-dealing and fraud.

And so as to the breach of a fiduciary duty and these folks sitting on the board, I would say that directed verdict should be granted as to the individuals. I think directed verdict should also be granted as to the

business entities because they didn't sit on the board. So I'm not sure how Marick or -- well, Bostic's not involved -- but I.M.K. or I.K. or M Group or anybody else, they didn't sit on that board. So I think that would be dismissed as to them.

And, again, Your Honor, I have several of these. I can stop and wait for replies, or I can just continue on.

THE COURT: Well, I'd like to hear all of the motions now. As I say, I'm not going to be able to decide them this afternoon, and particularly with the jury because I do want to go forward with the case. We've already been out -- what is it? -- a week. But go ahead and state your other grounds too, please.

MR. IMHOFF: Your Honor, this is maybe not more of a difficult directed verdict, but I think it's almost as procedural as it is substantive. I'm not sure if the Court looks at it this way, but it looks like to me that we are trying two different cases here. We're trying a builder's negligence case and whether they built the roof and the deck and put the windows in and the stone and all of that, and whether when it was built it complied with the code and industry standards at the time. And that's what we think of as a typical construction case. The case -- and I made this point in the opening, and all the evidence and testimony has supported it. The case

against Marick is did they find those defects. Were they negligent in their investigation and their inspection? And so I guess I'm asking for a partial directed verdict because the evidence and testimony is from plaintiffs' expert, Your Honor, that his scope of repair to take everything off of this building was necessary before Marick ever got on the project. All of the roofs, siding, stone, windows, doors, foundation piers, all of that needed to be done before Marick ever got there. Almost like a superceding negligence kind of argument, Your Honor. And the only damage that Mr. Hodgin could attribute to Marick's failure, as he testified, to inspect was increased damage to the bones of the structure. You know, the framing and the boards and that type of thing.

After Mr. Hodgin was done testifying, I specifically went through those damages with Mr. Folk, if you will remember. And I said, "Okay. You've indicated that there's twenty-five percent -- you're guessing. But there's twenty-five percent damage to the roof sheathing and fifteen percent damage to the siding sheathing." And I went through all of those things with him. And at the end of that, he agreed that the damages attributable to Marick, based on Mr. Hodgin's testimony, is two hundred and fifty thousand dollars, Your Honor.

And so we have two cases. We have a case of original builder negligence with a three-million-seven-hundred-and-fifty-thousand-dollar estimate, taking our two fifty out, and then a two-hundred-and-fifty-thousand-dollar inspection case against my client. And so I would ask for a partial directed verdict on that, or the jury is going to be very confused about what they're determining. And, again, that's why I said at the beginning of this, it's as much procedural. But it is, in fact, two different cases. And it's two different cases based on plaintiffs' expert's testimony attributing only increased damage to the bones of the underlying sheathing to my client.

So that would be my second directed verdict or a request for a partial directed verdict, Your Honor.

THE COURT: All right.

Mr. Lyles?

MS. BROWN: Your Honor?

THE COURT: Oh, yes, ma'am.

MS. BROWN: Your Honor, I.M.K., to the extent that on the personal directed verdict, would join in Mr. Imhoff's motion.

THE COURT: Very good.

Mr. Lyles?

MR. LYLES: Yes, sir. With regard to the

breach of fiduciary duty, the Concerned Dunes West Residence case versus Georgia Pacific is the case that finally recognized the fiduciary duty. And the court stated very plainly as follows.

THE COURT: All right. What's that cite on that?

MR. LYLES: I'm sorry, Your Honor. It is 562 S.E. 2d 633.

THE COURT: 633?

MR. LYLES: Yes, sir.

THE COURT: 562 S.E.2d 633?

