THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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S.C. SUPREME COURT

APPEAL FROM DILLON COUNTY
Alison Renee Lee, Circuit Court Judge

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

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

v.

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

AND

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

v.

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

RECORD ON APPEAL - VOLUME II

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excused.

MR. WILLIAMS: Call john Benton.

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

CLERK OF COURT: Be seated in the witness-box. State your full name for the Court spelling your last, please, sir.

DIRECT EXAMINATION

BY MR. WILLIAMS:

Q. She said state your full name, John?

A. John S. Benton.

Q. And where do you live?

A. In Florence.

Q. What do you do for a living now?

A. I'm retired at the moment. I was general contractor for 38 years.

Q. Okay. And what was the name of the company when you were general contractor?

A. Benton Construction Company, Inc. Incorporated.

Q. And do you do any work even past your retirement?

A. Yeah, I'm still working every day.

Q. What do you do now?

A. I'm helping my brother until he retires.

Q. What is the difference between the work you're doing now as opposed the work you were doing when you were a

general contractor?
A. I'm still doing the same thing just helping him.
Q. You're working for your brother instead of working for yourself?
A. Yeah, I'm working form him, but you know, in the same capacity that I always have.
Q. Okay. What -- tell the jury a little bit about yourself. What's your background and experience that made you become a contractor?
A. I been around construction since I was about 14 or 15. Graduated high school. Didn't go to college. Worked with architect in high school and a couple years thereafter. And then I went to work with a contractor, Kyle Construction. And with them I built banks, motels, superintendent of Nucor Steel. And '73 I believe it was I went in business myself, and I do -- during all that time I did custom homes and light commercial, banks -- not banks. Office buildings, motels, that sort of thing.
Q. You did that from '73 until now?
A. Yes.
Q. When you say a custom home tell the jury what a custom home is?
A. Usually, a home an architects has designed. I guess you may say higher end homes.
Q. Okay. What's the name of the other home that are not

custom homes that people usually use?
A. Most speculative, you know.
Q. Spec houses?
A. Yeah.
Q. Okay. Comparing the quality of construction and workmanship and materials between custom homes and other homes?
A. Normally, it's just -- I don't know how to say it. Things are more expensive. Higher more -- higher quality materials, and I built some -- a few regular homes also, you know. But it's quality. Not going in a knock it out and run, you know. You should take your time and do a good job.
Q. All right. I take it from your answer that you did mostly custom homes, but every now and then would do a regular?
A. Yes, sir.
Q. How many, over the course of the years from 1973 until now, how many custom homes do you think you've built?
A. I don't know. I don't have a clue. Couple hundred.
Q. Couple hundred?
A. Yes.
Q. Close enough. As part of that process is -- do you have to determine what the charge somebody to build a

house?
A. Yeah. Yeah.
Q. All right. What experience do you have in determining how much to charge somebody?
A. Well, when you go into business yourself and you give somebody a price you've got to live with it. So, you know, you figure what exactly what it's going to cost to build a house and you give a firm price and you work towards that contract price.
Q. And why is it important, if it is, that your price be accurate?
A. Either I make a living or I go broke.
Q. Have you made a living all that time?
A. Yes, I have.
Q. And how important is your ability to accurately estimate the construction cost of a house accurately to your having been able to make a living all this time?
A. Well, you have to be pretty accurate or you lose money. You know, you can't stay in business if you don't.
Q. Okay. What has been your number one job as a construction company building customs houses?
A. Estimating. I do some drawing of homes or businesses. But now the way codes are commercial is almost out of the question. And I supervise my work, order materials.

Q. Of those skills, the estimating and the construction supervision and selection of materials and overseeing and all that, what -- to which of those skills are you attaching the most importance in terms of making your livelihood?

A. Well, for it to all work it all has to be -- one is as important as the other. You have to know what you're doing, know what materials you're going to use, what they cost, then buy those materials and try to get those materials because prices fluctuate. And then you got to make sure it's all installed properly and all the work is done in accordance to code and, you know, look right.

Q. All right. In your experience what's the best way to estimate and give somebody a firm price on what it's going to cost to build a structure?

MR. PLYLER: Your Honor, objection. Just a housekeeping matter. It's now we're getting into opinion. He hasn't been properly qualified as an expert or offered in a certain field.

MR. WILLIAMS: Your Honor, I'm asking that as a qualification question. I'm getting ready to tender him as an expert.

THE COURT: Repeat the question.

BY MR. WILLIAMS:

Q. My question is, I think -- I think I'm repeating it.

May be a new and different question. But question is how do you go about estimating? What is the process one goes through?

A. Well, you study your plans and start from the day you walk on the cite, and my way of doing it is I take off every piece of material that's used in the process of building that structure.

Q. Every piece of material?

A. Every piece of material.

Q. You don't do any guessing of amounts?

A. No, sir.

Q. When you say every piece do you mean like nails and lumber?

A. Yes, sir.

Q. Okay. And is that the process you've gone through since 1973?

A. Yes.

Q. Okay?

MR. WILLIAMS: Your Honor, I would offer Mr. Benton as an expert in the field of estimating construction costs for custom homes in this area of the world.

MR. PLYLER: In this area of what, Judge?

MR. WILLIAMS: Of the world. The Pee Dee.

THE COURT: Any voir dire?

MR. PLYLER: Yes, please, Your Honor.

VOIR DIRE EXAMINATION

BY MR. PLYLER:

Q. Mr. Benton, Daniel Plyler. We met last month I think; is that right?

A. Yes, sir.

Q. Now, you never actually constructed a home in Latta, South Carolina, have you?

A. No, I have not.

Q. Well, I guess the next thing answer should be pretty simple. You didn't construct the Graham's house, did you?

A. No, I did not.

Q. In fact you never constructed a house in Dillon County, have you?

A. I've done some work in Dillon County.

Q. Okay. Well, I think during your deposition I asked you that question, and you said you'd done one in Bennettsville?

A. I did a house in Bennettsville. I built a Save Way Convenience Store here in Dillon.

Q. Well, you agree with me that commercial and residence construction are different, correct?

A. Different materials.

Q. Okay. But you never built a residential home in Dillon County, have you?

A. No, I have not.
Q. And correct me if I'm wrong, but you haven't done any testing or inspection to determine whether or not the Graham's property, the house on the Graham's property, needs to be destroyed?
A. Needs to be what, sir.
Q. Needs to be bulldozed, torn down, destroyed?
A. Environmentally, that sort of thing I'm not qualified for that.
Q. Right. All you can talk about is if I was going to build that house how much it would cost?
A. What it cost to replace it. Yes, sir.
Q. But you have no evidence, testing, inspection, anything to suggest that it needs to be replaced?
A. No, sir.
Q. That's correct, right?
A. That's correct.
Q. All right?
MR. PLYLER: Your Honor, our objection here is Mr. Benton -- I'm sorry. We had a Benton Henry earlier so I was attempted to call you Henry. I'm apologize. Mr. Benton's work in this case is -- our objection would be that it's irrelevant. There has been no evidence and no testimony that the house in question needs to be replaced. And I happen to know that his estimate is done as a

replacement cost estimate, and he's never built a house in Latta or in Dillon County. So I don't believe he would be qualified, and the opinions he's about to give are irrelevant to this matter.

THE COURT: Any further voir dire as to his qualifications?

VOIR DIRE EXAMINATION

BY MR. WILLIAMS:

Q. Mr. Benton, where have you built houses?

A. Florence, Marion, Myrtle Beach, Bennettsville, Darlington.

Q. Is there any reason you couldn't build a house in Dillon County?

A. Oh, no. You fill -- I mean I was licensed by the State of South Carolina for unlimited. So I can build anywhere in the State.

Q. Is there anything unique, peculiar, or unusual about Dillon County that would make it a weird place outside of your experience to build?

A. No, sir.

Q. Is there -- have you built houses farther away from Florence than Latta is?

A. Oh, yes.

Q. And you just named some?

A. Yes.

Q. Okay.

MR. WILLIAMS: That's all I have, Your Honor.

MR. PLYLER: Your Honor, may I just briefly?

THE COURT: Yes, sir.

FURTHER VOIR DIRE EXAMINATION

BY MR. PLYLER:

Q. Now, Mr. Benton, you're not currently licensed as a contractor, are you?

A. I dropped my license about two years ago.

Q. So you haven't been licensed as a contractor in two years?

A. That is correct.

MR. PLYLER: Your Honor, I still maintain our objections as to relevance. I still think there is an issue, to some degree, to his qualifications on this particular matter.

MR. WILLIAMS: Your Honor, may I ask two more voir dire questions?

THE COURT: Yes, sir.

FURTHER VOIR DIRE EXAMINATION

BY MR. WILLIAMS:

Q. Is the person you -- is your brother that you work for is he a licensed contractor?

A. Yes, he is.

Q. And what job do you do for -- what's the name of his company?
A. Now it's Construction Management of Florence.
Q. What's your principle function with Construction Management of Florence?
A. Estimating, supervision.
Q. Any difference between that type of estimating you're doing now and what you used to do when you owned your own company?
A. No, it is not.
Q. Okay. Thank you?
CLERK OF COURT: I'll find him qualified as an expert in estimating residential home building.
MR. WILLIAMS: Thank you, Your Honor.
THE COURT: And I'll overrule your objection otherwise.
MR. PLYLER: Thank you, Your Honor.

FURTHER DIRECT EXAMINATION

BY MR. WILLIAMS:
Q. John, were you engaged to do certain work with respect to the Graham house?
A. Pardon?
Q. Were you engaged to do something relating to the Graham house?
A. I was asked to work up an estimate to replace it as

built as close as possible.
Q. And who asked you to do that?
A. You did.
Q. And did you do it?
A. Yes, I did.
Q. Approximately, when was that?
A. February this past year.
Q. Okay. Of 2012?
A. Yes, sir.
Q. Okay. How did you -- in order to do that what did you do?
A. I got a set of floor plans from your office, I think. Made a copy of them. Returned those to your office. Went to the site. You gave me Mr. Graham's number. I called him. He met me, opened the door, showed me though the house, and he left. And I went through the house. Upstairs, down. I looked under the house, but I didn't go under the house for obvious reasons.

I went in the attic. I looked at everything that I could possibly look at. And I wound up making three other trips back to be sure to confirm everything that -- cause sometimes you look at a whole house some things you can't remember at all. And I wound up with three other trips to be sure that I got it all right as far as finished materials and how things were done, what materials were

used. And it took four trips all together to finish my estimate.

Q. And having done all that and having gathered that information what did you do next?

A. Well, I was -- during the whole process I was figuring. Once in a while you run up on something like, well, what was around the front door or what kind of windows were they. Hundreds of thousands of things, you know, that's involved in it, and you can't get them all with one trip. And I run into something that stumped me, and I couldn't remember what was used or how it was used. I had to go back and check it. And then I completed my estimate.

Q. And what do you do about pricing things that you observe?

A. I don't understand.

Q. How did you determine what a window cost, for example?

A. You get a price from a window manufacturer or a building supply.

Q. And is that what you did in this case?

A. The same. I got prices on just about everything in the house I got two different prices from different building supplies. In fact the windows come from a building -- from a window manufactures. But not a

manufacturer. A window dealer, not a building supply. Most of the materials I got prices from two different building supplies.

Q. When you're doing your estimating like that on this house -- you said you checked from two different places. Is that what you've typically always done?

A. Yes.

Q. Are there things that you don't get fresh, new estimates from that you know what to price is and you're willing to just kind of guess?

A. Not in the last ten years. The prices change daily. In fact since I've done that estimate prices have changed.

Q. Okay.

A. Some of them dramatically.

Q. All right. What kind of computer records do you keep when you do that kind of work?

A. As far as an estimate I don't do computer. I do it all by hand. I do it I guess the old way, you know.

Q. You just use paper and pencil?

A. Paper and pencil. I'm computer illiterate. I don't know how to turn one on. I got three in the house. My wife, you know, do all the bookkeeping.

Q. How about calculators? You use a calculator?

A. Oh, yes, sir.

Q. And then you write down the -- what you --

A. Yes. Advanced to master calculator.
Q. Okay. Did you prepare a written estimate in this?
A. Yes. Yes, I did?
Q. Okay. I'm going to show it to you. It's Plaintiff's Exhibit 15. It's been marked, and here it is. Can you identify Plaintiff's Exhibit 15?
A. Yes. That's my estimate.
Q. Okay. And what is it consist of?
A. Every piece of material in the house.
Q. And the front page is what?
A. It's a cover sheet of accumulation of different items. Everything from what a survey would have to be done. Get it on the property for a new house all the way down to paint, plumbing, electrical, everything.
Q. And what are all the other pages in there?
A. Those are an accumulation of itemized materials in the house.
Q. Give us an example of what you mean by itemized material?
A. Well, if you go to any sheet you will find, like on this one, is two by tens. I've get the lengths of every different length, every different length, every different amount of every different length that I use, and i put where they're used. And it's just an accumulation. Like in the floor systems of how many two by tens. Anywhere

from 8 foot to 16 foot that are used. Same thing with baseboard in the house. Accumulation of how many linial feet is a baseboard, crown molding or whatever.

Q. Okay. Now, John, in this case you had an actual house? You knew exactly what you were going to build, right?

A. Yes.

Q. Is that typical?

A. No. Usually you have to take off a set of plans.

Q. Okay. Have you ever had to duplicate a house before?

A. Yeah. I -- might as well as I reconstructed one. Somebody had an old house that was built in, you know, late 18, 1900s. You would go a measure it, redraw it and rebuild it, you know.

Q. So this was not something that you had to study up on how to do?

A. No. No.

Q. Okay. Is there a book you can go to or would it be easier to go to some book somewhere and figure out what the prices this house?

A. Not for me, not. A lot of people square foot stuff, but you can't do it. You can't square foot something unless you build the same house over and over.

Q. Okay. On this house, when you examined it, did it -- earlier you used the words 'custom house' and 'ordinary

house' What kind of house was the Graham's house in Latta from its original, as is construction when you saw it?
A. It was a reasonably nice home.
Q. Would you put it in a category of a custom house or ordinary house?
A. Yeah. Yeah. I mean it's just some things, you know, aren't updated maybe. Like everybody now is using granite countertops, you know. But there were some unique things about the house that were unique. Yes.
Q. When you were pricing it did you price it like you were trying to reconstruct that house as a custom house or as it set?
A. As it set.
Q. As it set?
A. Yep.
Q. And is that what you did?
A. Yes. Like upstairs they had something I've never seen anybody do. It was oak flooring, and they had sanded them and went back and used a sand blaster. And it eat out the soft porous part of the wood and made it look like it was, you know, a couple hundred years old. I'd never seen that done before. It was real neat. And I priced which costs about another $1,800 over just refinishing the oak floors.
Q. Okay. Any other special features that you noticed in

the house that affected the pricing?
A. I mean every house has it's little quirks, you know, but those kitchen countertops were I think -- I can't remember exactly. I believe they were heart pine and they were naturally finished.
Q. All right. Well, let's ---
A. It's been six or eight months since I've done this so I don't remember everything.
Q. Okay. Well, look back at your work if you need to and let me just ask you this question. After all that work, all that analysis and applying your training and background and experience, did you determine what it would cost to rebuild the Graham house on a different piece of land?
A. Yes.
Q. And what was that?
MR. PLYLER: Your Honor, I just renew my objection as to relevance. Just to make sure the record is protected.
THE COURT: Overruled.
BY MR. WILLIAMS:
Q. You may answer.
A. $478,280.
Q. And does that include everything?
A. I think the only thing it didn't do would be grading and seeding the yard. Landscaping and that sort of thing.

Q. Okay. So does it include buying the land?
A. No.
Q. So this is just to reconstruct that house on a different piece of land?
A. The house, the driveway, the fence, the brick fences, storage, the back part of the carport, everything. Everything that is on that piece of property. Not including the pool nor irrigation, nor grading and landscaping.
Q. Did you say not including the pool?
A. Not including the pool.
Q. Okay. Does that include the appliances?
A. Yes, it did.
Q. Let's say that for some reason they decided to not use the appliances you priced but to take the appliances from the existing house and put them in this other house. How much did the appliances cost out of that $468,000?
A. $4,500.
Q. $4,500.
A. Yes, sir.
Q. And give me the ---
A. I rounded that figure off cause it was a few dollars of being that.
Q. All right. Give me the figure again. The bottom line what it would cost to rebuild the house?

A. $478,280.
Q. $478,280?
A. And 56 cents.
Q. Okay. And is all that paperwork there in your handwriting and you did the calculations yourself?
A. Yes, sir, it is.
Q. And does that reflect your opinions that you just expressed here today?
A. Yes, sir.
MR. WILLIAMS: Your Honor, I would offer that in evidence.
MR. PLYLER: Objection, Your Honor. It's not admissible evidence. This is hearsay. He just specifically said it was his opinions so it's not available to exception under the hearsay rules. He's obviously testified to it. Mr. Williams is willing to talk a bit more if he likes, but that doesn't mean that it comes in evidence.
MR. WILLIAMS: Your Honor, I think it would have been helpful for the jury to examine it during their deliberations, and I believe it is admissible.
THE COURT: Then the opinions only relate as to the pricing? Is that what it is?
MR. WILLIAMS: Yes, Your Honor. And the whole exhibit relates to the pricing.

MR. PLYLER: If I may be heard briefly, Your Honor.

THE COURT: Yes, sir.

MR. PLYLER: I mean that's the problem. The entire document is suggestive opinion. Mr. Benton's subject opinion of what materials would be needed, how much these materials would cost, and how many of these materials we would need. So the entire document is subjective opinion. He's here to testify to it. He's done that. Now, that doesn't mean the document itself is evidence to be admitted in the record.

I believe under the hearsay rules there is not an exception that applies. Therefore, it's out of the Court state of being offered. It's subjective opinions would not be admissible.

MR. WILLIAMS: Your Honor, I'm going to withdraw the exhibit. Let me just ask the witness a few more questions, and we won't worry about an exhibit.

BY MR. WILLIAMS:

Q. John, if somebody examines your work, goes behind you, checks every one of those figures behind you -- well, I don't want to ask that question. How confident are you in the accuracy of your figuring?

A. I've done it for 40 something years.

Q. Exactly the same way?

A. Yes, sir.

Q. And if you got it wrong what would happen to your livelihood?
A. I would -- it would be my problem.
Q. Okay?
A. Not the homeowner.
Q. Thank you.
MR. WILLIAMS: That's all I have, Your Honor.
THE COURT: Any cross?
MR. WREN: Yes, Your Honor. Briefly.

CROSS-EXAMINATION

BY MR. WREN:
Q. You still have the estimate in front of you, sir?
A. Yes, sir.
Q. Okay. I have a few questions. All right, sir. $478,000 -- excuse me. $200 -- excuse me. $478,280.56; is that correct?
A. Yes, sir.
Q. And that includes 10 percent for your fee?
A. Yes, sir.
Q. And 10 percent for the use of your equipment? Is that how I understood that?
A. That's overhead and expenses. Trucks, gas, equipment.
Q. All right. So that's almost $80,000 right there, isn't it?

A. Yes, sir.
Q. So just to build the house, taking out your fee and overhead for just a minute, and I understand you wouldn't build a house without charging a fee. Wouldn't expect you to. Taking that out we're down to $398,580.56, correct?
A. That is correct.
Q. That doesn't include the pool?
A. No, sir.
Q. And that didn't include the irrigation system; is that correct?
A. That's correct.
Q. And doesn't include the land that it's going to be built on?
A. That is correct.
Q. And it doesn't include the grading of the property where this house will be built?
A. Final grading, yeah.
Q. And -- but it does include -- does that say -- make sure I get it right. $34,000 -- $34,620 for paint?
A. Yes, sir.
Q. Okay. And to get somebody to put the paint on the walls?
A. Painting inside and outside. Yes, sir.
Q. Is any part of the Graham's property painted on the outside? It's a brick house, correct?

A. Brick house, vinyl siding, but it did have some painting. Yes, sir.
Q. Okay. On the inside was there anything particularly extravagant about the paint on the walls?
A. No, sir.
Q. Have you ever heard the term 'true cut lumber'?
A. Yeah.
Q. I think when we talked about this last month you called it rough stone. Am I saying that right?
A. That house was built out of mostly rough stone lumber. Yeah.
Q. All right. But you wouldn't use rough stone lumber today because it's not treated; is that right?
A. True.
Q. And I think you calculated, and I understand you didn't price is per square foot. I'm not asking you to, but you calculated this particular house was 2900 square feet; is that correct?
A. I've forgotten now, sir.
Q. Okay. Well ---
A. I wouldn't object to that. I don't know.
Q. That sound about right, 2900?
A. Probably right.
Q. All right. We can get your deposition. I think there in your deposition you said 2900 square feet?

A. If I did that's -- if I said that that's what it is. I don't have that.
Q. That's fine.
A. I had a rough sheet that had something about it.
Q. And when you were contacted be Mr. Williams to put together this estimate he told you what it was for, correct?
A. Told me what?
Q. He told you why he wanted you to calculate this estimate, correct?
A. Yeah.
Q. I mean you knew you weren't actually going to go build this house, am I right?
A. No, I didn't know.
Q. Okay. Did you think you were going to build this house for Claude and Vickie Graham?
A. I -- no. No, I hadn't planned on it. No.
Q. Okay. So you knew you weren't going to be going to build this house when you were putting this estimate together, am I right?
A. No. I mean it's a possibility if I could rebuild this house somewhere else.
Q. Have you ever had somebody come to you and ask you to build a house when they didn't have a piece of property for you to build it on?

A. Yeah.
Q. Okay. That happens a lot?
A. No. But it happens, yes.
Q. And I think you included the price of your estimate the cost of the survey, correct?
A. Yeah.
Q. And you wouldn't build a house without a survey, would you?
A. No.
Q. Why?
A. Because I want to be sure it's put on the right place.
Q. And you want to be sure you know what the value of that property is, correct? You don't want to put it on somebody else's property?
A. True.
Q. You want to know it's on the property, right?
A. I think I know where you're going, but I don't know how to answer that question.
Q. All right. It seems to me like a pretty simple question. If you're going to go build somebody's house you would want to know what's on that property before you started building it, correct?
A. I want to be sure it's put in the right place and good soil perk, maybe -- even possibly soil treatment. I

mean soil testing, you know.
Q. I mean you don't ---
A. With the new code.
Q. You don't want somebody to spend $478,280.56 and you end up putting on top of something it shouldn't be on top of?
A. No, I wouldn't.
Q. That would be bad, wouldn't it?
A. Yes, it would.
Q. And as a builder you could be liable for that, couldn't you?
A. No, I don't think so.
Q. All right. That's fine. We'll move on to something else. Now, I think I asked you this already during what we call voir dire when I was talking to you a minute ago, but you didn't do any testing or inspecting to determine whether or not this house needs to be replaced, did you?
A. No.
Q. Okay. And when you were getting estimates for those numbers that are in your estimate here you're getting quotes from people; is that correct?
A. Yes, sir.
Q. You didn't get any quotes from anybody in Dillon County, did you?
A. No.

Q. Nobody from the Town of Latta?
A. No, sir.
Q. Okay. And you didn't do any -- you weren't asked to do, I assume, so it might be why you didn't do it. But you didn't do any investigation to see what property and houses cost in the Town of Latta, did you?
A. No.
Q. And you charge $2,800 to put this estimate together; is that correct?
A. That is correct.
MR. WREN: Court's indulgence.
BY MR. WREN:
Q. Thank you for your time, Mr. Benton. We had a Benton Henry earlier, and I'm tempted to call you Mr. Henry. I apologize.
A. Okay.
THE COURT: Any redirect?
MR. WILLIAMS: Yes, Your Honor.

REDIRECT EXAMINATION

BY MR. WILLIAMS:
Q. John, you didn't put this appraisal -- this estimate together for the purpose of bidding on building this house, correct?
A. No, sir.
Q. Okay. If Mr. Graham had said to you, "Cool. I

really like this estimate. I've got a piece of land. Will you build this house for me for that price," would you have at that time?
A. At that time. I wouldn't today do it for that price.
Q. And why not?
A. The prices have increased.
Q. They've increased since then?
A. Yes.
Q. Okay.
A. Plywood has gone up $8 a sheet in the last three weeks.
Q. Okay. But as of the time you prepared that estimate it was suitable for entering into a contract or testifying in court, either one?
A. I would replace it for that price. Yes.
Q. All right. Thank you.
THE COURT: You may step down.
MR. WILLIAMS: That's it. May Mr. Benton be excused, Your Honor?
THE COURT: Without objection you may be excused.
MR. WILLIAMS: Than means you can go home. Your Honor, may I approach the bench?
THE COURT: Yes, sir.
(WHEREUPON, a bench conference was held off the record in the presence of the jury, but out of the

But there seems to be a specific exclusion or exception for nuisance. And I don't see that, unless Mr. Wren can enlighten us, I don't see that there are any cases that have specifically interpreted that particular subsection.

MR. WREN: Your Honor, to answer your question, may it please the Court. There are none. Judge Benjamin and I, a year or two ago spent some time on this.

MR. WILLIAMS: I'll withdraw the motion, Your Honor.

MR. WREN: We agreed that there is nothing there. The way I research it, Your Honor.

MR. PLYLER: I wasn't prepared to argue it, of course, this morning, but I'll be quite honest, Judge, it's pretty straight forward.

MR. WILLIAMS: I'll withdraw the motion, Your Honor. I agree with him. It is pretty much straight forward. That's what happens when you have good ideas after Court and don't check them out in full before 8:30 in the morning.

MR. WREN: At least Mr. Williams has good ideas.

THE COURT: Well, we all get an education, so. I had no idea that was even there.

MR. WILLIAMS: And I do rest, Your Honor.

THE COURT: Are there motions at this time?

MR. WILLIAMS: No, Your Honor. I meant to say I

rest, but the Plaintiff does in fact rest. No motions by Plaintiff.

THE COURT: All right. So Plaintiff is rest. Are there any motions by the Defense?

MR. WREN: Yes, Your Honor. At this time, the Defendant, Town of Latta, in both cases that we have here, Judge, would move for directed verdict. As we touched upon late yesterday u think we are in agreement. Always like to confirm especially in a situation where we have two claims. One, of course, on behalf of Claude Graham. One on behalf of Vickie Graham; that causes of action raised in those complaints from Mrs. Graham. Those being inverse condemnation, trespass and negligence. And then, of course, Mr. Claude Graham's complaint, negligence.

I think we touched upon it. Just to clarify it again, Judge, that for all intents and purposes through this trial for purposes of this motion we're treating the negligence claims as one and the same. So with that said, Judge, again, the Town does move for directed verdict as to all causes of action that have been raised by the Plaintiffs.

If Your Honor has any preference or direction on how to address those. My presumption was I would simply take them as pled, Judge. And I'd be happy if you like for me to argue the cause of action and then allow rebuttal or

whatever suits Your Honor?

THE COURT: Let's go by inverse condemnation and then trespass and then negligence.

MR. WREN: Thank you, Judge. And again may it please the Court. Judge, you actually enlightened counsel yesterday in regards to your having recently dealt with some of these issues in another matter I believe Your Honor has handled. So I won't belabor a lot of the background law. I do just want to set a time to set the preference for what the law is, foremost, in regards to the cause of action for Mrs. Graham as to inverse condemnation.

Judge, recent law and specifically I think is well cited and established and controlling in this case is the case of Hawkins v. the City of Greenville. A 2004 Court of Appeals Opinion that outline essentially what inverse condemnation is, the elements are. It's when a governmental agency commits the taking of private property without exercising its powers of imminent domain. And to establish this inverse condemnation the Plaintiff must show an affirmative, positive, aggressive act on the part of the governmental agency. Number One.

And, Number Two, a taking. And then Numbers Three and Four; being the taking is for a public use.

And, Four, that the taking has some degree of

permanence.

Your Honor maybe aware there is some case law that perhaps more so a regulatory context distinguishes or questions whether you need elements Three and Four. Not withstanding, Judge, I think any arguments we make there. What would be controlling for our purposes as would be as to Elements One and Two; the affirmative, positive, aggressive act that the Plaintiff must now show and establish.

And, of course, the taking itself. Importantly, Judge, and I think entirely applicable in this situation. The evidence, the testimony that's been put forth is the fact that as to inverse condemnation allegations of the mere failure to act are insufficient to establish a claim for inverse condemnation. And I highlight that, Judge. I'm citing to the Hawkins decision for that law. I highlight that because that's entirely the case and the evidence that's been put up these last couple of days here in Dillon County.

What the Grahams, what their witnesses, the evidence has come in and has shown is if anything what we have here and what their alleging is that the Town has failed to act. And I cannot imagine the facts or evidence in that is more applicable to the same situation that they had in Hawkins.

Now, basically Hawkins is not all that different from the matter at hand. In fact, through the coarse of this case, you know, Hawkins, we -- of course, the law has been there. Its been established. We knew that to be there, and we've seen these parallels throughout the course of the discovery and, of course, the presentation here at trial.

They're dealing with the City of Greenville in a storm water situation. But -- and the claims against the City, which also I'll note because we'll come back to, included the trespass and negligence. Wherein the city prevailed on all those for slightly different reasons on each. But as to inverse the allegations were that it was improperly designed and improperly maintained.

Well, what the Court did in looking at the evidence there, what the Plaintiff established was that nothing had been done. And that's where, Judge, again, I want to highlight the fact that the law is a mere failure to act is insufficient to establish an inverse. I see this issue being very clear. I believe that the Town should prevail on that ground alone.

However, I also want to add additionally that the -- with inverse we've got to look a numerous cases. I say Hawkins because, Number One, it's fairly recent. Number Two, there are some analogous facts. And, Number Three,

it's important for our purposes because they handle all these causes of action and the governmental entity prevails as a matter of law.

But there are some other cases and some of these, Judge, for the record, and I think we did this on the record yesterday, some other cases that I think are also enlightening on this failure to establish an inverse claim in this case. Your Honor I think mentioned a couple of these. I don't have my list to compare. One being Brandi v. City of Spartenburg. A little bit older. A 1987 Court of Appeals opinion.

But in Brandi it was the same thing. Essentially there that a sewer backed up where the Court found it did not establish a taking. It lacked the elements of, of course, the taking. The second element. But also there the Court found that there was no affirmative, positive, aggressive act. And now, Judge, I hope what I'm painting the picture that every case out there is found is not inverse.

But, certainly, there are cases where the Court's have found inverse. But the distinguishing element in all of this is they have that element -- establishment in the case of the positive, affirmative, aggressive act. Whether it be capping a landfill. Whether it be Berries on Main where the City of Columbia, I know it all too

well, went in and affirmatively did work and changed things on the street and with the building. Those facts, that evidence is entirely lacking in this case.

Additionally, Judge, Balou v. City of Spartenburg, 1981 Supreme Court Opinion, which had to do with actually designing of a building, inverse condemnation was not established. I would not that that case was actually overruled on our grounds, but not withstanding as to the inverse claim it's still good law.

Additionally, Judge, McEachin v. Mungo, not one of the ones with cited today, but I came across it. 1986 Court of Appeals Opinion. And if it counts for the record, Judge, I'll give the cite. 340 SE 2d 154. That had to do with an inadequate drainage system. And to the degree any of the assertions or evidence in this case is going to inadequate design or sewer system, again, inversus was not established in that case.

A couple others, Judge. Gaskins v. Town of Conway. An old case, 1940. Had to do with the denial of a building permit, and there are, of course, regulatory, there is zoning cases. I had the distinct privilege of having two of those go up in the last couple of years to the South Carolina Supreme Court, the Carolina Chloride Opinion and the Quail Hill Opinion. Those dealt with zoning. Similar issues. Similar problems. Even the

regulatory context, but especially here where they cannot establish that affirmative, positive, aggressive act.

And then, of course, Judge, the last one I have is what we talked about which does deal with water issues and that being the fault in this case which is entirety on point in this situation.

With that said, Judge, and as I've already eluded to there are cases where that affirmative act has been shown and established. I mentioned Berries. That's a good example. Also, Newsome v. Town of Surfside Beach. 1989 Court of Appeals Opinion. There the governmental entity went out and physically raised the level of a street found to be an affirmative act. Don't have that evidence here.

Things such as holding loose a gas line. Preventing a land owner from taking action. Where the government is affirmatively doing something. If they've established that. We do not have those facts or that evidence here in regards to establishing and inverse condemnation case.

And, Judge, also let me -- we've touched on Brandi, Hawkins, Cobb v. South Carolina Department of Transportation. This is what, again, this not being on the record and pretrial with Your Honor we touched upon. And that is instructive on the fact of how an inverse condemnation case is handled in South Carolina; that being where the trial judge is the one that must determine

whether or not a claim for inverse has been established.

And in view of damages, of course, is the issue that will be submitted to the jury. And for our purpose, of course, Judge, we have -- we discussed and I agree that a set bifurcation on that would not be necessary. I think it would, frankly, waste the Court's time and the jury's time. So we've handled all that concurrently. But not withstanding is a matter of law that inverse condemnation claim must be decided by Your Honor.

And, of course, under South Carolina Rule 52 that requires that separate, under that non-jury, requires the separate finding of fact and conclusions of law that has to be rendered to establish this. But not withstanding, I guess that's a more procedural, Judge. The big issue here, and I'm probably beating a dead horse, is the Plaintiff's unequivocally, and I probably should say for Plaintiff, Vickie Graham's claim, unequivocally has failed to establish these first two necessary elements under inverse condemnation.

We submit that they failed to establish it, period. But I think it is unequivocal. They have failed to set forth the evidence of a positive, affirmative, aggressive act to establish that claim. For that reason, Judge, the Town would ask that this -- that they're entitled to directed verdict on this first cause of action we

addressed.

THE COURT: Just to be clear, Mr. Wren, what I'm hearing you say is that even if I -- no matter what I rule on this particular claim I would still need -- I would still under rule 52 or 59, whichever. Fifty-two be required to set fourth in writing specific findings of fact and conclusions of law?

MR. WREN: That is our contention, Judge.

THE COURT: Yes.

MR. WREN: I base that on prior experience as well, Judge.

THE COURT: Yes, sir, Mr. Williams. I'll hear you on this.

MR. WILLIAMS: Thank you, Judge. Your Honor, on the inverse condemnation claim, procedurally, I would suggest that the Court not rule on this motion at this time but wait until the presentation of all the evidence when the Court will be making the liability determination on the matter.

Subsequently, I think the evidence does show that the Town undertook affirmative, positive, aggressive action. And in saying that there are two parts to my argument. One is all the cases that Mr. Wren has cited that relate to findings against the -- in favor of the government against the land owner for inverse condemnation relate to

activities undertaken by the government off of the Plaintiff's property. A water system that malfunctioned and overflowed onto the Plaintiff's property. Alteration of land features that caused water to flow on the various properties. Things of that nature.

In this case the governmental entity has placed on the Plaintiff's property this governmental device, the Town's main sewer line. If one affirmative, positive, aggressive act occurred in 1924 or thereabouts when they built that line there and have kept it there ever since and the Plaintiff only discovered it when the Plaintiff only knew or should have known that it was there without permission and sometime in 2010.

Secondarily, each and every time the Town dumps its sewage on to the Plaintiff's property that's an affirmative, positive, aggressive act. The Town is choosing to continue to dump its sewage on her property. They have not redirected the line. They have not decided to dump it somewhere else. They have not decided to shut down the Town's water -- sewer system. They have decided that it's in the City -- the Town of Lamar's best interest to continue dumping sewage onto Vickie Graham's property. And I think that's an affirmative, positive, aggressive act.

THE COURT: Can you define what you mean by dumping

sewage on the property?

Q. Allowing the sewage to leave the property line. The main sewer line by exfiltration process and come on to the Plaintiff's property. Whether by the line itself or by that manhole that spews it from the street. It's doing it in both fashions I think the evidence shows. It's coming up from the line and it's coming over from the street.

And it's almost like every flush of the commode in the City of Latta has the potential to be one more affirmative, positive, aggressive, act. Those acts not only cause damage, apparently, when there is significant moisture of some kind, whether heavy rain or whatever, but each instance is an affirmative, positive, aggressive act which the Town of Latta chooses that it's in the best -- the Town of Latta has said in effect it's in the best interest of all the citizens of Latta that we continue to have some sort of sewer line.

And if that's -- the cost of that is that it goes through the Graham property then so be it. We're saying that could -- they're going so be it on the sewage then you've taken our land. It's no longer habitable. Thank you, Your Honor.

THE COURT: And so I just want to make sure that I understand your argument. You're claiming that, basically, that because the sewer line exists on the

property and because it's the main sewer line that whenever sewer runs through that the City is affirmatively in doing something actually doing something that causes damage to your property?

MR. WILLIAMS: That is correct cause the City continues to allow sewer from other people's houses and the rest of the Town to run through there, and that's a positive act. And they undertook those acts. They're using her land for a public purpose without legislative action.

THE COURT: Let's state it a different way.

MR. WILLIAMS: Okay.

THE COURT: The sewer line has been there since 1924.

MR. WILLIAMS: Correct.

THE COURT: According to the testimony. And what I hear you saying, basically, is that the City is not moving the line or removing it from the property? And so it could be argued that that's a failure of the City to act. The failure of the Town to act. The failure to do something that would prevent injury to the Plaintiff's property. How under the case law that's been discussed how is that an affirmative, positive, aggressive act?

MR. WILLIAMS: It's -- I -- what I say to this things that I have tried to make that their failure to act under these circumstances become an affirmative, positive,

aggressive act. They're doing something that they didn't intend to do. But they elect to continue to do it. So they elect -- they can cap this line. They can cap it, and by not capping it they are electing to dump sewage onto the Plaintiff's property.

It's a fine line between failure to act and positive action under these circumstance I think that the activity of the Town should be viewed as an affirmative, positive act. A decision on their part knowing that what they are currently doing is causing damage. They elect -- and unjustifiably causing damage. They elect to continue to operate their sewer system.

THE COURT: And I understand that, and I understand that argument. It just appears from the case law that it has to be more than a decision to do or not to do something; that there has to be some physical act to the property that would subject them to a condemnation claim.

MR. WILLIAMS: They go out there and they place the line and maintain the sewer line when it overflows from that manhole on the street. They go out and do things to make it work better. They do things back at their facilities to cause the Town sewer system to continue to function, cause the Town sewer system to -- they are electing to use these people's property to operate their sewer system.

In effect their dumping sewage on their property. They's electing to do that ever time. Every time that the sewage gets there the Town has elected to dump it on their property.

THE COURT: And explain to me just so that I'm also clear. I understand the allegations and the claims that whatever comes out the manhole cover and filters onto the Plaintiff's property creates a problem. Explain to me what evidence there is about the property itself and how the line is, for lack of a better word -- the word that has been tossed around quite frequently is 'leaking'. And I'm still having a difficult time understanding that.

What evidence is there about that actual leaking?

MR. WILLIAMS: The evidence is ---

THE COURT: Or what do you consider to be the leaking?

MR. WILLIAMS: I believe that Mr. Davis' testimony was that it being a terra cotta pipe in all likelihood deteriorated to the point that it leaked. And that there was -- and his opinion was that there was exfiltration from that line on to the Graham's property. And I -- it's supported by the testimony from Mr. Graham about the line being, according to the City, being under the house.

The testimony from Mr. Graham was the City had accepted responsibility for it, and said I think the

physical evidence has been observed that even on the occasions when there was not excessive rainfall that created sewage overflow problems from the manhole that dumped onto the yard, even on occasions where that didn't happen, there was still sewage coming up under the house.

And, logically, it would seem that it's a reasonable inference that the finder of fact should draw is when the sewage is only appearing under the house it means that it has filtered from somewhere outside the house especially when there is no evidence of sewage out in the yard, etc.

Restating, the sewage is under the house but not in the yard. It seem a reasonable conclusion that the sewage must have exfiltrated from the sewage line on the property.

MR. WREN: May I be heard, briefly, on the last issue?

THE COURT: I'll get to you in just a second. I'll let you respond.

MR. WREN: Okay. Thank you.

THE COURT: Anything further, Mr. Williams?

MR. WILLIAMS: No, Your Honor.

THE COURT: Yes, sir, Mr. Wren.

MR. WREN: Yes, Your Honor, briefly. As to the last point or two Mr. Williams has advanced I just want to clarify cause I think perhaps the claims or issues here.

This idea of this kind of inference based upon the fact that there is sewage there must be because of the City is how it got there.

Your Honor, actually, this comes out of the Snow case that we're going to address in just a moment as to trespass and negligence for that purpose. But in South Carolina this idea, this theory of, well, it's there. It must have been the Town's fault. The law is there is no inference of such a claim simply on the fact that there is an entry.

And in fact South Carolina unequivocally does not recognize res ipse loquitur which is exactly what I understood Mr. Williams to kind of be arguing. Now, I don't think it's applicable to inverse regardless. I think what's controlling here is the point that advanced, and I think Your Honor questioned on and I think it's very clear that there is not a possible affirmative, positive, aggressive act. In that Hawkins makes very clear further that the failure to act is not actionable. Does not sustain that claim.

So, again, won't beat that dead horse, Judge, but that's our position on it. And, Your Honor, if I may actually just briefly for the first points made. I kind of forgotten. This idea that every time the commode is flushed and sewage passes through pines, if that's the

case then that would sustain the -- or establish the evidence of an affirmative, positive act. I think it's a can of worms. In fact I may be switching to the Plaintiff's side of the bar and bringing some of these cases because every case, every situation would establish that. This is a failure to act scenario that we have here.

MR. WILLIAMS: Your Honor, I'm just going to respond to that last point, Your Honor. I doubt that there are any other municipalities have elected to use property not their own to operate their sewer lines. And that would not open up any sort of can of worms even if that was a relevant consideration. What this Town is doing is electing to use somebody's else property to operate their sewer lines.

THE COURT: Looking at the second amended complaint the allegations as it relates to inverse condemnation or that the Plaintiff, Vickie Graham, owns property that was identified by its legal description; that the Defendant is authorized to operate a municipal waste water sewer system for the public purpose; that on the evening of September 5th, and subsequently, September 6th and on subsequent dates the Defendant's waste water sewer system backed up and overflowed causing severe, permanent and irreparable damage to the Plaintiff's property; that the

Defendant had prior notice of problems with the operation and maintain; that the failure of the Defendant to properly construct, operate, maintain its municipal system has resulted in a de facto taking of the Plaintiff's property, and therefore, she's entitled to an award of damages.

I think the law that's been cited by Mr. Wren as it relates to inverse condemnation is the correct statement of law. Specifically, in Hawkins, which is a 2004 case. Also Rowandi v. City of Spartenburg. In W.R.B. Limited Partnership v. County of Lexington which wasn't specifically argued. And Balou v. City of Spartenburg. And in White v. County of Newberry which is a Federal District Court -- it's Court of Appeals Fourth Circuit 985 F 2d 165, a 1993 case.

One of the requirements is that there has to be an affirmative, positive, aggressive act on the part of the governmental agency. These cases have defined what is considered to be an affirmative, positive and aggressive act.

Specifically, in White v. County of Newberry the Federal Court focused on three specific cases that dealt with the affirmative nature. Those include Lindsey v. City of Greenville in which the City opened the pipe valve. There was a valve and an overflow pipe through an

earthened dam to control the water.

As a result of heavy rains and rapidly rising reservoir levels the City opened the pipe valve and discharged large amounts of water on to the Plaintiff's property destroying his crops.

In the second case, Department of Highways and Public Transportation, negligently diverted ground water supply away from the Plaintiff's property. When a later pipe for construction to drain the roadbeds the pipe drew ground water from the Plaintiff's property lowering the lake level.

Then, lastly, in Newsome v. Town of Surfside Beach. The Town rebuilt washed out portions of a highway. In doing so built the rebuilt portions at a higher elevation than the original damaged road. And that caused rains to wash away -- to flood the Plaintiff's property. The Court indicated that South Carolina law requires the showing of an actual municipal action, such as the laying of a pipe, raising of a roadbed, that causes damages to the complaining landowner.

In the White Case the City's road work or the Town's road work was directly linked to the increased flooding. the Whites define the County's affirmative act as its general operation and maintenance of its facility. And the Court held that there was not an affirmative act by

the County of Newberry. Relying on the analysis in White v. County of Newberry and in the other cases I've cited this morning that I find that there is an affirmative, positive aggressive act that resulted in the taking of the property.

What we have here is a situation which there were heavy rains that precipitated of overflow of sewage onto the property. The allegations of the Plaintiff are that subsequent events, whether they're rain events or other events, have caused sewage to leak onto the property, and in fact, asserts that there is an active exfiltration under the house that causes leaks onto the property on a regular basis.

In essence, the Plaintiff argues that the failure of the Town to maintain its waste water treatment system, to repair or to redirect the flow of sewage from that area or to close off that pipe running through the Plaintiff's property and redirecting it in a different direction is what's causing the taking of the property because of the repeated exfiltration of sewage onto the property.

Under Hawkins and under Rowandi that is not sufficient. RowandI involved where there was the collection sewer system, raw sewage had backed up into the home through a sewer line that connected the residence to the sewer system. Apparently, the allegations were that

the pool or one of the local colleges was drained into the sewer line, and that was too much capacity for the sewer line to handle and causing the sewer to back up into the property. And, therefore, claiming inverse condemnation for those reasons.

The Supreme Court held in that particular -- the Court of Appeals held in that particular case that that was not an affirmative, aggressive, positive act on the part of the City. And that there was no difference from Balou v. Spartenburg which involved the bursting of a water line which caused damage to the property. In specific -- in additionally in Balou the allegation was that the City failed to properly maintain its a water mains which is basically the same allegations that the failure to maintain the sewer lines and the failure to maintain the waste water treatment facility has caused the damage.

