

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas for the Ninth Circuit

Kristi Lea Harrington, Circuit Court Judge

CASE NO. 2008-CP-10-0049

Appellate Case No. 2016-000185

RECEIVED

JAN 10 2017

SC Court of Appeals

Mark F. Teseniar and Nan M. Teseniar, on behalf of themselves and others similarly situated,
and Twelve Oaks at Fenwick Property Owners Association, Inc. (from December 16, 2008 to
present), Respondents,

v.

Fenwick Plantation Tarragon, LLC, a South Carolina Limited Liability Company, f/k/a Fenwick Tarragon Apartments, LLC, A South Carolina Limited Liability Company, Charleston Tarragon Manager, LLC, a Delaware Limited Liability Company, Tarragon Development Corporation, a Nevada Corporation, Summit Contractor WSW Group, Inc., Summit Contractors,, Inc., Fugleberg Koch Architects, Inc., Development, Compliance & Inspections, Inc., H2L Consulting Engineers, Twelve Oaks T Fenwick Property Owners Association, Inc., (from August 6, 2006 to December 15, 2008), Professional Plastering & Stucco, Inc., Johnson Companies, Inc., d/b/a Johnson Roofing, Inc., Los Compos, Inc., North Florida Framing, Inc., Best Masonry & Tool Supply, Inc., as successor in interest to Manga Wall Inc., All South Vinyl Products, Inc., Marquez Construction, Inc., J.T. Walker Industries, Inc., J.T. Industries d/b/a General Aluminum Corporation and General Aluminum Company of Texas, LP, J.R. Hobbs Co.-Atlanta, LLC f/k/a JRH Merger Co., LLC, Jamie Helman, individually, Scott Ferguson, individually, and Chris Cobbs, individually, and Federal Insurance Company, Maria Arias, Miquel Roales, APS Enterprises, Unlimited, Inc., HR Electric, A.M. Jacobs, Inc., Mickey Mason, d/b/a Mason Contractors KMAC of the Carolinas, Inc., NEO Corporation and Vava Guzman Construction Company, Inc., Defendants,

And Mt. Hawley Insurance Company is the Appellant/Proposed Intervenor.

RECORD ON APPEAL

THURMOND KIRCHNER & TIMBES, P.A.
Michael A. Timbes, SC Bar No. 69730
Thomas J. Rode, SC Bar No. 77480
15 Middle Atlantic Wharf
Charleston, SC 29401
Phone: 843-93 7-8000
Fax: 843-937-4200

Andrew K. Epting, Jr., Esquire
Michelle N. Endeman, Esquire
ANDREW K. EPTING, JR., LLC
46A State Street, Charleston, SC 29401
P: (843) 377-1871
F: (843) 377-1310
Attorneys for Appellant/Intervenor

Justin O' Toole Lucey, Esquire
LUCEY LAW FIRM
415 Mill Street
Mount Pleasant, South Carolina 29464
843-849-8400 (office)

W. Jefferson Leath, Jr., Esquire
LEATH, BOUCH & SEEKINGS, LLP
92 Broad Street
Charleston, South Carolina 29401
843-937-88 11 (office)

Phillip W. Segui, Jr., Esquire
SEGUI LAW FIRM, PC
864 Lowcountry Boulevard, Suite A
Mt. Pleasant, South Carolina 29464
843-884-1865 (office)

John T. Chakeris, Esquire
THE CHAKERIS LAW FIRM
231 Calhoun Street
Charleston, South Carolina 29402
Phone: (843) 853-5678
Facsimile: (843) 853-5677

Attorneys for Respondents

INDEX

1. Mt. Hawley Notice of Appeal.....	1
2. Order Denying Intervention and Relief from Judgment	4
3. Transcript of January 12, 2016 Motion Hearing	5
4. Transcript of January 14, 2016 Motion Hearing	15
5. July 28, 2015 Motion to Intervene and for Relief from Judgments	37
6. Underlying Class Action Complaint	44
7. North Florida Framing's Third Party Complaint	80
8. Complex Case Designation Order	92
9. November 18, 2010 Order of The Honorable Roger Young.....	94
10. Trial Brief of North Florida Framing	95
11. North Florida Framing Motion to Bifurcate Trial	102
12. May 6, 2011 Settlement E-mail	107
13. Underlying Jury Trial Transcript Vol. 1 pp. 59–65.....	110
14. Underlying Jury Trial Transcript Vol. 1 pp. 66–69.....	118
15. Underlying Jury Trial Transcript Vol. 1 pp. 86–89.....	122
16. Underlying Jury Trial Transcript Vol. 1 pp. 100–108.....	126
17. Partial Transcript of Underlying Jury Trial pp. 651–700	135
18. Consent Order Relieving Counsel for North Florida Framing.....	186
19. May 19, 2011 Motion and Proposed Order Preliminarily Approving Partial Class Action Settlement.....	190
20. June 10, 2011 Final Order Approving Partial Class Action Settlement ..	207
21. Covenant not to Execute.....	218
22. July 22, 2011 Notice of Appeal filed by Professional Plastering.....	223
23. August 8, 2011 Order of Dismissal as to Certain Defendant's with Prejudice	230
24. Order of Default dated August 9, 2011	233
25. Transcript of Damages Hearing dated May 14, 2013	235
26. Order Granting Judgment Against North Florida Framing.....	242
27. Declaratory Judgment Action Against Mt. Hawley	245
28. Notice of Proposed Settlement with Professional Plastering	280
29. Actions Docket for Underlying Case 2008-CP-10-00049	283

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

FEB 01 2018

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas for the Ninth Circuit

SC Court of Appeals

Kristi Lea Harrington, Circuit Court Judge

CASE NO. 2008-CP-10-0049

MARK F. TESENIAR and NAN M. TESENIAR, on behalf of themselves and others similarly situated, and TWELVE OAKS AT FENWICK PROPERTY OWNERS ASSOCIATION, INC. (from December 16, 2008 to present),.....Plaintiff/ Respondent,

v.