MR. LYLES: Yes, sir. And it says very plainly, "The developer in this case of a P.U.D. owes a duty to the P.O.A. to turn over common elements that are not substandard and that are in good repair. Failure to do so subjects the developer to liability for bringing the common areas up to standard." The court goes on to say in its holding, "That is, developers are held responsible for the condition of the common elements at the time these areas are deeded to the P.O.A. That was a deeded case as opposed to a board-controlled turnover case. "If these areas are not in good repair at the time of conveyance, the developer is liable for the cost of repairs."

The Concerned Citizens Dunes West case, which

establishes this fiduciary duty, doesn't talk about the business judgment rule. It doesn't weigh the conduct of the developer. It says very simply, when the developers are in control of a board and they turn over control of that board to an association with common elements that are in substandard condition, the developers are liable for the cost of repair.

In the -- I believe it's the Magnolia case or it could be the Pope case. Yes, it's the Pope case. Hang on just a second. Pope versus Heritage Communities. That's 717 S.E. 2d. The court continues to discuss -- that's a very recent case where the court discusses this and the damages that flow from that breach of fiduciary duty.

THE COURT: 717 S.E. 2d?

MR. LYLES: Yes, sir. 717 S.E.2d 765.

THE COURT: Okay.

MR. LYLES: It's very plain. Again, there's no requirement that any elements of the business judgment rule be met. The testimony in this case was crystal clear that the people who were in control of the board at the time of turn over were I.M.K. and its principles, Mr. Thoennes and Mr. Cox. They personally had the fiduciary obligation to turn over a building envelope in good condition. The testimony of Derek Hodgin during his test

-- when he was on the witness stand was that in his opinion, to a reasonable degree of certainty, the common elements were not in good condition in September of 2005 -- excuse me -- 2008, which is when the common elements or the building envelope were turned over to my clients.

I would also refer the Court going back to the Concerned Citizens Dunes West case. There is authority in that case applying the same fiduciary obligation to an H.O.A. of townhomes. And townhomes are somewhat different than condominiums. But the same fiduciary duty applies. And it's -- I won't call it strict liability, but the court is very clear. If the common elements aren't in good condition at the time control of the board is turned over, the developers are responsible for it.

On the issue of the damages, it's an interesting argument. And I see it as one of two things. Either the conduct of Marick in not doing an adequate inspection and not making proper repairs has contributed to the single loss that my clients have, which is the cost to repair. Under a joint and several verdict or in a joint and several liability standard, they contributed with the negligence or their negligence contributed, along with the negligence of Bostic and perhaps others who were far more responsible, to cause that one wrong or that one damage. So joint and severally, I guess it would be

unfortunate for Marick that they can articulate their damages at a much lower level than Bostic can. But I think that the rule under joint and several is that they buy it.

If joint and several doesn't apply, then the apportionment statute applies. And the apportionment statute, if it applies to Marick in this case, is intended to do exactly what Marick wants to have done, which is a jury to say here's what percentage of this larger problem we're going to assign to Marick. And so that will be the answer to the question we just got.

THE COURT: All right.

Now Mr. Anderson?

MR. ANDERSON: Your Honor, if I could just respond to one thing Mr. Lyles said ---

THE COURT: Go ahead.

MR. ANDERSON: --- about the testimony of Mel Morris. On the issue of placement of the drywall, Mel Morris testified in his deposition if it were applied on the exterior of the walls, it would have been done by the drywall contractor. We had this set for impeachment if he testified any differently. I did not have to use this. So I believe that his testimony was quite clear that the exterior drywall was applied by the drywall contractor and not Jose Nino.

THE COURT: I think that's what Mr. Lyles said too.

MR. LYLES: What I said is that he testified -- there are two types of firewalls. There's an interior firewall, and then there are these exterior firewalls. I think what Mr. Morris said is on the interior, Jose Nino would have had responsibility to put the drywall on the interior face of the wall. And then a drywall contractor would come back and put drywall on the, I guess, the exterior facing the wall. Maybe I had that exactly opposite. But I think he testified in this trial that with regard to those exterior walls where he was doing all the sheathing, he put up the fire-rated wall.

THE COURT: All right.