And no based upon these lines of cases I will grant the motion as it relates to the inverse condemnation. And I'll ask Mr. Wren to provide at least the first draft of the findings of fact, the conclusions of law, and I will revise them as necessary in order to have them -- a written ruling pursuant to Rule 52.

THE COURT: What is your next motion, Mr. Wren, as it relates to I believe I said the trespass?

MR. WREN: Yes, Your Honor. And I appreciate your accommodating. I wanted to address them as well. Judge, next the Town moves for directed verdict as to the Plaintiff, Vickie Graham's, claim for trespass. Judge, another area, and I don't recall if you indicated you had also dealt with this same claim and issue recently, and how recently you heard some of the case law on it.

Let me quickly -- in fact I tell you what is most instrumentative is actually some of the same cases that we just used for inverse condemnation; that being the Hawkins Opinion. But also, as I think Your Honor familiarity with, Snow v. City of Columbia. It's a 1991 Court of Appeals Opinion. The cite is 409 SE 2d 797. Those cases both, Judge, dealt with the trespass claims with similar situations with regards to water on property with a governmental entity.

And the law in regards to trespass, Judge, I'll cite the Hawkins first, is that for a trespass action to lie the act must be affirmative, invasin of the land must be intentional, and the harm fall by the invasion of the land must be the direct result of that invasion. And I emphasize that, Judge.

The -- additionally the Snow Opinion looked at it, and that was an earlier opinion in 1991. Actually, kind of established that, Hawkins cited to Snow, with the same

proposition. To establish actionable trespass you have to have the same things; the affirmative act, that the invasion must be intentional, the intent and that the harm falls must be the direct result of that invasion.

Interestingly, Judge, you've heard my arguments and my citations under inverse out of Hawkins about the failure to act. Our courts have looked at this in other areas; that being what we're dealing with now which is trespass, I would cite you still to the Snow Opinion which dealt with whether the Court's determination whether or not the error was the City of Columbia was liable for a water main leak that the -- the contention was whether or not the City could be held liability.

And the question being whether or not it intentionally caused. The law in this area is the same with what we just dealt with in inverse, wherein, the trespass -- the law is that trespass does not lie non-feasance or failure to perform a duty.

And, Judge, I've gone through that the lack of evidence that's been established in this case on that issue, the Plaintiff's theory, the testimony that's been set forth and, it's the same position, Your Honor, that we expressed on inverse; that, essentially, at most what they have established is a failure to act on behalf of the Town of Latta in regards to these issues.

And so for that reason, Judge, we believe they have failed to establish the necessary elements for trespass. But further, and the Snow case goes on, and says, "Trespass is an intention tort." If you recall, of course, the second element. And while the trespasser to be liable do not intend or expect the damaging consequence of his injury. He must intent the act which constitutes the unwarranted entry on another's land.

And this is that other necessary element of intent, Judge. Here what we have and what's been alleged and what's been established through the evidence in the case up through the close of the Plaintiff's case is nothing but these events occurring with no establishment of any intent on the Town to do one thing or another.

In fact, Judge, it takes us back to this failure to act that I believe is controlling both for inverse, but also for the trespass claim. So, Judge, we think based upon that the Town should be entitled to directed verdict. Now, I do want to distinguish and clarify because earlier in the record, Your Honor, if you recall during the Plaintiff's case in chief we -- the issue arose. And I'm sure Your Honor perhaps while we started into this did not already as to the Plaintiff's claim for trespass in her complaint.

And our position is what the Plaintiff has pled, Your

Honor. Is that the trespass is the location of the pipe along the property. It's indicated and in fact the very first line says, "Some unknown time in the distant past." We now know from the evidence in the case that to be 1924; that the Town of Latta began to trespass upon the property now owned by Ms. Graham.

Your Honor, we've dealt with it. That's how we had argued it that that being the trespass, but that is not -- there's been no establishment that gives rise to any damages by the Plaintiff, Number One.

Number Two, to the degree that the Plaintiff is now trying to evolve their trespass argument to be the overflow or this leak issue with the pipe which we of course contend there is not evidence of that's been put in the record. But that's where they're going for purposes of establishing damages. We think the same law controls there, Judge.

And, essentially, what we've got with Snow and with Hawkins on this issue of both the affirmative act and then the intent is that they have not established or pointed to some act, some -- something that was done by the Town that caused this.

And, Your Honor, one thing, and I guess it's worth mentioning and it will come back up again in a moment for negligence, but if indeed the issue is the construction,

the placement of the line in the 1920s on this property, if that's the case that is -- that's the evidence in the record. Number One, it's significant statute of limitations issue.

Not withstanding there is also evidence in the record in essentially that's where the trespass actually relies. On that issue the law is that for a Plaintiff to establish actual trespass the owner of the property -- the law is an action for trespass will not lie unless the Plaintiff had either actual or constructive possession at the time of the alleged trespass. That's Daniels v. Coleman. A 1969 Supreme Court opinion. The cite is 169 SE 2d 593.

I share that because when this first issue of the trespass is the location of the line or the existence of the line on the property, Your Honor, that would have been a claim that had arisen and the right to seek remedy under it would have existed in the 1920s with whatever predecessor owner was there at that time.

Your Honor, on a side note, Judge, it's also our contention, and you will recall some of the questioning and testimony of this idea of the fact that you questioned what kind of trespass it is when it's a sewer line that the residence has been connected to and use. So I share that, but the controlling thing here for trespass it's the line. It's the fact that that would have existed some

time ago. There is issues with statute of limitations, and the question is whether the Plaintiff would even have standing -- at this point would have had standing for that.

And then, Judge, of course, this idea of the trespass being a leak of the sewer line on their property. We believe what is applicable there is the Snow and the Hawkins Opinions both as to the affirmative act, which again, I won't beat that dead horse again under -- we just talked about under inverse and then the intent, well, which has not been established. There is no evidence of in this case record.

Your Honor, on the statute of limitations issue just so there is some law on it, of course, there is a two year statute of limitations. I cited that. City of North Myrtle Beach v. Louis Davis case. I think we mention it. If I didn't I'll get you the cite.

THE COURT: I'm sorry. Which one?

MR. WREN: It was City of North Myrtle Beach v. Louis Davis.

THE COURT: Yes, sir.

MR. WREN: Did you have that one, Judge?

THE COURT: I have that one.

MR. WREN: Okay. And so, any way, I just wanted to put that law out there; that being a two year statute.

But, Your Honor, for those reasons we contend it's our position we think the Town is entitled to directed verdict for their failure to establish the claim. Beg the Court's indulgence.

Your Honor, one other thing let me share with you, please, on this issue factually the evidence that's been established in the record for purposes of trespass. It was confusing to me, frankly, from the get go how this issue of a pipe which is open and obvious. There is testimony in the record that Mr. Benton Henry as a child walked across the pipe. Mr. Claude Graham testified as a child being in that area of the existence of a pipe. How there is not some issue with the discovery of an alleged trespass sometime well before the events which give rise to this case.

And, again, Judge, it's our position as you heard us earlier that what's been pled in this case are the events that occurred in September of 2008. Of course, the Grahams purchased their property well before these other events -- occurred well in the past. So I would share that as well on the issue.

But, actually, I want to make sure I covered everything. The main thing, and I just want to stress this, Judge, is that it's the same failure to establish the affirmative act which is a necessary element of the

Plaintiffs that we addressed a moment ago, Hawkins and Show.' And it was also applicable to inverse. But also it's a failure to establish the intent that I believe, Your Honor, is fatal to this trespass claim advanced by Ms. Graham.

And for that reason, Judge, we would ask the Court to direct a verdict in favor of the Town as to Ms. Vickie Graham's claim for trespass.

THE COURT: Mr. Wren.

MR. WREN: Yes, ma'am.

THE COURT: What if any impact would the Plaintiff's claims, at least here and partially what was, I guess, argued earlier about continued, repeated entry onto the property. How would that affect either the statute of limitations argue argument or the trespass issue?

MR. WREN: Well, Your Honor, I think that having the fatal flaws with the affirmative act and with the intent without having to even to get to whether it is or isn't continual and whether or not that being the existence of the pipe versus this theory of it leaking.

THE COURT: Well, let's just say for purposes of augments let's get past the affirmative act part. Specifically, I understand that at least as to the events in September of 2008 there is an argument that can be made that any acts the -- if there were any acts by the City

that they were not intentional ones in that looking at Snow, there is the argument that -- in Snow that the City did not intentionally discharge the water. And in fact it goes on to say 305 SC, Page 554 that the City was not aware of the leak until Mr. Snow brought it to their attention.

And the Snows make no claim to the contrary. Mr. Snow testified himself that the City did not intentionally allow to water to escape onto his property. And at best the evidence showed that the leak resulted from the inadvertent failure to keep its water main in good operating condition. And since it was not -- since the entry was not a voluntary act of the City the action for trespass will not lie. So I can see that the argument is is that at least when the sewer main overflowed and the rain event and the sewage on the property that that may not have been an intentional act.

But what about, and im anticipating an argument by Mr. Williams, that the fact that it's repeated and the City became aware of it, I'm assuming that their claim is going to be that the City did nothing to change it or correct it, and therefore, it has become an intentional act?

MR. WREN: No, Your Honor. I don't think intention lies there, and to your point citing from Snow, and you

know, of course, there just for -- to clarify the Court it goes on to say that in that situation, you cited the facts from the case of the City where we're dealing with the City of Columbia, it goes on to say that to hold otherwise under that as far as this issue of intent, essentially there is not strict liability upon a governmental entity.

That goes back to what we talked earlier about South Carolina does not recognize res ipse. There is no inference that just because there is an injury that it was an act, a wrong act, or intentional act by the governmental entity. To your point, Judge, let he handle it two different ways and make sure I understand and just stop and ask me to clarify anything.

To this idea of post-September 2008. With a recognition or the complaints that were lodged. In fact just the civil action, Your Honor, was filed the end of 2008. That alone we know these claims have been set forth at that time. Your Honor, that point there is still no intent. There is still no affirmative act. So the first two necessary elements.

And I cite to what we have to go by which is that the evidence that's been set forth by the Plaintiffs in this case and in this trial, and there is no evidence there to establish that. There being an intent, there being an affirmative act by the Town. To continue a trespass under

the theories they've advanced.

Let me while I'm on this issue, Judge, address one other thing cause I think it's important to set forth is that, and I'm going to cite you a case, Judge. It's Loftus -- I misplaced it. I set it down. Judge, it's Loftus v. S.C.E. & G, a utility case. It's a South Carolina Court of Appeals Opinion. A 2004. The cite is 694 SE 2d 714. It's a prescriptive easement case, Judge, and essentially dealt with what they contended was open and obvious utility lines across a property.

Curiously sounds a lot like this case. An easement was looked for but could not be located. And the law is, Judge, in order to establish an easement by prescription a party must show the continued and uninterrupted use or enjoyment of a right for a full period of 20 years, Number One.

Number Two, the identify of the thing enjoyed, and.

Number Three, had the use or enjoyment was adverse or under claim of right.

Your Honor, we would submit and argue that is exactly what the evidence exists in this case that's been set forth to this Court establishes was that the Town of Latta had a prescriptive easement or the sewer line in question. And, Your Honor, Further I want to just clarify that nowhere in this case have the Plaintiffs set forth or

established that the Town did not have a right to the sewer line on the property. I understand, of course, we stipulated for the jury that an easement was not -- I can't remember the language. Was not produced. That's the facts.

However, what the Plaintiffs have failed to establish as a matter of -- for our purposes, a matter of law now is that, and they have the burden; that the Town did not have a right to have that line on the property. The facts being going back to the 1920 or thereabouts, the subsequent construction on the house, and the connection on that house to the line. There are a number of issue -- questions there.

Not with standing they haven't established that there was not a right to the Town. So I share that as an ancillary argument, Judge, to your question in point as to this continuing trespass argument.

THE COURT: Does it make any difference whether subsequent purchases of the property had notice of the line on the property?

MR. WREN: I take that on a couple of quick levels, Judge. It certainly would from a statute of limitations issue. Of course, a two year statute would apply here. And otherwise for purposes of the Plaintiff in this case under this theory of a continuing trespass I'm not sure if

it does, Judge. I don't know. I don't know if it is -- if it an argue. I don't think it is. It's still the burden on the Plaintiff to establish, and I believe they failed to do.

Judge, actually, if I may in addressing your question, going go to this Loftus Opinion that I cited. It states, and I'll cite to it, "A purchaser of land with actual, constructive or implied notice that the property is burdened with an easement ordinarily takes subject to the easement. In order to charge the purchaser of the certain estate with notice of an unrecorded easement the marks of the servitude must be open and visible."

Your Honor, the testimony in this case of Benton Henry alone was it open and obvious, yes. Mr. Claude Graham as a child in that vicinity, in that area. Pipe was there. As I told the jury in opening one of nice things here is sometimes we agree upon that are established here. Easy. We know that's been there for well before any of us.

Your Honor, it's our contention that establishes a presumptive easement. In addition, we would assert that the Plaintiffs failed to establish that there was not a right that the Town had.

THE COURT: Mr. Williams.

MR. WILLIAMS: May it please the Court. Plaintiffs

have established that the Town of Latta has no right. We have established is that there is no right recorded or otherwise establishing an easement for the Town of Latta. As a matter of law in South Carolina an interest in real estate can be conveyed must be in writing. There is no writing.

In order for the Grahams to have notice of it it must be recorded. It is not recorded. So the evidence -- and in addition to that is that if they have actual knowledge of that easement. That would be a fact to be in dispute, but they have testified that they did not in fact have actual knowledge of an easement; that they acquired actual knowledge of a claim of an easement sometime long after they had purchased the property. And they acquired that knowledge from the Waste Water Manager for the Town of Latta.

So what the Plaintiffs have established is that there is no actual right in the Town to have the pipe there.

THE COURT: Well, so basically, what you're saying is that any argument about an easement by prescription doesn't apply even though the pipe has been there since 1924?

MR. WILLIAMS: With respect to easement by prescription, but let me go back to the Loftus case on Page -- I'm quoting exactly the same language that Mr.

Plyler just quoted. In order for the Graham to be held with knowledge of an easement by prescription or for one to exists that can be enforced against the Grahams, and I quote, "A purchaser of land with actual constructive or implied notice that the property is burdened with an easement ordinarily takes it the subject to the easement. In order to charge the purchaser of a servant mistake with notice of an unrecorded easement the marks of the servitude must be open and visible."

Their argument of open and visible servitude is that in a ditch that these people do not own and did not purchase there is a pipe crossing that ditch. There is no evidence where that pipe comes from or where that pipe goes to or what kind of pipe it is. There has been no evidence and there will be no evidence that either Graham knew what that pipe was, what it was for, where it went, where it goes, whether there is anything in it or not until one time it malfunctioned and the City came out and taped it up. At that point they learned it was a sewage pipe.

But there was not evidence that at the time they bought the property they had actual, constructive notice that was open and visible that a sewer line was running under the law. And they testified that if they had known that they wouldn't have bought the property. Who would?

Their testimony is manifested and credible and just an issue of fact for the jury to determine. But at this point the testimony with all reasonable inferences be drawn in favor of the Plaintiff is that they did not have actual knowledge of a claim's servitude.

And, of course, there is no evidence that there is a servitude much less something -- there is evidence that a pipe was there but not that they knew it was there or that the City has a right to have the pipe there.

With respect to the other arguments, as to affirmative act, we say that there are three affirmative acts. One is an affirmative act somewhere in the 1920s when the Town of Latta put the sewer line there;

That the Grahams did not have a cause of action relating to the existence of that sewer line until they had damages;

That that Grahams at all times thought that the City had -- not at all times, but at all times once they were told by the City that the sewer line ran under their house, they thought the City had an easement to have that sewer line there. And the City represented to them they had an easement for that sewer line.

Ms. Graham has testified that she did not learn it until sometime after I began representing her which was in 2010 this record will reflect. Until 2010 that she

obtained the fact which would make her either know or should know that the City did not have a lien. And we are immediately moved to ament the complaints. It was well within the statute of limitations.

The other affirmative act is the City put the pipe there is affirmative act number one. They elected, once they learned that they were -- are pumping sewage onto the property and had no right to have the line there they continued to do so. That's an affirmative act, to leave the pipe there and continue to dump sewage on the property and the dumping of the sewage is in fact an affirmative act.

And as Your Honor considers this issue I would refer the Court to Raven v. Greenville County which I believe Your Honor mentioned to us yesterday as one of the cases you were considering. I'm looking at beginning at Note 21 on Page 463 of the South Carolina Reporting. And I'm going to quote reasonably extensively here.

It says, "The common law landowner showing in that case;" that's where the Town had capped a landfill. It said, "The common law landowner showing in this case would be insufficient to demonstration trespass because of the requirements of an affirmative act." The Court goes on to hold that, "Nevertheless, there is a trend in environmental law to recognize that the infiltration of a

conterminous onto a plaintiff's property constitutes as much an invasion of his possession in interest as the cutting of a tree on his property."

And then it goes on to say. Skip another citation, "Because the landowners claim a continuing trespass by the respondents the lack of possession at the time of dumping prevents no bar to recovery when they're presently being injured." So the fact that the plaintiffs didn't own this land until 1989 is not a bar to their recovery even though the trespass didn't occur long before that unbeknownst to them.

Ultimately, Greenville County prevailed the issue of trespass, but that was because that the record in that case didn't -- said there was no unauthorized entry by Greenville County. No unauthorized entry. In this case the evidence is that the entry is in fact unauthorized, and it should be distinguished from the result in Raven v. Greenville. Thank you, Your Honor.

MR. WREN: Your Honor, may I address that just briefly?

THE COURT: Yes, sir.

MR. WREN: Judge, just for the Raven case and to distinguish myself for our purposes here today. Of course, Raven had -- there was an affirmative act. They established the element. We contend they have not and

cannot do that here. But going down, having flushed out this issue of prescriptive easement, we cited to the law. I think we have different interpretations. Of course, Mr. Williams understand the focus being actual notice. Certainly, if there was an easement I think as Your Honor is, too, we would. It would be a very different situation if there was an easement sitting there. That's not the case.

But the law is Loftus cites is correctly. Constructive or implied notice applies. And, Your Honor, the evidence is in about what was seen and what was done and what results have not done by virtue of not having a home inspection, of not having a survey. Those are all -- that all rests with the Plaintiff, the plaintiffs in this case.

And then, Judge, also now focusing going back to the leak issue. Very importantly what's controlling there is the Snow case. Hawkins applicable as well, too, but the Snow case which had the same facts. And what the Court said there, "That the immediate cause of the injury on the Snow's property was the discharge of water from the leaking pipe line. However the City did not intentionally discharge the water."

And I'll go down. "At best the evidence shows the leak resulted from the City's inadvertent failure to keep

its water main in good operating condition." There is no intent, Judge. It lacks here, and it's fatal to their trespass claim. Again, we'd ask for directed verdict as to the entirety of the Plaintiff's trespass claim.

MR. WILLIAMS: Your Honor, just to quickly. They intended to put the pine down. They intended to leave it there. And they intended and they left it there without correcting it knowing that every time there was a significant rain that that was going to dump sewage.

THE COURT: From what time period?

MR. WILLIAMS: Starting in 2008. September 5th and 6th 2008; that's when they acquire the knowledge that they were dumping sewage on those people's property. And they intended their intentional act was to not do something it. Their original intention not intentional act was to invade the property of the predecessor in title with no right to do so.

Every -- September 6th 2008 forward their intentional act -- they didn't intend the consequences. They intended the act. Their intended act was to operate the sewer system on these people's property without permission.

THE COURT: I'm going to defer on this particular issue at this particular point, and I'll come back to you. Just to save time.

MR. WREN: And, Your Honor, just for our purposes and

so the record will be clear, just so Your Honor can look at other cases and issues with it meaning you want us to go ahead and argue the next point?

THE COURT: Yes.

MR. WREN: Okay.

THE COURT: Yes.

MR. WREN: Judge, beg the Courts indulgence just one moment.

THE COURT: I tell you what. Let's take a brief break and we will come back. I think everyone needs to go.

MR. WREN: I needed just a second to switch gears, switch tracks.

THE COURT: Let's just take a quick break and we'll come back.

MR. WREN: Thank you, Judge

(WHEREUPON, Court was in recess at 11:23 a.m. and reconvened at 11:32 a.m.)

THE COURT: We're ready.

MR. WILLIAMS: Plaintiff is ready, Your Honor.

MR. WREN: Defendant is ready, Your Honor.

THE COURT: Let's talk about the negligence issue.

MR. WREN: Thank you, Judge. May it please the Court. Having addressed the inverse condemnation and the trespass claims on behalf of Ms. Vickie Graham, Your

Honor; the Defendant would further move and assert they're entitled to directed verdict as to the negligence claims asserted both on behalf of Vickie Graham and Claude Graham.

And Judge, as to the negligence claim, of course, the theory of the case, the evidence that's been put forth. We all have been privy to that, the -- I guess I'm going to do this two fold. One, it is -- of course, I'm very much surprised, Your Honor. We assert that pursuant to the South Carolina Tort Claims Act that the Town of Latta under the circumstances and based upon this evidence would be entitled to immunity on several issues.

However, let he reserve, if I may, those arguments for just a moment. The immunity arguments and touch upon first what I think frankly is more important and more pressing and is failure of the burden of proof to establish that's occurred in this case. And that is the -- just the simple establishment of the necessary elements of negligence. It's not often something we can get to argue or we argue ineffectively, Judge.

But here is what I ask the Court's indulgence to on. Throughout the course of the testimony and the evidence the Plaintiffs have put up in this case there has been utter lack and void of this whole issue of -- Your Honor mentioned earlier the question about the leaking or what

the problem is or what is issue is, how do you fix it. It goes back to my theory in opening as to responsibility, by identifying a problem and doing something about it. Well, that is what negligence is, Judge. It's actually negligence -- my person -- I relate it under layman's terms. I always put it as blaming or establishing another one's fault for an injury you sustained.

But what the Plaintiffs have failed to do here, Judge, is to establish that. Is a duty owed a necessary element of a negligence claim. Questionable at best. Roger Davis did have some experience and knowledge with regards to municipal waste water systems. I don't even remember the angle in which he approached his expertise on this. There was enough there that he asserted that, of course, there is some duty to have a properly operating system.

With that said, however, where the law here comes in is with the proximate causation or a breach of that duty. Your Honor, I would submit that at best what the Plaintiffs have established, and this would be solely from Roger Davis' testimony, again, and I'll touch in cite to all -- why South Carolina doesn't, you know, follow res ipse. To assume an injury has occurred and person can be held accountable because an injury has occurred. But the only thing the put in on breach and on approximate

causation is this issue that at the end of Mr. Davis' direct testimony if you recall about there is infiltration problems.

There is infiltration problems with the Town of Latta's waste water system, and I believe that's the issue that we have here as he stated. And there are a couple of things you can do. You can move the pipe. You can reline it, and so forth. I think you've got a few options.

Judge, what he didn't do, and on cross-examination, I want to confirm this by what several of the other witnesses, not that they were set forth for this purpose, but with the Grahams themselves, likewise, would couldn't do is to say 'what is the problem. Where is the leak. Where is the infiltration that's causing the damage or has caused the damages the Grahams are seeking regress for.

And it's very important, Judge, and I know it sounds elementary, and I that for the fact that, you know, negligence I'm well aware how far more often than not is a jury question. But they are matters of law. They have to be established. They have to have those necessary elements. What Mr. Davis, the closest witness they have that can get there, the most he did is said that there was infiltration in the Town's system. Important, what he could not do and what I asked him was, "You can't show me that there was infiltration in or around the Grahams

residence that caused the damages that they are seeking redress for at this time." And he cannot.

You recall there was predicating questions about his -- why he didn't do any testing, and he didn't even determine -- do mapping and so forth. What he could not do was say, 'there was an infiltration here, here, and here or there, there, and there and that is causing this problem'. There has not been an establishment of proximate cause.

Judge, with that I'd like to segway to case law that has dealt with this and has rule favorable on behalf of governmental entities. I know Your Honor is aware the Hawkins case dealt with negligence claims. And similar situation, Judge, where you have this issue of a water intrusion the defense, the City in that case asserted several immunities I'm going to touch upon in just a moment.

But not withstanding, it was obviously not a finding of negligence or establishing the necessary elements. That duty and then the proximate cause and the breach -- the breach and the proximate cause relation of that duty. So, Judge, with that said, and again, I just really want to get home the issue that, frankly, the failure of Roger Davis to establish this.

Expert witnesses as Your Honor is aware can do a lot

of things, whether good. Bad or indifferent. They can give opinions all over the place. Roger was the only one that kind of came from the 10,000 foot view and looked at this and could said this is what's causing the problem. This is the proximate cause. He could not do that. He don't have -- done the homework. He can't set forth what the breach of that duty was, where it was.

Judge, in Hawkins -- excuse me. I picked up Snow. In Hawkins, again Judge, they dealt with inverse as we addressed. They dealt with trespass as we addressed, and they dealt with negligence. With regards to negligence, Judge, and I'll use this now, the Court found it. They heard the City, and a factual scenario here where these, like we have in evidence here of, at best, a failure to act by the municipality.

The Court found that the City was not liable for several of the immunities under the Tort Claims Act, and we, of course, have asserted these, Judge, in our responsive pleadings and the argument here today. I just realized that Hawkins actually numbers with a different -- I'll cite the -- how we numbered them.

But, foremost, Judge, the immunities found under 15-78-60, Subsections One and Two which deal with the legislative, and it goes on to say judicial or quasi judicial errs of the legislator action or inaction which

is actually what we have. This failure to act. Inaction, they're synonymous.

Subsection Two deals with administrative actions in that regard to the degree that the Plaintiffs assert, whether this is the Town sewer people that would be doing it. It's not actually a legislative body. I disagree, and I don't think there is anything. Notwithstanding what we're dealing with, Judge, and what Hawkins found, is that the government entity In these situations is immune based on the legislative functions that they must perform with regards to the provision of something as necessary as the elementary industry as water and sewer.

Judge, further, we raised and we argue and Hawkins likewise cited in Subsection -- this again being 15-78-60, Subsections Four and Five. Judge, Four deals with the adoption, enforcement or compliance with any law or failure to adopt or enforce any law whether valid or invalid included but not limited to and it goes on to say rules, ordinances, regulations and so forth.

To the degree that Roger Davis' testimony, of course, cited to the fact that he had to take some corrective action. Actually, that is not a dispute that they had. Again, it's kind of the same situation that the problem that he has him focusing on the bigger picture things, but forgetting to find evidence and have an opinion and have

proof that there was some localized issue or problem causing the Grahams issue. But to the degree that's applicable and Roger Davis testified to that, that's what we're dealing with here. That's where they found the immunity in Hawkins. That's where we have the immunity here for complying with the D.H.E.C. regulations and so forth.

Notably, Danielle Watson, a D.H.E.C. employee, long standing employ, has worked with the Town for years, stated, "Yeah, the Town has. There have been some citations, some issues. The Town has addressed those." Where is there is lacking is any evidence showing that the Town was cited for a problem with this line, with this sewer at the Graham's residence. And, frankly, there is no evidence. So I can't say either way, but that it failed to act or acted improperly.

They did not establish that, and to the degree they did with Roger Davis or Danielle Watson the Town should be entitled to immunity. Additionally, Judge, importantly and applicable here, Subsection Five, the exercise of discretion or judgment by the governmental entity. This goes on to say that, "To perform any act or service which is in the discretion or judgment of the entity." That's what we're dealing with here.

And it goes also to this what we recouch, but I think

it's pretty clear from the evidence is at most a failure to act. Well, if that's the case and as Mr. Williams argued earlier that they want to say, well, that -- the failing, the making the conscious decision not to do something, discretionary.

Judge, the Town was involved. There is testimony that the Town was contacted even around the time of these events. What the Town did was there was some communications. Ultimately though, no, they did not bring a backhoe and dig up the yard. No, they did not transport the house. That was within the discretion of the Town. There were decisions made, so the purpose of the plaintiffs in that regard is that this failure to do anything is a decision they made that they should be held liable for. We would assert that we're entitled to immunity under discretionary immunity.

And I would note I cited for ease of Your Honor's reference just by the statutory cites under 15-78-60, discretionary immunity as I'm sure Your Honor is aware there is a good bit of case law out there. I just don't want to belabor the issue and waste our time. It's kind of like inverse, Judge. There are cases where, yes, they found discretionary did not apply. The immunity in situations where the Town or the governmental entities performed must a ministerial duty. Well, that's not,

under this theory advanced and argued by the Plaintiffs, that's not what their saying. This is discretionary and a judgment decision. Albeit one that was to not act. Not withstanding what the Town decided to do.

Beg the Court's indulgence. And, Judge, yeah, on that issue, of course, Mr. Davis touched on this, too, that I almost forget to include is this issue of, well, if there is infiltration around it's because you're not maintaining the lines, failure to maintain. Your Honor, they -- Number One, I would say the Plaintiffs have not asserted that. They've not -- Number One, they hadn't put in the standard of care. They haven't established that. They haven't established a deviation from it.

But, Your Honor, this maintenance issue and how they decide to do what they do still goes do to this immunity outlined in the Tort Claims Act. Additionally, Judge, at any point -- I just thought it would be easier just to cover all these. If Your Honor has any question, please, I'll move this along.

Subsections Eight and Nine, I will point out that those actually were not advanced and argued under Hawkins, but we still contend they apply. Hawkins found, Judge, immunity. All the other ones that I mentioned thus far, and one or two if I will, but Number Eight deals with, it references snow or ice condition or temporary or natural

conditions on any public road or public place due to weather conditions unless the snow or ice, thereon, is affirmatively caused by a negligent act of the employee. Again, the governmental entity.

We assert, Judge, that they have not established this act that they allege to be negligent. But not withstanding the evidence in the case -- I don't remember all the terms. Significant, unbelievable. There may be one or two more descriptive terms for the rainfall that occurred in September of 2008 that are above and beyond what could be expected. You know, act of God, and I know what the law say. I'm not trying to turn it into that.

But this is temporary or nature weather conditions that are occurring that we believe the Town would likewise be immune for with the issues that they have sued for in September of 2008 which is contained in their complaints. And then, Judge, also and we touched on this under the trespass a moment ago, that I reference to Subsection Nine. We raised it in our responsive pleadings where it state that the governmental entity is immune. Paraphrase it. Is immune for entry upon any property where the entry is expressly or impliedly authorized by law.

Judge, this is the same discourse we just had on prescriptive easement so I won't rehash that. We cited to the Loftus case, and I think all parties have had their

say on that. But were I want to take it further, one step further, is to say based upon that in a finding there, Judge, there is the Town's understanding and belief of the rightful location of the sewer line that it falls under Subsection Nine. And it's actually the immunity that is built into our Tort Claims Act.

In fact I'm saying it backwards. Your Honor knows the background of Batson. It's actually one of the exceptions to the waiver of immunity; that there is immunity in this situation where there is a right of entry upon property. Judge, further, in the last one that we had raised is Subsection 13. Now, taking you back a Hawkins, Hawkins found 13 to be applicable as well. Again, analogous facts.

But it deals with regulatory inspection powers or functions including the failure to make an inspection or making an adequate or negligent inspection of any property to determine whether the property complies with or violates any law, code, etc. and more importantly contains a hazard to health or safety. Now, we know from the testimony Dr. Culpepper's appearance, albeit, it was for purposes of establishing damages, but clearly, there is sufficient evidence to say that the Plaintiff's content that this is a health issue at their property.

Judge, what 13 does and as it was found to hold true

in Hawkins is provides immunity for these issues where the Plaintiffs are contending, well, the Town should have done something. Town's on notice after we talk to them and we talked about this. They say Town failed to act. Well, what they're further saying or at least can be inferred from this is the evidence the put in is that the Town has failed to properly inspect or property determine if this -- whether this property poses some problem or risk.

Judge, under the facts in this case what's been established in the Plaintiff's case and chief we further assert that we're entitled to immunity. And, again, Judge, just citing the Hawkins. I'm lacking at the moment. It's towards the end of it. It's a lengthy opinion as Your Honor is aware. But they went through all these, and they found for each of these code sections that were advanced. Subsection One, Two, Four, Five and 13 are all under those analogous facts. In Hawkins found that the City there, the municipality, was entitled to immunity based upon the events that occurred.

So, Judge, under this our argument for DV, of course, would be foremost what we addressed. And the Plaintiff's have just failed to establish the necessary elements. Again, pointing to Roger Davis and the issue of the alleged leak and infiltration and not being able to determine it. And then further, Judge, the numerous

immunities which we contend are applicable. If I may, Your Honor, just as an ancillary issues. And I would like to address that we do believe to be applicable here would be the statute of limitations, of course.

Your Honor, there is I say problematic testimony for those purposes within the record in this case.

THE COURT: Is that as to all claims or just to negligence claims?

MR. WREN: Well, Your Honor, it applies to all and for purposes of the record if I did not specifically address them.

THE COURT: Let's hold off on the statute of limitations, and we'll come back to that.

MR. WREN: Okay. Fair enough, Judge. Well, you may want to hold off on this, too. May like to hear from me. The other thing with the statute with this being applicable to the negligence claim, but the application of a statute of repose. And part of this, Judge ---

THE COURT: Let's come back to that, too.

MR. WREN: Okay. Bear with me one moment, Judge. Make sure I covered everything. Your Honor, one our note, and perhaps out of caution as I understood the argument and to the degree it evolves any further that the plaintiffs are asserting that either Danielle Watson or Roger Davis; that the Town of Latta has violated some

D.H.E.C. regulation or requirement or rule. If that is the case and there is any evidence the Plaintiffs contend to support that, Your Honor, we would argue that the public duty rule applies.

It would be applicable in this situation thereby being a cite I think the main case on it, Judge, is Jenson v. Anderson County D.S.S. It's a '91 Supreme Court decision, 493 SC 2d 615. it essentially saying public officials or public entities are generally not liable to the individuals for their negligence in discharging public duties as the duty is owed to the public at large rather than anyone individually.

So perhaps out of precaution, Judge, that that's the argument in that regard for negligence purposes. We would then contend that the public duty rule apply; that we would be immune. And perhaps on that issue, Your Honor, with reference more so to Danielle Watson, I think she did more why D.H.E.C. does what it does, what the rules are based on the Plaintiff's examination.

With that, Judge, I think we've exhausted our arguments under negligence, and again, would assert and barring anything -- any further -- like to hear on the statute of limitations exception in the case?

THE COURT: I'm come back to that one.

MR. WREN: Okay. With that said then, Judge, we, the

Town, asserts that as to both the Plaintiffs causes of action for negligence the Town would be entitled to negligence as a matter of law. Would be -- excuse me. Would be entitled to directed verdict on negligence as a matter of law.

MR. WILLIAMS: Please the Court.

THE COURT: I just want to make sure he's finished.

MR. WREN: Your Honor, and I apologize. I thank you. My law partner pointed out one thing, and it is a distinguishment between the two plaintiffs. I know I grouped them together for our ease, and of course, the jury's, but in Vickie's complaint it is alleged, and it goes to this trespass issue, and I think it's partly interpretation. I do -- I will concede that the word, 'continued' is included in that section under trespass that this is some kind of on-going event.

And I know we talking about negligence, but I want to couch that because it's under her trespass claim. However, Claude Graham's claim here is solely for negligence, and it is solely for the events that occurred in September of 2008. And as a practical matter just the claim from the personal property that would have the had the right to assert a claim for damages as well. So, Your Honor, I wanted to clarify that for purposes of, you know, some issue about where the alleged negligent act occurred.

Perhaps it also goes to statute of limitations or something.

But with that said, Judge, the Town asserts that it is entitled to directed verdict on the negligence claims. Thank you.

THE COURT: You're not claiming -- yes, sir, Mr. Williams.

MR. WILLIAMS: May it please the Court.

THE COURT: Yes, sir.

MR. WILLIAMS: With respect to this negligence claim this is not a professional negligence claim so the Plaintiff has no burden to establish the standard of care. The standard of care applicable here is the reasonable standard; guard to provide any negligence statute. In order to establish our claim we would have to allege and prove the duty, breach of the duty, and damages.

The duties established by the testimony of Roger David, Danielle Watson and the submission of Mayor Brigman the Town has the duty to maintain and operate the sewer system. The breach of the duty, the jury can find that they breached it by they failed to cure the defects in the system by either moving the line, filling it up with concrete or inserting a slip line on it.

In any event they breached the duty by continuing to dump sewage onto the Graham's property. And there are

facts from which the jury can conclude there was negligence. The jury is perfectly capable of deciding, based on the facts, that they were presented that the Town was negligent in some way in failing to fix it or failing to even try to fix it with the Town having the duty to maintain the line. And then refusing to maintain it.

They breached their duty and that that was a negligent breach of duty. It's failure to act like a reasonable town would have acted under the same or similar circumstances. The towns do not have an absolute discretion from immunity, absolute immunity for things that involve some discretion. And I would submit that the exercise of discretion and judgment does not include the Town's ability to choose to violate the law, to choose to be negligent, to choose to commit a lawful act, to choose to commit an unlawful act or to choose to invade the right of the citizens of the Town.

Those are not discretionary or judgment related acts. These are unlawful acts, and it's not within the discretion of the operators of the sewer system. And their duty here was a ministerial duty. If the line broke, fix it. If you dump sewage on somebody's land, stop it. That's not an exercise of discretion or judgment. That's a ministerial function.

THE COURT: But now would you not agree that would be

an exercise of discretion of whether or not to move it in that the Town would have to at least consider weighing and competing interests or whether be cost, whether it be feasibility to move from one place to another, where to tie it in. All of those things would be ...

MR. WILLIAMS: If our claim were based on their choice of how to fix it we wouldn't have a claim. The claim that we contend they don't have a choice on whether to fix it it would be discretionary to choose whether to pour cement into it or move the line or do a slip line or discontinue operating the sewer system. Whatever they had the discretion to choose to do what they could do.

But it's -- they do not have the discretion to burden these people with the inadequately functioning sewage system, disposal system. And we did not allege that the Town failed to inspect the system. Our allegation and the evidence clearly is that the Town was there and saw what was happening and inspection occurred. So any arguments related to the failure to inspect, that's not an alligation that they failed to inspect.

To the extent that the public duty rule has any application to the facts of this case the well recognized exception to the public duty rule is that when there is a specifically identifiable victim or if there is a special relationship of -- that there -- a violation of the public

duty rule would result in liability to somebody like the City. In this case there was a specifically identifiable people that can be harmed by the failure of the City to -- failure of the Town to attend to their duty and they had a special relationship with them, too.

THE COURT: What's the special relationship?

MR. WILLIAMS: The special relationship being under their scenario the special relationship was being an occupier of the property with the permission of the owner. That's what they believed at the time, and that was a special relationship. One who has been granted the ability to use one's property in trust that you won't damage my property while you're using it. That's an implied in law condition of the occupancy of an easement.

And, finally, Your Honor, with respect to the other issue, and I think this goes to a lot of the Defendant's arguments. I'm thinking about Snow v. City of Columbia. City of Columbia is obviously a public entity and very much similar to the Town of Latta. And at the conclusion of that case the Court held, said, "From these facts competing inferences might reasonably be drawn as to the City's failure to exercise the due care in the installation and maintenance of the water main and as to the issue of approximate causation. Because the significance of these facts and inferences to be drawn

they were in dispute the issue of negligence was for the jury." and it cites Davis v. Piedmont Engineers, 284 SC 20.

Therefore, the Circuit Court erred in directing a verdict on the City on the negligence cause of action. I think the circumstances here are similar to those in Snow v. City of Columbia. A governmental entity that we allege and have offered evidence, too, from Which the jury can conclude the City breached its duty to maintain a reasonably functioning sewer system, and that breach of that duty to exercise reasonable care resulted in damage to my clients.

THE COURT: And what do you --specifically, what are you claiming as the breach of the duty?

MR. WILLIAMS: The failure to maintain in a non-negligent manner, the sewer system.

THE COURT: That's double speak. Tell me. You've got to tell me specifically what you're claiming.

MR. WILLIAMS: I'm claiming that by failing to fix the sewer system in some way and make it stop dumping sewage on these people's property they breached that duty of care. That was their negligence. They had an array of conduct that they might have done to stop the discharge, but the chose to do none of those things.

THE COURT: Would you agree that any breach of the

system they may have occurred from an unusual storm event would not be the subject of a breach of the duty?

MR. WILLIAMS: I would agree to that, Your Honor, but do not agree that there were any facts presented in this case that would indicate that an unusual storm event of that magnitude in fact occurred. At best the evidence in this case is that there was a significant rain. Not an unusual rain. Nobody ever said -- I heard Mr. Wren say he doesn't recall the words that were used. He couldn't remember if somebody had said unbelievable, and nobody said unbelievable.

The worse anybody said about that rain was that it was significant. Some people said it was heavy. Some people said it was significant. The evidence from which the jury should be considering thing is that it was a significant rain, but that significant rains happen and predictably happen.

The jury can reasonably conclude that anybody who builds a sewage system should anticipate the occurrence every now and then of significant rains and build it and operate it and maintain it in such a way that significant rains do not cause it to malfunction in a way that dumps sewage onto the landowner's property. Significant is a fairly benign word, Your Honor. It just means it makes some sort of sign. It's something you notice is basically

what it means. It was a notice of a rain. One that you would remark upon or notice or talk about. It's not a -- it's not the type of event that one would consider the immunity related to the ice and snow act of God type catastrophe. Just heavy rain.

THE COURT: What's your argument relating to Mr. Wren's discussion that you have to establish that there was -- where the breach in the system occurred or what -- either where or what the cause was or the circumstances surrounding the breach of the system?

MR. WILLIAMS: My response to that as it's up to the jury to determine whether we have sufficiently established precisely what happened. It's clear that's what -- it's clear that something happened that caused there to be sewage under this particular house when there was no sewage in the yard or in the street or elsewhere.

THE COURT: That sounds pretty close to a res ipsa.

MR. WILLIAMS: It's not res ipsa, Your Honor. The jury can apply their common sense to reason. Not res ipsa. Doesn't speak for itself, but they can apply their common sense and draw reasonable inferences from the evidence presented in a logical fashion. They can reason from the fact that there is a sewer line under the house, there is sewage under the house, and that there is no sewer anywhere else; that that sewage under the house had

to come from that line up under there. That's a logical inference.

THE COURT: But ---

MR. WILLIAMS: And the jury should be permitted to draw ---

THE COURT: There is a step missing in there.

MR. WILLIAMS: Pardon?

THE COURT: I said there is a step missing in there.

MR. WILLIAMS: I think Mr. Davis supplied that step when he said that when there is in fact infiltration, exfiltration that you could expect with a terra cotta pipe that's some 85 years old when it has a life expectancy of 40 years it's going to crack. It's going to have defects in it, and it's going to, your know, it's going to deteriorate.

And I think that's the step that -- the jury can put two and two together using their common sense. Sewer line under the house, old pipe, busted pipe, exfiltration system. There have been events which show that there is something going on under this house, and the City refuses to even attempt to fix the sewer line by selecting one of the array of things that can be selected.

THE COURT: So the negligence isn't necessarily that the infiltration occurred? The negligence is that they haven't done anything to fix it?

MR. WILLIAMS: Correct. Nobody would know that the exfiltration occurred until the events of September 5th and 6th 2008. Once they learned that they learned that exfiltration has occurred. Then the duty arises to fix it. I'm speaking now strictly in the negligence context.

THE COURT: Yes, sir.

MR. WILLIAMS: You know, bottom line of our argument on this point, Your Honor, is I think that the jury has facts from which a reasonable jury could determine that the Town of Latta is liable for negligence, and that's a jury question from that point of view. To give all the inference, all the reasonable inference from it to the Grahams as the law requires a reasonable jury could conclude that the negligence of the Town of Latta caused the damages.

THE COURT: Thank you.

MR. WREN: Your Honor, I think another relevant fact that the jury would be consider is that pipe belongs to the City. That's all I really have to say. If you have any questions I'll be happy to answer them the best I can.

THE COURT: I don't have anything further. Thank you. Yes, sir, Mr. Wren.

MR. WREN: Judge, if I may briefly just a couple of responsive points. One, Mr. Williams obviously understands some reliance on the Snow v. City of Columbia

case. I always find it interesting and usually helpful for all our purposes when both sides cite the same case. But, Judge, he's pointed to the holding and the issue there being the fact that although an earlier decision in Hawkins and Snow that they let negligence go to the jury.

And pointing to that because there are some facts that are similar. I don't disagree, but as I put it it's also a water case. However, what's distinguishing if you go to the beginning of the facts in Snow it's not this case. Not even close. In Snow what they said is that a problem had been reported to the City in advance. The City came out, dug 8 feet of earth up to get to the water main.

It was a lateral connecting pipe. They discovered water from a joint fastened by a series of nuts and bolts. Several bolts were loose. They tightened them, but the tightening failed to stop the leak. They placed a sleeve joint -- a sleeve over the joint. The sleeve stopped the leak at that time. What goes on is that basically what happened is that they built up pressure, cracked a joint in the foundation wall, water goes flooding into their basement. That's not what we have here as we just heard it again, Judge.