FENWICK PLANTATION TARRAGON, LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY, F/K/A FENWICK TARRAGON APARTMENTS, LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY, CHARLESTON TARRAGON MANAGER, LLC, A DELAWARE LIMITED LIABILITY COMPANY, TARRAGON DEVELOPMENT CORPORATION, A NEVADA CORPORATION, SUMMIT CONTRACTORWSW GROUP, INC., SUMMIT CONTRACTORS, INC., FUGLEBERG KOCH ARCHITECTS, INC., DEVELOPMENT, COMPLIANCE & INSPECTIONS, INC., H2L CONSULTING ENGINEERS, TWELVE OAKS T FENWICK PROPERTY OWNERS ASSOCIATION, INC., (FROM AUGUST 6, 2006 TO DECEMBER 15, 2008), PROFESSIONAL PLASTERING & STUCCO, INC., JOHNSON COMPANIES, INC., D/B/A JOHNSON ROOFING, INC., LOS COMPOS, INC., NORTH FLORIDA FRAMING, INC. BEST MASONRY & TOOL SUPPLY, INC. AS SUCCESSOR IN INTEREST TO MANGA WALL, INC., ALL SOUTH VINYL PRODUCTS, INC., MARQUEZ CONSTRUCTION, INC., J.T. WALKLER INDUSTRIES, INC., J.T. INDUSTRIES D/B/A GENERAL ALUMINUM CORPORATION AND GENERAL ALUMINUM COMPANY OF TEXAS, LP, J.R. HOBBS CO. – ATLANTA, LLC F/K/A JRH MERGER CO., LLC, JAMIE HELMAN, INDIVIDUALLY, SCOTT FERGUSON, INDIVIDUALLY AND CHRIS COBBS, INDIVIDUALLY AND FEDERAL INSURANCE COMPANY, MARIA ARIAS, MIQUEL ROALES, APS ENTERPRISES, UNLIMITED, INC., HR ELECTRIC, A.M. JACOBS, INC., MICKEY MASON, D/B/A MASON CONTRACTORS KMAC OF THE CAROLINAS, INC., NEO CORPORATION AND VAVA GUZMAN CONSTRUCTION COMPANY, INC.....Defendants/ Respondents,



AND

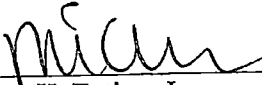
Mt. Hawley Insurance Company Appellant/Intervenor.

NOTICE OF APPEAL

Intervenor, Mt. Hawley Insurance Company ("Mt. Hawley") appeals the order of the Honorable Kristi Lea Harrington filed January 19, 2016 (Exhibit A) denying its Motion to Intervene and for Relief from Judgments dated July 28, 2015. Appellants received written notice of entry of Judge Harrington's order denying their motion to intervene on January 20, 2016.

January 29, 2016

ANDREW K. EPTING, JR., LLC

By 
Andrew K. Epting, Jr.
Michelle N. Endemann
46A State Street, Charleston, SC 29401
Phone: 843-377-1871; Fax: 843-377-1310

Attorneys For Appellants / Intervenor

Counsel of Record for Respondents:

Phillip W. Segui, Jr.
Jefferson Leath
Jesse Kirchner
Justin Lucey

EXHIBIT A

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2008 CP-10-0049

Mark F. Teseniar and Nan M. Teseniar, et al.

Fenwick Plantation Tarragon, LLC, et al.

FEB 01 2016

SC Court of Appeals

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Mt. Hawley Insurance Company's Motion to Intervene is Denied.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge

2151
Judge Code

January 15, 2016
Date

For Clerk of Court Office Use Only

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) CASE NO.: 2008-CP-10-00049

MARK F. TESENIAR and NAN M.)
TESENIAR, on behalf of themselves and)
others similarly situation, and TWELVE)
OAKS AT FENWICK PROPERTY)
OWNERS ASSOCIATION, INC., (from)
December 16, 2008, to present),)

PLAINTIFFS,)

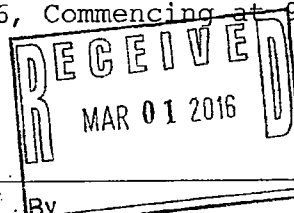
VS.)

PROFESSIONAL PLASTERING &)
STUCCO, INC.,)

DEFENDANTS.)

MOTIONS HEARING

held before the Honorable Kristi L. Harrington
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Charleston County Courthouse
Charleston, South Carolina
on Tuesday, January 12, 2016, Commencing at 9:49 a.m.



By _____
SUSAN "MIA" PERRON, CVR-CM-M
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 31865
Charleston, South Carolina 29417-1865
1-706-231-6028

APPEARANCES OF COUNSEL

FOR THE PLAINTIFFS: Jesse A. Kirchner, Esquire
Attorney at Law
15 Middle Atlantic Wharf, Suite 101
Charleston, South Carolina 29401

Phillip W. Segui, Jr., Esquire
Attorney at Law
864 Lowcountry Blvd, Suite A
Mount Pleasant, South Carolina 29464

FOR THE DEFENDANTS: Andrew K. Epting, Esquire
Attorney at Law
46 A State Street
Charleston, South Carolina 29401

INDEX TO PROCEEDINGS

	PAGE
PROCEEDINGS	4
CERTIFICATE OF COURT REPORTER	10

- - - - -

EXHIBITS

	MARKED/ADMITTED
Defendant's Exhibit Number 1 [Notebook]	4 /

MIA PERRON, CVR-CM-M

-3-

PROCEEDINGS

[Whereupon, Defendant's Exhibit Number 1 is marked
by the court reporter]

THE COURT: All right. Mr. Kirchner?

MR. KIRCHNER: Jessie Kirchner and Phillip Segui,
here for the plaintiffs.

This is in the Teseniar case, which we've
affectionally referred to over the past seven years as the
Twelve Oaks case. This is case number 2008-CP-10-0049.
This is Mt. Hawley's motion to intervene. The case is
over and closed, for Your Honor's information.

That is the Mt. Hawley who insured a defendant in
the case. Mt. Hawley never participated in defense or
otherwise made appearance, and they made this motion to
intervene. For what purpose, I'll let Mr. Epting explain
it.

That's why we're here.

THE COURT: Mr. Epting?

MR. EPTING: Good morning, Judge.

Judge, the motion is actually styled motion to
intervene and relief from judgment.

In June of 2015 -- I'm going to call the plaintiffs
Teseniar-Fenwick, because it involved the Fenwick project
-- filed a declaratory judgment action as a judgment
creditor against Mt. Hawley and they did so on the basis,

MIA PERRON, CVR-CM-M

-4-

Tesenlar, et al vs. Professional Plastering
Motions Hearing
January 12, 2016

1 Judge, of having gotten a judgment against a party by the
2 name of North Florida Framing. Okay?

3 THE COURT: I'm writing and reading. I can --

4 MR. EPTING: All right.

5 THE COURT: You just handed me a five-pound binder,
6 so --

7 MR. EPTING: Yeah. Well, I didn't get a --

8 THE COURT: -- so I can either look at that --

9 MR. EPTING: No, no, no, no, no, Judge.

10 THE COURT: -- look at you, or something else.

11 MR. EPTING: I was just trying to give you a little
12 background. And so we --

13 THE COURT: All right. Thank you.

14 MR. EPTING: -- have put together a binder here to
15 just walk you through what has occurred.

16 So the judgment was obtained against North Florida
17 Framing and on the basis of that judgment, a declaratory
18 judgment action was filed in June of 2015.

19 In July of 2015, Mt. Hawley filed this motion to
20 intervene. This case, Judge, was still pending at the
21 time the motion was filed because you were still
22 entertaining motions with regard to All Pro Plastering.
23 So all of that has been resolved, but what is still
24 pending is this motion.

25 So, Judge, if you will look with me at Tab 1. And

MIA PERRON, CVR-CM-M

-5-

1 everything, Judge, that I'm going to refer to, relates to
2 something that is here in this Court's docket in this
3 case.