MR. LYLES: And I know that the drywall guy didn't do the O.S.B. sheathing, which is the problem with the firewall. Mr. Nino did that.

THE COURT: All right. Very good.

All right.

Now Ms. Brown?

MS. BROWN: Yes, Your Honor.

THE COURT: Okay.

Mr. Imhoff?

MR. IMHOFF: Your Honor, I just want to respond to something. That question has come up, and I've heard

it kind of kicked around a little bit. The apportionment statute or the contribution statute is very, very clear about joint and several liability in a construction case. And that is that if the C.O. is issued after, I think it's, June 2005 -- July 1st, 2005, it's a contribution statute; it's not joint and several liability. And so I would agree with Mr. Lyles that the apportionment statue would lack merit to make that argument. But I think that it would be clear to the jury if Marick was granted directed verdict on the builder negligence, the original negligence that we were just talking about, and making it clear to the jury that it's the inspection or the alleged lack of inspection of the work that already existed. We're not talking about the original construction. The different case. And that was defined very clearly by Mr. Hodgin.

May I go back and address the breach of fiduciary duty, Your Honor?

THE COURT: I tell you what. I'm going to hear you more without the jury here if it gets that far. So let's don't -- because obviously I've got to do a little since I haven't been provided, at least not that I know of, authorities that we're hearing about today.

LAW CLERK: I've got them on the computer.

THE COURT: Oh, you've got them on the

computer? That takes care of that. That is if it's the computer that is up here. My problem is that obviously I'm not going to make a decision without something other than your good advices, you know, on how to rule. And you're looking at your clock, Mr. Belcher.

MR. BELCHER: Well, Your Honor, just to inform the Court as to where we are right now, we'd be happy to spend the rest of the afternoon with the Court if the Court wants to dismiss the jury for the day. Because it seems to me like this case is getting really smaller and smaller by the day. We have two witnesses left that I can tell, the witnesses that I would call if I were to go next. But I'm not on the caption next. But since I'm the ring leader, if I'm going to start calling witnesses, they're not in this courtroom right now. They're parties, but they're not in the courtroom. So my two witnesses, the only ones that I have left to call, are ready to go tomorrow morning at nine a.m. And I would say between the two of them we would be done by two o'clock in the afternoon. It's going to be very short. It's the same testimony from a scope of repair, Rick Moore, and then putting J.R. Watkins back on to spend about half as much time as we spent yesterday in my estimation.

THE COURT: Okay. How about the others?

MR. BELCHER: If anyone else has witnesses -- I put a call out last night saying, if you have witnesses, bring them today because ---

THE COURT: Mr. Anderson, do you have any witnesses?

MR. ANDERSON: No, Your Honor.

THE COURT: Mr. Imhoff?

MR. IMHOFF: I don't think so, Your Honor. I think Mr Lyles called the ---

THE COURT: Ms. Brown?

MS. BROWN: No, Your Honor.

THE COURT: Mr. Hemphill?

MR. HEMPHILL: No, Your Honor.

THE COURT: All right. So, really, we're talking about two witnesses. To be very candid, though, I'm just -- I'm not -- I don't want to -- well, it's three fifteen.

MR. BELCHER: There's other work that we can do without the jury here this afternoon as well if we want to discuss charges ---

THE COURT: Right.

MR. BELCHER: --- and that sort of thing so that we can move smoothly ---

THE COURT: Well, I'm just thinking about bringing them in later in the day tomorrow, say, noon or

something like that.

MR. BELCHER: And then just doing our closings on Friday or letting -- or on Thursday. I'm sorry.

THE COURT: Thursday. No. I'm thinking that -- what is it? -- if you've only got two witnesses and we've pared it down as it might be, it might be able to go tomorrow afternoon.

MR. BELCHER: We would rest and be prepared for charges, I would say, or for summation if we're going to do summation first and then charges.

THE COURT: Tomorrow? I mean, if you had your two witnesses?