And what the plaintiffs have contended and what the evidence shows is that it's a failure to act. Snow is

readily distinguishable from that contention on why negligence went to a jury. I can understand. The other thing on Snow, Judge, is as I hear the argument counter on why I think directed verdict should not be granted in favor of the Town on negligence I hear a res ipsa argument which is the same thing Snow dealt with.

Now, there they were dealing with the context, of course, of trespass, but -- well, excuse me, actually, it does state that negligence -- res ipsa doesn't exist. So I just want to clarify that that's how I see the argument and hear the case. This issue about -- I think Your Honor had asked the question about the storm event and how -- what applicability that would have.

The case -- the evidence before the Court at that time is Danielle Watson. This was a named storm event. Danielle went so far on perhaps redirect to be able to say, and frankly, it was news to me at the time that D.H.E.C. actually has exemptions for named storm events for purposes of enforcement and so forth. It was a big storm. I don't think that's in dispute whatsoever.

I think that's clearly the evidence in the record, and to the point of the question about the term, 'unbelievable', that was made, and that was made cross examining the Vickie Graham. And I took identical language. The word is unbelievable, and it's in the

record from Mrs. Graham's deposition. My point being that there is a consensus by the parties themselves that this was a major storm event in September of 2008 for purposes of this negligence claim.

And then, Your Honor, to the issue of Mr. Davis fillings, basically, the Plaintiffs' argument is that Mr. Davis bridged the gap for us on this problem of duty to proximate cause, and you've already heard my argument on that. Well, the evidence set forth for that that I just heard was this idea of him saying there are terra cotta pipes out there. I remember him saying that they have a shelf life of so many years. They crack. I got up in front of the jury. I talked about flower pots.

You recall further examination as with several of Mr. Davis' positions is, no, he didn't know what was down there. He hadn't done any testing. Based on assumption. If based on assumption by an expert, and that's not our standard. Our standard in South Carolina for these kinds of expert opinions he's got to have objective evidence.

And the Plaintiffs, by via expert or in their case in chief otherwise had failed to establish this objective evidence of a approximately -- of approximate breach of the standard of care in or around the Graham residence to this sewer line which caused the damages their seeking before the Court today. And so, Judge. With that we

think that's addition sustains of why we think the Plaintiffs failed to establish the standards claim. Not even going back and touching all the various immunities that we've already gone through.

Your Honor, if I may. Just one other brief point. I learned a long time ago that it's always smart to have smarter people around you. Makes your life easier. I was just reminded one other thing that was just addressed in Mr. Williams' rebuttal about the fact that as I understood it, and Your Honor certainly heard the same thing I heard interpreted it different. As I understood the argument it was not until the September of 2008 event that there was notice on the 5th and 6th, the big flood, that there was notice of this problem with infiltration or whatever that was causing the issue with the Graham's residence.

Your Honor, that's a serious flaw then for purposes of their negligence claim against the Town for these events because, otherwise, there is still no evidence of it being the proximate cause in my mind and based on the evidence, but as to -- if that's the event that precipitated the discovery of the alleged negligence, and I even questioned then how is that an act of negligence, but notwithstanding, that's the event what their argument is and pled is that it was done on September 5th and 6th 2008. There is no notice. And I'll step down. Thank

you, Judge.

THE COURT: I'm sorry. No notice?

MR. WREN: That there was an issue or what the issue even was at that time. I will further contend today as well, but clearly at that time. Point is I understood the argument. Point was the Grahams didn't understand or no one understood that there was a problem until this flooding, this hurricane, Tropical Storm Hanna, came through on September 5th and 6th 2008.

That being the case that still doesn't show the act of negligence preceding the alleged events gives rise to their damages. And then, of course, just to the straight issue of any kind of actual or constructive notice for purposes of the Town, if that's what had happened then there is no notice prior to. Thank you, Judge.

THE COURT: Yes, sir.

MR. WILLIAMS: Mr. Davis did testify that the sewer line under the Graham's residence had a leak that allowed raw sewage to be discharged in the crawl space under the house. With respect to the distinction that Mr. Wren is tried to draw between the facts of the Snow case and this case it would lead to me -- what I contend to the Court would be a curious result. And that is under the Snow case if the City discovers a problem and tries to fix it and doesn't fix it the jury gets to determine whether

that's negligence. But if a City discovers a problem like they did with the Grahams and walks out there and looks at it and says, "Man, that sure is a bad problem up. Um Um Um," and goes back and doesn't try to fix it then it's not their -- they're not entitled -- the Grahams would not be entitled to go to the jury.

I don't think that's the standard under the law of negligence. A City's action or their failure to act in circumstances where a reasonably prudent City would have acted can constitute lack of negligence, and we think the jury, as I said before, should be entitle d to make that decision.

THE COURT: Anything further.

MR. WREN: No, Your Honor.

THE COURT: Let's go to the statute of limitations argument.

MR. WREN: Thank you, Judge. Judge, would it be any easier to do -- handle statute repose first?

THE COURT: Whichever.

MR. WREN: Okay. Statute repose, the applicable statute repose under 15-3-640, you may recall some time back, or sometime practicing law, it used to be 13 years. It was changed by the Legislature to eight years. It's neither here nor there for our purposes of our case, Judge. But to the degree over the course of two day of

the trial and evidence and argument I have seen the theory kind of evolve that there is liability through the -- via trespass or negligence for the installation, the construction of the sewer line on the Graham's property which the evidence says was in 1924; that the statute of repose would bar the Plaintiff's be -- against the Town.

THE COURT: I'm sorry ---

MR. WREN: The only evidence is ---

THE COURT: The statute repose would bar?

MR. WREN: Would bar the Grahams seeking relief from the Town, Judge, and I base that upon that, of course, the date I referenced. But the only testimony in there is that the Town is who put the line in at that time. And their theory of remedy, Your Honor, on liability is that the installation of that has given rise to their damages. Again, I'm going to address this for the trespass theory. They should be barred in that regard due to the statute of repose. There was one case on point. Its Hollywood's Association of Residents Owners v. Hiller. It is a Court of Appeals case from Judge Lockemy in 2011. And, Your Honor ---

THE COURT: What's the cite?

MR. WREN: Yes. I'm sorry. And, Your Honor, kind of as we heard the theory I'm adapting as well, Judge. This is not something we initially intended to advance. The

cite is 392 SC 172. And I can give you the Southeastern Second Recorder if you require.

THE COURT: Yes.

MR. WREN: It's 708 SE 2d 787. And, Judge, just to highlight. It speaks for itself on this issue, but what I think their's was like a condominium situation or something. I do just enough construction litigation to know how those cases go. Anyway, it dealt we several issues. Multi-family dwellings, I believe but what was instructive in the Court is that they did deal with this issue. The owner or one of the problems that they allege from a construction standpoint was the installation of sewer lines.

I believe if you look at the statute the language that is out there it deals with improvements to real property. I cite that case for that proposition just -- I want to clarify that that's exactly what this would be. Typically, we think of statute of repose with new residential and commercial construction involving buildings. But it's most certainly applicable, Your Honor, to this situation.

And so that would be the position and argument as statute of repose, Your Honor.

THE COURT: Is there one on statute of limitations?

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

THE COURT: I said do you have an argument on statute of limitations?

MR. WREN: Yes, Judge. Would you like to hear both?

THE COURT: Yes.

MR. WREN: I'll be very brief. Your Honor, again, as to both the trespass and the negligence causes of action both, Your Honor, the law is carry a two year statute of limitations. And as to this issue of -- first, as to the issue of the presence of the pipe itself, Your Honor, Number One, we go back to what we cited earlier about it being open and obvious.

South Carolina followed the discovery rule with reasonable diligence. And a person, talking about the reasonable proof of person standard and why it's there. What a person should know or see. Testimony, of course, is seeing it in the ditch and it being out there and obvious.

The -- I would cite to another governmental case, Young v. S.C.D.C. It's a 1999 Court of Appeals opinion to this issue about discovery rule. It essentially says, "Circumstances which would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist." And that has to do with the fact there, there was a question of whether the Plaintiff actually

knew that they had a claim.

And what -- that was the question that test. The test is the Court must decide whether those circumstances give rise to put that person on notice. The evidence is in the case and the argument is there about the knowledge and what could have been done or wasn't done to determine the existence of the sewer line itself. So, Judge, that would be our argument with regards to the applicable statute of limitations. Beg the Court's indulgence.

And, Your Honor, I think we keep the statute of limitations argument focused there. The only -- I've already referenced Benton Henry. You will recall the photographs, his testimony about the pipe, of course, Mr. Graham's testimony as evidenced, and then, of course, under this kind of due diligence standard that exists. The general contractor, Mr. John Benton, about the fact that you should do a survey if you're going to purchase land and build a house. You need to know what your property entails.

So, Judge, those are the grounds and the application of the statute of limitations in concurrence with the statute of repose to this existence of the sewer line on the Graham's property. Thank you, Judge.

THE COURT: Yes, sir, Mr. Williams.

MR. WILLIAMS: Your Honor, I'll address things in the

same order he did. With respect to the statute of repose my recollection is that's an affirmative defense, and I don't think that lead it. I didn't get a citation to the actual statute itself. Be that as it may we do not contend that the pipe in 1924 was built badly. My understanding, base on the testimony of Mr. Davis and just my general knowledge of the world is that's the way thing were done in 1924. So we're not making a claim that would -- should have -- that has been lying in repose since 1924.

With respect to the statute of limitations it beings to run -- it's the date a person knows or should know or a person of reasonable prudence would know that they have a cause of action, a claim, against someone for something. In this case a cause of action would not accrue. A cause of action for negligence would not accrue until the Grahams suffered some damages. And from the testimony in this case that would be September 5th or 6th 2008.

If the Town was negligently maintaining that sewage line from the beginning of time up until September 5th 2008 these people wouldn't have any negligence claim cause they wouldn't have any damages arising from it. So the September 5th, 6th 2008 is when the statute of limitations should begin to run. This suit for negligence was brought -- I don't recall the exact date, but it was very

early in 2009. It was certainly -- it was long, long before September 5th of 2010. The record for this Court will reflect the exact date.

And the argument that Mr. Wren keeps making if you're going to purchase property and build a house you should survey it. Well, these people didn't purchase property and build a house. They purchased property that already had a house built on it. They haven't pled contributory negligence which, if they were going to be, if that were going to be a defense, they should have pled it. But they didn't plead it.

But the fact of the matter is these people did not buy property that indicated that they should have a plat done to see what the underground condition and the underpinning of the dirt were on this house that appeared to be sitting there fine and had been built in the 1960's. So I think the statute of limitations, in my view, began to run on September 6th 2008.

THE COURT: Thank you.

MR. WREN: Your Honor.

THE COURT: Let's take a lunch break and come back at 1:30.

MR. WREN: Judge, may I put on one additional point? It seems like I had it checked and did confirm that it was in the pleadings that would be an additional ground for

directed verdict that wasn't addressed was I didn't find it in the clause, but in the second amended complaint of Vickie Graham, Vickie Graham's second amended complaint, it's not actually at the bottom under damage, but internally in the complaint it does reference punitive damages.

I don't recall which cause of action it is, negligence, and Your Honor, we would just simply assert that -- and I can show the citation or provision under the Tort Claims Act. But the Town of Latta is immune for an award or punitive damages under 15-78-120.

MR. WILLIAMS: We're not seeking punitive damages, Your Honor. I concede.

THE COURT: I don't see it in there. I don't see it in there.

MR. WREN: It's in Paragraph 25, Judge. I didn't find it -- I saw we raised it. I couldn't find it.

THE COURT: In the prayer for relief it doesn't mention.

MR. WREN: It's not in the prior, correct.

THE COURT: Okay.

MR. WREN: But I think procedurally it's all benefit. If Mr. Williams wants to stipulate not to seek punitive damages. So that's all. Thank you, Judge.

THE COURT: Let's take a lunch break, and then we

will come back.

MR. WILLIAMS: What time you want us back, Your Honor?

THE COURT: 1:30.

MR. WREN: Thank you, Judge.

(WHEREUPON, Court was in recess at 12:37 a.m. and reconvenes at 2:15 p.m.)

THE COURT: As to the trespass issue I'm going to grant the directed verdict as to trespass on the same basis that there is not an affirmative act on the part of the Defendant for the same reasons as inverse condemnation. There was part of the argument by the Plaintiff was that the trespass was the existence of the pipe itself on the property. And I don't find that to be trespass.

There is no evidence establishing the circumstances under when it was built or how it was built or whether it was a right or title or any easement. In specifically under the provisions of -- under the provisions of Loftus v. South Carolina Gas we've all been focusing on the notice issue. But the Court in Loftus found the existence of the prescriptive easement before even addressing the notice issue.

And the notice issue was just an additional sustaining ground, additional basis by which to say and in

addition to the prescriptive easement you also had notice. The way I read Loftus is there has to be a continued and uninterrupted use or enjoyment of the right for a period of 20 years, the identify of the thing that's enjoyed, and the use or enjoyment was adverse or under a claim of right.

Certainly, in this case there has been evidence presented that the pipe was placed on the property in 1924. And that it has continuously been on that property since 1924. The house that was built on this property that the Graham's subsequently purchased was not built until 1960. At the time of -- up until I guess this is lawsuit or shortly before this lawsuit the Town was under the impression and had a belief that the pipe was there pursuant to an easement. And so they were claiming a right to use the property for the pipe.

And I think that they demonstrated their belief that they had a right to use the property, and that was done partially through the testimony that was presented by the witnesses as well as the stipulations and the discussions that we've had about that particular pipe. I think Mr. Davis is the one who indicated that that pipe had been there since 1924. So he's established that it was 20 years.

And the information about the license has been

established as well through the witnesses. Or there might have been a belief that there was an easement. And the Court in Loftus indicated as it relates to S.C. E&G's use of the property that the poles, utility poles, and power lines on the property that S.C. E&G has used and maintained the power lines in question since the 1930's pursuant to their belief that they had a valid right of way to use the property in this manner.

Evidence supporting that claim was presented to the master. There was information about SC E&G searching for the document believed to exist but missing proving that filed a right of way on the property. And in addition to that case -- in addition to those facts, the Court also found that because of service agreements between the customer, who were previous owners of the property, that there was information in the service agreements about allowing them the right to access the property to do trimming and clearing.

And the Court said that pursuant -- all of this evidence clearly supports the master's finding that SC E&G has a substantial belief that it has the right to use the property in the manner it did based upon the totality of the circumstances. And so in -- pursuant to this Court standard of review, therefore, hold the master's establishment of an easement or prescription in favor of

S.C. E&G. And then after making that statement it went on the address one of the other arguments made by the appellants that because they never had service from SC E&G that that didn't make any difference what theory you used to talk about prescriptive easements.

There was no evidence to support it, and that's when the Court talks about the notice provision. So I think the existence of the right is a red herring. That is not trespass in this particular case. And I don't think that would seriously consider to be the trespass until such time as we start the arguments because everything that has been testified to about the pipe or in the -- has all been about the fact that it leaked; that it was on the property and, yes, it was testimony that the Plaintiffs did -- weren't aware of it.

But the existence of the pipe is not what gives rise to the trespass, and even if there were allegations to that I think that under Loftus there is a prescriptive easement, and so the Town would have had a right to place the pipe on the property.

So then the question goes to the other allegations or other elements for the cause of action for trespass. I talked already about the fact that there was no affirmative act with respect to the release of sewage on the September 5th and 6th, and that continued release of

sewage, whether you call it a leak or whether it's from the heavy rains. But that's not an affirmative act as recognized by case law pursuant to cases I discussed earlier.

Additionally, I at least find that as it relates to the September 5th and 6th incident there was not an intentional act. There was no intent for there to be any release of sewage or there was no intent that -- on the part of the Town for any actions to occur on the property of the Plaintiff. And so for those reasons I find that the directed verdict should be granted as a trespass.

As it relates to the negligence, additionally, one additional point on the trespass. Snow v. City of Columbia indicates that trespass does not like a non-feasance or the failure to perform a duty. And so to the extent that there is a claim that the Town had a duty to repair, to replace, to move, to do something to change the course of the sewer pipe or the sewer line and that they failed to do that; that does not give rise to the trespass claim.

So then we look to the negligence. What I've heard -- I kind of view this in terms of separate incidents. What I gather is that there is this major event which is the event that started all of the problems on September 5th and 6th. And it's clear that no one had

any notice of any problems of the sewer line, the sewer pipe or anything relating to the operation of the waste water system in this particular area.

Now, I agree that there has been testimony that there were previous instances in which the Town had been cited. The evidence does not tell us what they were cited for. It doesn't tell us when they were cited. It doesn't tell us what remedial action was required if any. The witness testified for letters written. We don't know what the contents of those letters were. We don't know nothing other than the City -- the Town was cited for some reason.

There is not a correlation between notice about -- notice of certain violations, and there is really no telling what these violations were. Notice of any violations and the fact that the Town may have had notice that there was a problem with the sewer line in this particular location.

I would state that under Snow in which the situation was that there was a break in the water line or leak in the water line that caused the water to leak into the property of Snow, into the house. And no one knew about it until Snow called and told the City there was a problem, and the City came out to fix it. In Snow the Court states that the Snows did not show to the exclusion of all other reasonable inferences that the City aught to

have known about and repaired the leaking pipe before it was reported as a problem. And so there is a question as to whether or not there was a negligence if you don't know that there is a problem; that how can you either affirmatively do something about it or fail to do something about it if you are not aware that there is an issue.

And so to the extent that there is a question about negligence on the date of September 5th and 6th I think that that claim would fail because that really is a res ipsa argument. It's -- the water came, and it's the City's fault and the City was negligent, but as it relates to any questions about infiltration or exfiltration, while there was testimony that there apparently was some type of a breach some time, I'm not sure that there is evidence that there was negligence on the part of the City at particular point.

And there has been no showing that they failed to have any type of system of maintenance or repair. The allegations were that they failed to adequately maintain or properly operate the system, but there has been no showing as to what they did specifically and within the timeframe that would put them on notice to what they did or didn't do.

Other than there was infiltration and exfiltration

based upon all the information we got from everywhere, but there is no timetable. And I think that -- so as it relates to September 5th and 6th I'll direct a verdict as to the negligence on those issues.

As it relates to subsequent information which has been -- if it hasn't specifically been alleged its at least been evidence presented about subsequent issues with leaks or the release of sewage. I will deny the motion at this time on these basis -- bases. And I'm not necessarily excluding all the other arguments. I will be happy the rehear the arguments again as it relates to some of these issues at the conclusion of the Defendant's case.

But I think some of the immunity issues that have been raised as it relates to discretionary immunity in particular I think that the case law indicates that it's the Defendant's burden or the person asserting the immunity to establish it. And so I think there needs to be some additional information related to that and to demonstrate it was in fact these were in fact discretionary acts and/or that there was a conscience choice that had to be or could be exercised by the Town in deciding what to do and when to do it.

These are not ministerial acts. These are not acts in which -- it does not require the exercise of some competing factors to determine what and when and where a

course of conduct should take place. I did hear the Plaintiffs argument that it's not a question of what to do but it's a question -- but it is a requirement that they do something. And in this case there was -- they did nothing. And so I'm somewhat persuaded by that argument.

As it relates to after they were put on notice that there was a problem in this particular area and that there was a problem with either the sewer line or the sewer system and what they chose to do. So I think at least there is sufficient evidence at this particular point to get past a directed verdict on those act that occurred after September 5th and 6th.

We heard your argument about public duty, and I didn't really consider those arguments. And as I said I will be happy to consider those again, but I think at this particular point I believe that there needs to be some information presented from the Defendant to be able to flush out the remaining factors that need to be considered. Anything in particular I need to address?

Statute of limitations; to the extent I think it's -- there is a two year statute of limitations, and the action was filed in 2008, 2009. I notice that it was amended. The second amended complaint for Vickie Graham was filed in January of 2011. And that was the second amended complaint raised the issue about the trespass I believe

and so that's been taken care of. But I think it's the negligence claim is timely. And I don't think that statute of repose applies and as I stated I don't think the argument that it was there in 1924 and it wasn't until they got notice in 2010 that their claim accrued.

It's a viable one. I think what we have in this particular case is that they claim that events occurred after September of 2008; and that because the City was aware of the issues and because they did not undertake to fix the problem and it continued; and, therefore, they were damaged and I think those claims are certainly under statute of limitations on the negligence.

Anything else?

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

MR. WREN: Nothing from the Defendant, Your Honor. If I may though just seek five minutes or so before the jury is called back in, Judge. In light of your ruling I just want to think real quick how to put the remainder of our case up.

THE COURT: Okay.

MR. WREN: If I may, Judge?

THE COURT: Yes.

MR. WREN: Okay.

(WHEREUPON, a short break was taken.)

THE COURT: There anybody we need to talk before we bring the jury in?

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

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

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

(WHEREUPON, the jury panel enters the courtroom at 2:30 p.m.)

THE COURT: Good afternoon, ladies and gentlemen. Again I apologize for having you come and sit and wait and we have finally taken up our legal issues. As a result of those legal issues we are down to one claim that's pending. That's the claim of negligence. And we are now ready to hear from the Defendants as to any evidence they wish to put up. Mr. Wren, Mr. Plyler, you may call your first witness.

MR. PLYLER: Thank you, Your Honor. May it please the Court. The Defense would call Mr. Willie Hooks.

WILLIE HOOKS, after being duly sworn, testified as follows:

CLERK OF COURT: Be seated and state your full name for the Court spelling your last.

THE WITNESS: Willie Harvey Hooks, H-O-O-K-S.

DIRECT EXAMINATION

BY MR. PLYLER:

Q. Mr. Hooks, what do people generally call you?
A. Willie
Q. You mind if I call you Willie?
A. No, sir.
Q. And could you please tell the jury where you grew up.
A. Dillon County.
Q. Where do you live now?
A. Oak Grove.
Q. You pretty much spend your whole life here in Dillon County?
A. Yes.
Q. Where do you currently work?
A. Town of Latta.
Q. And what do you do there?
A. I'm an assistant supervisor.
Q. What does that mean?
A. I basically do everything; water, sewer, street. All the utilities.
Q. How long you been working for the Town of Latta?
A. Since September 4th of 2007.
Q. Has it always been in that same role?
A. Yes, sir.
Q. Now, how about tell us a little bit about your average daily job duties. What do you do everyday when you go to work?

A. First thing in the morning I check the pump stations, the pond, the chlorine in the water, general duties. It's usually that first thing in the morning. Rain gauges, things like that.
Q. You say the pond what are you talking about?
A. The retention pond.
Q. You said something about a rain gauge?
A. Yes.
Q. What is that?
A. Every day we check the gauge. It tells you how much rain comes that night from the time you checked it the morning before.
Q. Now, try to speed things up. My understanding is you hurt your back recently; is that correct?
A. Yes.
Q. I see you're kind of leaning over there. I'm not going to take up much of your time. Try to speed things up a little bit. We've already heard a lot about Claude and Vickie Graham's resident in the Town of Latta; about an event that happened in September of 2008 and about things that have happened since. So I'm just going to try to get you to that point.
Did you check the rain gauge or are you aware of what the rain gauge read on September 6th 2008?
A. Yes, sir.

Q. What did it read?
A. Seven and a half inches.
Q. And what did you do that day for the Town of Latta?
A. The day of the rain?
Q. September 6th 2008.
A. I came in. We had a lot of flooding of ditches, and just had a lot of water.
Q. Was that in any one particular location or tell us?
A. It was all over town. That was just a lot of water to consume at one time.
Q. And tell us in particular if you had any involvement with the residence on Eas Rice Street owned by Claude and Vickie Graham?
A. Yes, sir. I was the first one that got the complaint cause we have a complaint system cause if they call the Town Hall they call the supervisor. The supervisor will call me. And if I don't have nobody to go I have to go.
Q. Did you go to residence?
A. Yes, I did.
Q. What did you see there?
A. A lot of water in the road. They had -- there was water coming out the ditch behind their home flooding their yard. Flooding the -- next door to them is the Coxes. That had their yard flooded, and the road was flooded.

Q. Did you notice anything else?
A. No, sir. Just, you know, there was where the manhole is in the middle of the road there was water all around it.
Q. There was water coming out of the manhole?
A. I can't tell you that it was and I can't tell you it wasn't.
Q. Okay. When you were at the Graham's residence that day did you have an opportunity to look underneath their house?
A. Yes.
Q. Tell us what you saw under their house?
A. About 2-inches of water.
Q. Water under their house?
A. Yes, sir.
Q. Anything else?
A. No, sir.
Q. Well, let's talk -- let's move away from the event of September 6th -- an th and 6th 2008. Let's talk about sensors cause we've heard a lot about sewer pipes that's allegedly running across the Graham's property. Are you aware of whether or not there is a sewer pipe running across the Graham property?
A. Yes, sir.
Q. And how do you know that?

A. Well, when we got this complaint the first thing that was told to me was that Mr. Graham had said that the pipe was under his house leaking. And so the first thing I think is, well, let's find out where the pipe is. So me and my supervisor, James Bailey, he stood on the manhole on Rice Street, and I went to where the line goes through the ditch right behind Mr. Graham's house. And by our assumptions of looking at each other from straight lines it goes between his pool and his home. Not under his home.

Q. You talking about sewer pipe? Explain that to me again.

A. From where we were standing at, usually, they run a pipe straight. You can't crock pipe, you know. And I stood on the pipe at that ditch where it's visible at the ditch. And my supervisor at the time stood on the manhole and we could see each other. And we could tell where in our opinion the pipe ran.

Q. How about we've also heard this pipe leaked or allegations that this pipe was leaking. Have you, to your knowledge, has any testing of that pipe been done?

A. Yes, sir.

Q. And when did that testing occur?

A. Between -- we did a lot of testing. We tested all manholes, all pipes in the Town of Latta in between May of

2010 and October.
Q. How did you test them?
A. We tested them with smoke.
Q. I think I just asked you how you test the pipes?
A. We test them with some.
Q. Okay. Can you explain that to us a little bit?
A. Well, what they got is a fan that covers the whole manhole, and you put a bucket under it and you drop the smoke bombs which are real -- they've got a lot of smoke coming out of them. And you put it over the manhole with the bucket under it and it blows the smoke through the line. And if there's a crack or any kind of thing where smoke can get through it's going to come through.
Q. And I think you said y'all tested all the lines and the manholes in Latta. What I'm interested in and the jury is interest in are the lines and manholes near the Graham residence. Did y'all test those lines?
A. Yes, sir. We intensively tested. we used two box almost of smoke bombs on that specific line.
Q. Why?
A. Because we wanted to make sure there was no leak.
Q. What did y'all find?
A. Nothing.
Q. What do you mean by that?
A. There was no smoke coming from under his home or near

his home or anybody else on that street.
Q. Who -- let me start again. Why did you go test these lines? I mean was it your decision to test these lines?
A. No, sir. That's just routine with B.P. and Barber.
Q. Who B.P. and Barber?
A. It's our engineers.
Q. The Town engineers?
A. Yes.
MR. PLYLER: Court indulgence.
BY MR. PLYLER:
Q. Willie, I appreciate your time. Please answer any questions Mr. Williams has for you.

CROSS-EXAMINATION

BY MR. WILLIAMS:
Q. Mr. Hooks, when you got there on September 5th what time of day was it? September 6th, I'm sorry. What time of day was it?
A. I come to work every morning at seven o'clock.
Q. What time did you get to the Graham house?
A. We went out on the 5th at night because it was raining.
Q. You said it rained 6 inches that day?
A. Seven and a half.
Q. Seven and a half inches?
A. Yes, sir.

Q. By the time you got there the water in Mr. Graham's basement was down to 2 inches, correct?
A. That's what it looked like to me from what I could see.
Q. So you must have gotten there after the water subsided and everything dropped down at least five and a half inches, right?
A. On the 5th, the night of the 5th it was still raining when I went.
Q. Did you look under his house?
A. I didn't look in the man's house until the next day on the 6th.
Q. When you looked at -- under his house the next day on the 6th the water had already gotten down to 2 inches under the house?
A. That's what it looked like under his home, yeah. I don't know if it was higher than that.
Q. So to you when you were there it was 2 inches?
A. It was 2 inches under his home.
Q. Okay. And there was no water in the yard by then, was it?
A. It was coming out the ditch the next day or the next morning.
Q. The ditch at the back had plenty of water in it?
A. Yes.

Q. Got all over town, right?
A. Yes.
Q. But his yard didn't, but under his house there was still 2 inches? Now, this water wasn't good, clean, clear, pure water, was it?
A. It was regular ditch water.
Q. Ditch water or sewage water?
A. I don't know what you mean by ditch water, sewer water?
Q. You do -- your responsible for the sewage system in part, right?
A. Yes.
Q. Was it not water that came out of the sewage system?
A. I can't say it was. No, sir.
Q. You can't deny it was either, can you?
A. No, sir.
Q. Okay. Now, did it smell under there?
A. I didn't put my head under it. I seen the water cause you can stand at the edge of his home and see under the house.
Q. All right. So you stood at the edge of the home and looked under the house, but you didn't get down on your hands and knees and look around under there?
A. I looked from where I was standing.
Q. Looked from where you were standing?

A. Yes, sir.
Q. About -- let's say that the edge of his house is right here. Tell me how far away you were. Where were you standing?
A. About where you're standing at.
Q. About where I'm standing. You can look down over there at a hole in the crawl space?
A. Crawl space about two by two. Two foot by two foot crawl space.
Q. Were you standing up?
A. Yes.
Q. Okay. All right. And it was 7 and a half inches of rain on September -- the night of September 5th and 6th, right?
A. Yes, sir.
Q. How much rain was there on September the 13th?
A. I would have to look back in my book.
Q. You have your book with you?
A. No, sir. No, sir.
Q. Well, let me ask you. Since the night of September 6th have there ever been 7 inches of rain since that day?
A. I wouldn't say quite 7 and a half. There has been significant rain since.
Q. Has there been any rain as heavy as the night of

September 5th and 6th? Since then? You've been in Latta. You've been in charge of things. Is that a memorable night or is it just like that?

A. That was a memorable night. It was all over Town that night.

Q. All right. Now, we're going to talk about since then. On September the 13th 2008 did you have -- this is only about a week after the day we're talking about, did you have another really bad rain or it was just a normal rain?

A. It was just a normal rain I imagine.

Q. How about September 25th 2008? Two weeks, 19 days after the day we're talking about?

A. I can't remember it, you know, to say it was a lot of rain cause I ain't got my paperwork with me.

Q. Nothing sticks out in your mind?

A. No, sir.

Q. Does anything stick out in your mind about April 2009, April 14th, specifically?

A. No, sir.

Q. What about April -- May 28th 2011?

A. No, sir.

Q. You don't know nothing, big storm in May of 2011, do you?

A. Not that I know of.

Q. Okay. How about March 18th 2012? That was this year. There wasn't a big tropical storm or hurricane?
A. No. We got quite a lot of the rain in March.
Q. Lot of rain in March?
A. Yes, sir.
Q. Was it as bad as the rain in September of 2008?
A. Probably so.
Q. Okay?
A. Cause it was a lot of rain.
Q. How about April 10th of this year?
A. We had a lot of rain this year period.
Q. Not real heavy, unusual rain, was it?
A. We had it a couple times.
Q. Couple of times this year? All right? I asked you about March 18th and April the 10th. You said those were heavy rains, but those may or may not be the two times you talked about?
A. I remember we had a couple times of heavy rain, but we had to block the roads and stuff like that.
Q. How about May the 17th of this year? Anything stick out in your mind?
A. No, sir.
Q. How about June the 23rd of this year? Anything stick out in your mind about it?
A. I was on vacation at that time.

Q. All right. Where were you vacationing?
A. I think it was the beach if I remember right. The beach.
Q. Did you have a nice vacation? Sunny the whole time? You were at Myrtle Beach?
A. Yes.
Q. North Myrtle Beach?
A. Myrtle Beach.
Q. Myrtle Beach. All right. When you got back had there been any records in the Water and Sewer Department of Latta to indicate that there had been really heavy rains in Latta on September 23rd 2012?
A. I ---
Q. I mean June 23rd 2012?
A. I didn't go back and check and see. No, sir, I didn't.
Q. How about your employees and people working in the Water Department and Sewer Department with you? Did they chit chat with you about it? Tell you about it?
A. They didn't say nothing to me about it.
Q. Nothing important enough for them to say anything to you about it, correct?
A. Yes, sir.
Q. On the smoke test you talked about where were you when the smoke test was going on?

A. I was doing the smoke test, me and Mr. Brian Cox.
Q. And where were you standing?
A. With the fan.
Q. And where was the fan?
A. Over the manhole.
Q. Where was the manhole?
A. In the middle of Rice Street.
Q. Okay. That manhole was in the middle of Rice Street. Okay. Did you go over -- back over to Mr. Graham's house and look down ---
A. Under the home, yes, sir.
Q. Did you get down on your hands and knees?
A. No, but Mr. Ryan did. I think he checked every home just to make sure there wasn't smoke coming out.
Q. You yourself did not get down on your hands and knees and look under there, did you?
A. No, sir.
Q. Did you tell Mr. Graham that you were getting ready to do those tests and it might be in his best interest to watch you while you did it?
A. I think everybody got a notice of us doing the test.
Q. You think so?
A. I think so.
Q. You think they were entitled to notice?
MR. PLYLER: Objection, Your Honor.

THE COURT: Rephrase the question.
BY MR. WILLIAMS:
Q. Why do you think they -- everybody got a notice?
A. I just figured they would get one?
Q. Did you just figure that or did somebody tell you they're supposed to?
A. I just figured.
Q. You just figured that?
A. Yes.
Q. Why would you figure that they aught to have notice? Just seems fair, doesn't it?
A. I imagine so.
Q. Okay. Did you know at that time that Mr. Graham -- that Mrs. Graham was in a suit with the Town and Ms. Graham in a suit with the Town?
A. No. I didn't know nothing about this until this week when I was told I was a witness.
Q. All right. So you didn't know he had a lawyer, Mr. Rushton, at that time?
A. No, sir.
Q. And if you had known that it would only seem fair that to you that Mr. Graham or his lawyer, Mr. Rushton, or Ms. Graham or somebody of them aught to know that y'all were going to running test at his property, right?
MR. PLYLER: Objection. It calls for speculation and

it's a hypothetical question. He's already testified that he didn't know it was a lawsuit going on. So how ---

THE COURT: I'll sustain the objection.

BY MR. WILLIAMS:

Q. My question to you then do you know of a reason why Mr. and Ms. Graham or their lawyer were not given notice you were going to be running smoke tests that involve their house?

A. No, sir.

MR. PLYLER: Objection, Your Honor. Calls for facts that are not in evidence. It's not an expert witness.

MR. WILLIAMS: Your Honor, my question was does he know why, and he's answered it. He doesn't know why.

MR. PLYLER: And his questions was does he know why about facts that are not in evidence.

THE COURT: I'll sustain the objection.

BY MR. WILLIAMS:

Q. Mr. Hooks, do you know of anybody who did call Mr. Graham, Ms. Graham, or their lawyer to let them know y'all were going to be doing smoke tests at their property?

A. No, sir.

Q. And were they there when you did the smoke tests?

A. I don't know. We didn't smoke test their property. We smoke tested the plain lines.

Q. The main line?
A. Yes, sir.
Q. Did the main line run on their property?
A. Yes, sir.
Q. So as part of your smoke tests you were smoke testing the main line that run through their property?
A. Yes, sir.
Q. Were they there?
A. I don't know.
Q. You didn't see them there?
A. I didn't talk to them.
Q. And no one told you they were there, did they?
A. No, sir.
Q. Did you see Mr. Rushton, their lawyer, there?
A. I don't even know who that is.
Q. Okay. So you don't -- you didn't see him there?
A. No.
Q. Okay. Do you have any report or results or record of the smoke -- conducting of this smoke test?
A. I myself don't, but the Town does.
Q. Do you have any pictures that were taken while y'all were doing this smoke test?
A. I think our engineers do.
Q. Do you -- have you looked at any pictures of it?
A. No, sir. I was there. I don't need to see the

pictures.
Q. My question to you was did you look at any pictures?
A. No, sir.
Q. Have you looked at any videotapes?
A. No, sir.
Q. Okay. Do you know whether the pictures they took were still pictures or moving pictures or video pictures?
A. I do not know.
Q. Okay. So you didn't take the pictures yourself?
A. No, sir.
Q. That's all I have. Thank you.
MR. PLYLER: Nothing further, Your Honor.
THE COURT: You may step down.
MR. WREN: May this witness be excused.
MR. WILLIAMS: No objection.
THE COURT: You are excused. Thank you. Call your next witness.
MR. WREN: Thank you, Your Honor. The Defendant would like to call Mike Hanna.
MICHAEL HANNA, after being duly sworn, testified as follows:
CLERK OF COURT: Be seated. State your full name for the Court spelling your last for us.
THE WITNESS: Michael Harvey Hanna. H-A-N-N-A.

DIRECT EXAMINATION

BY MR. WREN:
Q. All right. Mr. Hanna, good afternoon. And again just for the jury you go by Mike, correct?
A. Yes, sir.
Q. Is that okay if I call you that today?
A. That's fine.
Q. All right. Mike, can you for the jury's benefit tell us a little bit about yourself. Are was from this area?
A. I am from Johnsonville, South Carolina. I live in Florence currently.
Q. Okay. And how long have you lived over in that part of the Pee Dee?
A. Oh, 29 years in Florence.
Q. And we'll kind of do this in reverse order. Give you some kind of context perhaps for the jury. Tell us what you do for a living, please?
A. I am a civil engineer with a consulting engineering firm in Florence. I've been employed we two different firms during my career. Both in Florence. Both of those firms work for small towns and the Pee Dee area. Generally within 45 miles of Florence. Fairly close by.
Q. And you were here in the courtroom with us a moment ago, and you heard Mr. Hooks reference the Town engineer. Did you hear that?
A. Yes, sir.

Q. He used the term, 'B.P. Barber'. Is that one of the groups you had worked with?
A. Yes, sir. That B.P. Barber was a group I worked for for 15 years, and we were recently bought out by a larger firm called U.R.S. but it's still URS-BP Barber. Same general company just changed the name.
Q. And do you still work locally here in the Pee Dee?
A. Yes, sir. I'm the branch manager for the Florence office.
Q. Okay. And we'll come back to this is just a moment, but let's try to tie this together now. Have you done work for the Town of Latta?
A. Yes, sir, I've been the so called Town Engineer for -- since 1997. Our firm has been the engineer for Latta for many more years, 30, 40, 50 years. But I recently took over the account in 1997. Been there a while.
Q. All right. And with that said, Mike, let me back up a little bit and ask you because what you do for a living is what we consider the profession of engineering. Is that what you would call it?
A. Yes. Consulting engineering.
Q. Okay. And tell us just where you went to school and a little bit about your educational background?
A. After graduating from Johnsonville High School I went

to Clemson University and got a Bachelor of Science degree in civil engineering in 1983 and came to work and been back practicing in Florence every since.

Q. And you were not with us, sir, so I'll just ask it to you this way then. Are there different types of engineering that are generally recognized?

A. Yes, sir. I'm a civil engineer. A civil engineer is more of a broad category than any other branch of engineering. I chose to specialize in the water and waste water and storm drainage field. You can do a lot of things in engineering; build bridges, build buildings. I chose to work in water and sewer and storm drainage, and that is kind of where I've treated my education in engineering.

Q. And, Mike, things like chemical engineers or mechanical engineers they have different practice areas?

A. Yes, sir. They all have their different specialities. And civil is the more broad of the different professions.

Q. And within civil there are focus areas that you can specialize in?

A. Yes, sir.

Q. And what is the area again that you have done?

A. In water, sewer and storm drains.

Q. And you mentioned a moment ago about working with

cities or municipalities. Is that the kind of work that you've done with those towns and cities?
A. Yes, sir, for 29 years.
Q. Have you done that work with the Town of Latta?
A. Yes.
Q. Has that been since you started working with the Town of Latta?
A. Yes.
Q. And you are a professional engineer; is that my understand?
A. Yes, sir. After you graduate with a Bachelor of Science degree you take part one of a certification called an Engineering Training License, and once you pass that test you go out into the world, you practice engineering under another professional engineer for four years and then you get to take a Professional Engineering Certification Exam.

If you pass that then you can call yourself a professional engineer and be licensed by the State of South Carolina to design projects.
Q. And so in total how many years have you been a P.E?
A. Since 1987. I graduated in '83. Worked my four years under a licensed, professional engineer. Took my test in '87. Passed it and became a professional engineer.

Q. And is your license in good standing?
A. Yes.
MR. WREN: At this time, Your Honor, move to have Mr. Hanna qualified as an expert in the area of civil engineering with his focus on sewer systems and water.
THE COURT: Any voir dire? Any objection?
MR. WILLIAMS: Focus was on?
MR. WREN: His focus on sewer and waste water?
MR. WILLIAMS: May I voir dire, Your Honor?
THE COURT: Yes, sir.

VOIR DIRE EXAMINATION

BY MR. WILLIAMS:
Q. Mr. Hanna, as I understand your experience it's been with waste water treatment plants; is that correct?
A. No, sir. Waste water collection, pumping stations, enforcement, waste water treatment.
Q. Okay. Have you designed waste water collection systems?
A. Yes, sir.
Q. Have you redesigned waste water collection systems?
A. Yes, sir.
Q. Give me some examples of when?
A. The last two projects have been in the City of Bennettsville where we've rehabilitated old, existing sewer lines. We've done that in various other town in one

fashion or another.

MR. WILLIAMS: Bear with me one second.

BY MR. WILLIAMS:

Q. Did you have anything to do with this -- the Town of Latta's sewer system?

A. Portions of it, but not the area in question.

Q. Okay. But you have had something to do with the operation of the Town of Latta's sewer system?

A. Very little with the operation, but as a consulting engineer we are called on for a variety of problems as they occur. But some of the -- I mean most of the Town of Latta is a gravity sewer system. Was installed prior to me becoming engineer in 1997. But we've installed new gravity sewer systems out around the Oak Grove area, Gasley Road. So different parts of Town we've helped with new gravity systems.

Q. That's all the questions I have. Thank you.

THE COURT: Any objection to his qualifications, Mr. Williams?

MR. WILLIAMS: Your Honor, I don't object to his qualification. I do have a matter that I'd like to mention at the side bar. It may or may not become relevant.

THE COURT: Yes, sir. You want to do it now?

MR. WILLIAMS: Yes, Your Honor. Sh.

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

MR. WREN: Your Honor, may we resume direct examination?

THE COURT: Yes. I find him qualified as an expert in civil engineering with focus on waste water.

MR. WREN: Thank you, Judge.

FURTHER DIRECT EXAMINATION

BY MR. WREN:

Q. All right. Mike, bear with me one second. We were talking a little bit about you and your background, but also as it relates to the Town of Latta and you've provided those services for a period of time. Over the years you've worked how many different municipalities and town have you worked with?

A. Fifteen or 20.

Q. And I think you indicated earlier. Have those been in this geographic area?

A. Within 45, 50 miles, maybe.

Q. Are you familiar with the term, 'infiltration'?

A. Yes, sir.

Q. And for the jury's purposes, they may have heard this word before, what is infiltration?

A. In an old gravity sewer system you can have some

minor crack joints, crack pines and if you were to submerge those pipes under the ground water you would find drip, drip, drip, you know. And then a constant inflow of water coming into that sewer pipe. Sometimes that drip can turn into a one gallon a minute leak. Sometimes it can be a 20 gallon a minute leak.

But it's more of a slow, gradual infiltration of water into the sewer system at multiple areas, and I'm talking about thousands of areas in some cases because every joint might have three little places where water is coming in. And that is infiltration.

Q. And I think I heard you say a moment ago, did you say you can find places of infiltration? Is that what you stated?

A. Infiltration is difficult to find using smoke testing. It's easier to find using camera surveys where you insert a camera in the line and go look for that drip. With smoke testing it's more difficult to find with that.

Q. But it can be located? Is that what I understood you to say?

A. Yes.

Q. And in these other municipalities, towns that you've worked in -- let me just ask you this from your experience. Does infiltration exist in municipal water, sewer system?

A. Everywhere.
Q. It exists in all of them?
A. Yes, sir.
Q. Is that part of what goes into the knowledge of the engineer about operation and design of the sewer systems?
A. Yes.
Q. And from your experience with the Town of Latta has that been taken into consideration in the operation and maintenance of that sewer system?
A. Yes.
Q. And in September of 2008 do you recall a tropical storm event named Topical Storm Hanna?
A. Not specifically, but I remember the occasion because it was named my last name, so I took specific interest in -- Hanna dumped a lot of water on the Pee Dee, but not the specifics of the dates and the amounts. That sort of thing.
Q. So you just said. I had not put those two together?
A. Yes.
Q. I understand. But my question, my follow-up question, for you. Immediately or immediately after that storm event did you go to the Graham's property?
A. No, sir.
Q. Now, at some point subsequent did you become aware of some complaints or concerns by the Grahams or any property

owner there about events that occurred at that tropical storm at their property on's Rice Street?
A. Yes, sir. I'm not sure what date I was notified about the problem.
Q. What was the understanding that was relayed to you? What was their concern? What was their issue?
A. The initial understanding that was given to me and without a lot of facts was that the line was under their house and it was leaking and sewage was pouring out underneath the house. That was very concerning, so -- but that was the initial impression that I got from whoever I talked to.
Q. And we were talking about sewer lines a moment ago. A leak in a sewer line, can that be detected?
A. Yes.
Q. Can that be found and located?
A. Yes, and there is another term that I'd like to explain.
Q. Please.
A. Besides the infiltration. Infiltration being hundreds or thousands of very tiny leaks and cracked joints. And then there is another term called inflow. And this might occur in your yard what a clean-out cap had been busted off by a lawn mower and now when a ditch floods the water can directly get into the sewer system.