4 We believe the intervention should be granted,
5 Judge. It fulfils all the rules of requirements, it's
6 timely, we have an interest in the subject matter, our
7 interest can be impaired, and there's nobody else left in
8 this litigation who can protect our interest.

9 So what happened, Judge, is this case was referred
10 to you for trial by Judge Dennis.

11 THE COURT: Everyone, this is Judge Prilou. He is
12 observing court. Please remain seated. Please remain
13 seated.

14 MR. EPTING: So the case is coming up for trial,
15 Judge, on May 19th. And at Tab 1 you -- on that day, you
16 actually relieved counsel for North Florida Framing.

17 If we go to Tab 2, Judge, you will see on the next
18 day there is a notice for motion and motion for
19 preliminary approval of a partial settlement of a class
20 action.

21 And if I could, Judge, I would like for you to look
22 at page 2 of the order of preliminary approvment. It
23 is not the second page, but it is numbered page 2 behind
24 Tab 2. At the bottom of that page, Judge, it is written:
25 on Monday, May 9th, 2011, counsel indicated that the

Teseniar, et al vs. Professional Plastering
Motions Hearing
January 12, 2016

1 plaintiffs had reached a full, final, and complete
2 settlement with the following defendants, North Florida
3 Framing being named. This partial settlement only ends
4 the plaintiffs' claims against the settling defendants.
5 That's through page 3.

6 On page 4 of that document, you state: this
7 partial settlement only ends the plaintiffs' claims
8 against the settling defendants.

9 So here we have a preliminary order, Judge, on May
10 19th, ending the case with prejudice as to the settling
11 defendant, North Florida Framing.

12 If you will go, Judge, with me now to Tab 4 and
13 look at page 4 -- And this document, Judge, I believe you
14 signed on June 3rd, the preliminary. The final you signed
15 on June 10, but the preliminary you signed on June 3.

16 But on June 10th you write: with the order
17 preliminary, approving class action, partial settlement,
18 attorneys fees, approving settlement, notice program, and
19 settling final hearing, entered by the Honorable Kristi L.
20 Harrington on June 3rd. So the preliminary was signed on
21 June 3rd.

22 And then, Judge, in that same tab, if you will go
23 with me to page 7, number 6: upon payment of the proceeds
24 by the settling defendants, North Florida Framing, the
25 class representatives are authorized to execute a general

MIA PERRON, CVR-CM-M

-7-

Teseniar, et al vs. Professional Plastering
Motions Hearing
January 12, 2016

1 release as to the settling defendants and/or settlement
2 agreements on behalf of the class and orders and
3 stipulations ending this case and all class claims with
4 prejudice against the settling defendants.

5 And that money was paid. And so this case was
6 ended as to North Florida Framing, with prejudice.

7 Now, if I can ask you to turn to Tab 5 with me.
8 This is dated August the 3rd, 2011. On August the 3rd,
9 2011, you enter an order of default against North Florida
10 Framing, who had been dismissed with prejudice, and refer
11 the case to Michael Scarborough.

12 Now, Judge, you've relieved counsel, on I think the
13 day before the hearing, for North Florida Framing. You've
14 dismissed North Florida Framing with prejudice. North
15 Florida Framing got no further notice of any kind of
16 hearing, let alone of a default.

17 And at Tab 6, Your Honor, you will see North
18 Florida Framing still had all of its pleadings in the
19 record.

20 Finally, Judge -- and I think this is appropriate
21 here, as well. If you look at Tab 7 with me. Mr.
22 Kirchner has represented to Your Honor that this case was
23 assigned to you as complex. I don't think that really is
24 the way this went. This case was assigned to you by Judge
25 Young in 2010 for a trial on a day certain, May 9, 2011.

MIA PERRON, CVR-CM-M

-8-

Teseniar, et al vs. Professional Plastering
Motions Hearing
January 12, 2016

1 If you look at tab 9, Judge, what you see is Judge Dennis
2 assigned this case to Judge Young. And so I don't doubt,
3 Judge, you had the authority to try this case. But to
4 enter an order of default in August of 2011, and what
5 authority to hear anything after that, I don't see in the
6 record.

7 Now, I wasn't in this case, Judge, but I've gone
8 through this record pretty carefully. And so I'm just
9 pointing out things that I think are irregular.

10 So, Judge, let's first go to Tab 11, and I'll come
11 back to 9 and 10.

12 THE COURT: Hold on one second.

13 MR. EPTING: Sure.

14 THE COURT: Ms. Leonard, are the jurors here?

15 THE CLERK OF COURT: Yes, ma'am.

16 THE COURT: You indicated to my clerk fifteen
17 minutes, and so we have already gone past your fifteen
18 minutes so I'll -- let me know. Speed it up or we'll have
19 to reschedule. Thank you.

20 MR. EPTING: I'll be quick, Judge. So on the 14th,
21 a hearing --

22 THE COURT: Counsel, just approach for a moment.

23 [Whereupon, an off-the-record bench conference is
24 held]

25 [MOTION ADJOURNS AT 10:02 A.M.]

MIA PERRON, CVR-CM-M

-9-

C E R T I F I C A T E

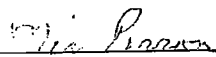
STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the motions hearing held before the Honorable Kristi L. Harrington, on Tuesday, January 12, 2016.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 26th day of February, 2016.



Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CVR-CM-M

-10-

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON) CASE NO. 2008-CP-00049

3

4 MARK F. TESENAIR,)
5 VS.) TRANSCRIPT OF RECORD
6)
7 FENWICK PLANTATION)
TARRAGON, LLC.) JANUARY 14, 2016
8) CHARLESTON, SC
9)

10

B E F O R E:

11

THE HONORABLE KRISTI L. HARRINGTON, JUDGE.

12

13 A P P E A R A N C E S:

14 Jesse Kirchner, ESQUIRE
Amanda Blundy, ESQUIRE
15 Attorneys for the Plaintiff

16 Andrew Epting, ESQUIRE
Michelle Endemann, ESQUIRE
17 Attorneys for the Defendant

18

19 Ruth C. Weese, RDR
20 Official Court Reporter

21

22

23

24

25

1 (The following proceedings were held
2 January 14, 2016, Charleston County, South
3 Carolina, @ 9:05 a.m.)

4 THE COURT: Counsel, again, my
5 apologies for whatever date the schedule was -- I
6 apologize. Thank you again for accommodating the
7 Court and do we have everybody here?

8 MR. KIRCHNER: Yes, Your Honor.

9 THE COURT: There was so many more
10 people here.

11 MR. KIRCHNER: Right. They have
12 whittled the folks down.

13 THE COURT: Mr. Kirchner, if you will
14 state your name for the record, the party you
15 represent and the purpose of today's hearing.

16 MR. KIRCHNER: Yes, Your Honor. Thank
17 you. Jesse Kirchner, K-I-R-C-H-N-E-R. We are here
18 in case number 2008-CP-10-0049. I represent the
19 Plaintiffs Mark and Ann Tesenair along with the
20 Twelve Oaks Homeowners Association.