MR. BELCHER: We could put on our two witnesses in the morning and be prepared to close in the afternoon.

THE COURT: All right. Well, the thing is you're -- I appreciate your thought about the jury because I do -- I'm not going to keep them back there in the jury room any longer today. I'm just saying I'm really not comfortable myself as to addressing some of these issues because you've raised -- if you really want me to be candid -- if I really had to be candid, I'd tell you, well, when we start talking about apportionment, those are all matters that have come along after I stopped practicing law. And I know about contribution, but I -- I really do. I need to catch up some.

MR. BELCHER: We could plan then, as the Court suggested, to have our witnesses here at noon tomorrow and give the Court plenty of time to study whatever it needs to study tomorrow morning.

THE COURT: Well, I want to hear you this afternoon on your motions. So then -- what is it? -- maybe in the morning again another nine o'clock -- well, I tell you what. No. Not nine o'clock because I'm not going to hear -- hopefully when we get together the next time, the argument will be more concise as far as what the issues are that I want to address.

MR. BELCHER: Okay.

THE COURT: All right. So let's do get -- let's let the jury go. I'm going to bring them out. I'm not even going to suggest that you rest on the record at this time.

MR. LYLES: Yes, sir.

THE COURT: But you have rested. And just let them go to -- you want to say noon?

MR. BELCHER: That would be fine with us, Your Honor.

THE COURT: All right.

MR. BELCHER: We'll have our witnesses here at noon to go.

THE COURT: All right. Ask the jury to join

us, please

I tell you what. I'll say twelve thirty. That'll give them a little late -- they can have a brunch at twelve-thirty.

(WHEREUPON, the jury entered the open court at approximately 3:19 p.m.)

THE COURT: All right. Let the record reflect that the jury and alternate are in the jury box.

Mr. Foreman, ladies and gentlemen of the jury, I apologize about having to keep you back in the jury room for over an hour. But certain matters have come up that will have or could have a very direct impact upon this case. And I'm going to suggest that rather than try to go through them all this afternoon -- and it's going to be something that I have to do -- and keep you back there, I'm going to request that you come back tomorrow at twelve thirty. And hopefully, at that time we'll conclude the trial of the case. But rather than keep you back there and rather than trying to rush through something that I want to feel more comfortable about, I'm going to dismiss you for the day and ask you to come back at twelve thirty in the morning. And we'll try -- I did not anticipate this. And I assure you I wouldn't have had you come back this afternoon.

All right. With that I will excuse you until

twelve-thirty in the morning. Just come back to the jury room. Obviously, do not undertake the discussion of the case among yourselves in any way. Thank you very much.

(WHEREUPON, the jury exited the open court at approximately 3:21 p.m.)

THE COURT: All right. Let's do this. Now, bear with me. Any other authorities? I have -- what is it? -- Magnolia North Properties versus Heritage.

MR. GRESH: Did you get a cite on that, Your Honor?

THE COURT: I got that, yeah. That's 397 348?

MR. GRESH: Yes, Your Honor.

THE COURT: I'm looking at it. And then 717 S.E.2d 765?

MR. LYLES: Yes, sir. That is the -- let me see which one that one is.

THE COURT: Well, that's the one that you gave me, sir. All right.

Now, any other authorities that you want me to look at?

MR. BELCHER: Yes, Your Honor. It's Laird [sic] versus Rock Hill, which is ---

THE COURT: And I had that earlier, but I want to see it. What's the cite on it?

MR. BELCHER: I'm sorry. Barr versus Rock

Hill.

MR. LYLES: I gave it to him.

THE COURT: We got it?

330 S.C. 640. Okay. That's Rock Hill? Okay.

MR. ANDERSON: Dean versus Ruscon.

THE COURT: Ruscon?

MR. ANDERSON: Ruscon, R-U-S-C-O-N. It's 321 S.C. 360.

THE COURT: 321 360 South Carolina?

MR. ANDERSON: South Carolina, yes, sir. Do you want the Southeast?