It's more of an immediate thing where the water will flush in. Hundreds of gallons a minute can go in. It might be the connection to another system, to a storm rain gauge or something. But that's the two things as an engineer we look for is how much inflow and how much infiltration. And sometimes it's easy to tell the difference. Sometimes it's difficult to tell the difference.

Q. And specific to these complaints and the understanding you obtained about the Graham's property of off East Rice after September of 2008 did you or your company on behalf of the Town do any work or do any investigation in that regard?

A. Yes, sir. We proposed that we do a variety of smoke tests throughout the entire system and that entails, like Mr. Hooks described, installing a fan on top of the manhole. You drop a bucket underneath the fan. We buy cases of smoke bombs. And to describe to you a smoke bomb it almost looks like a stick of dynamite. It's got a fuse sticking out the end. It's not going to blow up.

When you light the fuse and it hits the stick of dynamite looking device it produces a very dense, white, non-toxic smoke. We drop that in the bucket. The fan is pushing air down into the sewer system from the top of the manhole and it pushes white smoke out down the sewer line. If there is a crack in the -- such as the broken clean out

that I described in the -- in your yard that is a direct connection to the sewer system. There is no water in the way between that crack and the sewer line.

If the sewer line is full of white, dense smoke you will see white, dense smoke puffing out of the top of that clean out, the broken pipe that is visible or slightly under ground. And we blow the smoke and for maybe two blocks when we light these smoke bombs we've got one of my personnel there kind of directing the activities and we always ask that the Town send two or three people that can help us go along.

And all we do is we run up and down the road for two blocks. Maybe in a half a block radius, and we look for anything unusual, smoke is coming out. It is very to see smoke coming out of the top vent of your house. That is normal because that vent is directly tied into the sewer system. You would never see water coming out of your kitchen -- or smoke coming out of your kitchen sink or your commode or laboratory shower because all of those things are protected by what's called a pee trap that keeps the flow of sewer gases from entering your house.

So if there is a pee trap smoke will not get past that, but anything else; a crack in the pipe, the vent in the roof, some will come out of that. And that's what we're looking for. If there is smoke coming out the roof

of your house and we don't see any smoke in the front yard, we don't see any smoke coming out from under your house, there are no leaks in the system near your house that are readily visible.

We move on down the road. We look for the smoke to come out the next vent or the next house and we look around the yard; back yard, side yard, front yard. We look for smoke anywhere. And it's pretty easy to see. When you see that white, dense smoke coming out of the ground there is nothing that you're going to miss.

So we pump it in. We go down about two blocks. We pick our manhole machine up again. We tote it down two blocks, put another smoke bomb in, light it and keep going. And that's what we did for the Town over the course of three or four months.

Q. Okay. This was later in either 2009, 2010? When did this happen.

A. 2010, I believe.

Q. What else -- did you, your engineering group do any other work out in the vicinity of the Graham residence after September 2008?

A. Well, the first step before we do the smoke testing is we go out and we find every manhole that we can find. And in a Town of Latta's size I would say there are 200 to 300 manholes. We go find them. We take the top off. We

look down inside. We try to determine is this manhole perfect or is it leaking a little bit or leaking a medium amount or leaking a lot. And so we put it into three different categories and try to grade the manhole on how good it is or do we need to spend some money and do work on it.

And so we go out and do that. We also G P.S. that manhole. We have a very extremely accurate G.P.S. device that we stand on the top of that manhole and take a satellite reading that tells us exact where it is. It is accurate within a foot or maybe 18 inches. So extremely accurate on my part, and we look down the manhole. We the grade manhole, take some notes and we move onto the next manhole.

And so sometimes in 2009 we did a physical manhole survey and then back in 2010 I believe is when come back and did the smoke test.

Q. And, Mike, now, the work that you'll did on the sewer system in Latta the -- all that work, how many man hours do you think it was?

A. I'm not sure of man hours, but overall it was probably six months worth of work. Not everyday, but over a six month timeframe.

Q. During different times of the year?

A. Our purpose is we tell the Town we would like to come

over on a Tuesday and a Thursday. That way your staff still has Monday, Wednesday and Friday to do their normal job. We can go to work on other things, too, and some weeks we can get two days a week in. Some days we have to skip Thursday and just show up again next Tuesday. So we intentional don't try to overload the Town's forces all week or overload ours. So we pick one or two days a week and go with that.

Q. And were you supervising the work that was being done?

A. I was supervising from Florence, but I put one of my best men on it that had the experience with smoke testing. So he bought the smoke bombs. He bought the fan. Met with the two or three people from the Town and conducted the survey.

Q. And just so we're clear all this work that you just described was this all being done for just the Graham's house?

A. No, sir. The entire system.

Q. Okay. Was there anything done additional in the vicinity of the Graham's residence acknowledging the complaints that they had?

A. I told my buy that there was a suspicion that there was leaks in the sewer system in this area. To stop and pay particularly close attention. Maybe put two or three

smoke bombs in that general location. Sit there and pump bomb after bomb in and don't just pump a bomb and run down the street. Put some extra effort in to it to make sure that we don't miss anything.

Q. And the term you may have said, 'pumping or pushing' smoke. What does that mean?

A. You're actually blowing the smoke not pumping it. Like I said there is a -- it's like a window fan. It's got a Briggs and Stratton engine on it, gasoline driven engine. You crank it up. It immediately turns that window fan on and blows the air down into the manhole. And immediately downstream from that fan is that bucket with the smoke bombs in it producing that dense, white smoke. So you're actually blowing the smoke in not pumping it in I guess.

Q. All right. And based on the testing that was done in the field and the information that was relayed back to you over these several months that this work that was done, did you have any problems that was indicated to you in that vicinity of the Graham's residence?

A. In the vicinity, no. But overall the whole Town there were a number of problems. Nothing that I would categorize as severe, but there was no problems within a couple of blocks of that street.

Q. Did you locate a leak at the Graham's residence?

A. No.
Q. And the information that you obtained did you take that back with you or did you comply it at your office in Florence?
A. Over the next six months or so we completed all the mapping of where all the leaks were, finished filling out all the little forms. For every leak we found we will out a form. We don't do it while the smoke is pouring out of the man -- out of the yard or out the cleanout. We record it, take a picture of it and come back in the next 20, 30 minutes after all the smoke is gone.

But while the smoke is being pumped in or blown into the sewer system we want to go graft every leak that we can at that point in time. So when we've giving up and all the smoke is gone that's when we come back and do the record keeping and take our notes.

Q. All right. And earlier you mentioned that sometimes when you do find there is a problem or an issue what do you do in those regards to identifying the problem or talking to the Town about it?
A. We produce it in an infiltration and inflow study report and then make recommendations to the Town.
Q. And those recommendations you're telling the Town or can you tell me what you tell them? Are you providing them options? Are you telling them what to do? How does

that work?
A. Well, based on what we found we recommended that we go to the next phase of the testing and that is a camera survey. Camera surveys are extremely expensive, and we had to seek outside funding for the camera survey. So we are in the process of applying for funding that will enable us to hire another firm, a construction firm, that has these specialized camera equipment to put in the sewer line, in all the sewer lines, and look at them from the inside out and try to find any cracked pipes, broken joints, and then prioritized what we find with that along with the smoke test and the physical manholes and get all that repair work done at one time.
Q. Okay. There is still all this work going on. And the information you referenced, the study, the investigation you've done at their property, are those records that you've kept at your engineering office?
A. Yes.
Q. Okay. All right. Mr. Hanna, let me show you a document we've premarked and identified and please take a moment and see if you're familiar with what that document is.
A. It's a flood plain map.
Q. All right. And have you seen this document before?
A. Yes, sir. We use them all the time in our office.

Q. What are flood plain maps?
A. I believe it is F.E.M.A. that defines how big of an area around a street, or a river or a ditch is prone to flooding over a 2500 year basis. And we use those as a method of determining where the flood prone areas are.
Q. Are these documents that -- do you know if these are documents that are in the public record or government agency?
A. Yes, sir. Years ago we just got them from the Dillon County Courthouse or whatever courthouse we were at. Now, they are available online, and we don't much mess with the paper maps anymore. We just have a layer on our computer that we just turn on and it shows us the flood plains. So this is how we used to do things with the paper, but the same information is available online.
Q. And are those commonly and routinely used in your professional occupation as an engineer?
A. Yes, sir. Certain governmental agencies will not let me build a permanent structure, a pump station, a water treatment plant, a sewage treatment plant within a flood plain unless I design it to certain -- so I always have to prove whether I'm inside or outside of the flood plain.
Q. Okay.
MR. WREN: With that, Your Honor, we would move to admit Defendant's Exhibit I believe 13 into the record?

THE COURT: Any objection?

MR. WILLIAMS: Objection to relevance.

MR. WREN: Let me ask a follow-up question or two, Your Honor.

BY MR. WREN:

Q. Does this map -- is this map in the vicinity of the Graham's residence to your knowledge?

A. It shows a portion of the limits of the Town of Latta and a ditch that goes through the Town of Latta with the flood plain boundaries around it.

Q. And what street do the Graham's live on, do you know?

A. Rice Street, I believe.

Q. And is Rice Street depicted on that map?

A. Yes, sir, it's just very small.

Q. And I have a larger map. Can you find the general vicinity where the Graham's residence is located? Just a moment. I haven't published it yet, but just if you would verbally tell me?

A. On the thing right here going through the Town.

Q. All right. And so to your knowledge the Graham's residence is depicted on the map ---

A. Yes, sir.

Q. --- do you know?

MR. WREN: Your Honor, at this time I move to have Exhibit 13 admitted into evidence for the jury?

MR. WILLIAMS: I still don't know how it's relevant so we object.

MR. WREN: Your Honor, in response we've spent two and a half days in a trial about a flood water event at the Graham's residence, and this is a flood map.

THE COURT: And I think it was referenced earlier. I'll allow it in. It's admitted.

(WHEREUPON, Defendant's Exhibit No. 13 was admitted into evidence.)

MR. WREN: Thank you, Judge. May I publish it to the jury in a larger format, Your Honor?

THE COURT: Yes, you may.

BY MR. WREN:

Q. All right. This is going to be a little bit tough. What I'm going to do, Mr. Hanna, would it be easier for you to stand up.

MR. WREN: And, Your Honor, would that be okay?

THE COURT: That's fine. Keep your voice up so the court reporter can record what you're saying.

MR. WREN: Thank you, Judge. And we'll come so the jury can see and counsel.

BY MR. WREN:

Q. Is this the same document, Defense Exhibit 13, that you were just looking at?

A. Yes, sir.

Q. For the record this is just a larger, blown up version of that map?
A. Yes, sir.
Q. Can you -- I've got a highlighter here. Can you indicate to me approximately where the Graham's residence is located?
A. Right about that location.
Q. Okay. And can you explain to the jury what the light or white and the dark or shaded areas reflect?
A. Everything in the gray area is in the flood plain. And this is Causey Reedy Creek outside -- I've known it as Buck Swamp, but apparently everything north of that that is called Reedy Creek. And Buck Swamp is down here. And then you've got the drainage basin coming in the Town right her up to the railroad tracks and another one north of Town.

This is the area the plain drainage way for the Town of Latta coming out like right about here. There is a ditch right behind the Rice Street house that we're talking about and that is the center line of this gray area in that ditch.

Q. And, Mike, do you have an opinion as to whether the Graham's property is located in a flood plain?
A. Yes, sir.
Q. What is that opinion?

A. Yes, sir, it is located in a flood plain.
Q. Okay. Thank you, sir. You can have a seat. I'll sit this over here. Now, Mike, you told the jury a moment ago that y'all had done some investigation in the area. Were maps generated as a result of that work?
A. Yes.
Q. Are these -- in what format do you in current times with technology, how do y'all keep your maps and do your mapping?
A. We have a system call G.I.S. in which we have aerial photo backgrounds that we receive from Dillon County. Once every ten years or so Dillon County an other neighboring counties hire a firm to fly over the county, take pictures, produce these aerial photos. They're an excellent background for all the maps that I do, but they are dated the day that they are flown.

In Dillon County those maps are at least eight or nine years-old. They don't show you everything, but they show you what you really need to see. And so those are the backdrops that we put everything on, but every manhole that we surveyed, every leak that we surveyed we can create a dot line map. We can connect those dots to show the sewer system. And that's the format in which we can keep up with that. It's called G I.S. It stands for Geographical Information System.

Q. Mike, let me go ahead and show you right now for just identification purposes. It's Defendant's Exhibits One through Four. And it's four color maps, and take just a minute. I want you to look at each one, and I've got some questions for you, please.
A. All right, sir.
Q. Mike, are those -- are you familiar with those documents?
A. Yes, sir, they're maps that I created.
Q. And what's the purpose of these maps for you?
A. Two fold. The Exhibit One is a map of almost the entire Town of Latta. And it shows all of manholes that we had surveyed. It shows the sewer line connecting those manholes, and it shows you as a red dot the leak we found when we blew the smoke into the system.
Q. All right. Is this a document which you keep in your professional office and use ---
A. Yes, sir.
Q. --- in your engineering work?
A. Yes.
Q. And with that hold, same question, hold true for all four documents? Are these documents which you use in the coarse of a profession as an engineer?
A. Yes, sir.
Q. And have you used these documents in looking at the

situation with the Graham's property in rendering these opinions in this matter?

A. Yes, sir.

MR. WREN: With that, Your Honor, the Defendant would move to have Defense Exhibits One through Four admitted into evidence?

THE COURT: Any objection?

MR. WILLIAMS: I object to them. Perhaps a better foundation could be laid, but the witness necessarily has said that these are the documents he uses, but I don't understand what the relevance is. The fact that he uses them don't have something to do ---

MR. WREN: Let's me continue, please, Your Honor.

THE COURT: Yes, sir.

BY MR. WREN:

Q. Mike, are these -- you identified the first one and perhaps I moved along too fast and I apologize. You identified the first one to show this is basically the Town of Latta. What do the other documents reflect?

A. All right. Number One is the zoomed out view of the -- almost the entire Town of Latta. Number Two is zoomed in a little bit closer to the Rice and Zeal Street area. And also I turned on the flood plain later there so it would show the limits of the flood plain.

Number Three is zooming in even tighter to show the

residence of Mr. Graham and still shows the layer of the flood plain limits. And then Four is even tighter to show the block between Zeal Street and Rice Street.

Q. And do those documents have superimposed the location of the sewer lines we've been talking ago?

A. Yes, sir. All of them have the green sewer lines with the yellow manholes that we survived.

Q. And do all four of those documents contain or show the Graham's residence or Graham's property?

A. On Number One it's difficult to tell where his residence is, but as you zoom in on Maps Two, Three and Four you start to see his residence.

Q. Do these documents, at least the latter three, show the superimposed location of the flood plain that we just looked at on the map?

A. Yes, sir.

Q. And I think you touched upon this already, but let me ask a question. Also do they reflect and do they tell you and show where the manholes are located?

A. Yes, sir. There is a yellow dot showing the exact location where we surveyed the manholes. The green line is our depiction of how the sewer lines connect from one manhole to the next.

Q. And finally, Mike, I think you touched on this. The -- do these maps help you for purposes of showing you

where results were obtained from the investigation that was done by your firm?

A. Map One does.

Q. All right.

MR. WREN: With that, Judge, I move to have these four documents, Exhibits One through Four, admitted into evidence?

MR. WILLIAMS: Your Honor, I would object. This witness testified that in the first two steps of his testimony were government maps. Dillon County takes satellite pictures and the federal government superimposes the flood map. But then he testified he drew something on this map. His survey of the sewer line hadn't established that they're ability to do that.

That that's part of his regular occupation. His regular duties or that he's even authorized to mess with government maps by drawing his idea of where the sewer line are. And I would object to relevance and lack of proper foundation.

MR. WREN: May I respond, Judge?

MR. WILLIAMS: You may.

MR. WREN: Relevance, I don't know how this could be any more relevant or I've been at the wrong trial cause I thought this was entirely what this matter was about. And based on what Mr. Davis, the Plaintiff's expert, spent his

time talking about without the benefit of this information. But then, secondly, as to foundation. Your Honor, Mike is a professional engineer. He is familiar with then and has done work for the Town of Latta. He knows the subjects upon which we speak. And these documents reflect information of what he did.

THE COURT: I'll overrule the objection. I believed that he indicated that he uses a G.P.S. to help locate the manhole, and that they were typically insert onto maps and just to verify their location. And so to the extent that he prepared the document and he put the information I think it's ---

MR. WILLIAMS: Your Honor, may I also make note of the record of my objection to hearsay; that his testimony about sewer lines is his testimony about an out of Court statement. Very consistent with Your Honor's ruling with respect to Mr. Benton's worksheets, work notes. He's got an opinions. I would argue he should express it and but those documents would be hearsay. They're just reiterating his opinion. Thank you.

THE COURT: Okay. I'm not sure they're notes or reports, okay. But I'll rule that their admissible, and he can testify to what they depict and what he did with them.

(WHEREUPON, Defendant's Exhibit Nos. 1 through 4 were admitted into evidence.)

MR. WREN: Thank you, Judge. May I publish them to the jury.

THE COURT: Yes, sir.

MR. WREN: And for the record, Your Honor, this is Defendant's One through Four.

BY MR. WREN:

Q. And, Mike, if we can do the same thing we did a moment ago. Mike, you looked at a smaller version than that marked what the jury will have privy to. Is this the document you looked at that was marked? The first one, Defendant's Exhibit One?

A. Yes, sir.

Q. Okay. And for the jury's benefit what does this document show?

A. Basically, the Town limits of Latta and right here, these little yellow circles, are the manholes that we went out and surveyed in the physical inspection of the manholes. Those are accurate within 18 inches or so. So they're fairly close. We then drew a connection between that as the best map that we have available for Latta. We know that waste water starts off here and goes down this route this way.

So we know there is a connection between those two

manholes. And generally those connections are a straight line. That's the way it's required to lay them. So that green line is of my creation connecting the two dots in an exact location.

The red is where we surveyed the smoke that was coming out of the system. We ave that a number. That's Smoke Number 19. That's Leak Number 18, Leak Number 15. That sort of thing. So I see approximately 35 leaks throughout the system, and that kind of -- this shows you the overall basis where all the leaks were on the system.

Q. Is that number or location, is that unusual for a municipal sewer system?

A. That's not unusual. In fact I'd say it was probably fairly low.

Q. All right. Now, for the jury's benefit perhaps using a highlighter so they can follow you. Can you show the general, and you're welcomed to mark on it, show the general location of the Graham's residence on East Rice Street?

A. Doesn't mark very well, but between Zeal and East Rice where that green line goes.

Q. And this again is a broad picture, right?

A. Yeah.

Q. And can you just describe for the jury what's in the vicinity of where you indicated the Graham's residence is?

A. What's in the vicinity?
Q. Yes, sir. What are the -- I guess you've explained what the dots and the green lines mean?
A. There is a manhole at the intersection of Zeal and King that we shot. There is one down here at -- almost at Vanburg and Rice that we shot and several all the way around it. Generally, the waste water from this part of Town comes through -- goes through his property. The rest of the Town comes right along Rice and flows right out of Town. This is where all the sewer goes out to the Waste Water Treatment Plant which is way off the map.
Q. Yes, sir.
A. That's pretty much the exit as far as waste water in the Town.
Q. Okay. Again, what are the red dots?
A. Red dots are where we found leaks in the sewer system.
Q. Where you found problems?
A. Yes. Broken clean outs, cracked joints. Anywhere where the smoke appeared out of the sewer system.
Q. Okay. And point for me again where the Graham's residence is, please?
A. Right here.
Q. Did you find any problems or leaks or red dots?
A. Closer to 32 and 33 that we could find to that area.

Q. Thank you, Mike. Let me stand right here, and I'll try to make this short. The next one in order was Defendant's Exhibit Number Two, and other way.
A. Other way.
Q. And could you just explain to the jury what this is.
A. All right. This one is slightly zoomed into the area in question. A little bit more, but also turned on our flood plain layer which is a depiction of our other map with gray interior. Everything inside this red is inside the flood plain. And between Zeal and Rice Street that's the area in question. And I just showed you these two manholes we shot and a green line that we drew straight between the outside.
Q. And I didn't want to cut you off, but the red line that is reflected is that same area that we looked at that was the shaded area on the F.E.M.A. map?
A. Yes.
Q. Again, like we did on the last map, can you take the highlighter and just generally show -- I think you did. I just want to make sure we're clear. Where the Graham's property is?
A. Right here.
Q. Is that a swimming pool is see?
A. I can see the swimming pool right there. I can barely make it out. Few houses on this version, but

that's the house. That's the swimming pool, and the sewer line goes right between the two.

Q. All right. That's all the questions I have for that one. All right. Let me show you what you were looking at, Defendant's Exhibit Number Three. Can you please tell the jury what this is?

A. This is just a more zoomed in version of the previous. Now, we've got the two manholes on Zeal and Rice. That's the perimeter of the house roof. There is the swimming pool. There is the connection between it. There is the limits of the flood plain. Everything within here is inside those flood plain limits.

You can even see right in here this is the ditch leaving the property. Now, right under here it's under the cover of the trees so it comes up through here I believe somehow. But right there is fairly well defined. You can see what resembles the ditch.

Q. Okay. And I think as you pointed out can you see the four a little bit here?

A. There is the pool there. It's got a cover on the top. See all these little white stripes. It may be strapping. I'm not exactly sure what they are, but you can see the pools got a cover on it.

Q. I'm going to grab one -- right there without a cover on it.

A. There is one right there without a cover on it.
Q. And are you familiar with looking at, reading and interpreting these kinds of maps?
A. Yes, sir.
THE COURT: Y'all need to keep your voices up, please.
MR. WREN: Thank you, Judge.
BY MR. WREN:
Q. Last one. Mike, this is the document you looked at marked Defendant's Exhibit Number Four. Can you please tell the jury what this is?
A. Once again an even more zoomed in version of the two manholes. One at Zeal. One at Rice. A straight line to the green line that we drew on top of it. You see the roof outline here. You see the pool outline, and the proximity to that. You also see the red lines. Everything within this area is in the flood plain. You also see the ditch that I pointed out before pretty defined on the lower part.
Q. Okay. And, Mike, if the jury is like me I see we've zoomed way in. You can see a little bit more. Mostly on the really dark areas a little bit of this speckling white. Do you know what that is?
A. Just the reproduction qualities of that photo that we exported.

Q. When you zoom in?
A. Yes.
Q. And you pointed out the green lines same as the other one that that location for manhole to manhole of the sewer line?
A. Yes, sir.
Q. That crosses the Graham property?
A. Yes, sir.
Q. And, now, this photo is becoming more clear. Can you tell the jury from your observation, your knowledge of looking at this matter where the sewer line is located?
A. Well, here is -- you can barely see the outline of the roof line right along that green line. So the sewer line would be at least 3 or 4 feet outside the roof line. It also skirts along the edge of this pool right here. So in my opinion it's a few feet outside the house, but not under the house.
Q. And have you seen anything throughout your work on this, your experience and knowledge or investigation that has indicated to you that or confirmed that the sewer line on the Graham property is underneath their house?
A. I have not seen anything. The only two known points I know of is this manhole, this manhole and a straight line between them.
Q. And is this a gravity sewer system?

A. Gravity sewer lines with the direction of flow coming this way and turning and going out.
Q. And my guess is civil engineer. Is it more common to see a house built upon or in the vicinity of a line? Or a line built somehow underneath a building?
A. It's very uncommon, but it does happen.
Q. Here, though, you have not seen anything to indicate that that line runs underneath the house?
A. No.
MR. WILLIAMS: Objection.
MR. WREN: I'll be happy to rephrase it.
BY MR. WREN:
Q. Mike, have you seen anything, everything you looked at in this case to indicate that that sewer line runs underneath the Graham's residence?
A. I have not seen anything.
Q. Thank you. You may have a seat, Mike. I'm going to wrap up.
MR. WREN: Beg the Court's indulgence.
BY MR. WREN:
Q. Mike, the couple of documents that we have looked at today, have you looked at other documents relative to this matter?
A. Yes, sir.
Q. Have you looked at other photographs and such things?

A. Yes.
Q. And are you familiar with residences having what we -- service lines? Do you know what service lines are?
A. Yes, sir.
Q. Can you tell the jury what a service line is?
A. When the sewer comes from underneath your house from your fixtures; maybe your toilet. Maybe your kitchen sink, washer, all the different devices, all that constitutes plumbing lines underneath your house. When it leaves your house and all of those different fixtures are now heading toward the street to hook into the Town sewer line that's what I call the service line. Leaving your house and going out to the main line in the street.
Q. And what is a tap with regards to sewer lines?
A. A tap is the junction of the City's main line and the service line out at the road.
Q. And whose responsibility is the service line?
A. The service line is the responsibility of the individual.
Q. Mike, a little bit ago during voir dire Mr. Williams asked you a couple questions. I heard you say something about -- I think he had asked you about doing work in other municipalities. Do you recall that?
A. Slightly.
Q. Have you done work up in Bennettsville?

A. Yes, sir.
Q. Again, did I hear you to say that you did rehabilitation of existing sewer line work in Bennettsville?
A. Yes.
Q. And what is that for the jury?
A. Rehabilitation can be the full blown replacement of the sewer line. It can be the lining of the sewer line. A technology called pipe bursting. It can be many different things. It can be an insider linger, spring joints. There is many different ways to rehabilitate a sewer line.
Q. And these sewer lines up in Bennettsville were there problems with those lines?
A. Yes, sir. They were collapsed.
Q. And if you as an engineer have a collapsing line or have the problems we've talked about with the sewer line a there are there things you can do to fix it and repair it?
A. Yes.
Q. Is that how you operate?
A. Yes, sir.
Q. As to the Graham's property and everything you've -- looked at after these issues came to your attention after September of 2008 have you become aware of any problems with the sewer line at the Graham's residence that

required the type of rehabilitation or fixing that you just discussed?

A. No, sir.

Q. Thank you, Mike. I appreciate it.

MR. WREN: No further questions, and please answer any questions Mr. Williams has.

CROSS-EXAMINATION

BY MR. WILLIAMS:

Q. So, Mr. Hanna, the Graham's sewer line is just fine and nothing needs doing?

A. I said we did not see any problems associated with it.

Q. How do you account for the problems that have resulted in? If you don't see any problems associated with it how do you account for having sewage under the house?

A. I'm not sure if I know there has been sewage under the house.

Q. Have you ever looked?

A. I went and met on site one day. There was no sewage under the house.

Q. Did you look under the house that day?

A. Yes.

Q. What day was that?

A. It was a day of discovery when both attorneys met at

the house and they invited everybody there -- I think you were there that day.
Q. Yeah. The day I was there, and that was the date that there was no sewage alleged to be under the house or no problems that day, correct?
A. That's true.
Q. All right. Back in September of 2008 and October of 2008, November of 2008, April of 2009, May of 2011, and all this year, 2012, have you ever once looked under that house when there was a time of sewage problems?
A. No, sir.
Q. Okay. You weren't there the day that smoke test was done either, were you?
A. No, sir.
Q. Your people did smoke tests, but you weren't there?
A. That's right.
Q. Your people did camera tests on this sewer line, did they not?
A. No, sir.
Q. Are you aware that camera tests were done on the sewer line?
A. No.
Q. You did not report to Danielle Watson that y'all had tried to do camera tests?
A. I don't recall that.

Q. You know nothing about any camera test?
A. I don't recall anything about a camera test.
Q. That's different. Have you looked at your records to see if a camera test was attempted in preparation for your testimony?
A. No, sir.
Q. You haven't looked at your records?
A. No, sir.
Q. Can you deny that you all attempted a camera test and the line was so clogged that you couldn't get your camera in there?
MR. WREN: Objection, Your Honor. Asked and answered, number one. He can't disprove the negative. He stated he has no knowledge of a camera test.
MR. WILLIAMS: I'll take that as a denial.
MR. WREN: Judge, for the record I don't think my objection speaks for the witness.
THE COURT: You need to rephrase your question.
MR. WREN: Thank you.
BY MR. WILLIAMS:
Q. Are you saying that you're just unaware of a camera test or do you have had an opinion that you can state to a reasonable degree of engineering certainty that there has been no camera test?
A. I don't recall a camera test being done on that

property.
Q. Okay. All right. Let me get you to, if you would, to come down here and talk about the pictures. As I recall your testimony what you're -- this is Defendant's -- oh, this is the blow up of Defendant's Exhibit ---
THE COURT: Mr. Williams, we need to take a brief break? Comfort for one of our jurors.
MR. WILLIAMS: All right.
THE COURT: Let's take a break and come back and continue on. Ladies and gentlemen, I'm going to remind you not to begin to discuss this matter among yourselves as you have not heard all the evidence. Let's take a brief break and we'll come back.
(WHEREUPON, the jury panel was excused from the courtroom at 3:46 p.m.)
THE COURT: Mr. Hanna, you have not completed your testimony so during this break I ask that you not discuss it with anyone. Since you have not completed it it would be inappropriate for you to discuss it with anyone at all. You may step down. Let's take a brief break.
(WHEREUPON, Court was in recess at 3:46 p.m. and reconvened at 3:56 p.m.)
THE COURT: Is there anything before we ask the jury to come in?

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

MR. WREN: Nothing in the Defendant, Your Honor.

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

(WHEREUPON, the jury panel enters the courtroom at 3:57 p.m.)

THE COURT: All right. Mr. Williams, you may proceed.

MR. WILLIAMS: May it please the Court.

BY MR. WILLIAMS:

Q. Mr. Hanna, as I understand your testimony you didn't really get concerned about or involved in this situation at the Graham's house until about the time you and I met at Mr. Graham's house prior while know litigation was going on?

A. No, sir. I think I'd been involved prior to that.

Q. But what was your involvement prior to that?

A. Just hearing about the situation and trying to come up with solutions.

Q. What solutions did you try and come up with?

A. I think I was -- at that point in time the emphasis was on the line was underneath the house and it was leaking sewage. So I knew I could not replace a line underneath a house. So I was looking more at options to relocate that line.

Q. So you looked at options to relocate the line?
A. Yes.
Q. And that's on behalf of the Town of Latta?
A. Yes.
Q. Were you able to find options to locate the line?
A. I drew up a couple of scenarios, but there were no good alternatives there.
Q. When was that?
A. I have no idea.
Q. It was after the litigation started, right?
A. I have no idea.
Q. Okay. While the problems were going on in September, October, November 2008 and then through 2009 were you involved in trying to fix the problem at the Graham's house?
A. In ---
MR. PLYLER: Objection, Your Honor. I don't know what testimony there is of a problem at this location.
THE COURT: Maybe you need to rephrase the question or provide information from facts in evidence.
BY MR. WILLIAMS:
Q. Beginning in September 2008 and continuing to the point at which you drew out some possible relocations of the line did you have any involvement in trying to analyze, correct or understand the problems the Grahams

were having with sewage under their house?
A. I'm not sure if any direct involvement, but somewhere in that timeframe came the invention of let's do the smoke, let's do the physical manhole survey. I'm just not sure of the exact date when all that started.
Q. Okay. And I think you told the jury that the camera test is the most effective test, right?
A. Not necessarily the most effective. There are certain things that the smoke will show up that the cameras will never see. There are certain things that the cameras will see that the smoke will never show up. So they're equal partners in determining what to do with the line.
Q. But the smoke will detect as you testified to only readily visible smoke, correct?
A. Yes.
Q. And if a line is blocked and smoke can't get past that certain point then the smoke won't go somewhere else, right?
A. That's true.
Q. Okay. And if somebody, not you, but if somebody is conducting a smoke test and they see smoke coming out of the roof of a house they won't think there is anything to even observe, correct?
A. That is a good indication that smoke has made it that

far down the main line.
Q. Okay. It doesn't -- it's not an observation that there is an issue, correct?
A. No, no issue.
Q. Okay. It's a normal expectation?
A. That is correct.
Q. All right. Now, let's talk about the maps that you prepared, Number One, Two, Three and Four. The ones that lead to -- this is the third of them, but zooming in on the Graham's house?
A. Okay.
Q. The Dillon County Government did the ariel photos, correct?
A. Yes.
Q. And you rely on those? Everybody relies on those?
A. Well the Dillon County Government did not do the photos. They paid for theme. The Pee Dee Regional Council of Government hired the firm that did the photos.
Q. Okay. And the red lines are something you can mash a button on a computer and that information comes from the federal government, correct?
A. I think that information comes from the D.N.R.
Q. What?
A. Off of the D.N.R.'s website.
Q. Department of Natural Resources?

A. That's right.
Q. They get it from the federal government, correct?
A. From F.E.M.A.
Q. F.E.M.A. The Federal Emergency Management Administration?
A. Yes, sir.
Q. Okay. And that's how these red lines got on this drawing?
A. Yes, sir.
Q. The green lines that are on this drawing what map -- what computer did you go to find out where to put those lines?
A. Those are lines that my G.I.S. technician drew from known manhole locations.
Q. Okay. So you didn't have a governmental reference source to determine where the Town of Latta's sewer lines are located, do you?
A. No, sir.
Q. And you don't have a -- and the Town of Latta doesn't have a map showing where its sewer lines is, does it?
A. Yes, sir.
Q. Did you look at that map?
A. Yes, sir.
Q. Did you use that map to prepare this photograph?
A. Yes.

Q. Okay. How did you use that map?
A. At this point we have two pieces of known information. We have our physical manhole data that we have GPSed and that is a known location on the face of the earth. I can guarantee that within a foot or so.
Q. Okay.
A. The map for Latta is a map that is approximately 90 percent accurate that Latta has been using for 30 or 40 years. This represents a much more accurate rendition of what is actually in place in the field than the old Latta maps. But we use the Latta maps to tell us that the flow goes from Manhole One to Two. Skips over to Four. Goes down the Five. Just as a general representation to make sure we're connecting the dots properly.
Q. All right. Each one of these dot is designed to represent at manhole, correct?
A. Yes.
Q. You put those on there or your G.I.S. technician put them on there?
A. Well, when you download the data off of the G.P.S. device it puts them on there. Nobody draws them. It shows a dot on that location on the face of the earth.
Q. So the global positioning satellite tells you where this manhole is?
A. Yes.

Q. How does it know?
A. We have a device called a Tremble GOX-8. It's about this big. It's like a very large calculator. We go stand on top of the manhole. We push several buttons, and it measures from seven to 12 of satellite locations where I'm standing on the face of the earth. I'm standing on the top of a manhole. You take that device back. You hook it into the internet. It takes 24 hours to calibrate that data. And then it produces an output file that you put on the computer and the computer draws where that dot is on the face of the earth.
Q. Okay. You prepared this for this litigation, correct?
A. No, sir. I prepared that for the infiltration and inflow study report that I'm doing.
Q. So what the satellite reads is not where the manhole is. It's where the person is standing when they sent the information to the satellite, correct?
A. Yes, sir.
Q. And if the person was not standing on the manhole the satellite goes and pick a wrong location, correct?
A. Yes.
Q. And even if a person is trying to stand on the right manhole and just 6 inches off of this. They should be on the dead center of the manhole, right?

A. Yes, sir.
Q. If they're a few inches off the dead center of the manhole that's going to go up to the satellite, come back down 6-inches in the wrong location, right?
A. The Tremble GOX-8 device that I described as a large calculator it is mounted to a pole. You sit the base of the pole in the center of the manhole. You stand the pole up straight. I agree it could be tilted 2 degrees one way or the other. The device is sitting on that. The signal is going from the top of the pole to the satellite. And it's all within 3 or 4-inches. The accuracy of the satellite, the G.P.S. device, is within 18 inches. So generally we're within a foot, 18 inches of the actual location.
Q. Okay. The accuracy of the satellite is within 18 inches, and that's from the -- with respect to the point in which the signal is sent up to the satellite, right?
A. Yes.
Q. If the signal was sent a little bit off then it can be more than 18 inches off, correct?
A. Sure.
Q. Sure?
A. Yes.
Q. Okay. Did you stand on this manhole cover?
A. No, sir.

Q. Did you stand on that manhole cover?
A. No.
Q. Did you stand on any of those manhole covers?
A. No, sir.
Q. Did you obvious the people who stood there?
A. No, sir.
Q. What kind of training do they have?
A. Years of experience with the GOX-8 Tremble device.
Q. Who were they?
A. Ryan Cox.
Q. Okay. Not employees of the Town of Latta?
A. My employees.
Q. Your employees?
A. My company's employees.
Q. Your company's employees, okay. Now, so what you -- correct me if I'm wrong, but basically what you did is based on this manhole cover, supposed manhole cover, it's either 18 inches on way or off one way or the other; is that correct?
A. 18-inches total.
Q. When you say total what does that mean?
A. The center of the manhole, I make sure in this location that it was either nine inches that way, 9 inches that way. 18-inches circle.
Q. Okay. So it could be 9 inches off either way?

A. Yes.
Q. Same with respect to this manhole?
A. Yes.
Q. So the two of them together can be 18-inches off?
A. Sure.
Q. One could be to the left. One could be to the right?
A. Yes.
Q. So together would be 18-inches, right. So how far from the Zeal Street manhole to the Rice Street manhole?
A. I do not know.
Q. Is this map to scale?
A. No, sir. It's in proportion, but it's not to a scale that we can measure.
Q. How about your F.E.M.A. map? It's to scale, isn't it?
A. No, sir. It's printed on 11 by 17 paper. There is a scale that you can match it, a graphical scale, but it's not to scale.
Q. You're an engineer. You're used to eyeballing maps, aren't you?
A. Pretty much so.
Q. All right. Eyeball from the Zeal Street manhole to the Rice Street manhole, isn't that roughly 200 feet?
A. I would say closer to 400 feet.
Q. 400 feet, okay. Twice as much.

A. Normally city blocks are about 400 feet apart. That looks like a normal city block.
Q. All right. When your man went out there to stand out there and hold up the stick and send the signal to the satellite did he have a map of where the manholes were in Latta?
A. Yes.
Q. Okay. And he went and looked for the maps? I mean looked for the manholes base on the map?
A.
Q. But the map was 30 or 40 years old?
A. Yes, sir.
Q. Okay. What if he got to a place and there was supposed to be a manhole there and there wasn't? Did that happens
A. Yes, sir.
Q. Okay. Did he get to other places where there wasn't supposed to be a manhole and there was one?
A. That would not be as common as the previous scenario.
Q. Okay. But thinking there was going to be a manhole and not seeing one is more common, correct?
A. Yes.
Q. Do you have a record of where they looked for manhole and couldn't find one?
A. Yes, sir.

Q. Where were those locations?
A. I have no idea. I have a record of it. I don't have it in my head.
Q. Wasn't one of them right there on Rice Street at the front of the Graham's driveway where their driveway leads to Rice Street?
A. I don't recall it.
Q. Didn't there used to be a manhole there?
A. I don't know.
Q. Years ago?
A. I don't recall that either.
Q. Wasn't there a manhole there that was covered up when they repaved -- when they paved Rice Street?
A. I don't recall that either.
Q. Okay. All right. You're an engineer. If this line here is a straight line from the Zeal Street manhole to the Rice Street manhole.
A. Okay.
Q. And it's 400 feet long. If you moved one of the -- let's say if you moved the Zeal Street -- I mean the Rice Street manhole 9 inches to the left. Got me so far? Now, let's move the Zeal Street manhole 9 inches to the right, correct? Now, you have a right triangle the hypothesis of which is 400 feet, correct?
A. Yes, sir.

Q. And you know the Pythagorean Theory, don't you?
A. Yes, sir.
Q. Tell the jury what that is?
A. Z squared equals X squared plus Y squared.
Q. Okay. So if -- and Z squared being the hypothesis. That's this line here?
A. Yes, sir.
Q. So if you know what this line is you can -- you will know what every other line forming a right triangle with it is, is that correct?
A. Yes.
Q. If you're 18-inches off. If you're 9-inches off to the right on Zeal Street and 9 inches off to the left on Rice Street you're going -- you can be as much as how many feet off on this straight line?
A. In the midpoint I would be the exact same place I started.
Q. In the midpoint. I said if you're 9 inches off this way and 9 inches off that way you can -- this line here, this portion on Rice Street can be as much as 45 to 50 feet off, isn't that right?
A. No, sir.
Q. Do you have a calculator with you?
A. I do not.
Q. Do you have a cell phone with you?

A. No, sir.
Q. Do you have a pencil and paper?
A. No.
Q. Do the math necessary using the Pythagorean Theory we just described to determine the possible locations of this line. The lines connecting this manhole to that manhole if you're off 9 inches to the right on Zeal Street, 9 inches to the right of Rice Street?
A. Zero. I would demonstrate. May I?
Q. Yep.
A. I have a vertical line. That's where I say the line is. You say that I am off 9 inches at this location. I'm off 9-inches at this location. I connect the dot. I'm at the exact same point, midpoint.
Q. Midpoint, okay.
A. If this is 200 feet and half way if this is off 9 inches that would be off four and a half inches. Same way up here. If you're going a third point it would be off two and a half inches. If it was off here it would be six and a half inches. Those are rought numbers out of my head.
Q. So if this line here -- if this point here is 9 inches this way and this point here is 9 inches this way the line would run just like this, would it not?
A. And meet at the exact same location in the middle of

that line.
Q. In the middle?
A. Yes.
Q. The middle of the line would be at the ditch though, wouldn't it?
A. Yes, sir.
Q. So the middle of the line would be the ditch, but then that line would continue on a little bit to the left?
A. 9 inches to the left.
Q. 9-inches to the left. 18 inches total. 18 inch gap here. It you tip this line just a little bit it runs right through that house, doesn't it?
A. I disagree.
Q. It runs partly under the house, correct?
A. No, sir.
Q. Not at all under the house?
A. No, sir.
Q. Okay. So this -- no matter where you put the manhole cover on Zeal Street or Rice Street it doesn't affect the drawing of that line?
A. Within a reasonable degree of accuracy which I've stated is about 9 inches. 18 inches total.
Q. When you drew this that's a line, isn't it?
A. Yes.
Q. All right.

A. That is a worse case scenario. If we were off to the east on a northern manhole and we were off to the west on the southern manhole it would work out to the exact same thing.

Q. What I'm trying to get you to do is do a worse case scenario?

A. The worse case scenario is if I were off 9 inches on both locations to the east, then I would be off 9 inches in the middle.

Q. Label your drawing of the original line. Just write original line or Mike or M.A. And then label this line here the 9-inch off line. Okay?

MR. WILLIAMS: Your Honor, I would offer this as Plaintiff's Exhibit Number next?

THE COURT: Any objection?

MR. WREN: I'm sorry, Your Honor. I stayed back to stay out of the way. Just a moment. I don't understand the math, Judge, but other than that I don't think I have an objection.

THE COURT: Plaintiff's Exhibit 19.

(WHEREUPON, Plaintiff's Exhibit No. 19 was marked for identification and received into evidence.)

BY MR. WILLIAMS:

Q. All right. You mentioned something else. You said the formula by which one would determine how far off this

line could be was Z squared equals something. Say that again?

A. You asked me what the Pythagorean Theory was.

Q. Right.

A. I gave you that. That is not the formula on how to determine how ---

Q. Okay. What's the Pythagorean Theory? What is the formula for that?

A. I think it's Z squared equals XY -- X squared plus Y squared.

Q. Okay. Write that down on that piece of paper, please. All right. Now, write down the 400 feet for the hypotenuse. You agreed that's the hypotenuse, right?

A. Right.

Q. I said just write down the number?

A. I agree that it was the distance between the two manhole.

Q. Right.

A. The approximate distance.

Q. Right. Why don't you write Z for that so everybody can know what you're doing. All right. Now, under the scenario that I've described where the satellite is 18-inches off. The base of they triangle is going to be 18-inches, right?

A. I'm not sure what you're trying to ...

Q. I'm trying to move the manhole 18-inches to the right -- to the left, actually. I'm trying to move the Rice Street manhole 18 inches to the left relative to the Zeal Street manhole. You see what I'm trying to do?
A. What's your question.
Q. Would the base -- would that line on the triangle be 18 inches?
A. I will draw another scenario. If you only want to move one manhole. I say it is here. You say it is 18 inches off. And now I connect the lines. At approximately half way it would be 9 inches off.
Q. What about at the full way?
A. At the way.
Q. At the -- all the way down, how much would it be?
A. You said 18 inches.
Q. Okay.
A. Give and take.
Q. But it would be 9-inches off at the midpoint?
A. Yes, sir.
Q. Okay.
A. I disagree with the 18-inches.
Q. Okay. What -- if the base of that triangle is 9 inches, the one that you want to use, what would the long line be?
A. The hypotenuse.