21 THE COURT: Thank you.

22 MR. EPTING: Drew Epting for the
23 intervener, Mt. Hawley. And Michelle Endemann is
24 with me.

25 THE COURT: I'm sorry?

1 MR. EPTING: And Michelle Endemann is
2 here with me.

3 THE COURT: Thank you. We are here on
4 your motion to intervene; is that correct?

5 MR. EPTING: Yes.

6 THE COURT: We started a little bit of
7 this and then I said that we just did not have
8 time. You had presented a lovely binder to me. So
9 I have had some opportunity to review that. So
10 let's just start fresh today if we could.

11 MR. EPTING: Judge, what I will do is
12 I'll just quickly review what we talked about
13 before.

14 Mt. Hawley has been sued I think in
15 July 20, 2015, and the DJ is predicated upon a
16 judgment that was entered by Judge Scarborough in
17 2013. And there are several orders that you
18 entered which I went over when we were previously
19 here. The first order was an order of dismissal of
20 the party North Florida Framing. And the dismissal
21 was entered in June of 2011. It was entered with
22 prejudice.

23 Subsequently, you entered another order
24 putting North Florida Framing who had been
25 dismissed by you in June, you entered a subsequent

1 order placing North Florida Framing in default.
2 North Florida Framing had on file pleadings, filed
3 a pretrial brief. His counsel was relieved. And
4 the default went forward without notice to North
5 Florida Framing. And subsequently in this same
6 order you referred it to Judge Scarborough.

7 Judge Scarborough conducted a hearing
8 and entered a default judgment in the amount of
9 about \$15 million. If you would turn with me,
10 Judge, to Tab 11, this is the hearing in front of
11 Judge Scarborough. And on page 2, and I am just
12 going to quickly elaborate, Your Honor, on page 2,
13 you will see that there was no service process on
14 North Florida Framing because -- no valid service
15 of process because the certified letter was
16 returned.

17 And the dialogue about what happened
18 and what Judge Scarborough based his finding that
19 service was proper is all before you. We think
20 that his rule was in error, but more importantly,
21 Judge, that the case would not validly be in front
22 of him because the order that was entered by you,
23 we don't think this Court was given jurisdiction
24 except by Judge Young to try the original case that
25 was tried I think on May 9th, 2011.

1 You'll also see, Judge, at page 3 and 4
2 of the transcript behind Tab 11 that Judge
3 Scarborough --

4 THE COURT: Let me inquire. So you
5 believe that I do not -- did not have jurisdiction
6 to enter any order in this case?

7 MR. EPTING: The case was referred to
8 you, Judge, and we went over that tab by Judge
9 Young to try the case. It was a complex case.
10 Judge Young was appointed as the judge to handle
11 all matters related to the case except the trial.

12 THE COURT: So did you give me that?

13 MR. EPTING: I did. It's in the
14 binder, Judge, and I think it is tab -- if you will
15 look at Tab 8, you will see the complex designation
16 and the designation to Judge Young. If you look at
17 Tab 7, you'll see Judge Young's order assigning you
18 to try the case.

19 THE COURT: So it is your opinion that
20 I have no other authority or jurisdiction other
21 than to just try the case?

22 MR. EPTING: That would be my opinion,
23 yes, Judge.

24 THE COURT: So then you believe that it
25 should have gone back to Judge Young for all of

1 these matters?

2 MR. EPTING: What I would say, Judge,
3 is that when you entered the order of dismissal,
4 everything that occurred thereafter you would not
5 have had jurisdiction over. But at that point,
6 Judge, we wouldn't be sitting here because it would
7 be no order of default. It would be no hearing in
8 front of Judge Scarborough and North Florida
9 Framing who had no more interest in this case after
10 settling out, it would just be ended. And so there
11 would have been nothing to go back to Judge Young
12 for.

13 THE COURT: Do you believe that you
14 should be in front of Judge Young then on this
15 part?

16 MR. EPTING: Judge, I think that's
17 probably right. But Mr. Kirchner said that the
18 case had been designated complex and that you were
19 assigned to hear it. And so I just accepted that.
20 I wasn't sure of it, but that was his
21 representation, but when I saw the order which Ms.
22 Endemann gave me Monday, Friday, something like
23 that, yes, it occurs to me that perhaps this Court
24 wouldn't have jurisdiction, yes.

25 THE COURT: So I think that needs to be

1 the first matter that we address. If you're
2 indicating that I don't have -- didn't have
3 jurisdiction to do what I did, then I don't know
4 that -- I think we need to address that so that
5 first of all, are we in the appropriate place, then
6 we will address whether or not I had jurisdiction.
7 Because if I didn't have jurisdiction to do what I
8 do then this is really a moot argument, correct?

9 MR. EPTING: I think that's right,
10 Judge.

11 THE COURT: All right. So Mr.
12 Kirchner, I'm perplexed.

13 MR. EPTING: Should I sit down, Judge?

14 THE COURT: Sure, that will be fine.

15 MR. EPTING: Judge, you know, I could
16 -- I have got two minutes to sort of finish up with
17 my whole argument and then I'll sit down
18 completely.

19 THE COURT: Okay.

20 MR. EPTING: So it was told to Judge
21 Scarborough that there was joint and several
22 liability. And on that basis he entered a judgment
23 for 15 million. But if you look at Tabs 9 and 10,
24 12 and 13, I think what you find, Judge, is that
25 the Plaintiffs went to trial before you and

1 contended that of the 15 million, eight million
2 700,000 was exclusively default of the stucco
3 applicator. And what you have in these tabs is
4 that testimony. And not only that, Judge, you have
5 the Court of Appeals opinion from the verdict that
6 was rendered in your courtroom which states that
7 the Plaintiffs tried the case against All Pro
8 Plastering contending that 8.7 of the 15 million
9 was purely default of All Pro Plastering. That
10 occurred two years before the trial in front of
11 Judge Scarborough.

12 Secondly, Judge, nothing was said to
13 Judge Scarborough about any setoff of all the
14 settlements and the like that had been entered
15 into, and contained in the binder are the amounts
16 of the setoff. So for all those reasons, Judge, we
17 think that the judgment that exists is not valid.
18 With that I'll sit down, Judge.

19 THE COURT: All right. So let me ask
20 you this, Mr. Epting. Tell me what it is, first of
21 all, that you want me to do.

22 MR. EPTING: I think, Judge, you should
23 rule that we can intervene for the sole purpose of
24 contesting the validity of the judgment. I think,
25 Judge, if you upon reflection decide that indeed

1 Judge Young referred this matter to you just for
2 the purpose of trying the case, I think what your
3 order would be is that any further actions that
4 were undertaken were outside the scope of the
5 designation of Judge Young and that such actions
6 would be rescinded.