THE COURT: No, I just need the one. 321 S.C. 360, Ruscon?

MR. ANDERSON: Yes, that is correct. And also as to the hundred-and-twenty-day rule, it would be Rule 3(a). And then also the Mims case at 399 S.C. 341.

THE COURT: Okay.

MR. ANDERSON: Thank you.

THE COURT: Yes, sir.

MR. IMHOFF: Your Honor, let's go ahead and start with the contribution among tort feasors act cited. That's § 15-38-15, Your Honor.

THE COURT: Just give me that number. § 15-38 -- what is it?

MR. IMHOFF: § 15-38-15.

THE COURT: Okay.

MR. IMHOFF: And specifically the note at 2005 Act 27, Section 16(4) makes clear about the applicability of that to construction cases.

THE COURT: Okay. Effective date?

MR. IMHOFF: I don't have it, Your Honor. I'm sorry.

THE COURT: It should be ---

MR. IMHOFF: 2005.

THE COURT: It'll be in the history, in the notes on the statute.

MR. IMHOFF: I can hand it to you if you'd like to look to see where it is.

THE COURT: I've seen those before. I used to write them. Forgive me. I'm sorry. That was tacky.

MR. IMHOFF: I have a couple of cases, Your Honor ---

THE COURT: Yes, sir. Well, I want any other cases.

MR. IMHOFF: --- about developer liability for our cite of the business judgment rule. Your Honor, first is Dockside versus Detyens, I think is how you say that.

MR. LYLES: Detyens.

MR. IMHOFF: Detyens. 352 S.E.2d 714.

THE COURT: Is that 352 714?

MR. IMHOFF: Yes, Your Honor. And then Goddard versus Fairway Development, and that is at 426 S.E.2d 828.

THE COURT: Okay.

MR. GRESH: One last case on the statute of limitations, Judge?

THE COURT: Certainly.

MR. GRESH: I would cite -- I would direct the Court to Epstein versus Brown.

THE COURT: Do what?

MR. GRESH: I would ask the Court to politely consider Epstein versus Brown.

THE COURT: You didn't say Georgia, did you?

MR. GRESH: No, no, no. I know better than that. I know better than that. I would have been burned by that one.

THE COURT: Okay.

MR. GRESH: This is a great South Carolina case.

THE COURT: Oh, all right.

MR. GRESH: Epstein versus Brown, 363 S.C. 372, and that's a 2005 case.

THE COURT: All right. Do that one for me again. I'm sorry.

MR. GRESH: Yes, Your Honor. 363 S.C. 372, and that's a 2005 case.

THE COURT: Okay.

MR. GRESH: Thank you, Your Honor.

THE COURT: All right. Mr. Lyles?

MR. LYLES: Yes, sir. I think that you've got the Concerned Citizens of Dunes West, which is 562 S.E.2d 633.

THE COURT: Okay.

MR. LYLES: And you've got that one.

THE COURT: 562 S.E.2d 633?

MR. LYLES: Yes, sir.

THE COURT: Okay.

MR. LYLES: Then the Graniteville case, which is 447 S.E.2d ---

THE COURT: 447?

MR. LYLES: Yes, sir.

THE COURT: S.E.2d?

MR. LYLES: 226. The Holly Woods Association case, which is 708 ---

THE COURT: Just a second. 708?

MR. LYLES: S.E.2d 787.

LAW CLERK: What was it?

MR. LYLES: 708 S.E.2d 787. You've got the Magnolia case, and I think you've got the Pope case I've

already given you, I believe. That's the 717 case.

On the issue of the apportionment statute, Your Honor, I know the effective date of the statute, and I know what it says about C.O.s. And this case has always perplexed me a little bit because we have a mixture of dates here. But I also think that the apportionment statute is clear that it applies to tort feasors. If you look at Kennedy versus Columbia Lumber, which is 384 S.E.2d 730, I think Justice Toal in Kennedy ---

THE COURT: 384 S.E.2d?