Q. Well, the second angle? The second line? The second largest line? Not the hypotenuse, but the second largest line?
A. If the hypotenuse is 400 it would be 399.8. I mean it would be slightly less than 400.
Q. Let me abandon that line of questioning. Let's go back to this. If in fact there was a manhole cover, and if you'd come over here and look at it more closely, if there is a manhole whose cover had been paved over at the end of the Graham's driveway and you drew up -- and you got the G.P.S. You stood there with the G.P.S. device. You would draw a straight line right through their house, would you not?
A. If I knew that to be the case.
Q. If that were the case?
A. Yes, sir.
Q. Okay. And your people had no way of determining what was under the pavement, do you?
A. No.
Q. Okay. Thank you. That's all I have.
MR. WILLIAMS: Your Honor, I have broken my grasses. Can I have a minute to try to reconnect them?
THE COURT: Yes.
BY MR. WILLIAMS:
Q. Mr. Hanna, you do disagree that the type of pipe used

in 1924 was terra cotta pipe? Most likely terra cotta pipe running underneath the Graham's house?
A. I do not know what was used in 1924.
Q. Do you know what's under the Mr. Graham's house?
A. No, sir.
Q. And Mrs. Graham's house?
A. Yes, sir, I do.
Q. What's under there?
A. I saw a picture that made it resemble cast iron pipe. Now, that's the service line underneath the house. I did not see the main line for the Town of Latta.
Q. Okay. The service line is metal?
A. Yes, sir. Cast iron.
Q. That would mean the line from the commode to the main line?
A. It would appear to be cast iron. I don't know for sure.
Q. Appears to be cast iron?
A. Yes, sir.
Q. What about the main line that's owned by the Town of Latta?
A. No, sir.
Q. Did you attempt to look at it?
A. No, sir.
Q. Did you look at it?

A. No, sir.
Q. Did you stumble across it?
A. It's underground.
Q. Okay. Did Mr. Graham show you the spot where he had dug up the line and look at it?
A. I don't recall that.
Q. Dug up to the seal where the service line is connected with the main line?
A. I don't recall that.
Q. Okay. You didn't look at that?
A. I don't recall that.
Q. Didn't you look a the hole at his back door and say -- and he point to you and show you where that was?
A. I don't recall that.
Q. Well, under -- If there is a service line connecting to your main line that someone had actually looked at would that be a good reference point for drawing a straight line out to a manhole on Rice Street?
A. I'm not sure what that point would represent.
Q. It would represent a line running from that point to Rice Street?
A. I'm not sure how I can determine that by looking into a whole.
Q. What if you looked in the hole and saw the main line?
A. I would not be sure how I would determine if that

would be the main line.
Q. You can't look at one and tell what it is?
A. It's according to what I'm looking at.
Q. So would it not be more reliable to look at it and see -- say to yourself, 'this is the main line. It looks like the main line'; that is to go out and stand on a manhole and have somebody else stand far away and you look over there and they wave to you and see that that's the main line between the two?
A. I'm not sure what your question is.
Q. Is a hole dug in the ground where you see the main line, isn't that a good reference point from which to draw a straight line?
A. As long as you know what line you're looking at.
Q. You made no attempt to look at any such line, did you?
A. No, sir.
Q. Okay. Tropical Storm Hanna didn't go through Latta, did it?
A. I have no idea, sir.
Q. All right. That's the one you were fond of because you had the same name.
A. I remember the storm. I don't remember it's path.
Q. Didn't it go out in the ocean and go ashore well north of Latta?

MR. WREN: Objection, Your Honor. The witness is not an expert. Just testified he doesn't know where the storm went.

BY MR. WILLIAMS:

Q. You weren't interested enough in it to figure out where it went? You just liked the name?

A. I remember the name. I didn't say I liked the name. I remember it, but I don't remember its path.

Q. Isn't there another way to determine where a line is other than running smoke through it and running a camera through it and standing on manholes and looking at each other?

A. If there is some sort of magnetic location device or if it's cast on or steel you can use magnetic locators to find ---

Q. But for the magnetic locators to work it would have to be a metal pipe or have some sort of wiring in it? It couldn't be terra cotta pipe; is that correct?

A. That's right.

Q. All right. Is there such a thing as coring to determine where it would be?

A. I'm not sure what coring is.

Q. Is there any kind of technique where somebody can go out with a tool of any kind whatsoever and jab it in the ground and figure out what's underneath the ground?

A. Yes, sir. But you're not 100 percent sure you know what line you're tracing.
Q. Okay. But you can determine lines?
A. Yes, sir.
Q. You're won't know which line it is, but you will find lines?
A. Yes.
Q. Okay. You may find more lines than you're looking for or you may find the wrong lines, but you will find lines, right?
A. It's not 100 percent reliable.
Q. Well, neither is G.P.S. or G.I.S. Nothing is 100 percent reliable, correct?
A. I have a lot of faith in the G.P.S. system.
Q. Did y'all send anybody out before going to these other techniques? Did y'all send somebody out poking in the ground to see if you can find the line?
A. No, sir.
Q. That's never been done?
A. Not to my knowledge.
Q. Okay. Will you agree with me that if the service line from the Graham house connects with the main line right at their back door within 5 or 6 feet of the carport. You know what area I'm talking about?
A. Yes, sir.

Q. Where the back steps join the grass, if there is a main line connection to the service line at that point would you agree with me that you can't get to Rice Street from that point without going under their house?
A. That would be true.
Q. Thank you.
MR. WILLIAMS: I'm sorry. I'm through, Your Honor.
THE COURT: Any redirect?
MR. WREN: Yes, brief redirect, Your Honor.

REDIRECT EXAMINATION

BY MR. WREN:
Q. Mike, the -- all the opinions you've relied to the jury here today have they all been to a reasonable degree of engineering certainty?
A. Yes, sir.
Q. And that is your profession; is that correct?
A. Yes, sir.
Q. ——If there had been a camera study done of this particular location would you have seen it?
A. Yes, sir.
Q. You recall Mr. Williams asked you about options of the potentially relocating the line. Do you recall all that from a little bit earlier ago?
A. Yes, sir.
Q. And you actually, indeed, did look at options of

possibly relocating the line. Was that your earlier testimony?

A. Yes, sir.

Q. Did you need to relocate this line?

A. We didn't find a problem with this line that needed relocating.

Q. Mike, thank you very much for your time.

A. Thank you.

MR. WREN: I believe I have no further questions.

RECROSS-EXAMINATION

BY MR. WILLIAMS:

Q. Mr. Hanna, does the Town have to ability to shut down the sewer system? To turn a crank or something and temporarily have things stop flowing?

A. No, sir.

Q. There is no way to do that? How do y'all when y'all have -- do you ever have to repair a sewer line by taking out part and replacing it?

A. Yes, sir. You have to plug the line, but that's not a very normal -- you start creating blockages upstream when you do that.

Q. So you block it off somewhere?

A. Yes, sir.

Q. Block it off upstream and downstream?

A. You've just got to block it upstream.

Q. Only upstream?
A. Yes, sir.
Q. Then you can work on it?
A. Yes.
Q. Okay. Has the Town of Latta ever done that with its main line during your relationship with them?
A. I don't recall any specific events, but I'm sure they probably have. Contractors do it more frequently than the to Town staff do it.
Q. When I say, "the Town' I mean the Town and its contractors and subcontractors and people like you. Has the Town in the few few years not had occasions where it would shut down the sewer line temporarily to do repairs?
MR. WREN: Your Honor, objection. I was trying to give some deference, but my redirect was pretty brief. And I'm pretty sure I didn't go into any of this, Judge?
THE COURT: I'll allow him to ask the question.
MR. WILLIAMS: Thank you.
BY MR. WILLIAMS:
Q. Have they done that?
A. Yes.
Q. And after affecting the repair cut the sewer system back on?
A. Yes, sir.
Q. And what's the most recent occasion for that?

A. In the last few weeks.
Q. How often does it happen?
A. Not very often. The Town is going through a project right now because of a highway expansion on 301 an 501. Some of that work is causing us to tie into the sewer lines with contractors. Not the Town's staff, and I do believe that they've had to plug and bypass lines around things while they can make the new repairs.
Q. Okay. Is that a once a year thing?
A. I'd say more like once every three to four to five years.
Q. But most recently two or three weeks ago?
A. Yes, sir.
Q. Thank you.

COLLOQUY

MR. WREN: Your Honor, may the witness be excused?

THE COURT: Yes, sir. You may step down. You may be excused.

MR. WREN: And, Judge, Your Honor, with that the Defendant rests.

THE COURT: Is there any rebuttal testimony?

MR. WILLIAMS: I think so, Your Honor, but perhaps not. If we can have a recess so we can consider it and make a phone call.

THE COURT: Yes. Ladies and gentlemen, once again

we're going to take a brief break so we can determine whether we need to take additional testimony today. I ask that you retire to the jury room and not to begin any deliberations any this point or any discussions about the evidence and the testimony as you still have not heard all of the evidence. And even if you have heard it all you haven't heard my instructions on the law. I'll bring you back in just a few moments. Jut bear with us. Thank you.

(WHEREUPON, the jury panel was excused from the courtroom at 4:32 p.m.)

MR. WILLIAMS: I am going to have some rebuttal, two witnesses. One of them cannot get physically get here until in the morning. It's Danielle Watson. She's off work and other things to do when I tried to call her about an hour and a half ago. She can be here in the morning. And the other one is Mr. Graham. I can call him now or I can call him in the morning. Whatever the Court's pleasure?

THE COURT: Whatever will speed us along.

MR. WILLIAMS: Pardon me?

THE COURT: Whatever will speed us along.

MR. WILLIAMS: I don't think it will make a material difference. I'm going to ask Mr. Graham about four questions.

THE COURT: Since we've got the jury here and we've

got time let's go ahead and do that.

MR. WREN: Thank you, Your Honor.

MR. WILLIAMS: I sent him out to call Ms. Watson and tell her to be here in the morning.

THE COURT: That's all right. No problem when he gets back. I'm sure he won't be long. Are these large exhibits been marked?

MR. WREN: Yes, Judge. We have smaller copies of the original which we marked with ease for the jury. These were demonstrative, and I should have clarified that. I'm sorry.

MR. WILLIAMS: And I believe I think we have agreed that they would enter into evidence the smaller ones and we all use the larger ones.

THE COURT: That's fine.

MR. WREN: Sorry, Judge. We forget to tell you.

THE COURT: We ready?

MR. WREN: Yes, Your Honor.

THE COURT: Okay. Ask the jury to come in, please.

(WHEREUPON, the jury panel enters the courtroom at 4:52 p.m.)

THE COURT: You may call your witness, Mr. Williams.

MR. WILLIAMS: Your Honor, we call Claude Graham to the stand.

THE COURT: Mr. Graham, I remind you that you are

still under oath to tell the truth in this matter.

THE WITNESS: Yes, ma'am.

CLAUDE GRAHAM, after have been previously duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WILLIAMS:

Q. Claude, you're still under oath?

A. Yes, sir.

Q. Did you ever locate your service line for your sewage system for your house?

A. Yes, sir.

Q. And how did you do that?

A. Hired a plumber to come to the house, and we dug up the section of line and then followed it where it tied into the sewer line.

Q. And did you watch that hole being dug?

A. Yes, sir.

Q. Did you watch the hole after it was dug?

A. Yes, sir.

Q. Did you see the place where your service line tied into another line?

A. Yes, sir, I did.

Q. Describe to the jury what you say?

A. The service line came out of the house, and it went to a bigger line that was up under the ground. And right

in the top of the line the service line was like hooked to the bigger line with cement all around it.

Q. All right. So the service line ran up and down from your house?

A. Yes. Well, it came from the house like this and whenever it got to the sewer line it went like this to the sewer line.

Q. It crooked down?

A. Yes, sir.

Q. To the sewer line?

A. Right.

Q. Okay. What was the size of the service line? Use your hand if you want to.

A. About this big around.

MR. PLYLER: Objection. Calls for an opinion, an estimate and speculation.

THE COURT: He can give an estimate of what he saw.

THE WITNESS: It was approximately that big around.

BY MR. WILLIAMS:

Q. And was the other line bigger or smaller?

A. Smaller.

Q. I asked -- my question ---

A. About this big. The other line coming from the house was about that big.

Q. All right. The line coming from your house was how

big?
A. The line coming from the house was about that big.
Q. Okay. And the other line?
A. The other line was about that big.
Q. Okay. So the other line was bigger?
A. Much bigger, yes, sir.
Q. What did you believe -- as a result what did you believe the other line to be?
A. The main sewer line.
MR. PLYLER: Objection. This is speculation. He's asking what he believes it to be. He's not been qualified as an expert. It's lay opinion and it's speculation.
THE COURT: I'll sustaining that one, and you can rephrase the question.
BY MR. WILLIAMS:
Q. Did you have any line on your property other than the service line?
A. No, sir.
Q. Okay. So that other bigger line was somebody else's line, correct?
A. Yes, sir.
Q. All right. That other bigger line, where did it lead? What direction was it running?
A. Towards my house.
Q. Towards your house?

A. Yes, sir.
Q. And how far away from your house was this hole that you dug?
A. 8 feet, 6 feet, eight feet.
Q. Let me get you to -- this is a blow up of Defendant's Exhibit Number Three. And I believe that we've got an even better one, view. Okay, this is a blow up of Defendant's Exhibit Number Four. You may -- with the Court's permission ask you to step down?
THE COURT: Just keep your voice up so we can hear you.
BY MR. WILLIAMS:
Q. It's a Sharpie that I borrowed from the Clerk of Court. Do you recognize this picture?
A. Yes, sir.
Q. Okay. Show, just so we can all reorient ourselves, show us Rice Street?
A. Rice Street is right here.
Q. Where is your house?
A. This is my house.
Q. And where is your pool?
A. This is swimming pool.
Q. Okay. This green line that might represent a sewer line, does that run underneath your swimming pool?
A. I couldn't tell you.

Q. Have you ever had any trouble with your swimming pool related to sewage?
A. No, sir.
Q. Okay. Draw with that Sharpie on here where you observed the hole that you saw the service line?
A. Where the service line came from the house?
Q. Where the service line came from the house and connected with the other larger line.
A. I don't know what this black stuff is, but it was right in there.
Q. All right. Make a -- draw a big circle around that little circle that you just drew. And put 'CG'. So on the center of this circle right here is where the hole was?
A. Yes, sir.
Q. How big around was that hole?
A. Pretty big.
Q. But was it big?
A. Yes, sir.
Q. As big as that?
A. Yes, sir.
Q. You had a clear, unobstructed view of it?
A. Yes, sir.
Q. Okay. Did you get down on your hands and knees and feel around in there or just looked?

A. I just looked.
Q. Okay. Could you tell what the other line was made out of?
A. It was covered in mud and everything else. So the thing I could see was where it was connected.
Q. Okay? All right. From this point here where you saw that connection if you wanted to get to Rice Street how could you do it?
A. Right there.
Q. And what direction was that other line pointed that you saw?
A. Right like that.
Q. Just like you just depicted?
A. Yes, sir.
Q. Both of them going through your house or under your house?
A. Underneath the house.
Q. Through the line running under your house.
A. Yes, sir.
Q. You can sit down back up there. Now, you recall some earlier testimony about Melvin Jackson, the supervisor of the Sewer Department for the Town of Latta?
A. Yes, sir.
Q. Did you ever have a discussion with him while he was in that capacity about the location of the manholes around

your house?
A. Yes.
Q. Tell the jury what he said, what you asked him, what he said as best you can remember?
A. He told me there was a manhole cover out at the end of my driveway that was covered up by pavement by the Highway Department the last time they paved the road.
Q. Did he say when the last time they paved the road was?
A. No, sir.
Q. And tell again the location of it that he said?
A. Out at the end of my driveway in the road. In Rice Street.
Q. And that line that you just showed the jury, the line that you drew on the map from your hole in the ground where the other line was, tracing it out, where would it have ended in relation to Rice street?
A. Pretty much in that area that we're talking about.
Q. At the end of your driveway?
A. At the end of my driveway.
Q. Okay.
MR. WILLIAMS: That's all the questions I have.
THE COURT: Mr. Plyler.

CROSS-EXAMINATION

BY MR. PLYLER:

Q. Mr. Graham, you were up here a little over three days ago, is that right? And then on Monday weren't you on the stand?
A. Yes, sir.
Q. Now, I think we started about two o'clock on Monday; is that right?
A. Yes, sir.
Q. You were up there for like two hours, weren't you?
A. Long time.
Q. Right. You were asked a whole bunch of questions, and you knew what you were going to be asked about, didn't you?
A. Yes, sir.
Q. And you knew that this whole lawsuit that you and your wife brought was about whether there is a line running underneath your house?
A. Yes, sir.
Q. And I asked you, just like we're doing right now, I asked you did you do anything to inspect that line? Anything to show that that line was running underneath your house, and what did you say? You said, "No."
A. No.
Q. So now you're telling me that I remember the time when the plumber came and dug the hole, and I can see that that main line is running underneath my house." So all of

a sudden two days later you remember this particular event; is that correct?

A. Yes, sir.

Q. And you understand that you're under oath, sir?

A. Yes, sir.

Q. You understand what that means?

A. I understand perfectly what it means, yes, sir.

Q. All right?

A. Yes, sir.

Q. And you understand that this lawsuit is important, correct?

A. Yes, sir.

Q. You understand it's important to all of us?

A. Yes, sir.

Q. You understand that it takes our time, our personal time, correct?

A. As well as mine.

Q. Right. And you could have provided that testimony on Monday, couldn't you?

A. I could have ---

Q. All right. So were you lying then?

A. If I remember ---

Q. --- or now, sir?

A. I'm telling the trust then and now.

Q. So when I asked you had you done anything to try to

show where that pipe goes and you said, "no" that was the truth?

A. No. You asked me if I had conducted an inspection. I have not still conducted an inspection. I watched a plumber dig a hole to install my service line.

Q. Wait. To install your service line?

A. Hook it back up in there if it was disconnected.

Q. So a plumber came to install your service line? So where is your sewage ---

A. Plumber came ---

Q. Excuse me, sir ---

(WHEREUPON, both parties speaking on top of each other.)

THE COURT: One moment. We cannot have people talking over each other. The court reporter can only take one person's voice. Both of you need to listen to each other and wait until the other person is finished speaking before you answer the question or ask the question.

THE WITNESS: Yes, ma'am.

BY MR. PLYLER:

Q. Please allow me to finish my questions?

A. Go ahead.

Q. So where has your sewage been going since 1960? Has anybody been using a restroom in that house if the plumber came whenever it was that you couldn't remember on Monday

and installed your service line?
A. It was going down that service line. That's why I asked him to come and check it to see if there was something wrong with it.
Q. Did you take pictures of that hole?
A. No, sir, I did not.
Q. You didn't think that was important?
A. No, sir.
Q. When did that occur?
A. Prior to this rain event that we're talking about.
Q. And did you think it was, I don't know, unusual that this pipe you saw in the ground that your service line was connecting to pointing directly at your house?
A. Most unusual.
Q. Okay. So you obviously went on the Town and complained about it, didn't you?
A. No, sir.
Q. Okay. And why is that? If it's unusual and you see it pointing at your house why you didn't go and complain to somebody about it?
A. It's not normally the way we do it in Latta.
Q. Okay. You never complain to the Town of Latta?
A. Oh, yeah.
Q. But the fact that there is a sewer pipe, according to you, that you just remembered was pointing at your house,

even though two days ago you didn't remember it. You didn't think that was important to tell us about on Monday?

A. I believe I did tell you about the sewer line on Monday.

Q. I believe you told us that a plumber told you that there is a pipe on your property running under your house; isn't that correct?

A. I'm sorry. Rephrase that.

Q. You told us that a plumber came to your property, because I remember having this discussion with you. So the plumber told you that this pipe was running under your house, right? You said, "No, Melvin Jackson told me the pipe was under my house?"

A. No, sir. I don't remember that.

Q. You don't remember saying that?

A. No, sir.

Q. Okay. But the fact that you had actually laid eyes on this pipe you didn't remember that two days ago to tell us that?

A. At that particular time I wasn't concerned about that.

Q. Now, I'm asking you on Monday you weren't concerned about that? You weren't concerned that you actually saw a pipe running under your house? Isn't that what this whole

lawsuit has been about?
A. I didn't think there was any question about that particular thing.
Q. You didn't think there was any question about whether you had seen this particular sewer pipe that you're suing about that you believe it was running under your house?
A. I believe my testimony was that there was a sewer line running underneath my house.
Q. Now, you don't think that telling us that you had actually seen it; that you had laid eyes on it; that somebody had dug it up and you could see it in the ground pointing at your house, two days ago your didn't think that was important to tell us?
A. I believe I told you I did see the line. I did not say I saw somebody digging it up on Monday. I didn't say that.
Q. Only after you saw this map, right? You were in the courtroom when then map was produced, right, Defendant's Exhibit Four? Actually, One through Four; you were in the court room, were you not?
A. Yeah. That's what y'all did a few minutes ago?
Q. I'm sorry. Did you forget when these were produced?
A. I was not privileged to see that map. I saw the back end of it. If that's what it was.
Q. Sir, didn't you just draw a circle on it?

A. I saw -- I just saw -- that's the first time I've seen that map.
Q. Okay. So when we gave these to you before trial your attorney didn't share them with you? That's what you're telling us?
A. I don't remember him showing me a map like that.
Q. We exchanged exhibits with your attorney before trial. Your attorney didn't show you these photographs?
A. I don't recall whether he did or didn't.
Q. Okay. Don't you think it's a little convenient that you remember today after these have been produce that all of a sudden, oh, yeah. I saw that pipe in the ground pointing straight at my house. Don't you think that's a little convenient that you come back on the stand today and say that?
A. I think it's honest.
Q. Why weren't you honest on Monday then?
A. Didn't have any reason to even consider it.
Q. Well, you knew what your lawsuit was about, correct?
A. And I ---
Q. Sir. You knew what your lawsuit was about, correct?
A. I do.
Q. All right. And you knew the lawsuit was about a sewer pipe underneath your house, correct?
A. Correct.

Q. Okay. But you didn't think there was any reason to share with the jury that you had laid eyes on it?
A. I believe it did tell you I laid eyes on it.
Q. Okay. We'll just let your earlier testimony speak for itself and our collective memories will remind us what you said on Monday. No further questions for you, Mr. Graham.

THE COURT: Any redirect?

REDIRECT EXAMINATION

BY MR. WILLIAMS:

Q. Mr. Graham, when did you first learn that the Town of Latta was even saying that that line was running under your house? When did you learn that the Town of Latta is now saying that that line is running under your house?
A. Just a few minutes ago.
Q. Thank you.

MR. PLYLER: I have nothing further, Your Honor. He's welcomed to be excused.

THE COURT: You may step down.

THE WITNESS: Thank you.

COLLOQUY

MR. WILLIAMS: Your Honor, we do have one additional witness, Ms. Watson. She's off doing D.H.E.C. work right now. She could be here first thing in the morning.

THE COURT: At this time, ladies and gentlemen, we'll

take up before we adjourn for the evening?

MR. WILLIAMS: No. Not from the Plaintiff, Your Honor.

MR. WREN: Nothing from the Defendant, Your Honor, but we would like to renew our motion for directed verdict. I guess that will be at the close of all the witnesses.

THE COURT: And I'm also going to ask that if you have any request to charge, if you happen to have them with you I would appreciate having them at this point. I understand there have been some rulings today, but I'm going to need them very quickly in the morning. So I need them first thing in the morning if you don't have them already. If you have them you can pass them up.

MR. WREN: Judge, I do, but if you can give us a few minutes or we can e-mail them to you.

THE COURT: No, I don't want e-mail.

MR. WREN: If you can give us a couple of moments.

THE COURT: I'll give you a couple of moments to produce them while I clean my desk.

MR. PLYLER: Your Honor, I would think there might be one, given your rulings earlier today, there may be one issue that we need to take up briefly.

THE COURT: Yes, sir.

MR. PLYLER: Plaintiff's Exhibit One was identified

as a photograph taken by either Claude or Vickie Graham on September 6th 2008. My understanding of Your Honor's earlier ruling today was any claims associated with the flooding event from September 5th and 6th 2008 were no longer in the case. Therefore, those exhibits would not be relevant at this point. So I don't think that they should be allowed to go to the jury when we get to that point.

THE COURT: Mr. Williams.

MR. WILLIAMS: Your Honor, the events of September 5th and 6th 2008 are not part of the damages or cause of action at this point, but those events are the same events that gave the Town notice that they better get out there and start looking at the sewer lines and repair it. And I think the jury -- and I think that these photographs are helpful to the jury in the sense of the magnitude of the issue the Town is faced with.

THE COURT: I'll consider those arguments and give them some thought.

MR. PLYLER: Thank you, Your Honor.

END OF TRANSCRIPT OF RECORD

might have been done. So this is going to be speculation and hearsay. So we would have a serious concern if there is anything that stands off of that testimony.

THE COURT: Well, she can take the witness stand and you can impeach her if you choose to do so.

MR. PLYLER: Thank you, Your Honor.

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

(WHEREUPON, the jury panel enters the courtroom at 9:40 a.m.

THE COURT: Good morning, ladies and gentlemen. At this time we are ready to continue on. You may call your next witness, Mr. Williams.

MR. WILLIAMS: Thank you, Your Honor. At this time we call Danielle Watson to the stand.

THE COURT: Ms. Watson, if you will step forward. I will remind you that you're still under oath to tell the truth in this matter.

DANIELLE WATSON, after previously being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WILLIAMS:

Q. Good morning, Ms. Watson?

A. Good morning.

Q. In your capacity in your employment with D.H.E.C. can your tell the jury what a camera line is?

A. To camera a line?
Q. To camera a line. I beg your pardon. Tell the jury what to camera a line means?
A. It's an instrument that has a camera on it that is run into sewer/water lines to look to see what's inside.
Q. Okay. And why would one want to do that?
A. Well, if you want to see actually where it goes or if there is cracks or if there is problems in there or what's in it you need to see. You really can't -- I mean you can't crawl in there. And that's a good way to look inside lines.
Q. And how big a camera is that?
A. They come in different sizes.
Q. Typically, how big?
MR. PLYLER: Objection, Your Honor.
THE COURT: Overruled. If she knows.
THE WITNESS: Well, I don't -- there is different sizes for different lines.
Q. Okay.
A. I mean there is not a specific size, you know.
Q. Well, let me ask you this. It's small enough to get inside the lines?
A. Yes, sir.
Q. Okay?
A. They make them small enough to get in lines, and they

make them big enough for bigger lines.
Q. How do you get it in there? Do you push it or pull it or what?
A. The cameras usually have some type of mobility wheels, tracks. They can be changed out for different sizes per lines to pull the cords in there ---
Q. Okay.
A. --- to see.
Q. All right. Do you know James Bailey?
A. Yes, sir.
Q. Who is James Bailey?
A. He was the Operator at the Town of Latta?
Q. Operator of what?
A. The water/sewer system.
Q. Would he have -- would he have been the successor to Melvin Jackson?
A. No.
Q. Some time after Melvin Jackson?
A. He was after Melvin Jackson.
Q. But of people in between Melvin Jackson?
A. Yes, sir.
Q. Okay. Is he the Town Sewer Supervisor now?
A. No.
Q. Who is?
A. Harold Snipes.

Q. Okay. Do you know Willie Hooks?
A. Yes, I've met Willie.
Q. Okay. What's the relationship in employment terms between Willie Hooks and James Bailey?
A. He worked for the Town of Latta. I don't know the hierarchy.
Q. Okay.
A. I'm not sure exactly how they -- he was employed with the Town of Latta.
Q. Okay. This trial is about events that first started in September of 2008. Let me direct your attention to the timeframe of mid-September, mid to late September 2008 through the end of that year.
A. Okay.
Q. Did you have any discussions with the Town of Latta Sewer Supervisor, James Bailey, about cameraing a line?
A. Yes.
Q. Tell the jury about that?
A. After they ---
MR. PLYLER: Objection, Your Honor. Calls for hearsay.
THE COURT: Overruled.
THE WITNESS: After they had the flooding in the Town, of course, there were some problems in the line, and I became aware of a line under a house and ---

Q. The Graham house?
A. Yes.
Q. Okay?
A. And to look to see -- I wanted to make sure the line was intact and was not going to cause problems. I asked that the Town do a line -- if they could -- if they could get somebody to go look at it or do a smoke test on it. They were actually in the process of doing smoke tests before that incident, and they were still in the process of doing that and mapping.

So I asked them to see if they could get somebody to do that.

Q. So smoke tests has been done before this incident?
A. In some parts of Town. I don't know if it was that section yet.
Q. Okay. Now, when you say you asked the Town to camera the line does that mean you asked James Bailey?
A. Yes.
Q. Okay. And did he agree to camera the line?
A. They agreed to camera it. To try to get somebody to camera it.
Q. Okay. Did he report back to you on what steps they had taken or what happened?
A. He reported back saying that they did, and I can't remember if that got the City of Dillon to do it or

another company to do it. I can't remember which, but he said they did try to camera the line.

Q. Tried to camera the line?

A. Um hum.

Q. Did he say why it was a trial and not a success?

MR. PLYLER: Objection, Your Honor. At this point we're getting into double hearsay. Apparently a third entity tired to camera this line, and he would be reporting to her what they reported to him.

THE COURT: And the statements that would be made by Mr. Bailey would be as a representative and an agent of the Town of Latta, and so I'm going to allow the testimony because he was responsible for that and would be the party who would be responsible for supervising and making sure it was done. And so I'll overrule your objection.

MR. PLYLER: Thank you, Your Honor.

BY MR. WILLIAMS:

Q. What did Mr. Bailey say happened when they tried to camera the line?

A. That they were going to come up behind the house to get to the line, and once they got so far they had obstruction in the line. They couldn't get the camera over or to go any forward. So they couldn't get to that part to took at.

Q. Did he say what the nature of the obstruction was?

A. If he did I don't remember. I mean those cameras can be stopped by a lot of things. I could be solids. It could have been a rock. It could have been a root. It could have been -- he just said obstruction.
Q. And where would those obstructions be?
A. It was before. It was in the lot behind the house. I don't know exactly. I wasn't present during the cameraing. So I don't know exactly how far they got into the line.
Q. What I mean is would obstruction be inside the line or outside the line?
A. Obstruction could be something in the line or it could be that the line was pushed up and the camera couldn't get over it. So it could be a lot of things.
Q. Did he say what the nature of the obstruction was?
A. He just said obstruction.
Q. Did he say anything else about their inability to camera the line?
A. Not that I remember. No.
Q. Okay. Would the Town have records of that attempt?
A. I would think he would have put it in his logs ---
MR. PLYLER: Objection, Your Honor.
THE WITNESS: --- but I don't know.
MR. PLYLER: Objection, Your Honor.
THE COURT: To the extent that it calls for

speculation I sustain your objection.
BY MR. WILLIAMS:
Q. Has it been your observation that towns keep records of events like these?
A. Yes, sir. Operators have logs that they keep, and they you write down -- should write down what they do every day.
Q. Thank you.
MR. WILLIAMS: That's all the questions I have.
MR. PLYLER: Briefly, Your Honor. If I may?
THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. PLYLER:
Q. Ms. Watson, welcome back. Thank you for being here today.
A. Thank you.
Q. Now, so you have seen a copy of some camera reports; is that correct?
A. I have not seen a copy of a camera report.
Q. Have you seen some photos from this?
A. They did not have the capable of filming it.
Q. Okay. So this wasn't recorded?
A. Not on film, no.
Q. And the Town of Latta doesn't own one of these camera, do they?

A. No, sir.
Q. Okay. And they're fairly expensive, aren't they?
A. Yes, sir.
Q. And they can be stopped -- you can have one root going through the middle of that pipe and the camera might not be able to get over and under it, right?
A. Yes.
Q. And that can be 10 feet into the pipe, right?
A. Yes, sir.
Q. And you're understanding of the system is that the sewage flows from Zeal Street from the lot behind the house, across the Graham's property and down to Rice Street; isn't that correct?
A. I think so. Yes, sir. Without looking at a map I can't be sure.
Q. Well, let me show you a map?
A. Okay.
Q. This is a blow up diagram that was produced to us yesterday. Defendant's Exhibit Three. Make sure I get it oriented correctly. Can you see that? All right.
A. Can you bring that a little closer?
Q. Well, I want to be able to have the jury see it, too.
A. I understand.
Q. I should have made it a little bit bigger. All right. This is Zeal Street, right?

A. Okay.
Q. Here is Rice Street, correct?
A. Yes, sir.
Q. Sewage treatment facility is way down there near Buck's Swamp, right?
A. Yes.
Q. Well, let me show you the bigger picture then. You've seen F.E.M.A. Flood Maps, haven't you?
A. Yes, sir.
Q. Okay. And you recognize based on this map that we're looking at?
A. Hold it up this way.
Q. I represent to you that that's the Town of Latta right there, isn't it?
A. Um hum.
Q. And that's Buck's Swamp right there, isn't it?
A. Yes, sir.
Q. So the sewage comes from -- generally from this direction coming down towards Buck's Swamp, correct?
A. Yes, sir, it should.
Q. Downhill?
A. Yeah.
Q. In fact you're familiar with a retention pond that was built by the Town of Latta, aren't you?
A. Yes, sir.

Q. Okay. Let me show you what's -- no, that's the closer one. Let's go a little further out. You see that retention pond on this aerial photo?
A. Let me get my bearings.
Q. I represent to you that it's right there?
A. Oh, yes, sir.
Q. I mean it's petty obvious, isn't it?
A. Can I see it?
Q. Yeah.
A. Can you turn it this way?
Q. In fact there is a smaller version right there if you want to look at that?
A. That's fine.
Q. And you can hold it as close as you'd like?
A. I'm just fine. I'm just trying to get my bearings.
Q. That's fine. I'm trying to help you. My understanding is this is the retention pond right here. If you'd like to look at that photograph there it might be a little clearer. Do you need your glasses?
A. No. I've got contacts on. Give me a minute.
Q. Take your time.
A. Actually, way down here ---
Q. Correct.
COURT REPORTER: Y'all need to speak up.
THE WITNESS: Oh, I'm sorry. The waste water plant

is down here, and that's a storm.
Q. That's a what?
A. The pond.
Q. Right. The retention pond. Right? That retains the water?
A. I call it a storm water pond. I'm sorry. All right.
Q. That's fine?
A. It doesn't have anything to do with the sewer.
Q. I know. Right. But it stops the water, correct?
A. Yes.
Q. And water runs downhill just like sewer?
A. Correct.
Q. Okay. So this would be above the Town of Latta?
A. Yes, sir.
Q. And down below the Town of Latta somewhere is the waste water treatment facility?
A. Well, yes. The waste water plant is below that map.
Q. Correct?
A. That storm water pond is on that side of town. Yes, sir.
Q. Well, water doesn't run uphill, does it?
A. No, sir. But they do have pumping stations.
Q. Okay. So does that help you figure out which way the sewage runs?
A. Yes.

Q. So it runs from Zeal to Rice, correct?
A. It should. Yes.
Q. All right. So if, just assuming, there is a blockage up here above their house that's going to stop sewage from getting to their house, isn't that right?
A. Yes, sir.
Q. Okay?
A. If that line runs that way. Yes, sir.
Q. You don't have any information or evidence to give to us today to suggest that it doesn't run that way, do you?
A. I do not have anything.
Q. In fact you haven't done any inspections or testing or mapping or surveying of this pipe that runs across the Graham's property, have you?
A. No, sir. I have not.
Q. All right. So you don't have any information to add or give to us that this pipe is actually leaking, do you?
A. I have no idea whether it is or not.
Q. Thank you very much.
MR. WILLIAMS: Nothing further of this witness.
THE COURT: You may step down. Thank you. You may be excused. Anything further in rebuttal?
MR. WILLIAMS: Nothing further from the Plaintiff, Your Honor.
THE COURT: Is there anything further from the

Defendants?

MR. PLYLER: Just a moment, Your Honor. Beg the Court's indulgence, Judge. Judge, the Defendant would call one additional rebuttal witness, a record's custodian on behalf of the Town. That individual is on his way to the court house. If we may have just a few minutes to put up that final witness.

THE COURT: Yes, sir. Ladies and gentlemen, I'll ask that you retire to the jury room and not engage in any discussions until we hear from the final witness and until you are instructed on the law. We will bring you back very shortly. Thank you.

(WHEREUPON, the jury panel was excused from the courtroom at 9:56 a.m.)

(WHEREUPON, Court was in recess at 9:56 a.m. and reconvened at 10:04 a.m.)

THE COURT: If everybody is ready we can bring the jury back in.

(WHEREUPON, the jury panel enters the courtroom at 10:05 a.m.)

THE COURT: Mr. Wren, you may call your witness.

MR. WREN: Your Honor, in hindsight we deferred. We are not going to call a rebuttal. I apologize. There was a slight delay, Judge, but the Defendant will rest. There will be no rebuttal witness. We move things along, Judge.

THE COURT: We're playing musical chairs today cause now that I've brought you back in I've got to send you back out cause we'll need to take up some legal issues before we get to closing and charge. So I'm going to ask that you go back to the jury room. Make yourselves comfortable. Not to discuss any of the evidence that you've heard even though you've now heard all the evidence in this case. It is still premature for you to begin to have any deliberations or discussions about this case until such time as you hear my instructions to you as to the law. And so I ask that you not begin to engage in any deliberations or discussions about this matter. If you will just retire to the jury room we'll bring you back in a few minutes.

(WHEREUPON, the jury panel was excused from the courtroom at 10:05 a.m.)

MR. WREN: And, Judge, my apologies. I assure you that we're not trying to waste the Court's time, but as you know sometimes we make decisions on the fly. We made a very last minute decision. I apologize.

THE COURT: Especially after you told me you were ready.

MR. WREN: When I say last minute, Judge, they don't come much more last minute.

THE COURT: All right. Are there any motions?

MR. WILLIAMS: Your Honor, the Plaintiff has a motion.

THE COURT: Yes, sir.

MR. WILLIAMS: The Plaintiff moves the Court to reconsider it's rulings on inverse condemnation and trespass based on the testimony of the Town's engineer to the effect that they cut off and cut back on the sewer lines every three to five years at least. And as recently as three weeks ago. And the basis for the reconsideration would be that every time they cut back on the sewer line that's an affirmative act; that the Town is electing to cut it back on knowing that it's going to create a trespass on the Plaintiff's property in times of rain.

The bottom line of the argument is that cutting it back on is an affirmative act.

THE COURT: The way -- I believe the way the case law reads is it has to be an affirmative act that causes the damage to the property. And that or the act has to proceed the actual damage to the property or whatever injury has been suffered. And so the simple act of -- I view that as maintenance on the line; that that is not an affirmative act that creates the inverse condemnation which is -- you're claiming that the way the line was maintained or whatever the Town specifically caused the problems that led to your clients moving and whatever

injuries and damage to either include their health or to the property itself.

And I don't believe that the fact that they are exercising their duties and discretions in maintaining the lines or allowing contractors to come in and perform work for other people, for other entities whether it's the Department of Transportation or some other entity. But the fact that they are allowing people to come in and they -- and that affects the line is what caused the damage to your client's property, and I think affirmative act, it has to be some correlation between the affirmative act that is done by the Town and the actual damage that's caused to your clients.

And so on that basis simply because they have performed work or they have allowed sewer -- the flow of sewage to be disrupted for periods of time for maintenance or to allow other contractors for other governmental agencies to come in and perform work in which the lines had to be -- the flow had to be stopped I don't think that that is the precipitating reasons for the damage.

So I don't consider those to be affirmative acts and I think the case law supports me on that and so I deny that request.

MR. WILLIAMS: Thank you, Your Honor.

THE COURT: Any other motions by the Plaintiff.

MR. WILLIAMS: There are no other motions from the Plaintiff at this time, Your Honor.

THE COURT: Any motions from the Defense?

MR. WREN: Your Honor, at this time the Defendant would renew their motion for directed verdict. Of course, as Your Honor is aware the focus of this motion from our prior argument and discourse would be in respect to the remaining portion of the Plaintiff's negligence claims.

Of course, Judge, as I understand your earlier ruling and what we have left and what I think was touched on in some instances in the remainder of this case, the Defendant's case in chief, as well as the Plaintiff's rebuttal what it had to do with was the events after the September 5th and 6th storm event.

Your Honor specifically understood that to be any questions, inferences or otherwise that have been asserted by the Plaintiffs with respect to any subsequent leaks or release of sewage.

And, Judge, foremost, in regards to those I would go ahead and renew all the arguments, of course, we had asserted prior at directed verdict. I think all of those are still applicable. In fact I still contend, Your Honor, that the main focus here, the fatal flaw here of the Plaintiff's negligence claim is the inherent lack of evidence that they have set forth in their initial case,

but in the remainder of this case to establish that the Town has breached a duty which proximately caused these damages. It's as simple as that.

The reminder of the evidence put up in this case, Judge, essentially argued the initial directed verdict motion, of course, consisted of an employee of the Town who was there and saw the event and testified and it did not provide any evidence to support that for the Plaintiff. And, of course, the expert witness, the engineer which the Town put up in their case in chief.

Judge, I think Mr. Hanna extremely well frankly for all intents and purposes I think he explained the fact that there was not a proximate cause. Not that the -- by no means trying to shift the burden on the Defendant to affirmative somehow prove it didn't exist. But at the same time I think it became very clear to Your Honor to counsel, of course, to the jury that there was not this cause, proximate cause, for purposes of establishing the Plaintiff's case.

Further, there has been nothing elicited in rebuttal witnesses, Your Honor, that have add to that or established that. You know, of course, there was some question and discourse as to a different location of the line. Questions as to whether or not a camera was run. Of course, that doesn't change the fact that there has

been no evidence introduced to establish anything to support that proximate cause. So I think that's the inherent fatal flaw here, Judge. Nothing has changed or been established by the Plaintiff throughout the entirety of this case to establish that.

Judge, we would further renew and argue our motion for directed verdict based upon the immunities which were set forth in our initial motion. Again, so that we won't belabor this, Your Honor, we raised and asserted Subsections 1, 2, 4, 5, 7, 8, 9 and 13. I accidentally included Seven, Judge. I think that is nuisance. I think that's already been dealt with.

But as to the remainder of those we do still contend, and in the questioning and examination with Mr. Hanna, I think it was clearly established as much as in the Hawkins case it was found that here you have several of those applicable immunities.

THE COURT: I'm having difficulty with Numbers One and Two.

MR. WREN: Legislative immunity, Your Honor?

THE COURT: Yes, sir.

MR. WREN: I would reference, Judge, to the testimony elicited from Mr. Hanna with regards to the actions that were taken subsequent to September, the September event. And September 5th and 6th wherein Mr. Hanna had been

advised that the work, the investigation that was done, the information that had been obtained and discussed. And inherently, I asked Mr. Hanna that when you have that information you take it to the Town.

They make a decision on it. Now this is where it goes to discretionary as well, Judge. But as to legislative I mean in did not proffer Mr. Hanna as an expert to explain municipal law and how a municipality operates. But what he did establish he takes it to the Town. The Town makes a decision. Your Honor, the Town of Latta -- I ask the Court to take judicial notice, of course, operates via a Town Council and it is a legislative body. I think it's fairly recognized in South Carolina.

So that is our position, Your Honor, as to how legislative immunity would apply. May I touch on any of the others, Judge or any questions?

THE COURT: Give me just a second. Number Four, Number Five. You night as well go ahead and discuss them all again. Provide a little bit more detail so you make sure I can understand.

MR. WREN: Certainly, Judge. This would include the group that was addressed in the Hawkins opinion that we discussed earlier. We're already touched on One and Two. Moving ahead then to the next one being Number Four,

Adoption Enforcement or Compliance with Laws, Ordinances, Regulations, Judge, there has been nothing set forth in the Plaintiff's case except for the discourse from Miss Watson with regards to D.H.E.C. enforcement, and that's where that comes into place, Your Honor. You recall there was some questioning.

I think Miss Watson just provided information with regards to enforcement. Named storm events are exceptions that D.H.E.C. was, D.H.E.C. being the regulator agency that would be the pertinent body to address these issues was involved in this, and did look at this as to whether or not the Town of Latta complied with or violated any regulations or laws. And that she said there was no finding as to the Town doing something improper.

So, Judge, that's where we believe this immunity would apply. And to the degree, Judge, that there was not evidence D.H.E.C. regulations applied to the Town of Latta I would simply ask the Court to take judicial notice of those State regulations.

THE COURT: And Number Five?

MR. WREN: Yes, Your Honor. Number Five being discretionary immunity. Craig referenced from what we put in our first motion what we argued point to Mr. Hanna's testimony, Judge, wherein he went through the process, the undertaking of the investigation that occurred, after this

initial event. The information that he obtained, the options that he considered, and the passing of that information along to the Town. That, Your Honor, is certainly not a ministerial duty. It is not a ministerial action.

It's the undertaking with the investigation, with research, an understanding of the issue, and then making -- and having options available -- available options to consider and make the decision which was ultimately made here, Judge, which is interesting which wasn't picking. It was none of the above because as you recall Mr. Hanna testified that there was not a causative factor relative to the Graham's property.

THE COURT: So I guess I'm having a hard time trying to figure out how the immunity applies when according to your version of the facts there was nothing for the -- there was no discretion for the -- there was no reason for the Town to exercise any discretion at all. So how would the fact -- how would that create the immunity for the Town.

MR. WREN: Well, Your Honor, Mr. Hanna if you recall -- I don't recall whose questioning it was identified the two options. He looked at it as to moving the location of the line. I think he actually said this for the purposes of the jury, but Mr. Davis had some of

that information that came up in the Plaintiff's case in chief that he had plans from B.P. Barber that indicated the different options. Ironically, all those options are still on the Graham's property. But not withstanding Mr. Hanna's testimony was neither option was good; that they were considered, however, that's where discretion comes in.

So the ultimate decision being made is that they don't have to pick A or B. They're not the best options. So I think the discretion, of course, being the different things. The discretion can also be choosing the fact that you don't need to do something.

THE COURT: And, Number Eight?