7 THE COURT: In my mind I'm trying to
8 determine how that would even make sense. If I am
9 assigned a case just to try it, there's -- that to
10 me indicates that I have jurisdiction and authority
11 over everything that flows from that case. How
12 would we then distinguish what I am able to do? So
13 is it your position that I only had the
14 jurisdiction to have the Twelve come in and then
15 receive the verdict and I couldn't make any other
16 rulings pretrial or post-trial?

17 MR. EPTING: No, Judge. First of all,
18 I don't pretend to have all the answers, but I
19 would offer this thought. Yes, I think if you were
20 asked to try the case that you tried the case.
21 There were Rule 59 motions and you were asked to
22 decide them, that it would be part of your
23 jurisdiction to take that to final judgment as to
24 the Defendants that went to trial.

25 But let's just imagine, Judge, that the

1 cases were bifurcated. And there was a set of
2 Defendants X, Y and Z and a set of Defendants A, B
3 and C and only A, B and C are going to trial. And
4 the designation to you is that the case that is set
5 for a date certain May 9th, 2011, against A, B
6 and C is assigned to you for trial, I think that
7 would be what you were trying, not the rest of the
8 case that was still pending against Y, X, Z in my
9 example.

10 THE COURT: But if I were making
11 decisions that would impact X, Y and Z would I not
12 have authority then to make those decisions as
13 well?

14 MR. EPTING: In my example, Judge, if
15 the designation gave you that authority you would
16 have that authority. If the designation was to try
17 the case on a certain date against A, B and C, no,
18 I wouldn't think you would have any jurisdiction
19 with regard to X, Y and Z.

20 THE COURT: So it's your opinion that
21 Judge Young should have indicated that he
22 transferred entire jurisdiction of this case to me?

23 MR. EPTING: If that's what he
24 intended, Judge, that's what he should have put in
25 the order. Then there is the further question,

1 Judge, of so without his input the case is then
2 referred to the master in equity whereas he has the
3 exclusive jurisdiction because it's been designated
4 complex.

5 THE COURT: Thank you.

6 MR. EPTING: You bet. Thank you,
7 ma'am.

8 THE COURT: Mr. Kirchner, I have never
9 had this issue arise and so tell me what you
10 believe --

11 MR. KIRCHNER: Yes, thank you, Your
12 Honor.

13 THE COURT: -- the law is and/or what
14 my jurisdiction is and what you're asking me to do
15 specifically.

16 MR. KIRCHNER: Absolutely. Judge, as a
17 practical matter I think it strains credibility to
18 suggest that you don't have the authority to place
19 somebody in default. In fact, under the rules, the
20 clerk can put somebody in default, Ms. Armstrong
21 can, so it blows my mind that I even just heard
22 that. But the reality of how this happened, you
23 were assigned the case for the trial. And let me
24 start by saying it makes sense that Mt. Hawley is
25 mistaken and doesn't understand what actually

1 happened because Mt. Hawley never participated in
2 the underlying cases. They hung their shirt out to
3 dry. They never defended it, they never
4 indemnified it. And because of that we have a case
5 against Mt. Hawley and now all of a sudden we have
6 their attention and they're here complaining about
7 what happened when they sat on the sidelines the
8 whole time in the underlying trial.

9 But I have got an excerpt from the
10 trial transcript that I emailed to Your Honor, I am
11 happy to hand up if you would like. And as Mr.
12 Epting indicated, you were assigned the case for
13 trial. The case was called for trial. And North
14 Florida Framing was a Defendant in your trial and
15 North Florida Framing did not appear for trial.

16 I don't know how at that point you do
17 anything other than what you did and which is to
18 place them in default. I don't know where else you
19 would have sent a Defendant who didn't show for
20 trial to be placed in default. If you read the
21 record it's very clear what happened before the
22 start of the trial. We placed on the record that
23 we reached a settlement with the two insurance
24 carriers that were participating on behalf of North
25 Florida Framing and they have given North Florida

1 Framing the entity certain covenants. North
2 Florida Framing had agreed to allow its trial
3 counsel to be relieved because the carriers who
4 were participating were no longer in the case and
5 paying their bills and we consented to that. And
6 so Barnwell Whaley was relieved and called the
7 case. North Florida Framing was not there. And
8 they were placed into default and referred to Judge
9 Scarborough for a damages hearing.

10 THE COURT: They had already been
11 referred. At that point there had been a portion
12 already referred to Judge Scarborough?

13 MR. KIRCHNER: Correct. But not North
14 Florida Framing. In fact, they participated in the
15 pretrial conference. They were there ready to go
16 to trial with Professional Plastering and some
17 other Defendants and before we struck the jury we
18 settled with everyone except for Professional
19 Plastering. And so this was at a call of the case,
20 I believe we had actually struck the jury. We were
21 waiting for them to come back and we put the
22 settlements on the record, one of which was with
23 the two carriers for North Florida Framing.

24 Interestingly, if you flip a couple
25 pages over to page 65 we also put a settlement on

1 the record for Nava Guzman. And the reason why I
2 think that's important is because at each of these
3 stages in this case we settled with various parties
4 along the way, we got court approval for the
5 settlements, and notice of the class, and after the
6 settlements were finalized the Court actually
7 issued an order of dismissal as to those settling
8 Defendants. And I have got two examples if I can
9 hand these up to the Court.

10 THE COURT: So if they had already been
11 referred to the master, then I mean even if I go
12 along with Mr. Epting's argument, that has already
13 been a decision made by Judge Young, correct?

14 MR. KIRCHNER: No, Your Honor. Those
15 were your decisions.

16 THE COURT: To refer to the master?

17 MR. KIRCHNER: Correct. Just for a
18 damages hearing which is not uncommon to have the
19 master in equity have the damages hearing after.

20 THE COURT: We had already done that
21 pretrial?

22 MR. KIRCHNER: For another Defendant
23 who was in default. There was a Tarragon entity.
24 And so at the call of the case when North Florida
25 Framing didn't show up you placed them in default

1 and referred the damages hearing to Judge
2 Scarborough at the very beginning of the trial.

3 THE COURT: To go along with the other
4 Defendants that I already referred to --

5 MR. KIRCHNER: Correct.

6 THE COURT: -- Judge Scarborough? And
7 we had done that -- at what procedural hearing had
8 we done that?

9 MR. KIRCHNER: With respect to the
10 Tarragon entity, I'm not certain, Your Honor. But
11 with respect to North Florida Framing, it was done
12 at the call of the case.

13 THE COURT: Thank you.

14 MR. KIRCHNER: With respect to the
15 order of dismissal, if you will look at the two
16 exemplars I handed to the Court, the first is
17 June 10th, 2011, and it identified some settling
18 parties there, H2L, DCI, Neo Corporation, and the
19 case is dismissed as to those folks with prejudice.
20 If you look at the second one I handed up, it was
21 entered August 8th, 2011. This is the order that
22 was entered identifying some of the settlements
23 that we placed on the record at the trial. That's
24 why I mentioned Nava Guzman because he is contained
25 in this order as a settling Defendant, Best

1 Masonry, Magna Wall, Nava Guzman, Aps
2 Enterprises which was also in the trial record,
3 General Aluminum which is also in the trial record.
4 Nowhere in the order of dismissal with prejudice
5 appears North Florida Framing.