MR. LYLES: Yes, sir.

THE COURT: What is the page?

MR. LYLES: It's 384 -- excuse me. 344. 344 S.E.2d.

THE COURT: S.E.?

MR. LYLES: Oh, excuse me, Judge. S.E.

THE COURT: S.E.2d, 344 S.E.2d ---

MR. LYLES: I gave you the wrong cite. I pulled up the wrong case. You were right the first time. Kennedy is 384 S.E.2d 730.

THE COURT: Okay.

MR. LYLES: And I apologize for that.

THE COURT: No problem.

MR. LYLES: But the significance of that case as it relates to apportionment is -- I think Justice Toal

in that case makes it very clear that the breach of implied warranty claims are not tort claims. They're different claims. She carefully distinguishes those claims. She talks about tort claims, and she talks about warranty claims. And so the statute -- excuse me -- the apportionment statute applies to tort feasors. I don't know that the apportionment statute applies to implied warranty claims.

I've also got some authority -- and, Your Honor, I'll have to email it to you because I can't put my fingers on it right now -- that there is some authority not in South Carolina, I believe from Illinois, that says apportionment should not apply to fiduciary duty claims because of the special nature of those claims. And I could send that to Your Honor by email. And I'll send it to everybody else as well.

And I think that that's all of the cases. Thank you.

MR. IMHOFF: Are you still hearing arguments on this, Your Honor?

THE COURT: I'll be glad to. I tell you what. I don't know when I'm going to get all of these authorities.

MR. IMHOFF: I'm glad -- well, I made another directed verdict motion, Your Honor, but it was one of

the ones on my list. And I'm glad Mr. Lyles just brought it up. As you know, the implied warranty of habitability has been dismissed in this case. So the only implied warranty cause of action that, I guess, exists against Marick or I.M.K. would be the implied warranty for workmanlike services. And as I was saying earlier, this is two different cases in my opinion. It's the construction and the inspection. My client, Marick -- and I.M.K., I think, will join and maybe M Group -- didn't build the defective construction in this case. I think that Mr. Lyles may be able to say that ---

THE COURT: Well, didn't you take on the construction when you bought the project?

MR. IMHOFF: We built the interiors, but none of the at-fault construction, none of the exteriors that are leaking -- I mean, the cabinets aren't an issue in this case. The carpeting isn't an issue in this case. The interior gypsum board isn't an issue in this case. And that's what my client built. It didn't build the leaking roof or the leaking stone or the leaking foundation. And the implied warranty of workmanlike service is that the work ---

THE COURT: But you still have the duty to inspect, do you not?

MR. IMHOFF: Well ---

THE COURT: And you have the ability to do all of that if you inspect and find it wanting?

MR. IMHOFF: Well, that's right. And that's the distinction Mr. Lyles was just making, is that the warranty claim he doesn't think goes in the contribution statute. But the inspection would clearly go in the contribution statue. You're right. We have -- the allegation is ---

THE COURT: Again, I don't want to get bogged down in the minutia here that -- what is it? -- because this is a directed verdict. I'm not concerned so much as to -- what is it? -- finding, you know, different, I guess you might say, layers or degrees of fault or contribution as much as I'm trying to find out is a party entitled to a verdict as a matter of law, that there are no genuine issues of material fact much like I would have done on summary judgment if I'd had -- what is it? -- of course, we didn't know how the testimony was going to develop.

But the main thing is, no, I don't want to get bogged down here on -- what is it? -- the fine points that might be done at the time of post-verdict motions.

MR. IMHOFF: Okay.

THE COURT: All right. Well, I mean, unless you've got something -- what else? Do you have anything

else to say? I mean -- because as I say, you're talking about the difference between, well, liability based on -- what is it? -- either inspection or -- what is it? -- the construction, discovery or construction. I might have a different -- I have a different problem.

MR. IMHOFF: Yeah, they're two different causes of action. Inspection would be one, and one's the working building.

Your Honor, I do have one more.