MR. WREN: Yes, Your Honor. Number Eight, and I did I think in our initial motion I did distinguish. I didn't want to misrepresent that. Eight and Nine I believe were not in the Hawkins opinion for a bases for the immunities that the Court found there. And what I contend is a very analogous situation, but it's our position on this perhaps as additional grounds that Number Eight dealing with weather conditions; that the -- of course, the initial event which the Court's prior ruling is not really on purpose right now.

The initial event was caused by a very large storm event, Tropical Storm Hanna. However, Judge, the

testimony and evidence as to the subsequent event and the other event I create reference to Mr. Graham's testimony with respect to the September 13th where he did testify ---

THE COURT: You can stop. Number Eight talks about on the public way or the public place. "It's a snow or ice -- snow or ice conditions or temporary or natural conditions on any public way or other public place due to weather conditions unless the snow or ice thereon is affirmatively caused by a negligent act."

MR. WREN: Judge, I thought the testimony was that there was flooding on East Rice Street.

THE COURT: I'm talking about the -- beyond the flooding. We're talking about the allegations that not only was there flooding which is separate, but also the problems underneath the house from what the Plaintiff's claim. So I don't think -- while certainly to the extent that it was a natural event that the rain storms caused the flooding.

MR. WREN: Yes, Your Honor.

THE COURT: There could be in fact some type of -- perhaps some type of immunity related to that. But it goes beyond -- I think it goes beyond that because it's not just on the public place.

MR. WREN: Fair enough, Judge. The only thing I

would add, and I certainly understand your position, I would cite to the testimony and evidence that came in in the Defendant's case in chief with regards to the residence, the property being in a flood zone. But with that said, Your Honor, I'm happy to move along if you care to.

THE COURT: Yes, sir. Number Nine.

MR. WREN: Number Nine, Your Honor, and of course, you understand, and I think it's how I positioned it in our first argument. There we had couched it along the context of the trespass claim. Judge, with respect to the -- where Number Nine bring entry on property where the entry is expressly or impliedly authorized by law. So I think that's how we argued it and couched it the first time.

Here, however, I think the, based on the Court's prior ruling and what we now understand the evidence as put up is that that was the Town's understanding that they were allowed to have this pipe in the location that is was. I think based on the Court's earlier ruling with regards to prescriptive easements that that has been established as the law of the case. And, Judge, I think that immunity would come into play.

THE COURT: And then Number 13.

MR. WREN: Yes, Your Honor. And we are back to a

ground that was -- an immunity that was found in the Hawkins opinion dealing with regulatory inspection powers over functions. I would, of course, note that includes the failure to make a proper or to make an inspection or making a negligent inspection. There, Your Honor, the Plaintiff's case, of course, I think there was some testimony or evidence, if not at least insinuation; that the Town failed to do that.

And I'm speaking now in the context of post-September 5th and 6th 2008. And I think that the testimony, the evidence put up in the Defendant's case in chief notably the testimony of the two Town's representatives clearly established that with regard to that they were out there and did inspect it. In fact went above and beyond the testing; that whether it was done right or wrong that's where this immunity applies.

And ultimately, Judge, if you read that immunity subsection all the way through it goes on to say, "To determine whether the property complies or violates any law or regulation, so forth." Interestingly here I would note, Judge, that it was the Town's determination that, no, there is was absolutely no violation or problem or issue with regards to the sewer lines in question.

THE COURT: Anything else?

MR. WREN: Yes, Your Honor. We would again hopefully

just for purposes -- for your purposes again hope we haven't left anything out from our initial directed verdict motion. I think Your Honor has already ruled on the statute of repose. I frankly don't think any evidence came in otherwise. I understand that. As to statute of limitations on the negligence claim again, Your Honor, for purposes of the discovery rule and the when a Plaintiff should or should not have been on notice it is our position that going back to the earlier events they should have been on notice of the line.

The testimony of Mr. Claude Graham was that this Melvin Jackson was with him on the property and the line. I think there is sufficient evidence there to put them on notice that there may be an issue.

THE COURT: During what timeframe?

MR. WREN: And, Your Honor, that -- it was indicated that it was well before these events, but as we stand the evidence is in the record. Beg the Court's indulgence. Only evidence that's come in since, Judge, is Miss Watson's testimony of the fact that Mr. Jackson was more than one public director before the subject event.

Beyond that, Judge, all the evidence in the record I can point to establish that. So, Judge, we would renew on that ground as well.

And then also out of -- of course, we have two

clients in this case. They are separate claims on behalf of Claude and Vickie Graham. As to -- we spent a lot of time talking about Vickie Graham's claim because it included the inverse and the trespass. Like I said we've already discussed that and have been ruled upon. But Mr. Graham's complaint, Your Honor, deals with and the damages sought pertain to personal property that he has sustained.

He testified at length at his direct on it. It included equipment in the shed. I don't recall. Things like that. The vehicles for which they have sought damages in their complaint in that case on behalf of Mr. Graham. Judge, our position would be that those damages would be related, and the only cause of action for negligence would be related to the initial flooding event.

There had been no evidence to establish that any subsequent event caused any of the damages for which they seek relief on behalf of Mr. Graham. And for all intense and purposes, Judge, I believe that would be on that ground alone perhaps fatal to his entire claim.

And, Your Honor, finally, beyond that no separate grounds. I would just point out to the Court's indulgence this, of course, we had specific reference to Hawkins which I've already done. And, of course, Snow v. City of Columbia case as it pertains to negligence. My position, my argument, Judge, is the Plaintiffs have put up

probability a pretty decent res ipsa case.

Judge, South Carolina does not recognize res ipse. And with that and in conjunction with other arguments on immunity we made I think the end result would be the Town would seek is a motion or a ruling directing verdict on all claims asserted by both the Plaintiffs in this matter.

THE COURT: Talk to me again about the duty issue.

MR. WREN: Yes, Your Honor. And I'll couch it as best I can, Your Honor, and try to be objective as to what the Plaintiff's theory here is. The Plaintiffs have asserted that the Town had a duty to not cause sewage or flood or property damage to their property. Where the Plaintiffs have failed is to establish, of course, causation which we've already talked about. But they failed to establish exactly what that is, Judge.

THE COURT: What is?

MR. WREN: The duty which you were questioning about. Of course, there is just an inherent duty of due care. I don't disagree with that. My focus has been more so on the problem that they have is the causation. But, underlying, I think the Defendants has failed to establish what the duty of care specific to municipalities is. I recall there being some questioning and testimony before about what do municipalities do. It was never established by the Plaintiff in their case what the standard of care

whether it be a medical malpractice case.

Of course, Judge, we look to what the professional standard is. It can be established by experts, and an engineering case, same thing. I think in the professional malpractice context. Here, Judge, there is some standard, some duty, that exists. I don't disagree with that. My position to your question would be that the Plaintiffs have failed to establish exactly what that is.

And I rambled a little bit. Perhaps that why I'm having trouble doing it. It's not been established in this case. And to that duty issue, Judge, of course, if I may going to the pleadings and the testimony, Judge, it expounds around a little bit. But case is there that it was leaking. It was leaking. There was a line under the house that was leaking sewage.

The bottom line through all of the entire case that's been put up is that there has been zero, not an iota of evidence that there is a leak causing the damages for which they seek relief. So to the degree that that ties back into duty I think that's what another one, Judge.

THE COURT: Anything further, Mr. Wren?

MR. WREN: No, Your Honor. One housekeeping matter that just noticed, and I don't believe it's been establish, but it's moot now anyway. In Vickie Graham's complaint there was -- in her amended complaint there was

under the trespass claim a claim for injunctive relief. That's actually where I think we found the punitive damage reference that's already been stipulated and dismissed.

With the trespass claim gone, Judge, that would not give me any concern, but just as an additional ground for clarity in her relief she does reiterate the claim for injunctive relief. Your Honor, our position would be that it was asserted pursuant to their trespass cause of action. Again, I take it as moot. I just want to clarify because it was the one damage that was sought that I had not addressed.

THE COURT: And it relates to easement, I believe?

MR. WREN: Yes, Your Honor. The injunctive relief sought was to cease operation on the line or to move it. Oh, excuse me. I misspoke. Just to cease operation on the line due to its presence on the property.

THE COURT: And I would agree that that's been resolved by the trespass issue.

MR. WREN: Yes, Your Honor. Thank you.

THE COURT: Mr. Williams.

MR. WILLIAMS: Thank you, Your Honor. Let me address a couple of three issues, and then I'll be happy to address any additional issues as Your Honor would like for me to do if we haven't sufficiently argued since yesterday.

THE COURT: Yes, sir.

MR. WILLIAMS: Mr. Wren, again, says that I had some obligation to establish a standard of care. This is not a an action for professional negligence of any kind. The ability of the jury to understand whether there was or was not negligence is not dependent upon testimony from specialized experts to say what people in the particular field like law or medicine or architecture or engineering usually do.

So the jury, any more than in an automobile accident case, you put up a driver to establish the standard of care for what a reasonable driver does. It's just something the jury can do on their own using their common sense and the testimony we gave. There was -- Mr. Wren said there was not and iota of evidence of the crack in the pipe.

THE COURT: Well, before you move on let's talk about the duty issue.

MR. WILLIAMS: Okay.

THE COURT: What are you claiming is that duty, and what evidence is there to show that duty?

MR. WILLIAMS: The duty is to operate the sewer line in such a way that it doesn't do damage to people like the Grahams. Ms. Watson established that duty, testified to that duty. The Mayor testified. The evidence that the

Mayor recognized that duty. And Mr. Davis testified to that duty existed. The duty is to maintain and operate the sewer system.

THE COURT: Okay. Yes, sir.

MR. WILLIAMS: The second point that I wanted to address is yesterday Mr. Wren mentioned something about a public duty exception. Are you withdrawing that? If that's withdrawn I won't address that. If it's still out there for consideration I would.

THE COURT: I would say go ahead it and argue it as we'll.

MR. WILLIAMS: Only briefly I would address the public duty exception, that exception that he relied upon yesterday. The refer the Court to Tresdale v. Cannon, 572 SE 2d 264. That's a 2002 case as is Morris v. Anderson. At 564 SE 2d 649. And both of those cases rely on Arthurs v. Aiken County, 531 SE 2d 579, a 2001 case also from the South Carolina Supreme Court which stood unequivocally for the proposition that when the Plaintiff's negligence cause of action is predicated on the governmental entity's breach of a statutory duty, whether that duty was supported and is under the public duty rule the duty alleged to have been breached, based on common law, however, the existence of that duty is analyzed as it would be were the Defendant a private entity.

And, of course, we have not alleged that the Town of Latta violated a statutory duty or obligation. And the other point I wanted to specifically address, Your Honor, and I'll address this again more -- not in more detail. In equal detail when it comes to considering the Defendant's charge request. But you know we have not pled that we are res ipse loquitur. I know South Carolina law does not recognize the doctrine of res ipse loquitur.

But I would refer the Court to the case of O'Leary Cain v. R.R. Hilton Head, 371 SC 340 at Pages 348 and 349. Also found at 638 SE 96 at Page 100. That is a 2006 Court of Appeals case. And in that case the Court of Appeals state today res ipse loquitur. I quote now, and this is from Page 244, and I quote now, "There must be a reasonable evidence of negligence. But where the thing is shown to be under the management of the Defendant or his servants, and the accident is such as in the ordinary course of things does not happen it goes use proper care.

It affords reasonable evidence in the absence of an explanation by the Defendant that the accidents arose -- accident arose from lack of care." And that's quoting from Keaton and Prosser on Torts.

THE COURT: You need to speak up.

MR. WILLIAMS: Pardon?

THE COURT: The court reporter didn't hear the last

part of what you said because you were talking down.

MR. WILLIAMS: The Court was -- the Court in that opinion was quoting from Page 244 of Prosser and Keaton on Torts. Section 39, Page 243. The Fifth Edition of 1984. And the Court went on do adopt that articulation of the exclusive control argument. If Your Honor has any others question you want to ask me about the Defendant's motions I'll be happy to try to answer them.

THE COURT: What about the tort claim issues?

MR. WILLIAMS: Your Honor, I think we argued all of those and addressed them yesterday, but -- and I don't think anything to add now that I didn't say then.

THE COURT: Well, can you repeat the argument for me just to make sure I understood it because I'm not sure that I understood half the argument yesterday.

MR. WILLIAMS: Okay. One of their defenses relates to -- referred to as Number Four, the immunity for following regulations. They haven't shown any regulations that they followed, and I'm not contending that they didn't follow regulations.

THE COURT: So you're just saying the Four doesn't apply?

MR. WILLIAMS: Right, doesn't apply. I addressed discretionary immunity yesterday, and I think the essential argument there is that while they may have the

discretion about how to operate the system in a way that doesn't harm other people they don't have the discretion about whether they should fulfil their duty to operate it in a way that doesn't harm other people.

THE COURT: And ---

MR. WILLIAMS: And especially when they have knowledge that they're causing harm. They don't have the discretion to fail to correct the thing. They may have discretion on how to correct it, but they don't have discretion to fail to correct it.

THE COURT: That goes back to your argument from Mr. Davis's testimony that there was infiltration and exfiltration in the lines, and therefore, the system was not properly maintained?

MR. WILLIAMS: And that there was a leak under their house that caused the feces and the sewage stuff to collect under there.

THE COURT: Yes.

MR. WILLIAMS: I don't remember Mr. Wren skipping around a little bit, and I'm not sure which ones I have not addressed, and I'm sorry, Your Honor.

THE COURT: Number 13, which is the regulatory inspections, make an inspection or inadequate inspection.

MR. WILLIAMS: Your Honor, I think that -- we haven't claimed there is a regulatory inspection. They haven't

asserted there was a regulatory inspection, and in any event I don't think that exception would apply to a town that conducts a regulatory inspection on itself. If, you know, that would seem to me that that immunity would apply when a governmental entity inspects somebody other than themselves and fails to find a detect that some person later contends they should have been found in the exercise of ordinary care.

I don't know think that immunity applies -- if that immunity applies then every government could just periodically say, "Well, we've inspected ourselves and we don't find we did anything wrong." So they aught to do that every three days and then they could exempt themselves from all of their defenses. In other words it's not a self-examination immunity.

And, of course, I think Your Honor was right -- was correct to point out the public way ice and snow immunity.

THE COURT: I don't have any additional questions.

MR. WILLIAMS: Thank you, Your Honor.

THE COURT: Will you repeat the cite for O'Leary -- the O'Leary case, please.

MR. WILLIAMS: For which one, Your Honor?

THE COURT: O'Leary.

MR. PLYLER: Your Honor, I have it right here. 371 SE 340, from (inaudible). I can give you that as well.

THE COURT: Yes, sir.

MR. PLYLER: 638 SE 2nd 96.

THE COURT: Thank you.

MR. PLYLER: You're welcomed.

MR. WILLIAMS: And I was Page -- from Pages 348 and 349 of the South Carolina Reporter at Page 100 of the Southeastern Reporter, Your Honor.

THE COURT: Thank you. Mr. Wren, any response?

MR. WREN: Yes, Your Honor. And, of course, Judge, if you look at the opinion. I'm looking at it pretty quickly. I'm sure only take a second to look at the O'Leary opinion. I can tell right off it's dealing with defective and dangerous conditions in a totally different premises liability context. I think it was a trip and fall case, Judge.

So I think it's extremely distinguishable, and I don't know if it's dispositive of anything to begin with on this res ipse. I think that is clearly established under Snow, a case that is interestingly on point. Although in Snow as Your Honor is aware the end result on negligence was that it was denied and no summary judgment or directed verdict.

There, again, I want to distinguish Snow because it holds I think it's on point with the issues we raised. Where i distinguish Snow, Judge, is the issue of

determining negligence involve them, and I recited all this during our initial verdict motion. But I cited to all this stuff that they had done with a leaking pipe. It was identified. They tried to patch it. It didn't work. It combusted or something. Totally different facts in that regard under Snow.

Hawkins, for all our purposes, I think is more point with how these several immunities and issues with negligence apply. And, Judge, to this issue, and I've heard Mr. William's reference to the degree I hadn't totally understood what they were contending was the duty here; this duty to maintain. That is what Hawkins looked at where they had a finding that the City was immune from liability for negligence for claims arising out of -- there they dealt with the design, and it was obviously a more recent system. And maintenance of the drainage system and the basis area they were dealing with.

Here, Judge, to that degree that's the question here about maintenance. They haven't established that, Judge. But our focus still has been consideration of Hawkins that almost not withstanding the ultimate problem is the breach of the duty. I just want to reference that because that's what Hawkins dealt with.

Judge, one other issue that I don't think we touched on, but to the degree that we're now getting into this

what a duty is versus driving a car and operating a public sewer system I don't think those two are analogous. To the degree that it's not before the Court, this question of this governmental function of the Town of Latta in operating or maintaining it's sewer system I would further then assert that this is, and there is some case law out there. I don't have it in front of me, but I can give you the cite's Judge.

That this is a situation where there is no private analog. This is an inherently governmental function that we're dealing with which is the provision of sewer service. It is undertaken by the Town of Latta, as has been for a tremendous period of time. I would just cite to the Court the cases of United States v. Olson, which is a U.S. Supreme Court case. 126 Supreme Court 510, out of 2005. And then back in -- there was a Court of Appeals opinion out of South Carolina. I apologize. I don't have the cite, but it was Sloan Construction v. South Co. Grassing. I dealt with this issue, Judge, in other cases involving zoning.

THE COURT: I'm sorry. South Carolina Court of Appeals?

MR. WREN: Yes, Your Honor. It was Sloan Construction.

THE COURT: Versus?

MR. WREN: South Co.

THE COURT: S-O-U-T-H, South Company?

MR. WREN: Yes, Your Honor. It's short. South Co. Grassing.

THE COURT: South Co.

MR. WREN: Grassing, G-R-A-S-S-I-N-G.

THE COURT: Thank you.

MR. WREN: It's a 2006 Court of Appeals opinion. So, anyway, I was further an additional ground, Judge, to assert that if that's what they're contending that this is not a private analog.

THE COURT: Meaning that there is not -- there is -- it's not a situation where you treat the municipality as if it were some other regular defendant?

MR. WILLIAMS: I use the analogy of a person operating a motor vehicle. I don't think this is that case.

MR. WREN: Judge, also, one additional thing, and I apologize. I'm trying to read the opinion as I'm listening to questions and speaking, but the O'Leary opinion, and I'm sure you've got the cite now to look at it. Beyond the distinguishments that I was able to accurately make a moment ago the other thing is the discourse on this defective condition issue there as to res ipse and how it applies.

There what they were saying is this is not common person's knowledge. This requires expert testimony to establish for purposes of duty. And again, Judge, to the point that we just made and you questioned on, I think this is clearly a case where the operation of a sanitary sewer system and necessary maintenance is not within the layperson's knowledge.

THE COURT: Anything else?

MR. WREN: Nothing, Judge.

THE COURT: Anything further, Mr. Williams?

MR. WILLIAMS: Your Honor, I don't have any cases to cite on this inherently public duty on sewer system work, but I do know as a matter of fact, and I think the Court knows this as a matter of fact, that there are such things as private sewer systems. And an operator of a private sewer system is going to be held liable for the negligence damages unincorporated associations, developments. They have it in parts of other counties.

Again, Dillon County. I don't know, but there are such animals in South Carolina as privately owned sewer systems. And I don't think they're -- and there are governmental entitles around the country that contract out their sewer system to private entities. And I don't think a municipality would be held to any different standard than the standard of ordinary care.

THE COURT: If you all will give me a few minutes to review some of the cases that have been cited and then I'll get back with you. Let's take a break. Let me look at those.

MR. WREN: Thank you, Your Honor.

(WHEREUPON, Court was in recess 10:35 a.m. and reconvenes at 10:50 a.m.)

THE COURT: Okay. Counsel, I have considered the arguments that have been made in this -- on the directed verdict. And after considerable thought and research and review of the facts in this case I find that, Number One, the public duty rule does not apply in that we're not relating to any specific statutes. And this is a common law situation. And that pursuant to the Arthur case that the City -- the Town would be treated as any other ordinary citizen.

I heard Mr. Wren's argument that should not be the case, but in reviewing that case and in looking at some of the other case law related to those issues I find that a proper analogy would be appropriate. And so, therefore, the public duty exception does not apply.

I also considered the evidence relating to the negligence claim in specific -- in particular whether or not there was a duty. I find that the Defendant -- I'm sorry; that the Plaintiff did establish evidence relating

to a duty. And that through the testimony of the witnesses they established that there would have been a breach of the duty. I think then and only then do I consider the Tort Claims Act immunities.

I find that provisions of Subsections One and Two of 15-78-60 do not apply. I don't think there was evidence in which there was any specific legislative authority or consideration in determining what functions and what actions to take or not take. So I don't find that either one of those exceptions applies.

I find that the section relating to -- Subsection Four relating to the adoption, enforcement or compliance with any law or failure to adopt or comply I find that that also does not apply in this particular situation. There is not been a claim that there has been any violation of a specific ordinance or regulations, particularly D.H.E.C. regulations. And so I don't find that that particular exception applies.

I considered Subsection Five, "Exercise of Discretion or Judgment by the Governmental Entity." And while I believe that there has been some exercise of discretion or judgment I think it becomes a jury question to determine whether or not there would have been a breach of duty in failing to take action. The way I view the evidence is that there were basically four competing choices in

addition to the underlying dispute as to whether or not there is a leak or not.

But if the considerations by the Town would -- there would have been four options. The three that were discussed was move the line, put a sleeve on it or I think put some glue or whatever in it or whatever the appropriate terminology is or to do nothing. While I understand that they weighed those options I still believe that the jury could make the decision. I understand that they weighed the options, and their option was to do the fourth; that was to do nothing.

And I understand that that was primarily because they did not believe that there was a leak in the line. So I think it becomes a question for the jury to decide, first of all, whether or not there was a leak; and second of all, whether exercising that particular option would have been a breach of the duty. And the duty is to maintain the system and the maintain the lines. And so I think that becomes a jury question.

It is not strictly a question of law for me to apply at this particular point, and there seems to be some support sending that to the jury pursuant to the Steinke, S-T-E-I-N-K-E v. South Carolina Department of Labor, Licensing and Regulation. Although in that particular case the Court said that there was not -- there was scant

evidence as to the exercise of discretion. It went to the jury, and the jury make the decision. And I think that's appropriate under the circumstances.

While I think that both sides agree that there were options that were available and there is evidence about those options whether or not there still would have been a breach of the duty by failing to exercise of those options is still a jury question.

And on the exception, Number 13, relating to the regulatory inspection powers or functions, I think that that particular section applies when the Town exercises its authority regulating other entities or businesses within the county. I mean within the Town. It is not the situation in which D.H.E.C. is exercising its authority over the Town and it is performing inspections in conjunction with D.H.E.C's authority.

I think that would more clearly fall under Subsection Four which would be the compliance with any regs, and so I don't find that 13 applies in this particular matter.

As it relates to the personal property of the plaintiffs I think that the testimony revealed that they were instances that occurred after September the 5th and 6th. In particular there was testimony about an event on September the 13th and other instances. And the testimony was that the tools had been in a shed and that it was not

checked until later. And so I think that there is evidence from which the jury could determine whether or not the damages arose as a result of the instances occurring after September 5th and 6th. And so I will deny the motion as it relates to the personal property damages on the personal property.

I think I covered everything. If there is something I left out please let me know. I think I've covered all the arguments that were made.

MR. WILLIAMS: I don't have anything else, Your Honor. It's their motion not mine so I'll give them the chance to speak first.

THE COURT: Yes, sir.

MR. WREN: And, Judge, nothing other than I just want to make sure I understand your ruling as to duty, breach; that I understood Your Honor is using being common law reasonable person standard as opposed to expert?

THE COURT: Yes.

MR. WREN: Okay, Judge. For the record we take action to what we understand that to be.

THE COURT: I don't think they're required to bring in an expert to say how the system has to be operated. I think that in the light most favorable to the Plaintiff D.H.E.C. employee, Ms. Watson, comes in and says they have a duty to maintain their sewer lines and they have a duty

to operate the system.

Mr. Davis comes in and says there was infiltration -- there were breaches in the system and that they failed to properly keep up the system. And he was an expert, and I think that was sufficient me to raise these issues. And just leave it at that.

MR. WREN: Very well, Your Honor. Thank you.

THE COURT: Anything else?

MR. PLYLER: Nothing from the Defendant. Well, actually, I'm sorry, Your Honor. Not on this motion.

THE COURT: Well, before -- is it another motion?

MR. PLYLER: No, Your Honor. It has to do with something from yesterday about exhibits based on your previous ruling.

THE COURT: Yeah. What my plan was was to send the jury out, send the jury to lunch so we can talk about charges and any other little issues. And then when they come back we can be ready to close and charge.

MR. PLYLER: Thank you, Your Honor.

THE COURT: Is that sufficient cause they've been sitting back there for a while. That's part of my issue. Ask the jury to come in.

(WHEREUPON, the jury panel enters the courtroom at 12:24 p.m.)

THE COURT: One more time. Ladies and gentlemen, I

instructions not to discuss this matter among yourselves even though you've heard all the evidence. You still have not heard my instructions on the law so you don't know how you're going to apply the law to the facts when you determine them.

I ask you to remember not to allow anyone to approach you to discuss this matter with you. Please do not listen to conversations that you may hear in the hallways. Again for the reasons that now you have heard the evidence so you shouldn't be swayed by other information that you may hear as you come and go. And again I'll see you back at the same jury room at two o'clock. Thank you all very much.

(WHEREUPON, the jury panel was excused from the courtroom at 12:27 p.m.)

THE COURT: Yes, sir, Mr. Plyler.

MR. PLYLER: Your Honor, briefly, and if you wouldn't mind, for scheduling purposes, probably needs to go outside and make a phone call about 3:30 to at least be with my wife on the telephone and any courtesy you can give to me I consent will be very appreciated.

THE COURT: Hopefully by 3:30 the jury will be deliberating.

MR. PLYLER: I imagine they will. I don't think it will cause a scheduling problem. I just wanted to bring

it up. Thank you. The issue we raised yesterday had to do with I believe Plaintiff's Exhibit Number One which is photographs that have been testified to were taken on September 6th 2008 by either Vickie or Claude Graham showing the results of the flood waters that were caused by Tropical Storm Hanna.

Based on Your Honor's ruling as to with any claims stemming from that particular event it would be our position that these exhibits are now irrelevant, and therefore, should not be allowed to go back to the jury for their consideration. That was sure position we raised I Understand you had taken it under advisement. Thank you, Your Honor.

THE COURT: And, again, any response to that from the Defense? I'm sorry, from the Plaintiffs?

MR. WILLIAMS: Your Honor, I said what I said yesterday. I didn't think that's the background. That's -- those show that, Mr. Graham, what events he witnessed. Those same events gave the Town notice of an issue that lets the jury analyze whether there was -- whether there was or was not an issue with the Town should have been recognized that it needed to take action.

THE COURT: And on that basis I'll allow the photos to go back on that basis. Not to show that he's entitled to any recovery for any damages that arose out of that

particular event but to show the conditions that lead to the Town having notice and investigated further along with other instances which are in the record from testimony in the record. So I allow those to go back.

MR. PLYLER: Thank you, Your Honor.

THE COURT: Anything further as it relates to motions or any other legal issues? Let's talk about charge.

MR. WILLIAMS: Your Honor, first on the pleadings, I understand, but I've got a few more charge requests. I did turn in three this morning.

THE COURT: Yes, sir, I received them. I've received three from the Plaintiff. I received a number from the Defendant. Admittedly, several of them ar no longer applicable. I find it easier for me to tell you what I will charge. And then we can talk about the specifics. I will charge the jury to determine the facts based upon the evidence. In doing that they have to judge the credibility of the witnesses. I'll instruct how to do that. I'll instruct them on -- I'm charge them on expert witnesses.

I'll charge them on the burden of proof. I'll charge them on the elements of the negligence claim. On the elements of the negligence claim I'll charge them that this Plaintiff has to prove that there was a duty of care owed by the Defendant to the Plaintiff; that the Defendant

breached that duty. And that there were damages resulting. I'll charge them that the duty of care is that standard of conduct the law requires of an actor in order to protect others against the risk of harm from his actions. It's the principle that the Plaintiff should not be called to suffer a harm to his personal property which is foreseeable and which could be avoided by the Defendant's exercise of reasonable care.

I'll define for them the -- further that negligence could be the failure to act or it could be the acting in a manner that a reasonably prudent person would not do under the same or similar circumstances. To judge whether a particular act is negligent they have to judge that act in the manner in which a reasonably prudent person would have acted under the same or similar circumstances.

I will charge them on proximate cause; that the Plaintiff has to show that the injury would not occurred but for the Defendant's negligence. The Plaintiff also has to prove legal cause which is showing that the injury was foreseeable; that is that the injury occurred as a natural and probable consequence of the Defendant's conduct.

While some injury from the Defendant's conduct or negligence must be foreseeable it doesn't mean that the Plaintiff has to prove that the precise incident that

occurred was foreseeable. Proximate cause does not mean the only cause. The Defendant's act -- there can be more than one cause of an injury and more than one -- the Defendant's act can be a proximate cause of the injury if it is at least one of the direct and concurrent causes of the injury.

I will charge them on what damages which would include personal injury damages; that's physical or mental pain and suffering, expenses incurred for necessary medical treatments, and any other losses that are reflected by the character of the injury; that the damages don't have to be proven to a mathematical certainty.

I will also charge them about damages to a building or other property. The measure of damages which the Plaintiff would be entitled to recover is the difference between the value of the building and other property of the Plaintiff's before the damage and the value in it's condition after the damage.

The preparing the building would put it back in the same condition as before the damage to the measure that it would be the cost to repair it plus any amount for the value of the building's decreased due to the damage. The damage to the real property. The measures the difference between the value of the entire premises before and after the injury.

The value of the property -- the value of property on undamaged real estate such as buildings, fences and other property. Personal property is measured according to that value of the property actually destroyed or damaged.

The owner of the property damaged by another's negligence must use every reasonable effort to minimize that damage. If the Plaintiff did not do this then the Plaintiff may not recover full amount of the damages.

I will also charge them that with respect to the note taking that their notes are their own to be used for their own specific, individual purposes. They should not share their notes with other jurors. They are to use them only for purposes of refreshing their own recollection and jury notes are not to be given any greater weight of the recollections of other jurors. And the recollections of individual jurors should be considered just as reliable as notes taken by any other juror.

On the -- there were -- in conjunction with that I would also charge them relating to the tort claims immunity. And while I haven't craft the language it would be something to the extent that the governmental entity is not liable for a loss resulting from the exercise of discretion or judgment by the governmental entity or its employees or the failure to perform any act or service which is in the discretion or judgment of the governmental

entity or its employees.

In considering -- in determining whether or not the governmental entity is liable for the loss as described by the exercise of discretion they may consider whether the governmental entity was faced with alternatives and actually weighed competing considerations and made a conscious choice using accepted professional standards. And that the burden is on the governmental entity to accomplish that it meets that criteria.

And then I'll tell them their verdict must be unanimous; that there are two choices for verdict: We find for the Plaintiff actual damages or we find for the Defendant. Is there anything additionally that the parties wish me to charge? Start with the Plaintiff?

MR. WILLIAMS: From the Plaintiff, Your Honor, I note that your summary of the charges didn't incorporate our Request to Charge Number Two, but neither Number One or Number Three and I would request those.

THE COURT: And if you could explain to me the rational behind.

MR. WILLIAMS: Well, with respect to Charge Number One, the City -- there has been testimony from the City that they had a map or a plat of the sewer system that the engineer used in preparing the documents with the satellite documents. They didn't produce that. They had

records from the smoke test and they attempted to camera the line. None of those records were presented to the Court, and those -- if those had been supportive of their position about the results of the smoke test, particularly, and the location of the manhole covers I would think that is a fact for the jury to take into account in determining whether that is or is not -- they be permitted to draw an inference those documents would be available but not required to draw an inference. Those documents are uniquely in the possession and control of the City.

THE COURT: Any response to that from the Defense?

MR. WREN: Yes, Judge. We, of course, don't agree and object to that. Also as to the results of the smoke test I don't have to state my position on it. The evidence and testimony from Mike Hanna, he had them in his possession. He's not the Town. He's the contracted engineer. The Town does not have them. He testified that he pulled them together and overlaid the information on a map that was created and produced and contemporaneously to Plaintiff's counsel last week.

So I don't see any results of smoke tests; that there is no such document. And importantly, Judge, for his exfoliation argument, there is no evidence or testimony or it's not the case that these things have been destroyed.

That's where exfoliation comes in. The analogy that the, for instance, the Plaintiffs testified about the damages to their vehicles. Extensively, there is documentation there. We have asserted that that has been destroyed. There is no need for an exfoliation charge.

And then as to the Town's sewer map, again, Mike. Hanna spoke on that was that there was some document there. It's not what he was using to identify all this information. Rather, it's just a document there that pertains to these things. Again, nobody has testified to the fact that they have been destroyed. It hasn't been requested, and so for a number of reasons, Judge, we argue this is not an exfoliation case issue.

THE COURT: The charge that you submitted says, "When they failed to preserve the material and evidence for trial." And I think that's more incumbent upon -- that's more an exfoliation issue. I think the testimony was that those documents were utilized in preparing the information that was testified to by Mr. Hanna.

And I think you can argue that to the jury that somebody got them and they weren't presented. But I think that's a choice of whether to produce them as opposed to they weren't preserved. Certainly, if you had subpoenaed them or requested them and they weren't produced then that would be another issue, but I don't think that's an

appropriate charge.

MR. WILLIAMS: Thank you, Your Honor. I understand.

THE COURT: Number Three.

MR. WILLIAMS: Number Three. Over our objections Your Honor ruled that the Town of Latta has a prescriptive easement over the Plaintiff's property. That being so I think it's appropriate to charge the jury that ordinarily the owner of an easement has a duty to keep it in repair.

THE COURT: Any response?

MR. WREN: Your Honor, yeah. A couple of questions. One of them I think is jury confusion. Of course, as a matter of law that was a determination made by the Court expressed to counsel and the parties here. Jury doesn't know that at this time, and I think that unless there is an explanatory instruction that the Town of Latta has a prescriptive easement on the Graham's property this does nothing but create confusion in the presence of the jury. I don't see where it helps the jury at all in their fact finding endeavor.

MR. WILLIAMS: Your Honor, I would consent to an amendment of the request. Since Your Honor knows that to be the case. It would be -- I would urge the Court similarly to instruct the jury that ordinarily the Town of Latta has a duty to keep the sewer lines -- I think that's what I said, Judge. My initial -- my instruction would be

to establish that this is what they want to say that the Town of Latta has a prescriptive easement upon the property, and then you can add that the law is they have a right to keep it in repair.

MR. WREN: Your Honor, if it helps, the reason the jury hasn't heard that is because this was all under the trespass. Trespass is not going before the jury. I don't see where this would have any bearing on anything other than to confuse the jury in total.

MR. WILLIAMS: Your Honor, I thought it was at the Defendant's motion that the Court declared the existence of prescriptive easement.

THE COURT: It was done in conjunction with the trespass issue.

MR. WREN: Correct.

MR. WILLIAMS: Be that as it may now that that easement exists, and I think it would be appropriate to charge the duty -- that to charge the jury what duties are inherent in ponds and easements. I'm not wedded to any particular wording. I think that wording, that according to the cases, is correct. But there hasn't been any testimony that there is an easement. So evidence, just as a matter of law, now, an easement.

I think that the jury should be instructed that the Town has a duty to keep in repair. However that's worded

or whatever, but I think that is an accurate statement of the law that ordinarily, Latta has a duty to keep that sewer line in repair.

MR. WREN: Your Honor, again, I think this is going to do nothing but confuse our jury. It's on a matter that's been disposed of. It's not before the jury. It's not something their going to be charged with.

MR. WILLIAMS: We can stipulate that the Town of Latta has a duty to keep it in repair?

MR. WREN: Judge, I'm not willing to stipulate to that.

MR. WILLIAMS: Your Honor, if it's going to be a factual issue it has to be resolved by the jury. The jury is allowed to know the applicable law.

MR. WREN: For a cause of action that's not before the jury, Judge.

THE COURT: Well, what your claim is now that they had duty to maintain the system, to operate the sewer line in such a way as not to damage the property. That's what you told me was the duty.

MR. WILLIAMS: Yes, Your Honor.

MR. PLYLER: Your Honor, may I briefly. I just tried skimmed through these cases very quickly. One is from 1836, and appears to be dealing with a logging road. The other one had to do with a permit. I believe in a

driveway or something over the surface of the land. And the question was going to be, especially in the later case, the one that is more recent, whether or not the cost of maintaining the surface of the land should be apportioned between the person claiming the easement and the actual property owner. That is completely different than what we have here.

All the testimony has been this particular pipe is underground. This is not the same as an easement by prescription where a utility company. I think it is confusing. The cases are distinguishable from the facts we have in this particular incident.

And although this hasn't been specifically argued, there might be a judicial estoppel issue. The entire litigation for over four years the Plaintiffs have been maintaining that the City -- the Town of Latta does not have an easement. Now, they want to flip the script on something that we haven't been able to develop factually about this issue of maintaining the property if we have an easement.

I just agree with Mr. Wren, and I only speak because I was trying to read these cases briefly. So thank you, Your Honor.

THE COURT: I'm -- I'll consider that one. I'll have to come back to that one.

MR. WILLIAMS: Thank you, Your Honor. As to what Your Honor stated you would be charging I have no objection to any of them. Thank you.

THE COURT: Anything further from the Defendant?

MR. WREN: Your Honor, just some housekeeping, and I want to make sure and I appreciate you including all -- I know I left you that packet which includes numerous charges that we thought were applicable. Did we have in the language I think came from the Snow case about the inference of negligence arises from the mere act or incident incurs? And I apologize. I missed that; your negligence charge.

THE COURT: I think it might have been in your request. I'm not so sure I pulled it out.

MR. WREN: And just respectfully, Judge, we ask for it to be included. If it helps to, Judge, it's located in Snow; that proposition.

THE COURT: Okay. That's usually in -- somewhere in my proximate cause charge. And so I don't have a problem getting that language or some variation of that language.

MR. WREN: That will be fine, Your Honor. And then additionally, Your Honor, the Tort Claims Act immunity as you identified. Of course, Subsection Five, the discretionary. I heard Your Honor speak to that. The Defendant would still request the other immunity

subsections we had asserted at directed verdict that will be charged, and beyond that.---

THE COURT: I'm sorry; that the other?

MR. WREN: That the other subsections of immunity will be charged to the jury beyond -- I heard you. I certainly heard your explanation as to discretionary, Your Honor.

THE COURT: Right. And that was the only one that I said survived your directed verdict motion.

MR. WREN: All right. I just want to make sure I understand the Defendant's position. We would for the record we would ask now that it be charged, but I understand the Court's ruling at this time. And beyond that, Judge, as to your discretionary ruling I understood you to include language that the burden is on the Defendant to show; is that correct?

THE COURT: To show that you're entitled to that immunity, yes.

MR. WREN: Okay. And just we would take objection to -- exception to that. We just simply ask that the immunity charge be charged as the law reads.

THE COURT: Well, but the case law clearly says that the Defendant has to prove immunity.

MR. WREN: And I'm not asserting that's the perfect defense, Your Honor. And, finally, as to the damages

charge I know that's pretty standard. I heard Your Honor included no speculatory -- speculation that kind of language. That's what we had included as well. The only question I had, Judge, in practices I'm not as familiar with this particular charge; the one referencing either real property or buildings.

I heard it to say that, basically, that for damages purposes where there is evidence that a building or property needs to be reconstructed something to that effect, and my hesitation there, Judge, is there is no evidence of that in this case. There was entire witness put up to establish what it would cost to build the Graham's residence to the tune of almost half a million dollars. But there is clearly no evidence, no witness or testimony to establish that needed to be done.

THE COURT: Well, what I said as to the bidding is that the difference between the value of the building being and other property in the condition before the damage and the value after the damage. If repairing the building would put it in as good a condition as before the damages then the measure of damages would be the cost of any repair plus the decrease -- plus any amount by which the value of the building decreased due to the damage.

And then I talked about real property, and it's a charge I really hadn't read until this morning.

MR. WREN: Your Honor, if I may inquire. Ervin or King charge?

THE COURT: No.

MR. WREN: Judge Anderson's charge. Excuse me.

THE COURT: It could very well be in Judge Anderson's. I don't know.

MR. WILLIAMS: All right. I think the language you're talking about -- I said, "The value of the property on the damaged real estate such as buildings, fences is measured according to the independent and separate value of the property actually destroyed or damaged."

MR. WREN: I guess, Judge, that's where I think we have objection. I take exception because of the lack of evidence in this case. Whether in terms of value or a need to replace or rebuild the Plaintiff's, they have not put any evidence of that in, Judge.

THE COURT: Then it goes on to say that, "This injury is measured by the difference between the value of the entire premises before and after the loss."

MR. WREN: Yeah, I guess our objection, Judge, would just be to be entirety of that for lack of establishing that's what the damages are. That's what's needed.

THE COURT: I will -- I know that I'm going to revise the charge. So I will not charge it as it's written. And I will -- I think what that sentence is trying to say is

when it comes to real estate building or other things attached to the real property then that measure of damages is the value of the entire premises before and after the loss.

But if there are things not attached to the property then their measure is by their independent value, and I think that's what that is trying to say the more I read it.

MR. WREN: Would it be helpful ---

THE COURT: And so what I'll probably end up doing is just going back to the general that -- to the extent that where real property has been damaged the measure of the damages is the difference between the value of the entire premises before and after the injury and let's leave it at that and not even talk about the building.

MR. WREN: Thank you, Judge. I think that would resolve if there is any question or the anticipated charge is different. Otherwise, I think that would be acceptable. And, Judge, the final thing just for housekeeping. I did -- we had mitigation charge, correct?

THE COURT: Yes. And I put in there mitigation.

MR. WREN: Yes, Your Honor. All right. Judge, I think that's all we had as far as the charge goes. Thank you.

THE COURT: Okay. All right. I assume that your

closing arguments will not the terribly lengthy. And when you come back from lunch I'll have the verdict form for you to look at. And like I said it's a simple verdict form. It will just say, "We find for the Plaintiff actual damages. We find for the Defendant," and since I'm only charging negligence that will be the only issue for them to consider. Anything else?

MR. WILLIAMS: May it please the Court. May I address. I know Your Honor is going to be considering -- reconsidering part of the charge.

THE COURT: The only one I'm really considering is the easement.

MR. WILLIAMS: Thank you. Okay. I thought I understood you to say that you were considering incorporating what I thought was the res ipsa loquitur into the standard charge.

THE COURT: Well ---

MR. WILLIAMS: Only thing I want to say is that if you are in fact reconsidering that portion of it I ask you to it in the light of O'Leary at the same time. O'Leary was the one that talked about.

THE COURT: Right. And I'm not charging a race ipsa. What I would -- the language that will be charged would be the mere fact that problems occurred after an incident is not sufficient by itself to show that the incident was

caused by the physical problems. The incident caused the physical problems. The Plaintiff must establish a natural an obvious relationship between the incident and the physical problems in that the injuries resulted from the incident.

The Plaintiff has to prove that the Defendant's negligence proximately cause the injuries. That's proven by showing a causation and fact that the injury would not have occurred but for the negligence.

The Plaintiff also has to prove legal cause proving by showing that the injury was foreseeable. So that would be the language that I use.

MR. WILLIAMS: I have no objections to that, Your Honor.

MR. WREN: And, Your Honor, since we're going to wrap this up just to clarify. There was a question as to the damages charge and the property issue and to the value comes in. Just we site the Court's attention to Jackson Britt. It's a 2000 South Carolina ---

THE COURT: I'm familiar with it. I've seen what the case law says.

MR. WREN: Yes, Judge. And that is the speculative nature of it is what concerns us.

THE COURT: Speculative nature of what?

MR. WREN: Of deciding that there is no evidence --

objective finding and that doesn't exist mere.

THE COURT: All I can do is charge them with what the elements of damages are, and it's up to them to determine the damages. You want to make that argument to them then you can make that argument to them.

MR. WREN: No, Judge. But that's our one issue we have with that particular charge.

THE COURT: I'm just charging the law the measure of damages.

MR. WREN: Fair enough. Thank you, Judge.

THE COURT: Anything else?

MR. WILLIAMS: Nothing, Your Honor.

THE COURT: Okay. Then we'll see you back at 2:00.

MR. WREN: Thank you, Judge.

(WHEREUPON, Court is in recess at 1:07 p.m. and reconvened at 2:05 p.m.)

THE COURT: Is there anything we need to take up before we bring the jury in? Oh, yes, I decided not to charge on the easement. I think that there is -- that there is a duty as it relates to the sewer system and the waste water treatment system. And I think that everyone agrees to that. I think there is evidence that shows that there is a duty to maintain that system including the lines. And so I'm not going to charge them about the duty to maintain the easement.

MR. WILLIAMS: Very well, Your Honor. I guess bring up one other thing. I don't like to interrupt.

THE COURT: That's all right.

MR. WILLIAMS: Maybe we can clarify this issue. Now, based on some of the questioning and some of the arguments I infer that the Defense might be arguing that the plaintiffs are in some way at fault in connection with this burden comparative negligence and contributive negligence and substrative risk. All that were not pled. So I don't think it would be appropriate argument to criticize the conduct of the Plaintiffs with respect to those issues.

THE COURT: I think that the only way that I know that it might come up other than what they should have done before they purchased the home or whatever would have been as it relates to the damages.