6 And the reason for that is because at
7 the trial when Your Honor had already referred it
8 to Judge Scarborough. And, again, I think the
9 confusion lies with the fact that Mt. Hawley wasn't
10 there. Mt. Hawley doesn't know what happened. Mt.
11 Hawley is trying to come in behind everybody and
12 play Monday morning quarterback. Certainly Your
13 Honor had the authority to place North Florida
14 Framing in default.

15 And that sort of leads into a nice
16 segue for the next argument in the discussion.
17 This is a general liability carrier trying to
18 intervene in an underlying liability case. It's
19 really inappropriate. It shouldn't be done, it's
20 never been done in any cases that I have been
21 involved in where it's been tried. In fact, in the
22 trial transcript you will find where Mr. McCants
23 and I believe it was National Fire tried to do the
24 same thing or something similar for Professional
25 Plastering. Your Honor denied it. Mr. McCants

1 appealed that ruling. The Court of Appeals
2 actually dismissed his appeal summarily with no
3 argument and we received sanctions. We got
4 attorneys fees and costs as a result of that. So I
5 think that a --

6 THE COURT: So it would be your
7 position had Mr. Epting on behalf of Mt. Hawley
8 been present that the Court's ruling based upon
9 similar rulings would not have allowed Mt. Hawley
10 to intervene?

11 MR. KIRCHNER: Absolutely. And the
12 other question as we stand here today now in
13 January of 2016 is intervening into what? The case
14 is over. It's been over for a very long time.
15 There is a separate case pending against Mt. Hawley
16 by its insured North Florida Framing and these
17 types of matters can certainly be dealt with there.
18 If they want to try to collaterally attack the
19 judgment or argue they are entitled to a setoff,
20 all those issues can be decided in that case. This
21 case is closed. This is an insurance company
22 trying to intervene in an underlying liability
23 case.

24 And, again, the reason why they are
25 trying to intervene is because they sat on the

1 sidelines and didn't participate and now they're
2 upset with what happened. I think they should be
3 estopped from that, from even trying to intervene
4 in the case.

5 THE COURT: All right. And what are
6 you asking me to do?

7 MR. KIRCHNER: I am simply asking you
8 to deny their motion to intervene. I don't think
9 any of these other matters about whether the
10 default was proper -- or they actually -- they are
11 not a party to the case. They are not in the case.
12 This is like a stranger walking in off the street
13 and saying, Judge, I have got some concerns about
14 what you did to North Florida Framing. They are
15 not a party to the case. So before they can even
16 discuss with you or Judge Young or Judge
17 Scarborough whether or not this judgment needs to
18 be overturned or whether or not the default was
19 proper, they have to be a party to the case. And
20 in order to be a party to the case you have to
21 grant their intervention. So I'm suggesting you
22 deny their motion to intervene and then all this
23 goes away.

24 THE COURT: All right. Thank you, Mr.
25 Kirchner. Mr. Epting.

1 MR. EPTING: Judge, just one last
2 thing. Mr. Kirchner just said on the record that
3 there was a settlement with North Florida Framing.
4 No matter what the settlement was, North Florida
5 Framing wound up with no further liability itself.
6 Any proceedings going forward against North Florida
7 Framing wouldn't be valid.

8 THE COURT: Are you representing North
9 Florida Framing?

10 MR. EPTING: Judge, I'm representing
11 Mt. Hawley contending that the judgment that was
12 entered for the reasons stated is not valid.

13 THE COURT: Any further argument, Mr.
14 Epting; anything else I need to know?

15 MR. EPTING: Nothing, Judge.

16 MR. KIRCHNER: Judge, for
17 clarification, the settlement that was entered with
18 North Florida Framing was very specific. It did
19 not release North Florida Framing. Those terms are
20 in the trial transcript. Those terms are in the
21 settlement agreement that we signed with North
22 Florida Framing. So I take exception to the
23 statement that we settled with North Florida
24 Framing. We did not. We settled with the two
25 carriers who were participating on behalf of North

1 Florida Framing, of which Mt. Hawley was not part.

2 THE COURT: Anything based upon that?
3 I don't want a whole lot of going back and forth,
4 but Mr. Epting, I will allow you the final
5 argument.

6 MR. EPTING: No. The only thing I
7 would like to do, Judge is, I'm not -- I don't
8 start as early as Mr. Kirchner and I hadn't looked
9 at the transcript. I'd just ask that I be given
10 the morning to look to see if there is anything.

11 THE COURT: I will do this. I will
12 take the matter under advisement. If there's any
13 additional argument or I don't want any more
14 argument.

15 MR. EPTING: There won't be.

16 THE COURT: If you want to submit a
17 proposed order and do so and highlighting anything
18 that you think that I need, you have provided me an
19 abundance of material that I have now had the
20 opportunity to review. But if there is anything
21 additional, again, I will be happy to accommodate
22 because I caused you some inconvenience.

23 MR. EPTING: Judge, no problem. If I
24 provide anything, Judge, it will be additional
25 pages out of the transcript that Mr. Kirchner

1 referenced. And I will likely do so without
2 comment.

3 THE COURT: And I will have -- I will
4 issue a ruling, so I will give you until 5:00
5 today. Would that be sufficient time?

6 MR. EPTING: That's fine.

7 THE COURT: Then I will issue my ruling
8 tomorrow. Typically I will try to do that before I
9 leave because I will be out of circuit for the next
10 four weeks.

11 MR. EPTING: Thank you, Judge.

12 (These proceedings were concluded at
13 9:24 a.m., January 14, 2016, Charleston County,
14 South Carolina.)

15
16
17
18
19
20
21
22
23
24
25

1 CERTIFICATE OF REPORTER
2 STATE OF SOUTH CAROLINA
3 COUNTY OF CHARLESTON
4

5 I, the undersigned Ruth C. Weese,
6 Official Court Reporter for the State of South
7 Carolina, do hereby certify that the foregoing is a
8 true, accurate and complete transcript of record of
9 all the proceedings had and evidence introduced in
10 the matter of the above-captioned case, relative to
11 appeal, in the Court of Common Pleas for the Ninth
12 Judicial Circuit Court for Charleston County, South
13 Carolina, on the 14th day of January, 2016.

14 I do further certify that I am neither
15 related to nor counsel for any party to the cause
16 pending or interested in the events thereof.
17
18
19
20

21 Ruth C. Weese, RCR
22 Registered Diplomate Reporter
23
24
25

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

MARK F. TESENIAR and NAN M.
TESENIAR, on behalf of themselves and
others similarly situated, and TWELVE
OAKS AT FENWICK PROPERTY
OWNERS ASSOCIATION, INC. (from
December 16, 2088 to present),

Plaintiffs,

vs.