THE COURT: Okay.

MR. IMHOFF: And that is to Rick Thoennes' personal liability.

THE COURT: Who is this?

MR. IMHOFF: Rick Thoennes, Your Honor.

THE COURT: Uh-huh (affirmative).

MR. IMHOFF: And his personal liability. The pleadings are very, very long, and there's been a lot of testimony. But as to his personal liability -- and I'm really going to need some help from Mr. Lyles what all he's trying to hit him with. But as a director, he was a director of the board, and he would be protected by the business judgment rule. We would ask that any personal liability be extinguished. As a member of Marick, he was a part of Marick Corporation, the corporation of Marick and ---

THE COURT: And I.M.K.

MR. IMHOFF: Well -- and that was part of I.M.K. And, Your Honor, we would move for a directed verdict on any personal liability of Rick Thoennes as he was working within the corporate form and for a corporation or, Your Honor, as a director on the board. And that's -- most of the testimony I've heard is that it was him as a director looking at the leaks out there and that type of thing.

THE COURT: Mr. Lyles, do you have anything to offer?

MR. LYLES: Well, none, except that I think he owes the fiduciary duty of a developer. His testimony in this case in terms of his board service, he testified today that he was not only the general contractor who had the license who pulled the permits, but also was in charge of the sales staff. I mean, he was deeply implicated in this personally in all levels.

THE COURT: Yes, sir, Mr. Anderson?

MR. ANDERSON: Your Honor, if I could just add one more thought on the fire-rated wall, if I could. Their complaint is the type of material that was used, not how it was attached to the wall. And the testimony was very clear that my client had no selection of material. He was told what material to use and where to

put it. And so that liability would lie with someone else, which appears to be his complaint on the exterior wall covering. By exterior, I mean outside the building. I don't know what Mr. Lyles' definition of exterior is, but apparently it doesn't include that. But that would just be one additional thought I would like to add to my directed verdict.

THE COURT: All right. I tell you what -- yes, ma'am? I'm not going to tell you what.

MS. BROWN: All right. Do you want to wait?

THE COURT: I'll wait to tell you what after I hear from you.

MS. BROWN: Your Honor, I'm just renewing -- or making a directed verdict motion, which is essentially a renewal of my summary judgment motion, with regard to personal liability of Mr. Larry Lollis and Mr. Bill Cox. As you recall in the pleadings, the allegations against Mr. Cox and Mr. Lollis personally are that they authorized, participated in or directed the tortuous or otherwise wrongful acts of I.M.K., Integrys or both of them, and are personally liable for the liabilities of I.M.K. and/or Integrys. I would simply say there's been no evidence to indicate that Mr. Lollis ever served on the board and was anything other than simply a monetary investor in this project. And he should be granted a

directed verdict on that basis due to the fact that there's been no testimony regarding any conduct of Mr. Lollis that was wrongful, negligent at all.

THE COURT: Mr. Lyles?

MR. LYLES: Yes, sir. The liability against Mr. Lollis simply stated is this. The testimony in this case is that Mr. Lollis, as a member of I.K., which is Integrys Keowee, misappropriated or siphoned off the corporate assets of I.M.K. They did it in 2007; they did it in 2006 as they sold I.M.K. assets. And then as Mr. Cox said in his testimony when they sold the I.M.K. assets to Mr. Ludwig, the consideration, the cash consideration for that, which he said was only five hundred and eighty thousand dollars, went directly to I.K. and then was disbursed to the members. It wasn't put into I.M.K. And so I am left, again, suing an entity in I.M.K. that is insolvent and has no assets.

And to compound that, as part of that sales transaction, I.K. received a promissory note and actually benefitted from the sale of these units after the sale to Ludwig and even benefitted from the sale of units which took place after this lawsuit was filed in 2009. And Mr. Cox admitted that. I'm sorry for Mr. Lollis. But the fact of the matter is that hundreds of thousands of dollars that should properly have been in the coffers of