MR. WREN: Mitigation.

THE COURT: Mitigation, but that was the only thing that I heard of, Mr. Wren.

MR. WREN: Yes, Your Honor, Mr. Plyler is going to be doing our closing to that point, but, not, that's what we contended. We have not asserted it and we didn't raise as far as comparative negligence. And I'll let Mr. Plyler address specifically as to closing, but that has not been our contention.

MR. PLYLER: And I apologize. I'm a little behind the eight ball here. I didn't get to hear all the information.

THE COURT: Oh, it was just the one Mr. Williams was trying to anticipate what may be mentioned in closing. I didn't want to object during the closing. He said to the extent that you -- that there would be any arguments that in some way the Plaintiffs were at fault in causing or contributing to the problems; that he didn't -- that the comparative wasn't pled along those lines.

And I said that as far as I knew with the exception of any arguments that were made before they purchased the property that they should have done and there has been testimony about that. Need to determine where the lines were, whatever. I did not believe that there would be any arguments.

MR. WREN: So I can go into that fact that they didn't do pre-purchase inspections?

THE COURT: I don't know what you're argument is going to be, but I just know that there was evidence and there were questions about, you know, what they did in terms of determining, you know, where the line was located and if there was a line or things along those lines.

MR. WILLIAMS: Your Honor, that's what I was concerned about. Pre-purchase inspections would go to

either on assumption of the risk defense or a comparative negligence or contributory negligence defense. So I don't think that it would be proper argument under the posture of the case.

MR. WREN: Your Honor, just to address the legal arguments then exclusive of the closing arguments in a moment. What the issues that Mr. Williams is raised, clearly, that's the evidence in this case. That's the testimony that's elicited from Claude and Vickie Graham and others relative to this property. And to the extent that is -- the Plaintiffs contend that that's an issue or problem here I think this is exactly what Rule 15 is designed for. To conform to the evidence. That is exactly what this case -- the evidence has been set forth.

I've never seen a case over this couple of days, you know, a few days of trial evolve as much as this one has, Judge. And, certainly, to that extent I think it should be addressed in closing. The underlying foundational issue here we would move to have the pleadings amended to reflect exactly what the evidence has shown which was there are issues about what the Grahams did or did not do both preceding and subsequent to the purchase.

THE COURT: Now, there is there a question as to whether or not -- I guess it may have been relevant, issues relating to easement or trespass or is it -- does

it really relate to whether or not the Town maintained or inspected or any of those allegations as it relates to what duty was of the Town as it relates to the sewer line. Certainly, it would be relevant to mention to the extent that there is an argument that we wouldn't have purchased the property had we known about it or we wouldn't have moved on the property. I think if those arguments were certainly fair to be able to say, you know, what the evidence is whatever it shows.

And so I guess it really depends on what he talks about in his closing. But I'm not so sure in terms of being able to say that they somehow contributed to it or they assumed the risk of having these events occur would be any -- that would be inappropriate argument to make.

MR. WILLIAMS: I anticipate I won't say anything that will open that door. If I do then, obviously, I have messed up and I will open the door. I don't plan to open that door.

MR. WREN: Your Honor, I don't want to confuse the issue, but one of the things that has come up is this thing about flood plains. And one of the things that they're claiming in their damages is related to flooding.

THE COURT: I think that's a fair issue. I mean I think that's fair game, you know, to say that it's not all the Town's fault. They moved into a flood plain, and you

know, they could have ascertained that before. And I think that is fair game. To me that's not a shifting of the responsibility. That's just an existence of you had the opportunity to discover that and had you known those features about your property maybe you wouldn't have bought the property. Maybe you wouldn't have lived there, but because it's flooded and it's in the flood zone is not necessarily the Town's fault because of that.

MR. PLYLER: And it would also go to damages we believe because part of the damages argument here is they're entitled to the difference in value between the property before the events and after. And, obviously, all -- there has been no change in condition to the property is one of the things we would be mentioning here.

THE COURT: To the extent you can make an argument about -- because of damages then, you know, I think the bottom line is I'm going to have to hear what the argue is before I can -- and you're just going to have to object.

Now, you love to object during the closing, but I think if it's a fair characterization of what the evidence is and it applies to the cause of action and the defenses that are raised in this particular cause of action negligence claim then it would be -- there could be arguments made.

MR. PLYLER: Your Honor, there is one matter that I'd

like to take up for the record, and I know we spent a lot of time talking about directed verdict. But I do feel this needs to be raised to make sure it's clear what our position would be. And the issue is, one, in Claude Graham's complaint, in Paragraph Five, he specifically says -- I want to make sure I get this right. I don't want to misquote anybody.

"On the night of September 5th 2008 and the morning of September 6th 2008 the municipal waste water system operated by the City backed up overflowed flooded the residence of the Plaintiff and his wife. Flooding the two vehicles and effectually destroying them or seriously damaging them to the point that they have no residual value." The reason I mention this is as pled he has related his damages and from what I remember of his testimony he related to his damages only to the Tropical Storm Hanna, September 6th 2008 event. But Your Honor had already ruled on.

They have no claims that survive D.V. for the September 5th and 6th 2008 storm event. So, therefore, his claims he has not shown any evidence in the record that his damages that survive are proximately caused by anything that happened after September 5th or 6th 2008.

Additionally, Your Honor, and all this is specifically mentioned earlier, I believe there is an

argument the same thing would apply to Miss Graham's claims. There has been no evidence put in the record, none, that the damages that they are alleging to the residence are any different whatsoever and have been proximately caused by any subsequent events.

All their damages could have just as well, and there hasn't been evidence to suggest otherwise, been caused by the flooding event. In fact I think Ms. Graham actually said on the stand that it's never been that bad. Its happened again since, but it's never been that bad. So I think there is an issue here of proximate cause.

Any evidence into the record that shows the damages that their alleging would not have been caused by this September 5th and 6th 2008 event which Your Honor has already correctly ruled the Town is not responsible for.

THE COURT: Well, I think there is evidence, and I understand that you're looking at the pleadings. I heard the evidence from the witness stand as well that there were instances -- that there were instances subsequent to September 5th and 6th, and while the characterization that you've made was that the flooding was not as bad. But there was still flooding on the property which would have been under the house which would have created the issues.

And so to the extent, and perhaps the value of the cars may end up going if the cars weren't flooded on

September 5th or 6th. But there is other evidence in the record they shows that it was not that one particular event but that there were subsequent events. And I think there is evidence in the report to support that there were subsequent flooding events and subsequent events in which there was sewage. And so that all those things together caused the damage.

I understand that, and in particular I'm thinking about the fact that at one time the ducts were redone, H.V.A.C. system under the house; that there was subsequent flooding and it happened again. And subsequently, they have not repaired it which I think goes to your discussion about mitigation of dangers. I think there is evidence in the record to support that there were continuing events.

To the extent that the flooding of the vehicles only occurred on that particular event, and that the evidence supports only that it occurred at that time then, you know, I'll be happy to direct as to the value of the vehicles.

MR. WREN: I believe that was the evidence, Your Honor; that the vehicles were only flooded in the Hanna storm event. In fact I remember specifically him talking about it got up in my carport and had like eight inches of water in my cars. And I heard nothing that they flooded subsequent to that. And it had to be flooded subsequent

to that.

THE COURT: I do recall the testimony that there was about 8 to 10 inches of water in the vehicles. 10 to 12 inches in the -- well, the September the 13th there was 10 to 12 inches under the house, but there was nothing mentioned about the vehicles at that time.

MR. PLYLER: In fact he said that his yard didn't even flood at that time, Your Honor. Cause that was one of the reasons they went to the leaking pipe. This wasn't an incident where the yard flooded. Only under the house. Cause I think that also goes to this issue of his other personal property. There has been no evidence put in the record that the flooding occurred that damaged his other personal property subsequent to the Hanna event.

And that also leads us to our directed verdict issue that I think we need to take up. We're going to need two verdict forms. We have two separate and distinct claims made by two separate and distinct individuals.

THE COURT: I have no problem with that. One is to her and one is to him. I have no problem because there are two separate cases that were consolidated together.

MR. PLYLER: Obviously, we're going to need a pretty clear explanation to the jury that as to the house and the real property that only Vickie Graham is made a claim versus as the personal property that is only Claude

As I said we submit to you that the real meat in this coconut is that Mr. Benton testified to what you would have to pay to build a house like this on another piece of property. Why is that an important question. Because it wouldn't do you any good to rebuild this house on this piece of property. It wouldn't do you any good to fix it up as I said and clean this house on this piece of property. This piece of property the City of Latta has decided that it is in their interest to use the Graham's home to help them operate their sewer system as they'd rather just use it and not fix it and let it go like it is and let the Grahams bear the expense and the burden of the Town of Latta's sewer system.

Again, I don't want to go on and on. I think I've made my point and I'm trying to answer any points Mr. Plyler made. Thank you very much.

THE COURT: Could I see the attorneys for just a moment, please.

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

CHARGE OF THE COURT

THE COURT: During this trial, ladies and gentlemen, you and I have certain duties to perform. As the trial Judge it's my responsibility to preside over the trial of

this case and to rule upon or pass upon the admissibility of evidence that has been presented throughout the course of this trial and you are to accept only the evidence which is before you. To any objections to which -- to any evidence to which there was an objection sustained you must not speculate as to what the evidence might have been or the reasons for the objection.

Again, you should also consider any stipulations of counsel that have been made a part of the record in this case. Again, you need to consider the testimony along with the exhibits and the stipulations that have been presented throughout the course of this trial. Now, I have the additional duty and responsibility to instruct you on the law that applies. And as the trial Judge I'm the sole Judge of the law that applies. If you have any preconceived ideas as to what the law is or your interpretation of the law or what you think the law should be or what you want the law to be, you must set all of that aside. Under your oath as jurors you are sworn to accept the law as I charge it to you.

Now, if by chance I make some error in my charge then there is another court at another time that can correct those errors of law. But for the purposes of this trial, right now, this moment, you must accept the law as I charge it to you as being the correct statement of law.

Now, every case tried before a jury, you the jurors become the sole and exclusive judges of the facts of this case. No one can tell you what the facts of this case are. And if I have done anything throughout the course of this trial that has given you any impression that I am commenting on the facts, or I'm telling you what facts to find or making suggestions about the facts, I ask you to set all that aside as well. I assure you that under -- that I don't have any opinion about the facts of this case. That's not my job here. That's not what I am supposed to do. That's not my role. That's your duty, your responsibility to determine the facts of this case.

Now, in order to do that you have to analyze and evaluate the evidence and determine what evidence convinces you of this truth. In order to do that you have to judge the credibility and believability of the witnesses that have testified. In judging the believability of the witnesses, you may consider the following factors: What was the manner and appearance of the witness who testified? Was he or she hesitate or straight forward in answering the questions? Was the testimony of a witness consistent or inconsistent? How did the witness come to know the facts that he or she testified to? What was his or her ability to know these facts? Did a witness give testimony that would help or

hurt one side or the other? Was the witnesses testimony biased or prejudiced in some how? As was the testimony of a witness strengthened or weakened by other testimony or other evidence.

Now. In determining the believability of the witnesses, you can believe one witness against several witnesses or you can believe several witnesses against one witness. You can believe a portion of a witness' testimony and disregard other portions of the witness' testimony. You may also consider whether or not a witness' testimony has been impeached or challenged by prior inconsistent statements. And if a witness' testimony has been impeached then you may give any or all of that witness' present or prior testimony the weight that you think it deserves.

Ladies and gentlemen, these factors you should not exercise arbitrarily, but if in your good judgment there is reason for you to consider these factors then you should do so. Your objective it to seek the truth, and whether it comes from a witness or witnesses for the Plaintiff or a witness or witnesses for the Defendant you don't determine the truthfulness of the testimony or the evidence by counting the number of witnesses who testified from one side or the other. The truth isn't determined by counting witnesses. What the law simply requires is that

when you exercise your mental processes and coming up with what you consider to be truthful evidence you should use your good common sense. Use your sense of logic and reasoning. Use your experiences in life. You then apply these attributes to the evidence to determine what you the jury consider to be truthful evidence. And then to those true statements of facts as determined by you, you apply the law as I will charge it to you. Then you will be able to arrive at your verdict.

Ladies and gentlemen, you verdict should not be based upon sympathy or passion or prejudice. While your verdict has no friends to reward and you have no enemies to punish. Your verdict should simply speak the truth.

Now, ordinarily our rules don't allow for witnesses to testify as to opinions or conclusions. An exception exists for those individuals who would be called expert witnesses. Those are witnesses who because of some education or training they profess to be an expert in certain areas. And they can state opinions in the area in which they profess to be an expert. You should consider any expert opinion that has been offered in this case and give it the weight that you think it deserves. If you should find that the opinion is not based upon sufficient education or training or the opinion is outweighed by other testimony or other evidence then you are not

required to accept that expert's opinion.

Additionally, an expert's opinion is to be given no greater weight than that of any other witness simply because that person professes to be an expert. and you are not required to accept an expert's opinion even though it may not be uncontradicted. Now, when an expert gives an opinion as to the cause of an injury or incident that witness must state to a reasonable degree of professional certainty that the event in question most likely -- the injury in question was most likely caused by a certain event.

And, now, ladies and gentlemen, each and every time that a case is filed in court and we come before trial the Plaintiff has the burden of proving each and every element of the their claim by what we call the greater weight or the preponderance of the evidence. The greater weight or the preponderance of the evidence is traditionally viewed by a set of old fashion scales where at that beginning of the trial the scales are even. But throughout the course of the trial the evidence that was presented the scales may tip back and forth.

If after all of the evidence has been presented the scales remain even or they tip ever so slightly in favor of the Defendant then that means that the Plaintiff has not satisfied the burden of proof and your verdict must be

for the Defendant.

If on the other hand after all the evidence has been presented the scales should tip ever so slightly in the favor of the Plaintiff then that means that the Plaintiff has satisfied the burden of proof and your verdict must be for the Plaintiff.

Now, of course, there is no way to physically weigh the evidence. It's entirely a mental process and the evidence to which you assign the most weight should be the evidence that convinces you of its truth regardless of from whom or from what source it comes.

Now, this case is what we call a negligence claim. And in this case the Plaintiff has burden of proof of proving four essential elements by the greater weight or the preponderance of the evidence. First, the Plaintiff has to prove that a duty of care was owed by the Defendant to the Plaintiff.

Second, the Plaintiff has to prove that the Defendant breached that duty by a negligent act or omission.

Third, the Plaintiff has to prove that they were injured.

And, fourth, the Plaintiff has to prove their injuries were proximately caused by the Defendant's negligent conduct.

So, let me define some of these terms for you. Duty

of care: Duty of care is that standard of conduct that the law requires of the Defendant in order to protect others against the risk of harm from the Defendant's actions. It is the principle that the Plaintiff should not be called to suffer harm to either his person or to his property which is foreseeable and which can be avoided by the Defendant's exercise of reasonable care.

Secondly, the Plaintiff has to prove that the Defendant breached that duty of care by a negligent act or omission. That is that the Defendant failed to exercise due care. Negligence means that a person did not use the same amount of care that a person of ordinary reason and prudence would have used under the same or similar circumstances. The word, 'careless' means the same thing. It can be said that a negligent person has done something that a reasonable person would not have done if faced with the same situation or perhaps that a negligent person did something -- did I say that right? Failed to do something that a reasonably prudent person would not have done or would have done or did something that a reasonably prudent person would not have done under the same or similar circumstances or perhaps a combination of the two.

To determine whether a particular act is negligent you have to judge that act in the matter in which an ordinary person would have acted under the same or similar

circumstances. If you determine that the Defendant owed a duty of care to the Plaintiff and that the defendant breached that duty then you would go on to consider proximate cause. Proximate -- and the question there is -- did -- were the injuries that were suffered by the Plaintiff proximately caused by the defendant's negligence?

Proximate cause is something that produces a chain of events which in the end brings about the injury. It is the direct cause of an injury. The mere fact that problems occurred after the incident is not sufficient by itself to show that the incident caused the problems. The Plaintiff must establish a natural and obvious relationship between the incident and the injuries or the problems and that the injuries resulted from the incident itself.

The Plaintiff has to prove that the defendant's negligence proximately caused the Plaintiff's damages or injuries. In order to do this the Plaintiff first has to prove the causation of the fact. Causation of the fact is proven by showing that the injury or the damages would not have occurred but for the Defendant's negligence.

The Plaintiff also has to prove legal cause. Legal cause is proven by showing that the injuries or the damages were foreseeable. That means that the injury or

damage occurred as a natural and probable consequence of the Defendant's conduct. Now, while the Plaintiff has to show that the injuries were foreseeable the Plaintiff doesn't have to prove that the precise injury or the precise damage that occurred were foreseeable. It is sufficient that the Plaintiff prove that the Defendant should have foreseen that its negligence would cause injury to someone or to something.

Now, proximate cause does not mean the only cause. There can be more than one cause of injuries or damages. The Defendant's act can be a proximate cause of the Plaintiff's injury if it is at least one of the direct concurring causes of the injury.

Now, once you've considered these particular -- if you find that the Plaintiff failed to prove that there was a duty of care owed by the Defendants or if you find that the Plaintiff failed to prove that there was a breach of that duty of care; that is that the Defendants were negligent then your verdict would be for the Defendant. If, however, you find that the Plaintiff has proven that the Defendant owed a duty of care and that the Defendant breached that duty of care and that you also find that the breach of that duty of care was the proximate cause of the damages then you would go on to consider one of the defenses that has been put up by the defendants.

The Defendant has put up one defense what we call a general denial. By that the defendant is denying that they've done anything improper or incorrect, and they're denying all of the allegations and claims that are made by the Plaintiff. You can consider that defense in making your decision?

Another defense is that the Defendant claims that he is entitled to immunity from liability based upon the statute. Now, under this statute a governmental entity is not liable for a loss resulting from the exercise of discretion or judgment by the governmental entity or by its employees or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee.

The governmental entity has the burden to establish that it's entitled to immunity. Immunity is established by proof that the governmental entity is faced with alternatives and actually weighed competing considerations and made a conscious decision or a conscious choice using accepted governmental -- I'm sorry. Accepted professional standards.

Once you have considered all that evidence, ladies and gentlemen, if you determine that the Defendants have established that they are entitled to immunity then your verdict would be for the Defendants. If you find that the

defendants have not established that and that the Plaintiff had proven that there was a duty; that there was a breach of duty and that it was damaged because of that breach of the duty then you would go on to consider the damages in this case.

The damages that -- what we are talking about are actual damages, and there are two separate plaintiffs in this case. Everything that we have talked about up to this to this point is exactly the same. When we get to damages there are going to be a few differences, and I will explain those to you. Damages in this case would include, for someone who has been physically injured; that is they have suffered physical injuries as a result of the incident, there would be damages for pain and suffering as well as mental anguish, impairment of health or physical condition as well as any reasonable or necessary medical expenses.

You can take into account the past and present aspects of that injury, the physical injury that would again include physical mental and pain and suffering, expenses incurred for necessary medical treatment and any other losses that are reflected by the character of the injury itself. Now, the damages are designed to put the Plaintiff in the same position they would have been in before the incident occurred in so far that can be done

with money.

For pain and suffering the law does not prescribe an amount by which to make to an award for pain and suffering. You have that authority, and you alone have that authority. The same with mental suffering. Mental suffering would include apprehension, anxiety, fright, shock and any kind of mental suffering as well as pain and suffering. You are entitled to make a decision about what to award for that. The law simply requires that when you decide to make an award for pain and suffering and mental suffering that you should do so with calm and rational judgment. And that any award that you make for mental and physical pain and suffering must be reasonable in light of all the evidence that's been presented in the case.

The Plaintiff can also recover for medical expenses. That would be expenses to cover medical, hospital, health or other health care expenses. The Plaintiff has to demonstrate that the medical treatment that they received was reasonable, was necessary for the proper treatment of their injuries and that the amount that was charged was reasonable. You may only award those amounts that you determine are both reasonable and necessary to treat those injuries.

Now, evidence of the amount that's charged for hospital or health care costs is not in of itself is not

evidence of the reasonableness of those expenses. Additionally, ladies and gentlemen, this is where there is a little bit of a divergence. Mr. Claude Graham is claiming injury to personal property. For personal property any damages that you would award for personal property would include the difference between the value of the property before the damage and the value of the property after the damage.

As it relates to Ms. Vickie Graham, she was the owner of the real estate and the home. She was the title owner so she is also seeking damages for damages to the real estate and the building. Where real estate has been damaged the measure of damages is the difference between the value of the entire premises before and after the injury. If the only the -- if damages to the building only then the measure of damages would be the difference between the value of the building in the condition before it was damaged and the value of the condition after the damage.

If repairing the building would put it in as good a condition as before the damage then the measure of damages would be the cost of the repair plus any amount by which the building has been decreased due to the damages.

Now, ladies and gentlemen, the Plaintiff has the burden of proving each and every element of their claim

including damages by the greater weight or the preponderance of the evidence, but that doesn't mean that the Plaintiff has to prove those damages to a precise amount of certainty. What the law requires is that they have to put up enough evidence that will enable you the jury to determine an amount that's fair and just and reasonable. Any amount that you award must not be on the basis of speculation or conjecture or guess. You must only award those damages that have been established by the greater weight or the preponderance of the evidence.

Now, finally, ladies and gentlemen, when you have considered all these factors then you will arrive at your verdict. And at that time it will be time for your foreperson to complete the verdict form. There are two separate verdict forms. They're both exactly the same except for the name that's on them. So there's a verdict for Claude Graham, and there is a verdict form for Vickie Graham. And the form says, "We the jury unanimously find for," there is a place for the Plaintiff. And there is a line for actual damages with dollar sign parentheses or we find for the Defendant.

In completing this form, your thought process should be this: Did the Plaintiff prove by a greater weight or the preponderance of the evidence that the Defendants breached that duty of care? If you find that the

Plaintiff failed to do that, prove that, then you check for the Defendant. If you find that the Plaintiff did prove that then you would ask yourself did the Plaintiff prove by a greater weight or the preponderance of the evidence that the defendants breached that duty of care?

If you find that the Plaintiff failed to do that, to prove that, then you would find for the Defendant. If you find that the Plaintiff did prove that then you would go on and ask yourself: Did the Plaintiff prove by a greater weight or the preponderance of the evidence that the breach of the duty of care, the negligence by the Defendant, was the proximate cause of the injuries? If you find that it was not the proximate cause, they didn't prove that, then your verdict will be for the Defendant.

If you find that they did prove proximate cause then you would ask yourself: Did the Defendant prove by a greater weight or preponderance of the evidence that it is entitled to immunity in what we call discretionary immunity for exercising its discretion. If you find that the Defendant did prove that by a greater weight or preponderance of the evidence then you would check for Defendant. If you find that the Defendant failed to prove discretion immunity then you would go on to consider damages.

Again, for Claude Graham it would relate to the

physical injuries, the physical pain and suffering as well as medical expenses as I've described to you as well as the personal property. Whatever amount you determine you would check for the Plaintiff, and you write this like you would a check. Words on the line with numbers behind the dollar sign. No matter what you complete sign your name and place today's date and foreperson.

Then as to Vickie Graham, exact same procedure. As to Vickie Graham, her damages that she is alleging would be the physical injuries. That would include pain and suffering, mental suffering and reasonable and necessary medical expenses. She is also claiming damages to the real estate and the building. You have to determine that. If you go through the same process, if you determine that she is entitled to damages, then you would again complete this like you would a check.

You check for the Plaintiff and whatever damages you find associated with that and then sign your name and place today's date. And, of course, if you find that she failed to prove those again check for the Defendant.

Ladies and gentlemen, your verdict must be unanimous. It must be the verdict of all 12 of you. You have been sworn as fair and impartial jurors to determine the facts of the case based upon the evidence that's been presented and based upon the law as I charged it to you. When you

have done that you will be able to arrive at your verdict and then no one can complain about the verdict that you have reached and you would have fully discharged your duty and your responsibility as jurors.

Now, let me talk to you just a moment about notes. I know some of you took notes throughout the course of the trial. Your notes are your own personal aides. Some people take great notes and some people don't take good notes at all. But you should use your notes only to assist you with remembering and recalling incidents based upon whatever you have written down and what you recall.

Your notes should not be shared with others. Your notes do not take precedence over someone else's individual recollection of what occurred. You are all competent to recall what happened throughout the course of this trial and what you recall in the form of testimony and what someone may remember and recall is just as good as what somebody has written down. And so you should not use your notes to compete against someone's individual recollection..

Any -- the recollections of all of the jurors, whether it's being written by notes or it's by your own individual recollection, are considered reliable. And you must use that throughout the course of your deliberations in this particular matter.

Now, ladies and gentlemen, I'm going to ask that you retire to the jury room, but before I do that let me tell you one last thing is that arriving at your verdict, again you verdict should not based upon sympathy, passion or prejudice. Again, your verdict should simply speak the truth in this matter. I'm going to ask that you retire to your jury room and just wait a few minutes before you begin your deliberations. All of the exhibits that have been admitted into evidence will be sent to you along with the verdict forms.

Madam Foreperson, if during the course of your deliberations you have any questions, if you will write the question on a sheet of paper, sign your name; knock on the door and give it to the bailiff and we'll try to answer it. If you have no questions and you arrive at your verdict then when you have completed both forms knock on the door at that time and tell him that you have a verdict and we will receive you back into Court to the receive your verdict. So I'm going to ask that you retire to the jury room and await further instructions until the exhibits and forms come into you.

(WHEREUPON, the jury panel was excused from the courtroom at 3:44 p.m.)

THE COURT: All right. Are there any exceptions to the charge by the Plaintiff?

MR. WILLIAMS: Nothing, Your Honor.

THE COURT: Anything from ---

MR. WREN: Your Honor, I just have a question. I could have missed it. Did we get the mitigation of damages charge in? I was listening, but ---

THE COURT: No. Thank you.

MR. WREN: I didn't hear it.

THE COURT: I'm sorry.

MR. WREN: That's okay. Otherwise, we don't take any exception. I just noted that one charge missing, Your Honor. And we would just note for the record our same request and objections to our previous conversation.

THE COURT: All right. Thank you.

MR. WREN: Thank you, Judge.

THE COURT: Now, would you ask the jury to come back in, please. When I rewrote the dangers I forget to put the mitigation in.

(WHEREUPON, the jury panel enters the courtroom at 3:45 p.m.)

THE COURT: I really just want y'all to get some exercise. All right, ladies and gentlemen, it's been pointed out to me that I failed to charge you one provision of the law that I need to instruct you on, and that's one of the reasons why we wait for you to before you start to begin you deliberations.

With respect to damages for property, the owner of any property that's been damaged by another person's negligence has to use reasonable efforts to minimize that damage. And so if you find that the Plaintiff has not done this, hasn't tried to minimize those damages as it relates to the personal property and the real property then the plaintiff may not recover the full amount of the loss.

In other words, if you would need to reduce the damages by any amount that you think that the Plaintiff should have or effort that the plaintiff should have used in order to mitigate those damages. And so I ask that you consider that in conjunction with any award for damages as it relates to the personal property or the real property should you determine that the Plaintiff is entitled to a verdict for those items.

And so with that I ask that you retire to the jury room and just give us one more second to make sure there is nothing else. And then the evidence and the verdict forms will be brought to you.

(WHEREUPON, the jury panel was excused from the courtroom at 3:48 p.m.)

THE COURT: Is there anything further?

MR. WILLIAMS: Not the Plaintiff, Your Honor.

MR. WREN: Not from the Defendant, Your Honor. Thank

you.

THE COURT: If you will come and look at the exhibits that have been made a part of the record. And the court reporter and I have gone over the list that we have together.

THE WITNESS: Can we take a quick break to look this over and then get back on the record?

THE COURT: Yes, sir.

(WHEREUPON, a short break was taken.)

MR. WILLIAMS: Do we have the verdict form?

THE COURT: Yes, that was done. Do you need to make any changes to the verdict forms?

MR. WILLIAMS: None from the Plaintiffs.

MR. WREN: No exception from the Defendant, Judge. Only other housekeeping matter, since we're doing this and on the record before we confirm the exhibits, we have the written stipulation. We did that as a Court's exhibit, correct?

THE COURT: That's a Court's exhibit.

THE WITNESS: Okay. That was the one I forgot to write down. I just want to make sure.

THE COURT: It's Court's Exhibit Number Two. I think the first one was the deposition. There was a deposition used to impeach somebody's answer. That was Exhibit One, and Exhibit Two is the stipulation.

THE WITNESS: Thank you, Judge.

THE COURT: Cause I always make transcripts a Court's exhibit. You need to confirm the trial exhibits? You have all agreed -- reviewed and agreed to them?

MR. WREN: Accurate.

MR. WILLIAMS: Yes, Your Honor.

THE COURT: Then it can go back to the jury, and they can begin their deliberations.

(WHEREUPON, the jury panel begins deliberations at 3:51 p.m.)

THE COURT: And we'll just stand in recess until we hear from them.

(WHEREUPON, Court was in recess at 3:51 p.m. and reconvened at 4:37 p.m.)

QUESTION FROM THE JURY

THE COURT: Counsel, I have a note from the jury. It says, "We need a breakdown of the prices on the house and cars," and it's signed Latoya Plowden, I guess is her last name. So that's the note from the jury. I don't know if they were specifically told not to consider the cars. So I'm happy to instruct them on that part. But I'm looking for your guidance on that.

MR. WREN: Yes, Your Honor. As to the other vehicles, I think perhaps that needs to be clarified as to the issue with the -- they want a breakdown of the?

THE COURT: It says, "We need a breakdown of the prices on the house and cars."

MR. WILLIAMS: Your Honor, I know this would be the accurate way to answer the question if Your Honor is inclined to do so would be $578,000 on the house and you're not to consider anything on the cars.

THE COURT: It was $478,000.

MR. WILLIAMS: $478,000. I misspoke. I'm sorry. $478 on the house, and you're not to consider the cars.

MR. WREN: Certainly, Judge, there is no exhibit or anything that they have that has that on it.

THE COURT: No, there is not. It's just the testimony of the witness.

MR. WREN: My preference, Judge, in those kinds of circumstances where there is a question on something that is not on an exhibit in front of them. They have been presented everything. I don't know what further there is to do.

MR. WILLIAMS: My alternate suggestion would be to read back that portion of the testimony. It would be more efficient for everybody if we say the figure is not disputed or $478 rounds it down.

MR. WREN: Yeah, I understand what the jury is saying. They want a breakdown. I don't know how you do that.

THE COURT: Well, what I could do is to tell them that they're no to consider -- that the cars are no longer an issue for them to consider in this particular case. And what information do they need relating to the house and see what they tell me. I mean they may say they want the cost or they may -- I know you talked about ...

MR. WILLIAMS: He didn't really break it down other that to state the one figure.

MR. WREN: Your Honor, Mr. Greene has mentioned a good point to me, too. Part of the evidence in the record was the cost of the house when they purchased it. That's in the record as well; $60,000.

MR. WILLIAMS: That's true. Your idea of asking what it is they're looking for probably covers everything.

MR. WREN: I have a problem trying to interpret what the jury may question or think.

MR. WILLIAMS: That's a good point, yeah. Valid point. Not a good point.

MR. WREN: See, you're on the record now. Judge, do you keep all these as Court's exhibits?

THE COURT: Yes.

MR. WREN: Thank you.

(WHEREUPON, the jury panel enters the courtroom at 4:50 p.m.)

THE COURT: Pursuant to legal decisions by the Court

the cars are no longer issue for your consideration. Please explain what information you are requesting about the house. Is there anything else I need to add?

MR. WREN: I think that's fair enough, Judge.

THE COURT: And I'm going to ask that the bailiff provide it to them and have the foreperson read it and to save the note, and when it comes back it will be marked as a Court's exhibit.

MR. WREN: Thank you, Judge.

THE COURT: And we'll just wait to hear from them further.

(WHEREUPON, Court's Exhibit No. 3 was marked for identification and received into evidence.)

(WHEREUPON, the jury panel was excused from the courtroom to continue deliberations at 4:55 p.m.)

(WHEREUPON, Court was in recess at 4:55 p.m. and reconvened at 5:39 p.m.)

VERDICT OF THE JURY

THE COURT: I heard that the jury has reached a verdict. Is there anything we need to take up before we bring them in?

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

MR. WREN: Nothing from the Defendant, Judge.

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

(WHEREUPON, the jury panel enters the courtroom at 5:39 p.m.)

THE COURT: Madam Foreperson, I understand that you've reached a verdict; is that correct?

JURY FOREPERSON: Yes.

THE COURT: Would you please pass them to the bailiff, please. Thank you. Thank you, sir. Madam Clerk, for you. Please publish the verdicts.

CLERK OF COURT: On Your Honor's docket, State of South Carolina, County of Dillon. Claude W. Graham, Plaintiff, v. the Town of Latta, South Carolina, Defendant. 2008-CP-17-376. We the jury unanimously find the Plaintiff $100,000. Signed by Foreperson, Latoya Plowden, 10/11/2012.

On Your Honor's docket, State of South Carolina, County of Dillon. Vickie B. Graham, Plaintiff, v. the Town of Latta, South Carolina. 2008-CP-17-377. We the jury unanimously find for the Plaintiff for $225,000. Signed by Foreperson, Latoya Plowden, October 11th 2012.

THE COURT: Do the parties wish to poll the jurors?

MR. WILLIAMS: Not the Plaintiff, Your Honor.

MR. WREN: Yes, Your Honor, please, on behalf of the Defendants.

POLLING OF THE JURY

THE COURT: Ladies and gentlemen, the Clerk will call

your name. She will ask you two questions. Those questions will be, "Was this your verdict and is it still your verdict." And I ask that you answer according to your conscious.

THE CLERK: Joseph Padillo, was this your verdict?

JUROR: Yes.

THE CLERK: Is it still your verdict?

JUROR: Yes.

THE CLERK: Latoya Plowden, was this your verdict?

JUROR: Yes.

THE CLERK: Is it still your verdict?

JUROR: Yes.

THE CLERK: Chyrelle Grooms, was this your verdict?

JUROR: Yes.

THE CLERK: Is it still your verdict?

JUROR: Yes.

THE CLERK: Gregory Seals. I'm sorry. That's one that we excused. Richard Smith, was this your verdict?

JUROR: Yes.

THE CLERK: Is it still your verdict?

JUROR: Yes.

THE CLERK: Kelly Bridgers, was this your verdict?

JUROR: Yes.

THE CLERK: Is it still your verdict?

JUROR: Yes.

THE CLERK: Daniel Lee, was this your verdict?
Juror: Yes.
THE CLERK: Is it still your verdict?
JUROR: Yes.
THE CLERK: Dorothy Vanderhall, was this your verdict?
JUROR: Yes.
THE CLERK: Is it still your verdict?
JUROR: Yes.
THE CLERK: Amanda Ward, was this your verdict?
JUROR: Yes.
THE CLERK: Is it still your verdict?
JUROR: Yes.
THE CLERK: Ernest Manuel, was this your verdict?
JUROR: Yes.
THE CLERK: Is it still your verdict?
JUROR: Yes.
THE CLERK: Sharon Cadell, was this your verdict?
JUROR: Yes.
THE CLERK: Is it still your verdict?
JUROR: Yes.
THE CLERK: Ronnie Williams, was this your verdict?
JUROR: Yes.
THE CLERK: Is it still your verdict?
JUROR: Yes.

THE CLERK: That's it, Your Honor.
THE COURT: You missed one.
CLERK OF COURT: I did?
THE COURT: Yes, ma'am.
CLERK OF COURT: Which one?
THE COURT: McCrae.
CLERK OF COURT: Miss McCrae.
JUROR: Yes, ma'am.
CLERK OF COURT: Is this your verdict?
JUROR: Yes.
THE CLERK: Is it still your verdict?
JUROR: Yes.
THE CLERK: Thank you.
THE COURT: Thank you.
CLERK OF COURT: Sorry, Judge. I missed one.

COLLOQUY

THE COURT: That's all right as long as we got them all. Ladies and gentlemen, the Court is not concerned with the verdict you reached so much as I'm concerned with the process by which you reach a verdict. You listened to the evidence as it was presented throughout the course of this trial. You also listed to my instructions to you as to the law. You determined the facts in accordance with your view what that evidence showed, and you applied the law as I charged it to you. And then you arrived at your

verdict. And having done so no one can complain about the verdict that you reached, and you've fully discharged your duty and responsibility as jurors in this particular matter.

On behalf of the State and Dillon County thank you very much for your service this week as jurors. Miss Hyatt has your checks, and so if you will step back into the jury room and she will pass them out to you. But I'd like to thank you very much for your service and make sure that you pick up any personal items on your way out.

(WHEREUPON, the jury panel was excused from the courtroom at 5:45 p.m.)

THE COURT: Are there any post-trial motions at this time?

MR. WILLIAMS: None from the Plaintiff, Your Honor.

THE WITNESS: Yes. On behalf of the Defendants, Your Honor, if we may, we'd like to have ten days for post-trial motions.

THE COURT: Yes, sir. I'll give you ten days. Can you give me a brief overview what they will relate to? I won't hold you exactly to them. Give me a brief overview and you can supplement.

MR. WREN: Yes, Judge, and respectfully we reserve in our -- and I appreciate the additional time. Anything that may arise as we look back at the record again after a

long week. Particularly, we would have potentially issues or draw the Court's attention in regards to the discretionary immunity ruling that I expressed earlier. Your Honor, as to the -- going back to the initial directed verdict ruling as well as the subsequent one we renew our motion for directed verdict on the grounds that were addressed there with the remaining negligence for which it was asserted.

The underlying -- one underlying position, Judge, is that we still contend, of course, that nowhere in the record or evidence in the case upon review there was an established breach of the duty which proximately caused the damages as well as the duty issue itself, Judge.

So if those immunities that we addressed and the -- with particular attention to the discretionary. Of course, the elements of negligence, Judge.

THE COURT: I will give you ten days in order to file those. Please remember that pursuant to the rules you must file a copy here in Dillon County and send me a copy to my office.

THE WITNESS: We will, Your Honor.

THE COURT: Because otherwise I would never know if they've been filed. And then I will give the Plaintiffs five days to respond. And then, thereafter, I will review the information. Anything further at this point? Then

with that I will. I will file the verdicts with the Clerk's office. I will note on the Form Four that the post-trial motions were briefly made and to be supplemented within ten days. So that the case is not yet closed. The exhibit -- the note from the jury will be marked as a Court's exhibit. Court's Number Three, I believe.

And if there is nothing further we are adjourned from this matter. Thank y'all very much.

MR. WILLIAMS: Thank you, Your Honor.

MR. WREN: Thank you, Your Honor.

MR. PLYLER: Thank you, Your Honor.

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PLAINTIFF'S
EXHIBIT
1
ALL-STATE LEGAL®

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Pay to:
Palmetto Internal Medicine of Florence PC
305 E. Cheves, Suite 120
Florence, SC 29506
(843) 656-2122

Claude W Graham
220 E Rice St
Latta, SC 29565

Patient Receipt

Friday, May 29, 2009

Amount Due	Amount Paid
$124.20	$217.30

Date	Description	Check	Fee	Units	Insurance	Patient
	Claude W Graham(577)/David M Culpepper MD/067460					
~~08/05/2008~~	~~Office or other outpatient visit for an established patient~~	~~$97.00~~	~~1.0~~	~~$97.00~~	~~$0.00~~	
10/08/2008	Disallowed Adjustment from BCBS State Employee	0827800585			($12.00)	$0.00
10/08/2008	Payment from BCBS State Employee	0827800585			($60.00)	$0.00
10/08/2008	Transfer from Insurance	0827800585			($25.00)	$25.00
10/24/2008	Payment from Graham, Claude W	2240			$0.00	($25.00)
	Balance:				**$0.00**	**$0.00**
	Claude W Graham(577)/David M Culpepper MD/067818					
~~09/19/2008~~	~~Office visit for established patient~~	~~$62.00~~	~~1.0~~	~~$62.00~~	~~$0.00~~	
10/08/2008	Disallowed Adjustment from BCBS State Employee	0827800585			($18.00)	$0.00
10/08/2008	Payment from BCBS State Employee	0827800585			($19.20)	$0.00
10/08/2008	Transfer from Insurance	0827800585			($14.80)	$14.80
10/24/2008	Payment from Graham, Claude W	2240			$0.00	($14.80)
	Balance:				**$0.00**	**$0.00**
	Claude W Graham(577)/David M Culpepper MD/068117					
10/03/2008	Office or other outpatient visit for an established patient	$67.00	1.0		$67.00	$0.00
10/20/2008	Disallowed Adjustment from BCBS State Employee	0828900529			($11.00)	$0.00
10/20/2008	Payment from BCBS State Employee	0828900529			($36.80)	$0.00
10/20/2008	Transfer from Insurance	0828900529			($19.20)	$19.20
10/30/2008	Payment from Graham, Claude W	2243			$0.00	($39.80)
05/29/2009	Payment from Graham, Claude W				$0.00	$20.60
	Balance:				**$0.00**	**$0.00**
	Claude W Graham(577)/David M Culpepper MD/069821					
10/20/2008	Office or other outpatient visit for an established patient	$67.00	1.0		$67.00	$0.00
12/17/2008	Disallowed Adjustment from BCBS State Employee	0833800620			($11.00)	$0.00
12/17/2008	Payment from BCBS State Employee	0833800620			($36.80)	$0.00
12/17/2008	Transfer from Insurance	0833800620			($19.20)	$19.20
01/06/2009	Payment from Graham, Claude W	2280			$0.00	($137.70)
05/29/2009	Payment from Graham, Claude W				$0.00	$25.40
	Balance:				**$0.00**	**($93.10)**
	Claude W Graham(577)/David M Culpepper MD/071913					
01/26/2009	Office or other outpatient visit for an established patient	$67.00	1.0		$67.00	$0.00
02/27/2009	Disallowed Adjustment from BCBS State Employee	0904200597			($21.00)	$0.00
02/27/2009	Payment from BCBS State Employee	0904200597			$0.00	$0.00
02/27/2009	Transfer from Insurance	0904200597			($46.00)	$46.00
	YOUR INSURANCE COMPANY HAS APPLIED THIS TO YOUR COINS AND / OR DEDUCTIBLE. PLEASE REMIT PAYMENT. THANK YOU.					
05/29/2009	Payment from Graham, Claude W				$0.00	($20.60)
05/29/2009	Payment from Graham, Claude W				$0.00	($25.40)
	Balance:				**$0.00**	**$0.00**

As always, we wish to thank you for your confidence in choosing us as your physicians!

Total Balance	Ins. Balance	Pat. Balance
$201.90	$295.00	-$93.10

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2

	Claude W Graham(577)/David M Culpepper MD/071239				
~~05/07/2009~~	~~Office or other outpatient visit for an established patient~~	~~$155.00~~	~~1.0~~	~~$155.00~~	~~$0.00~~
05/07/2009	Urinalysis w/ alb/creat ratio	$14.00	1.0	$14.00	$0.00
05/07/2009	Electrocardiogram, routine ECG	$74.00	1.0	$74.00	$0.00
	Balance:			**$243.00**	**$0.00**
	Claude W Graham(577)/David M Culpepper MD/074314				
~~05/14/2009~~	~~Office visit for established patient~~	~~$52.00~~	~~1.0~~	~~$52.00~~	~~$0.00~~
	Balance:			**$52.00**	**$0.00**

Your next appointment is on Friday, June 19, 2009 9:00AM with Mary Mitchell NP at Palmetto Internal Medicine of Florence PC.

As always, we wish to thank you for your confidence in choosing us as your physicians!