FENWICK PLANTATION TARRAGON,
LLC, A SOUTH CAROLINA LIMITED
LIABILITY COMPANY, F/K/A FENWICK
TARRAGON APARTMENTS, LLC, A
SOUTH CAROLINA LIMITED LIABILITY
COMPANY, CHARLESTON TARRAGON
MANAGER, LLC, A DELAWARE
LIMITED LIABILITY COMPANY,
TARRAGON DEVELOPMENT
CORPORATION, A NEVADA
CORPORATION, SUMMIT
CONTRACTORWSW GROUP, INC.,
SUMMIT CONTRACTORS, INC.,
FUGLEBERG KOCH ARCHITECTS, INC.,
DEVELOPMENT, COMPLIANCE &
INSPECTIONS, INC., H2L CONSULTING
ENGINEERS, TWELVE OAKS T
FENWICK PROPERTY OWNERS
ASSOCIATION, INC., (FROM AUGUST 6,
2006 TO DECEMBER 15, 2008),
PROFESSIONAL PLASTERING &
STUCCO, INC., JOHNSON COMPANIES,
INC., D/B/A JOHNSON ROOFING, INC.,
LOS COMPOS, INC., NORTH FLORIDA
FRAMING, INC. BEST MASONRY &
TOOL SUPPLY, INC. AS SUCCESSOR IN
INTEREST TO MANGA WALL, INC., ALL
SOUTH VINYL PRODUCTS, INC.,
MARQUEZ CONSTRUCTION, INC., J.T.
WALKLER INDUSTRIES, INC., J.T.
INDUSTRIES D/B/A GENERAL

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO. 2008-CP-10-0049

FILED
2015 JUL 28 PM 4:10
JULIE J. WILKINSON
CLERK OF COURT

MT. HAWLEY INSURANCE COMPANY'S
MOTION TO INTERVENE & FOR RELIEF
FROM JUDGMENTS

ALUMINUM CORPORATION AND
GENERAL ALUMINUM COMPANY OF
TEXAS, LP, J.R. HOBBS CO. – ATLANTA,
LLC F/K/A JRH MERGER CO., LLC,
JAMIE HELMAN, INDIVIDUALLY,
SCOTT FERGUSON, INDIVIDUALLY
AND CHRIS COBBS, INDIVIDUALLY
AND FEDERAL INSURANCE COMPANY,
MARIA ARIAS, MIQUEL ROALES, APS
ENTERPRISES, UNLIMITED, INC., HR
ELECTRIC, A.M. JACOBS, INC., MICKEY
MASON, D/B/A MASON CONTRACTORS
KMAC OF THE CAROLINAS, INC., NEO
CORPORATION AND VAVA GUZMAN
CONSTRUCTION COMPANY, INC.,

Defendants.

TO: COUNSEL FOR PLAINTIFFS

YOU WILL PLEASE TAKE NOTICE that the undersigned counsel for Mt. Hawley Insurance Company ("Mt. Hawley"), hereby moves this Honorable Court, pursuant to SCRCF 24(a) and 24(b), for an Order allowing Mt. Hawley to intervene in the above captioned action for the limited purpose stated below.

Mt. Hawley has standing to intervene as Mt. Hawley claims a direct, substantial, and legally protectable interest in the one aspect of this proceeding and is so situated that the disposition of the issues may, as a practical matter, impair or impede its ability to protect its interest. Mt. Hawley is one of the insurance carriers for a "Settling Defendant" in this action, North Florida Framing, Inc. ("North Florida"). On August 9, 2011, a settlement was approved by this Court, and thereafter a default and judgment entered against North Florida. On May 26, 2015, Plaintiffs, in their capacity as judgment creditors of North Florida, sued Mt. Hawley in a case styled, *MARK F. TESENIAR and NAN M. TESENIAR, on behalf of themselves and others similarly situated, and TWELVE OAKS AT FENWICK PROPERTY OWNERS ASSOCIATION, INC.* (from December 16,

2088 to present) vs. MT. HAWLEY INSURANCE COMPANY; Case No. 2015-CP-10-2994 (the "Creditors' Action"). As Plaintiffs are using the judgment against North Florida in the Creditors' Action as the basis for their claims, Mt. Hawley is entitled to intervene for the purpose of challenging the judgments entered against North Florida. Accordingly, Mt. Hawley must be allowed to intervene to protect its interest.

Mt. Hawley's interest is not adequately represented by the existing parties, and Mt. Hawley's application is timely as the suit filed by Plaintiffs in this action as judgment creditors against Mt. Hawley was only recently filed, on May 26, 2015. There is no prejudice to existing parties.

Alternately, Mt. Hawley requests to intervene pursuant to SCRPC 24(b).

Plaintiffs' reliance on judgments entered against North Florida is misplaced and this Court should so hold as well as restrain Plaintiffs from pursuing its claim against Mt. Hawley in which it relies on its status as a judgment creditor.

This motion will be heard at a time and place to be set by the Court.

PLEASE BE PRESENT IF SO MINDED.

THE UNDERSIGNED HEREBY CERTIFY that true and correct copies of the pleading or paper to which this certificate is affixed was served upon the party(s) to this action in accord with the applicable Court Rules by electronic transmission or by hand delivery or by regular U.S. Mail, postage prepaid, properly addressed to the attorney(s) of record for such party(s).

Signed this 28 day of JULY, 2015 at
Charleston, South Carolina

On this 28 day of July, 2015
Charleston, South Carolina

Respectfully Submitted By:

ANDREW K. EPTING, JR., LLC

Andrew K. Epting, Jr.
Andrew K. Epting, Jr., Esq.
Michelle N. Endemann, Esq.
46A State Street, Charleston, SC 29401
P: 843.377.1871 F: 843.377.1310
ake@epting-law.com
mne@epting-law.com

ATTORNEYS FOR MT. HAWLEY

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

MARK F. TESENIAR and NAN M.
TESENIAR, on behalf of themselves and
others similarly situated, and TWELVE
OAKS AT FENWICK PROPERTY
OWNERS ASSOCIATION, INC. (from
December 16, 2088 to present),

CASE NO. 2008-CP-10-0049

Plaintiffs,

vs.