Total Balance	Ins. Balance	Pat. Balance
$201.90	**$295.00**	**-$93.10**

Palmetto Internal Medicine of Florence PC * 305 E Cheves St Suite 120 * Florence, SC 29506 * (843) 656-2122

Plaintiffs' Trial Exhibit #6

(CD -- To Be Transferred from the Dillon County Court of Common Pleas)


3/18/2012
PLAINTIFF'S EXHIBIT 9
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735


3/18/2012



PLAINTIFF'S EXHIBIT 11

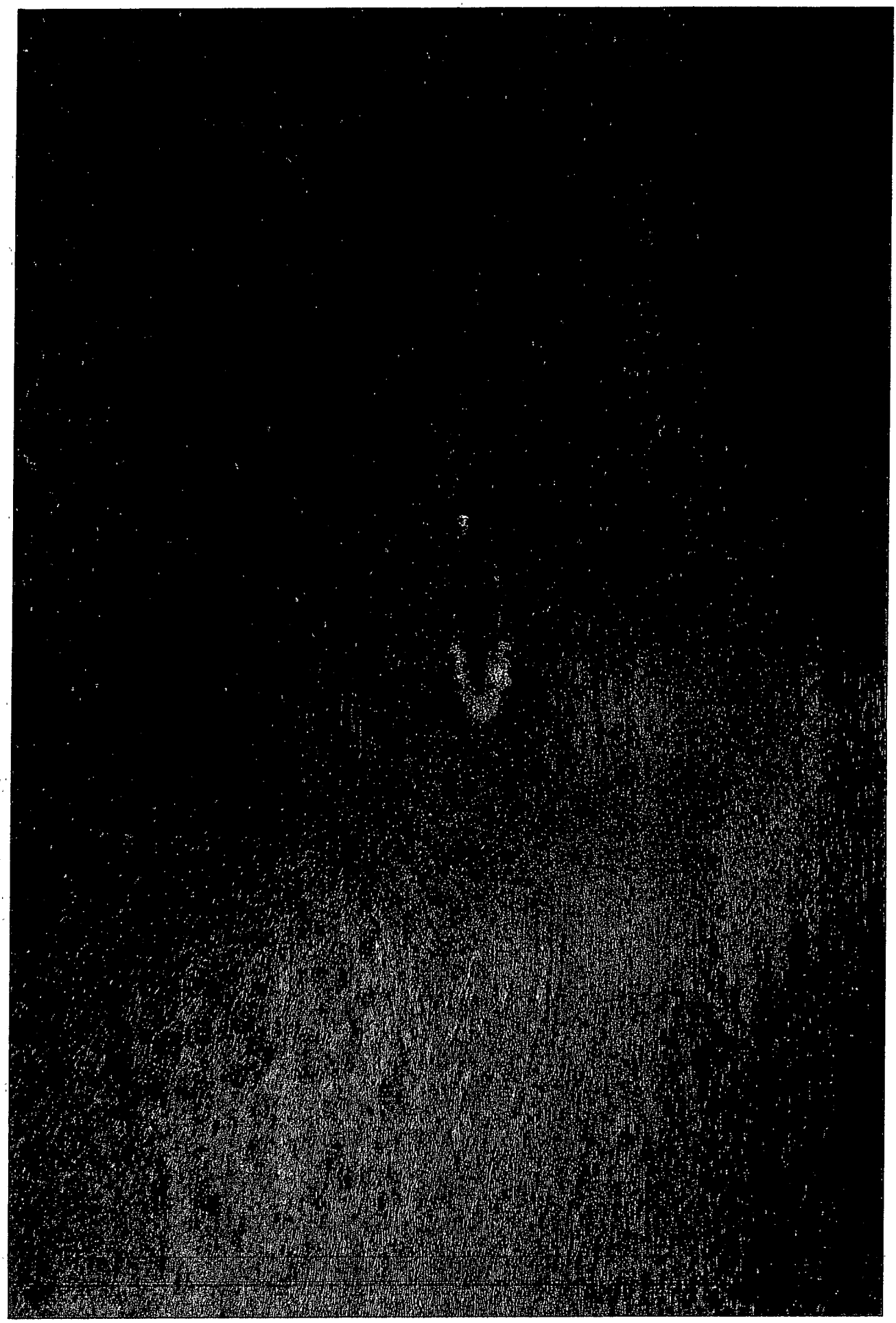
ALL-STATE LEGAL®

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740

741



Pay to:

Palmetto Internal Medicine of Florence PC
305 E. Cheves, Suite 120
Florence, SC 29506
(843) 656-2122

Vickie B Graham
220 East Rice St
Latta, SC 29565

Patient Receipt

Friday, May 29, 2009

Amount Due	Amount Paid
$161.40	$161.40

Date	Description	Check	Fee	Units	Insurance Adj.	Pat. Balance
	Vickie B Graham(593)/David M Culpepper MD/070081					
~~12/01/2008~~	~~Office or other outpatient visit for an established patient~~		~~$97.00~~	~~1.0~~	~~$97.00~~	~~$0.00~~
12/17/2008	Disallowed Adjustment from BCBS State Employee	0834500623			($12.00)	$0.00
12/17/2008	Payment from BCBS State Employee	0834500623			($60.00)	$0.00
12/17/2008	Transfer from Insurance	0834500623			($25.00)	$25.00
01/27/2009	Payment from Graham, Vickie B	5742			$0.00	($25.00)
	Balance:				**$0.00**	**$0.00**
	Vickie B Graham(593)/David M Culpepper MD/070246					
~~12/15/2008~~	~~Office or other outpatient visit for an established patient~~		~~$97.00~~	~~1.0~~	~~$97.00~~	~~$0.00~~
01/19/2009	Disallowed Adjustment from BCBS State Employee	0901000578			($12.00)	$0.00
01/19/2009	Payment from BCBS State Employee	0901000578			($60.00)	$0.00
01/19/2009	Transfer from Insurance	0901000578			($25.00)	$25.00
01/27/2009	Payment from Graham, Vickie B	5889			$0.00	($25.00)
	Balance:				**$0.00**	**$0.00**
	Vickie B Graham(593)/David M Culpepper MD/071581					
12/29/2008	Office or other outpatient visit for an established patient		$97.00	1.0	$97.00	$0.00
12/29/2008	Aerosol treatment		$35.00	1.0	$35.00	$0.00
01/19/2009	Disallowed Adjustment from BCBS State Employee	0901000578			($35.00)	$0.00
01/19/2009	Payment from BCBS State Employee	0901000578			($77.60)	$0.00
01/19/2009	Transfer from Insurance	0901000578			($19.40)	$19.40
03/04/2009	Payment from Graham, Vickie B	5772			$0.00	($19.40)
	Balance:				**$0.00**	**$0.00**
	Vickie B Graham(593)/David M Culpepper MD/071606					
~~01/05/2009~~	~~Office or other outpatient visit for an established patient~~		~~$67.00~~	~~1.0~~	~~$67.00~~	~~$0.00~~
02/03/2009	Disallowed Adjustment from BCBS State Employee	0901700618			($21.00)	$0.00
02/03/2009	Payment from BCBS State Employee	0901700618			$0.00	$0.00
02/03/2009	Transfer from Insurance	0901700618			($46.00)	$46.00
	YOUR INSURANCE COMPANY HAS APPLIED THIS TO YOUR COINS AND / OR DEDUCTIBLE. PLEASE REMIT PAYMENT. THANK YOU.					
03/04/2009	Payment from Graham, Vickie B	5772			$0.00	($46.00)
	Balance:				**$0.00**	**$0.00**
	Vickie B Graham(593)/David M Culpepper MD/071748					
01/19/2009	Office or other outpatient visit for an established patient		$67.00	1.0	$67.00	$0.00
01/29/2009	Disallowed Adjustment from BCBS State Employee	0902800592			($21.00)	$0.00
01/29/2009	Payment from BCBS State Employee	0902800592			$0.00	$0.00
01/29/2009	Transfer from Insurance	0902800592			($46.00)	$46.00
	YOUR INSURANCE COMPANY HAS APPLIED THIS TO YOUR COINS AND / OR DEDUCTIBLE. PLEASE REMIT PAYMENT. THANK YOU.					
03/04/2009	Payment from Graham, Vickie B	5772			$0.00	($46.00)
	Balance:				**$0.00**	**$0.00**

As always, we wish to thank you for your confidence in choosing us as your physicians!

Total Balance	Ins. Balance	Pat. Balance
$676.00	$676.00	$0.00

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	Vickie B Graham(593)/David M Culpepper MD/071210				
~~04/30/2009~~	~~Office or other outpatient visit for an established patient~~	~~$97.00~~	~~1.0~~	~~$97.00~~	~~$0.00~~
04/30/2009	Electrocardiogram, routine ECG	$74.00	1.0	$74.00	$0.00
04/30/2009	Urinalysis w/ alb/creat ratio	$14.00	1.0	$14.00	$0.00
	Balance:			**$185.00**	**$0.00**
	Vickie B Graham(593)/David M Culpepper MD/074368				
~~05/19/2009~~	~~Office or other outpatient visit for an established patient~~	~~$97.00~~	~~1.0~~	~~$97.00~~	~~$0.00~~
05/19/2009	Cardiovascular stress test	$424.00	1.0	$424.00	$0.00
	Balance:			**$491.00**	**$0.00**

Your next appointment is on Monday, October 19, 2009 9:30AM with Mary Mitchell NP at Palmetto Internal Medicine of Florence PC.

As always, we wish to thank you for your confidence in choosing us as your physicians!

Total Balance	Ins. Balance	Pat. Balance
$676.00	**$676.00**	**$0.00**

Palmetto Internal Medicine of Florence PC * 305 E Cheves St Suite 120 * Florence, SC 29506 * (843) 656-2122

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1675 North Commerce Parkway, Weston, FL 33326 (954) 384-4446

EXPERTISE UNLIMITED, INC.
2304 TIMBERLANE DR
FLORENCE, SC 29506

Certificate of Analysis

Prepared for:	EXPERTISE UNLIMITED, INC.
Phone Number:	(843) 669-2916
Fax Number:	(843) 669-2940
Email Address:	expertise_unlimited@msn.com
Project Name:	C. GRAHAM %J RUSHTON
Test Location:	220 EAST RICE STREET LATTA, SC 29565
Chain of Custody #:	404428
Received Date:	June 4, 2010
Report Date:	June 7, 2010

John D. Shane Ph.D., QA Manager

Currently there are no Federal regulations for evaluating potential health effects of fungal contamination and remediation. This information is subject to change as more information regarding fungal contaminants becomes available. For more information visit http://www.epa.gov/mold or www.nyc.gov/html/doh/html/epi/mold.shtml. This document was designed to follow currently known industry guidelines for the interpretation of microbial sampling, analysis, and remediation. Since interpretation of mold analysis reports is a scientific work in progress, it may as such be changed at any time without notice. The client is solely responsible for the use or interpretation. PRO-LAB/SSPTM Inc. makes no express or implied warranties as to health of a property from only the samples sent to their laboratory for analysis. The Client is hereby notified that due to the subjective nature of fungal analysis and the mold growth process, laboratory samples can and do change over time relative to the originally sampled material. PRO-LAB/SSPTM Inc. reserves the right to properly dispose of all samples after the testing of such samples are sufficiently completed or after a 7 day period, whichever is greater.

AIHA LAP, LLC
ACCREDITED LABORATORY
ENVIRONMENTAL MICROBIOLOGY
ISO/IEC 17025:2005
WWW.AIHAACCREDITEDLABS.ORG
LAB # 163230

For more information please contact PRO-LAB at (954) 384-4446 or email info@prolabinc.com

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17

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Prepared for : EXPERTISE UNLIMITED, INC.

Test Address : C. GRAHAM %J. RUSHTON
220 EAST RICE STREET
LATTA, SC 29565

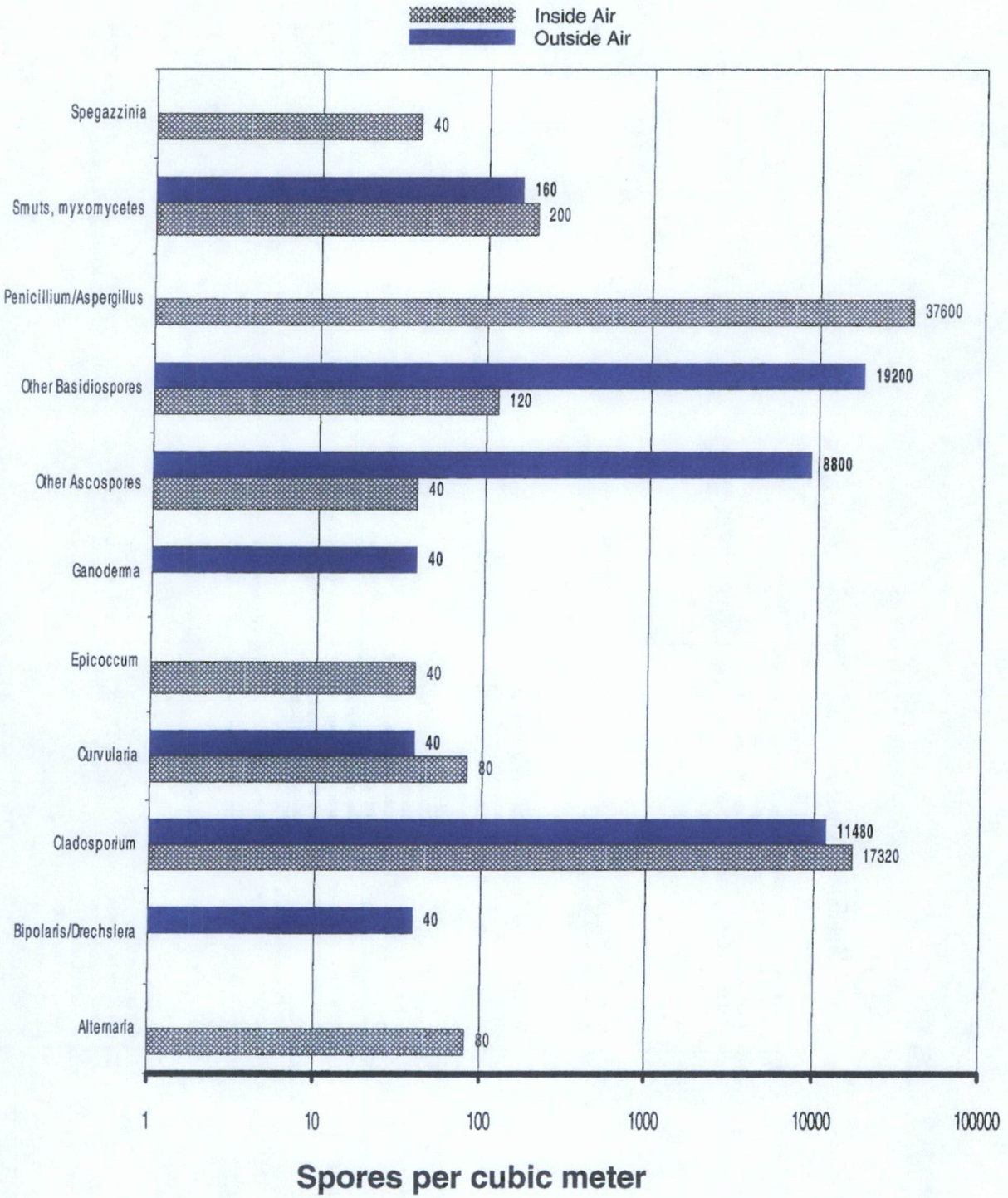
ANALYSIS METHOD	Direct Microscopic Exam	Direct Microscopic Exam	Spore trap analysis	Spore trap analysis
LOCATION	Hvac Return Air Duct	Hvac Supply Duct	Inside Air	Outside Air
COC / LINE #	404428-3	404428-4	404428-5	404428-6
SAMPLE TYPE & VOLUME	SWAB	SWAB	Z5 - 25L	Z5 25L
SERIAL NUMBER			Z463493	Z463502
COLLECTION DATE	Jun 3, 2010	Jun 3, 2010	Jun 3, 2010	Jun 3, 2010
ANALYSIS DATE	Jun 7, 2010	Jun 7, 2010	Jun 7, 2010	Jun 7, 2010
RESULT	UNUSUAL	UNUSUAL	ELEVATED	CONTROL

IDENTIFICATION	Mold Present	Mold Present	Raw Count	Spores per m^3	Percent of Total	Raw Count	Spores per m^3	Percent of Total
Alternaria			2	80	<1			
Bipolaris/Drechslera						1	40	<1
Cladosporium	X	X	433	17,320	31	287	11,480	29
Curvularia			2	80	<1	1	40	<1
Epicoccum			1	40	<1			
Ganoderma						1	40	<1
Hyphae	X	X						
Other Ascospores			1	40	<1	220	8,800	22
Other Basidiospores			3	120	<1	480	19,200	48
Penicillium		X						
Penicillium/Aspergillus	X		940	37,600	68			
Smuts, myxomycetes			5	200	<1	4	160	<1
Spegazzinia			1	40	<1			
TOTAL SPORES			1,388	55,520	100	994	39,760	100
Minimum detection limit:				40			40	
BACKGROUND DEBRIS			Moderate			Light		
Cellulose Fiber			4	160				
Insect Fragments			1	40		1	40	
Pollen			1	40				
OBSERVATIONS & COMMENTS	Presence of current or former growth observed.	Presence of current or former growth observed.						

Background debris estimates the amount of particles that are not pollen or spores and directly affects the accuracy of the spore counts. The categories of Light, Moderate, Heavy and Too Heavy for Accurate Count, are used to indicate the amount of deposited debris. Increasing amounts of debris will obscure small spores and can prevent spores from impacting onto the slide. Spore counts that are included with Heavy or Too Heavy for Accurate Count are minimal counts and the actual numbers of spores are likely much higher. Total percent may not equal 100% due to rounding.

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Chain of Custody # 404428



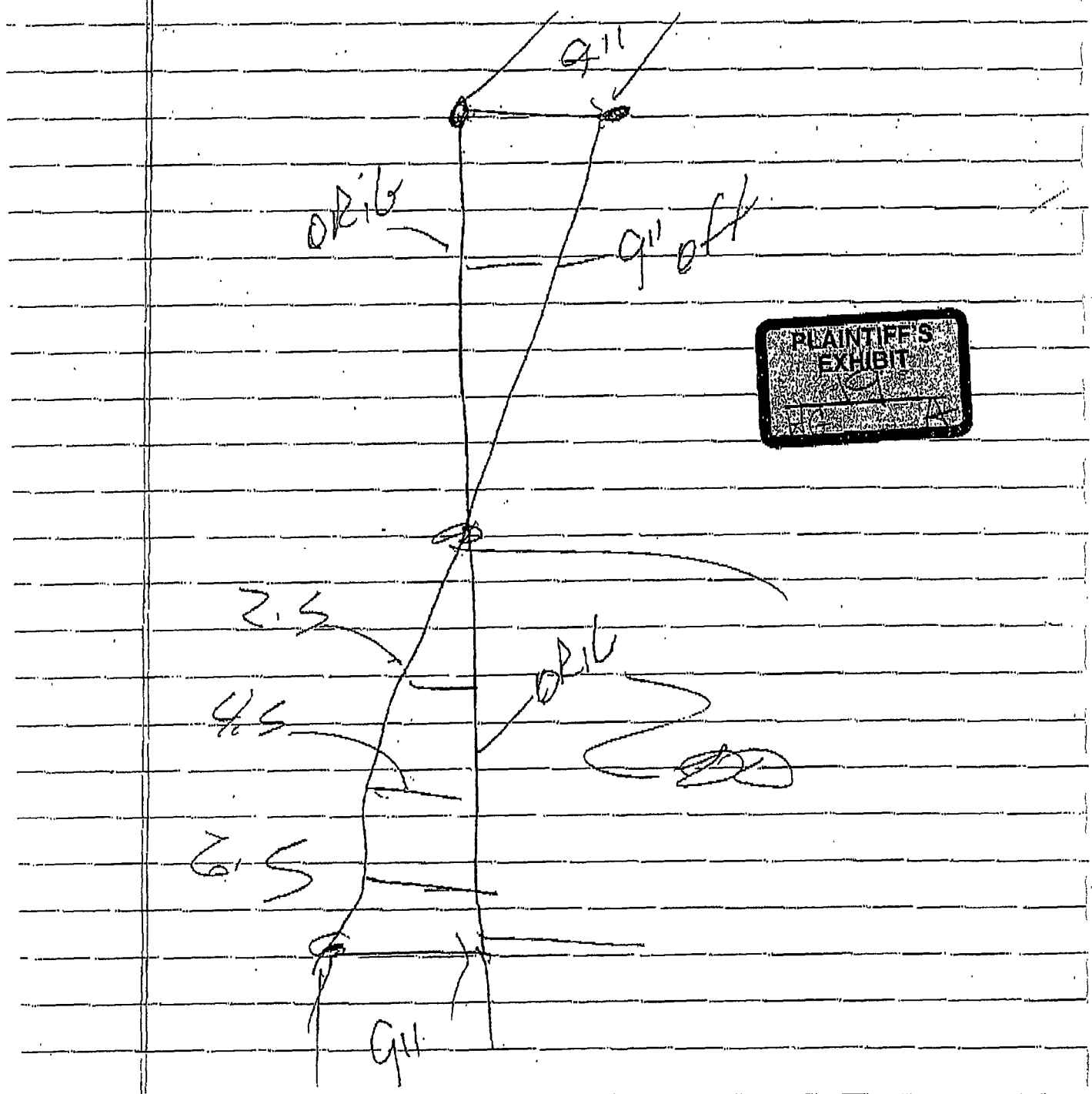
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Identification	Outdoor Habitat	Indoor Habitat	Allergic Potential	Toxins Produced	Comments
Alternaria	One of the most commonly reported airborne spores worldwide; Soil, dead or dying plants, foodstuffs, textiles	Wallboard paper backing, wood, other various cellulose-containing materials. Common in settled dust on carpets, drapes, textiles, etc.	Common allergen. Type I allergies (hay fever and asthma), Type III hypersensitivty pneumonitis. Common cause of extrinsic asthma.	Dextruxin B, alternariols, altenuenes, altertoxins, tenuazonic acid	Alternaria is commonly found in elevated numbers on wet-intruded building materials and in higher spore numbers in the air with respect to the outside when growth on wet building materials occurs.
Bipolaris/Drechslera	Common everywhere. Frequently associated with grasses, but also found on plant material, decaying food, and soil.		Common Type I (hay fever and asthma), fungal sinusitis.	None known.	This is a group of like-looking spores that include Bipolaris, Drechslera, Exserohilum, and sometimes Helminosporium They cannot be consistently separated by spore morphology and are thus grouped together. Must be cultured to consistly separate the genera.
Cladosporium	The most common spore type reported in the air worldwide. Found on dead and dying plant litter, and soil.	Commonly found on wood and wallboard. Commonly grows on window sills, textiles and foods.	Type I (hay fever and asthma), Type III (hypersensitivity pneumonitis) allergies.	Cladosporin, emodin.	A very common and important allergen source both outdoors and indoors.
Curvularia	Commonly found everywhere on soil and plant debris.	Capable of growing on many cellulytic substrates like wallboard and wood.	Type I (hay fever and asthma) and common cause of allergenic sinusitis.	None known.	
Epicoccum	Commonly found everywhere. Grows on plant debris, insects and soil.	Capable of growing on several different substrates, notably wallboard and paper	Type I (hay fever and asthma) allergies.	Epicoraxine A&B, flavipin	Very common in the summer, especially in the midwest and during harvest time.
Ganoderma	Common everywhere growing on hardwood trees.	None known.	None known.	None known.	
Hyphae	Common everywhere	All substrates.	None known.	None known.	Hyphae are the "root-like" food absorption strands common to nearly all fungi. They sometimes can become airborne.
Ascospores	Common everywhere. Constitutes a large part of the airspora outside Can reach very high numbers in the air outside during the spring and summer Can increase in numbers during and after rainfalls	Very few of this group grow inside. The notable exception is Chaetomium and Ascotricha.	Little known for most of this group of fungi. Dependent on the type (see Chaetomium and Ascotricha).	None known for most of the group (see Chaetomium)	
Basidiospores	Commonly found everywhere, especially in the late summer and fall.	Not normally found growing indoors. Can grow on wet lumber, especially in crawlspaces.	Some allergenicity reported. Type I (hay fever, asthma) and Type III (hypersensitivity pneumonitis).	None known.	Among this group are dry rot fungi Serpula and Poria that are particularly destructive to buildings.

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Identification	Outdoor Habitat	Indoor Habitat	Allergic Potential	Toxins Produced	Comments
Penicillium	Very common, growing on decaying plant material, soil, fruits and many other substrates.	Common indoor mold that grows on fruit, bread, textiles, leather and other substrates that are wetted.	Type I (hay fever and asthma) and Type III (hypersensitivity pneumonitis).	Many toxins known, e.g., verruculogen, nephrotoxin, viomellein, xanthocillin X, griseofulvin, ochratoxin, citrinin, penicillin, cyclopiazonic acid, etc	Penicillium is one of the most commonly identified mold type worldwide. Spores of Penicillium and Aspergillus are usually too similar to separate and when seen without fruiting bodies will be identified as "Pen/Asp".
Penicillium/Aspergillus	Common everywhere Normally found in the air in small amounts in outdoor air Grows on nearly everything.	Wetted wallboard, wood, food, leather, etc. Able to grow on many substrates indoors.	Type I (hay fever and asthma) and Type III (hypersensitivity pneumonitis) allergies.	Toxin potential is dependant upon which species of Penicillium or Aspergillus is present.	This is a combination group of Penicillium and Aspergillus and is used when only the spores are seen. The spores are so similar that they cannot be reliably separated into their respective genera.
Smuts, myxomycetes	Commonly found everywhere, espcially on logs, grasses and weeds	Smuts don't normally grow indoors, but can occasionally be found on things brought from outside and stored in the house. Myxomycetes can occasionally grow indoors, but need lots of water to be established.	Type I (hay fever and asthma) allergies.	None known.	Smuts and myxomycetes are a combined goup of organisms because their spores look so similar and cannot be reliably distinquished from each other
Spegazzinia	Not commonly observed, but widely distributed.	Not known to grow indoors.	None known.	None known.	Frequently seen especially in southern United States

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PLAINTIFF'S EXHIBIT



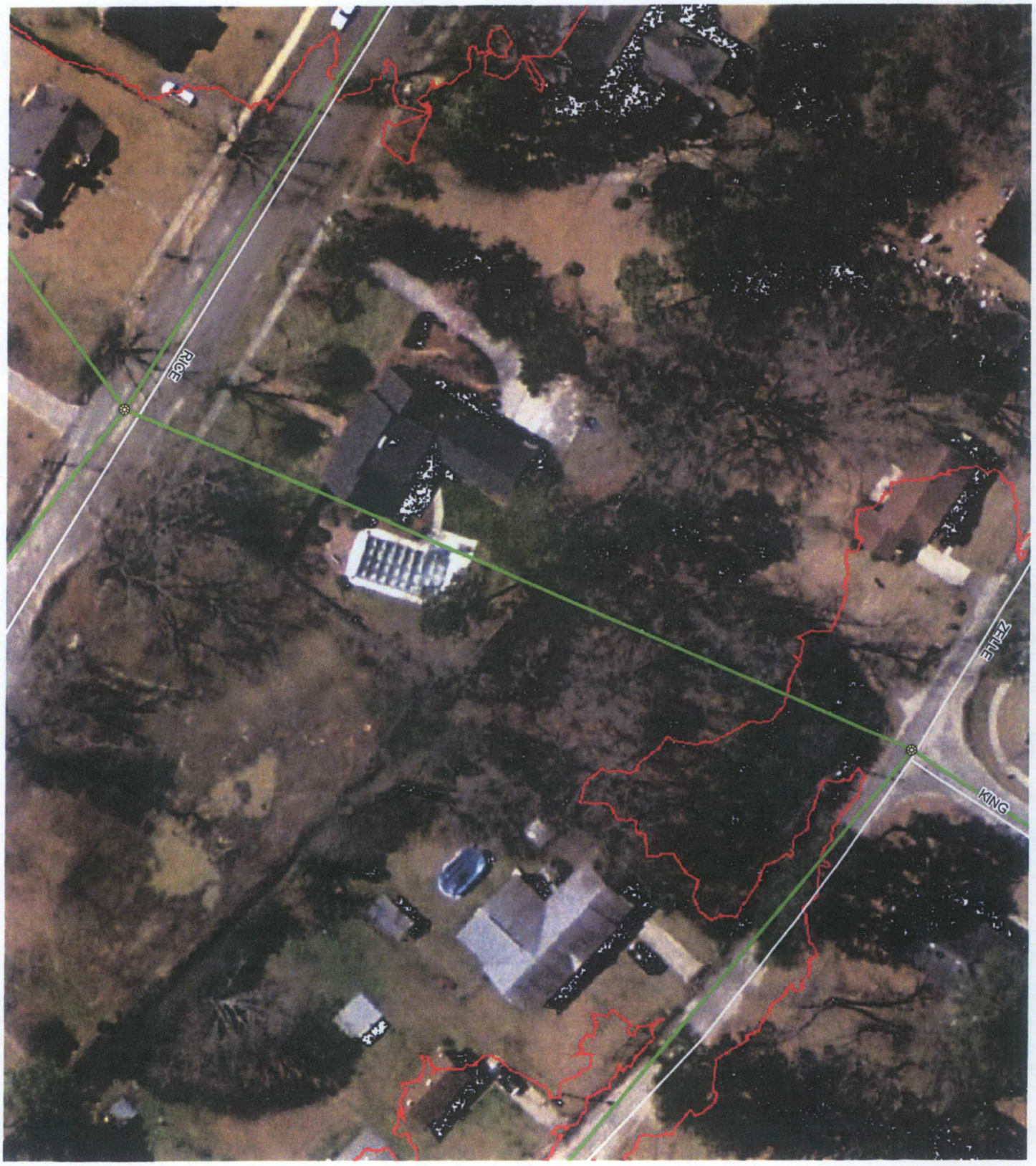
Defendant's Trial Exhibit #1



Defendant's Trial Exhibit #2



Defendant's Trial Exhibit #3



Defendant's Trial Exhibit #4

NOTES TO USERS

This map is for use in administering the National Flood [redacted] Program. It does not necessarily identify all areas subject to flooding, particularly from local drainage sources of small size. The community map repository should be consulted for possible updated or additional flood hazard information.

To obtain more detailed information in areas where Base Flood Elevations (BFEs) and/or floodways have been determined, users are encouraged to consult the Flood Profiles and Floodway Data and/or Summary of Stillwater Elevations tables contained within the Flood [redacted] Study (FIS) report that accompanies this FIRM. Users should be aware that BFEs shown on the FIRM represent rounded whole-foot elevations. These BFEs are intended for flood insurance rating purposes only and should not be used as the sole source of flood elevation information. Accordingly, flood elevation data presented in the FIS report should be utilized in conjunction with the FIRM for purposes of construction and/or floodplain management.

Coastal Base Flood Elevations shown on this map apply only landward of 0.0' North American Vertical Datum of 1988 (NAVD 88). Users of this FIRM should be aware that coastal flood elevations are also provided in the Summary of Stillwater Elevations table in the Flood Insurance Study report for this jurisdiction. Elevations shown in the Summary of Stillwater Elevations table should be used for construction and/or floodplain management purposes when they are higher than the elevations shown on this FIRM.

Boundaries of the floodways were computed at cross sections and interpolated between cross sections. The floodways were based on hydraulic considerations with regard to requirements of the National Flood [redacted] Program. Floodway widths and other pertinent floodway data are provided in the Flood [redacted] Study report for this jurisdiction.

Certain areas not in Special Flood Hazard Areas may be protected by flood control structures. Refer to Section 2.4 "Flood Protection Measures" of the Flood [redacted] Study report for information on flood control structures for this jurisdiction.

The projection used in the preparation of this map was South Carolina State Plane (FIPSZONE 3900). The horizontal datum was NAD83, GRS1980 spheroid. Differences in datum, spheroid, projection or State Plane zones used in the production of FIRMs for adjacent jurisdictions may result in slight positional differences in map features across jurisdiction boundaries. These differences do not affect the accuracy of this FIRM.

Flood elevations on this map are referenced to the North American Vertical Datum of 1988. These flood elevations must be compared to structure and ground elevations referenced to the same vertical datum. For information regarding conversion between the National Geodetic Vertical Datum of 1929 and the North American Vertical Datum of 1988, visit the National Geodetic Survey website at http://www.ngs.noaa.gov/ or contact the National Geodetic Survey at the following address:

NGS Information Services
NOAA, N/NGS12
National Geodetic Survey
SSMC-3, #9202
1315 East-West Highway
Silver Spring, MD 20910-3282

To obtain current elevation, description and/or location information for bench marks shown on this map, please contact the Information Services Branch of the National Geodetic Survey at (301) 713-3242, or visit its website at http://www.ngs.noaa.gov/.

Base map information shown on this FIRM was derived from 2007 U.S. Census Bureau TIGER data at 1:24000.

This map reflects more detailed and up-to-date stream channel configurations than those shown on the previous FIRM for this jurisdiction. The floodplains and floodways that were transferred from the previous FIRM may have been adjusted to conform to these new stream channel configurations. As a result, the Flood Profiles and Floodway Data tables in the Flood [redacted] Study report (which contains authoritative hydraulic data) may reflect stream channel distances that differ from what is shown on this map.

Corporate limits shown on this map are based on the best data available at the time of publication. Because changes due to annexations or de-annexations may have occurred after this map was published, map users should contact appropriate community officials to verify current corporate limit locations.

Please refer to the separately printed Map Index for an overview map of the county showing the layout of map panels; community map repository addresses; and a Listing of Communities table containing National Flood [redacted] Program dates for each community as well as a listing of the panels on which each community is located.

Contact the FEMA Map Service Center at 1-800-358-9616 for information on available products associated with this FIRM. Available products may include previously issued Letters of Map Change, a Flood Insurance Study report, and/or digital versions of this map. The FEMA Map Service Center may also be reached by Fax at 1-800-358-9620 and its website at http://www.msc.fema.gov/.

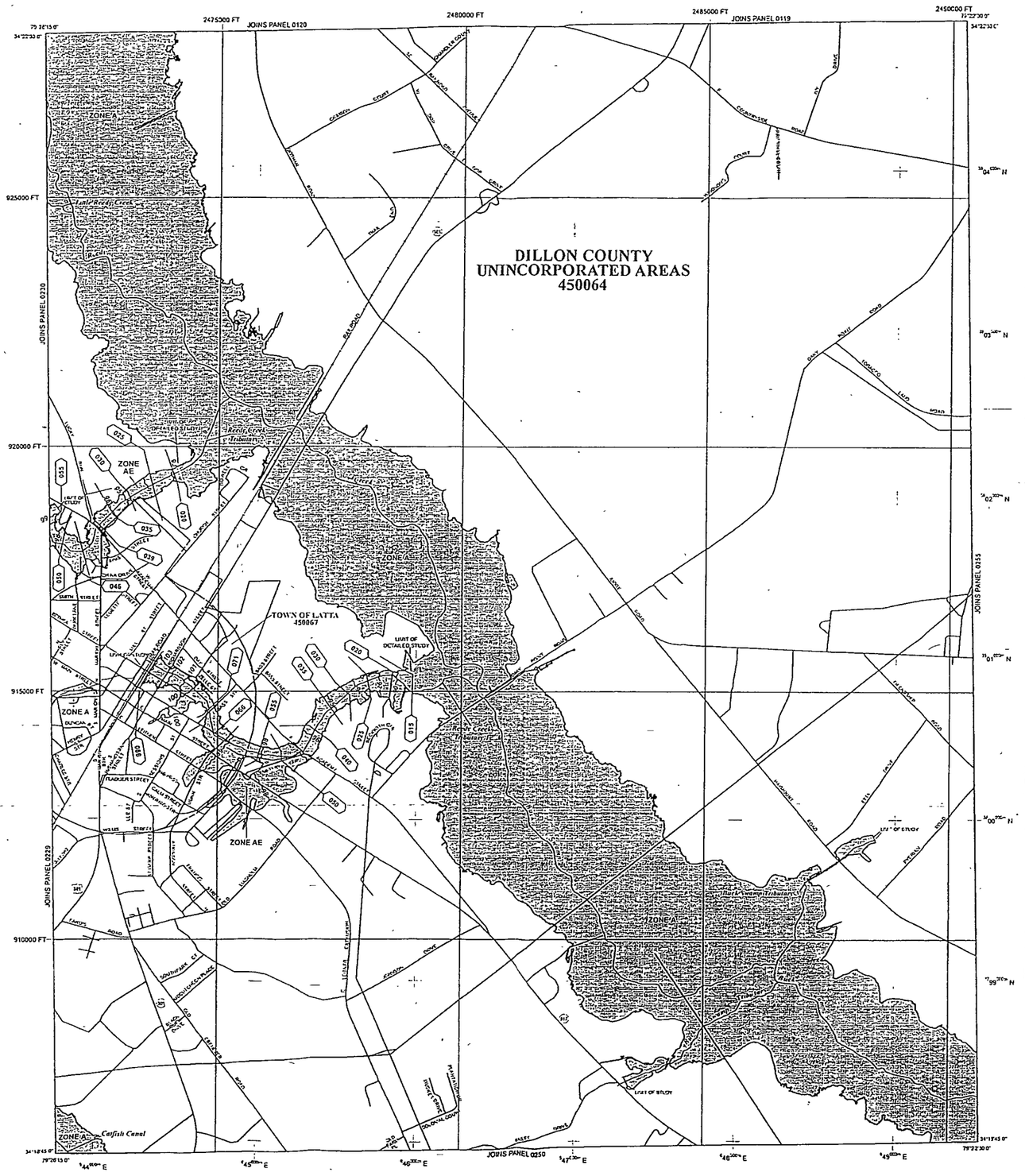
If you have questions about this map or questions concerning the National Flood Insurance Program in general, please call 1-877-FEMA MAP (1-877-336-2627) or visit the FEMA website at http://www.fema.gov/.

The "profile base lines" depicted on this map represent the hydraulic modeling baselines that match the flood profiles in the FIS report. As a result of improved topographic data, the "grid to base fee," in some cases, may deviate significantly from the channel centerline or appear outside of the SFHA.

DNR

This digital Flood [redacted] Rate Map (FIRM) was produced through a unique cooperative partnership between the State of South Carolina and the Federal Emergency Management Agency (FEMA). The State of South Carolina has implemented a long term approach of floodplain management to decrease the costs associated with flooding. This is demonstrated by the State's commitment to map floodplain areas at the local level. As a part of this effort, the state of South Carolina has joined in a Cooperating Technical State agreement with FEMA to produce and maintain this digital FIRM.

http://www.dnr.state.sc.us



LEGEND

SPECIAL FLOOD HAZARD AREAS (SFHAs) SUBJECT TO INUNDATION BY THE 1% ANNUAL CHANCE FLOOD

The 1% annual chance flood (100-year flood), also known as the base flood, is the flood that has a 1% chance of being equaled or exceeded in any given year. The Special Flood Hazard Area is the area subject to flooding by the 1% annual chance flood. Areas of Special Flood Hazard include Zones A, AE, AH, AO, AR, A99, V and VE. The Base Flood Elevation is the water surface elevation of the 1% annual chance flood.

- ZONE A — No Base Flood Elevations determined.
- ZONE AE — Base Flood Elevations determined.
- ZONE AH — Flood depths of 1 to 3 feet (usually areas of ponding); Base Flood Elevations determined.
- ZONE AO — Flood depths of 1 to 3 feet (usually sheet flow on sloping terrain); average depths determined. For areas of alluvial fan flooding, velocities also determined.
- ZONE AR — Special Flood Hazard Area formerly protected from the 1% annual chance flood by a flood control system that was subsequently decertified. Zone AR indicates that the former flood control system is being restored to provide protection from the 1% annual chance or greater flood.
- ZONE A99 — Area to be protected from 1% annual chance flood by a Federal flood protection system under construction; no Base Flood Elevations determined.
- ZONE V — Coastal flood zone with velocity hazard (wave action); no Base Flood Elevations determined.
- ZONE VE — Coastal flood zone with velocity hazard (wave action); Base Flood Elevations determined.

FLOODWAY AREAS IN ZONE AE

The floodway is the channel of a stream plus any adjacent floodplain areas that must be kept free of encroachment so that the 1% annual chance flood can be carried without substantial increases in flood heights.

OTHER FLOOD AREAS

- ZONE X — Areas of 0.2% annual chance flood; areas of 1% annual chance flood with average depths of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 1% annual chance flood.

OTHER AREAS

- ZONE X — Areas determined to be outside the 0.2% annual chance floodplain.
- ZONE D — Areas in which flood hazards are undetermined, but possible.

COASTAL BARRIER RESOURCES SYSTEM (CBRS) AREAS

OTHERWISE PROTECTED AREAS (OPAs)

CBRS areas and OPAs are normally located within or adjacent to Special Flood Hazard Areas.

- Floodplain boundary
- Floodway boundary
- Zone D boundary
- CBRS and OPA boundary
- Boundary dividing Special Flood Hazard Area Zones and Boundary dividing Special Flood Hazard Areas of different Base Flood Elevations, flood depths, and flood velocities.
- 513 — Base Flood Elevation line and value; elevation in feet*
- (EL 987) — Base Flood Elevation value where uniform within zone; elevation in feet*

* Referenced to the North American Vertical Datum of 1988 (NAVD 88)

- (A) — (A) — Cross section line
- (23) — (23) — Transect line
- 97°07'30", 32°22'30" — Geographic coordinates referenced to the North American Datum of 1983 (NAD 83)
- 4275000 FT N — 1000-meter Universal Transverse Mercator grid ticks, zone 17
- 6000000 FT — 5000-foot grid values: South Carolina State Plane coordinate system, (FIPSZONE 3900), Lambert Conformal Conic
- DX5510 — Bench mark (see explanation in Notes to Users section of this FIRM panel)
- M1.5 — River Mile

MAP REPOSITORIES
Refer to Map Repositories list on Map Index

EFFECTIVE DATE OF COUNTYWIDE
FLOOD [redacted] RATE MAP
May 24, 2011
EFFECTIVE DATE(S) OF REVISION(S) TO THIS PANEL

For community map revision history prior to countywide mapping, refer to the Community Map History table located in the Flood [redacted] Study report for this jurisdiction.

To determine if flood insurance is available in this community, contact your insurance agent or call the National Flood [redacted] Program at 1-800-638-6620.

MAP SCALE 1" = 1000'
500 0 1000 2000 FEET
300 0 300 600 METERS

PANEL 0235C

NFIP [redacted] PROGRAM

FIRM

FLOOD [redacted] RATE MAP

DILLON COUNTY, SOUTH CAROLINA AND INCORPORATED AREAS

PANEL 235 OF 350
(SEE MAP INDEX FOR FIRM PANEL LAYOUT)

CONTAINS:

COMMUNITY	NUMBER	PANEL	SUFFIX
DILLON COUNTY	450064	0235	C
LATTA, TOWN OF	450067	0235	C

Notice to User: The Map Number shown below should be used when placing map orders; the Community Number shown above should be used on insurance applications for the subject community.

MAP NUMBER
45033C0235C

EFFECTIVE DATE
MAY 24, 2011

Federal Emergency Management Agency

Defendant's Trial Exhibit #13

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D H E C
PROMOTE PROTECT PROSPER
South Carolina Department of Health and Environmental Control

Pee Dee Environmental Quality Control District
145 E. Cheves Street
Florence, South Carolina 29506
(843) 661-4825 Fax (843) 661-4858

Serving
Chesterfield, Darlington, Dillon
Florence, Marion, and Marlboro Counties

RECOMMENDATIONS FOR SEWER CLEAN-UP IN RESIDENTIAL HOMES

****

1. All furnishings, especially rugs, should be discarded. All non-porous surfaces which haven't been damaged by water should be washed down with a disinfectant solution.

2. For areas where water has fully penetrated the floors, the underlying floor insulation should be replaced. Even though the interior floor surface could be treated with a disinfection solution, the saturated insulation materials could pose a mold/mildew problem as it is unlikely to dry out in this crawl space. Such a problem could adversely affect an individual's health.

3. Prior to doing any work within crawl spaces, it is suggested that the soil be treated with a disinfectant to reduce the risk of disease transmission to repairmen. The nature and extent of this treatment will depend on the amount of wastewater/fecal material that could have entered the crawl space through the floor above.

4. Clean-up of the HVAC is dependant on the specific heating unit within the house. In general, have the HVAC ducts checked for evidence of wastewater intrusion. If the house has floor registers; wastewater coming from the sewer intrusion may have entered the nearest register. If wastewater intrusion has occurred, it is suggested that these ventilation ducts be removed and replaced rather than try to have them disinfected. In addition, the entire duct system serving the first floor should be evaluated for evidence of wastewater. If necessary, they may need to be replaced. The coils under the home should also be checked to ensure that fecal matter has not gone down into this part of the heating unit. If found, the coils should be adequately disinfected.

The above guidelines are items that need to be done to ensure that disease will not be transmitted to the homeowner/occupant or any repairmen who work on the home. The recommendations are meant to address general problems associated with the intrusion of raw wastewater into a home. Should this office receive more information from the homeowner/occupant, the repairmen, or the public works personnel about the extent of fecal contamination in the home, there may be additional recommendations to make.

This office can be reached at (843) 661-4825. Our fax number is (843) 661-4858. You may ask for Danelle Watson or Gary Stowe.

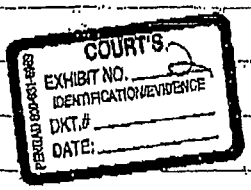
D's 14

Defendant's Trial Exhibit #14

Graham 321.7974

★ Stipulation:

The parties stipulate that the Town of Latta is unable to produce a written instrument conveying an easement for a portion of the Town's sewer system which crosses the property currently owned by Claude & Vickie Graham @ 220 E. Rice St. in Latta, SC



02/03/2014 11:07 8438413706 PAGE 03/03

CERTIFICATE OF COMPLIANCE

The undersigned counsel for the Appellant/Respondent Town of Latta certifies that the Record on Appeal complies with the Supreme Court's Revised Order of April 15, 2014, regarding personal identifiers and sensitive information.

DAVIDSON & LINDEMANN, P.A.

BY: _____

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DANIEL C. PLYLER
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(803) 806-8222

Counsel for Appellant/Respondent Town of Latta

Columbia, South Carolina

April 23, 2014

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SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned counsel certifies that the Record on Appeal contains all material proposed to be included by all parties and not any other material.

DAVIDSON & LINDEMANN, P.A.

BY: _____

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Counsel for Appellant/Respondent Town of Latta

Columbia, South Carolina

April 23, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DILLON COUNTY
Alison Renee Lee, Circuit Court Judge

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

RECEIVED
APR 25 2014
SC Court of Appeals

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

v.

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

AND

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

v.

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

CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Appellant-Respondent Town of Latta, does hereby certify that service of the two volume **Record on Appeal** in the above-captioned matter was made upon all counsel of record by a placing copy in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 23rd day of April 2014:

Reynolds Williams, Esquire
Willcox, Buyck & Williams
Post Office Box 1909
Florence, South Carolina 29503-1909