MT. HAWLEY'S ARGUMENT OUTLINE
IN FURTHER SUPPORT OF ITS MOTION
TO INTERVENE AND FOR RELIEF FROM
JUDGMENTS

FENWICK PLANTATION TARRAGON,
LLC, A SOUTH CAROLINA LIMITED
LIABILITY COMPANY, F/K/A FENWICK
TARRAGON APARTMENTS, LLC, A
SOUTH CAROLINA LIMITED LIABILITY
COMPANY, CHARLESTON TARRAGON
MANAGER, LLC, A DELAWARE
LIMITED LIABILITY COMPANY,
TARRAGON DEVELOPMENT
CORPORATION, A NEVADA
CORPORATION, SUMMIT
CONTRACTORWSW GROUP, INC.,
SUMMIT CONTRACTORS, INC.,
FUGLEBERG KOCH ARCHITECTS, INC.,
DEVELOPMENT, COMPLIANCE &
INSPECTIONS, INC., H2L CONSULTING
ENGINEERS, TWELVE OAKS T
FENWICK PROPERTY OWNERS
ASSOCIATION, INC., (FROM AUGUST 6,
2006 TO DECEMBER 15, 2008),
PROFESSIONAL PLASTERING &
STUCCO, INC., JOHNSON COMPANIES,
INC., D/B/A JOHNSON ROOFING, INC.,
LOS COMPOS, INC., NORTH FLORIDA
FRAMING, INC. BEST MASONRY &
TOOL SUPPLY, INC. AS SUCCESSOR IN
INTEREST TO MANGA WALL, INC., ALL
SOUTH VINYL PRODUCTS, INC.,
MARQUEZ CONSTRUCTION, INC., J.T.
WALKLER INDUSTRIES, INC., J.T.
INDUSTRIES D/B/A GENERAL

ALUMINUM CORPORATION AND
GENERAL ALUMINUM COMPANY OF
TEXAS, LP, J.R. HOBBS CO. – ATLANTA,
LLC F/K/A JRH MERGER CO., LLC,
JAMIE HELMAN, INDIVIDUALLY,
SCOTT FERGUSON, INDIVIDUALLY
AND CHRIS COBBS, INDIVIDUALLY
AND FEDERAL INSURANCE COMPANY,
MARIA ARIAS, MIQUEL ROALES, APS
ENTERPRISES, UNLIMITED, INC., HR
ELECTRIC, A.M. JACOBS, INC., MICKEY
MASON, D/B/A MASON CONTRACTORS
KMAC OF THE CAROLINAS, INC., NEO
CORPORATION AND VAVA GUZMAN
CONSTRUCTION COMPANY, INC.,

Defendants.

As requested by the Court, Mt. Hawley submits the following outline of its argument made and to be made and the record contained in in Exhibit A in the Court's possession and filed as materials in support of Mt. Hawley's motion:

1. Mt. Hawley has standing to intervene as Mt. Hawley claims a direct, substantial, and legally protectable interest in the proceedings and is so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest.
2. On September 10, 2010, The Honorable R. Markley Dennis designated the above captioned case as "complex" and assigned the case to the Honorable Roger M. Young, Sr. (See tab 8).
3. On November 22, 2010, Judge Young assigned the case to the Honorable Kristi Lea Harrington "for a date certain trial to begin on Monday, May 9, 2011." (See tab 7).

4. North Florida was represented by counsel, answered Plaintiffs' complaints, filed counterclaims, a third-party complaint, and a pre-trial brief in the action. (Tab 6).
5. This Court relieved North Florida's counsel on May 9, 2011. (Tab 1).
6. An order approving the settlement was entered on June 6, 2011. The June 6, 2011 order defines North Florida as a "Settling Defendant," refers to the settlement as "full, final, and complete," and authorizes "general releases" "ending this case and all class claims with prejudice against the Settling Defendants." (Tab 4).
7. On August 9, 2011 an order was entered by this Court putting North Florida in default and referring the case to the Master in Equity. (Tab 5).
8. A default damages hearing was held before the Master on May 14, 2013. Notice to North Florida was not proper as service was not made on an authorized agent and is so noted in the transcript. (Tab 11).
9. On May 14, 2013, a \$15,748,225.56 default judgment was entered against North Florida based upon representations to the Master in Equity. (Tab 13).
10. On May 26, 2015, Plaintiffs, in their capacity as judgment creditors of North Florida, sued Mt. Hawley in a case styled, *MARK F. TESENIAR and NAN M. TESENIAR, on behalf of themselves and others similarly situated, and TWELVE OAKS AT FENWICK PROPERTY OWNERS ASSOCIATION, INC. (from December 16, 2088 to present) vs. MT. HAWLEY INSURANCE COMPANY*; Case No. 2015-CP-10-2994 (the "Creditors' Action").
11. Mt. Hawley served the instant motion on July 28, 2015.
12. The order of default and the subsequent default judgment against Mt. Hawley's insured, North Florida is not valid for reasons argued and to be argued.

Respectfully Submitted By:

ANDREW K. EPTING, JR., LLC


Andrew K. Epting, Jr., Esq.
Michelle N. Endemann, Esq.
46A State Street, Charleston, SC 29401
P: 843.377.1871 F: 843.377.1310
ake@epting-law.com
mne@epting-law.com

On this 13 day of January, 2016
Charleston, South Carolina

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that true
and correct copies of the pleading or paper to which
this certificate is attached was served upon the party(s)
named herein by the applicable Court Rules
method of service, by hand delivery or by
regular U.S. mail, as said, properly addressed
to the attorney(s), or person(s) for such party(s).

Served this 13 day of JANUARY, 2016 at
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MARK F. TESENIAR AND NAN M. TESENIAR,
on behalf of themselves and others
similarly situated,

Plaintiffs,

vs.

FENWICK PLANTATION TARRAGON, LLC, A
SOUTH CAROLINA LIMITED LIABILITY
COMPANY, F/K/A FENWICK TARRAGON
APARTMENTS, LLC, A SOUTH CAROLINA
LIMITED LIABILITY COMPANY, CHARLESTON
TARRAGON MANAGER, LLC, A DELAWARE
LIMITED LIABILITY COMPANY, AND
TARRAGON DEVELOPMENT CORPORATION, A
NEVADA CORPORATION,

Defendants.

) IN THE CIRCUIT COURT FOR THE
) NINTH JUDICIAL CIRCUIT
) 2008-CP-10-49

FILED
2008 JAN -4 PM 2:22
JULIE K. J. KONG
CLERK OF COURT
BY _____

CLASS ACTION COMPLAINT
(JURY TRIAL DEMANDED)

The Plaintiffs, Mark F. Teseniar and Nan M. Teseniar, by and through their undersigned counsel, bring this class action on behalf of themselves and all others similarly situated, as a voluntary class action derivative class action under Rule 23 (a) and (b) (1) of the South Carolina Rules of Civil Procedure and allege:

PARTIES, CAPACITY, AND JURISDICTION

1. The Plaintiffs, Mark F. Teseniar and Nan M. Teseniar, are owners of Unit Number 224 in the Twelve Oaks at Fenwick Plantation Horizontal Property Regime (hereinafter "Regime"), Johns Island, Charleston County, South Carolina.

Moreover, by virtue of the Teseniars' ownership interest in their unit and the Regime, under the Master Deed of the Twelve Oaks of Fenwick Plantation Horizontal Property Regime (hereinafter referred to as "Master Deed") and the By-Laws for the Twelve Oaks at Fenwick Horizontal Property Regime (hereinafter referred to as "By-Laws"), they are a member or shareholder of the incorporated association of owners known as Twelve Oaks at Fenwick Plantation Property Owners Association, Inc.

2. Defendant Fenwick Plantation Tarragon, LLC f/k/a Fenwick Tarragon Apartments, LLC, is a limited liability company organized under the laws of the State of South Carolina and is the developer of and performed repairs and modifications to the property commonly known as Twelve Oaks at Fenwick Plantation and purchased the property consisting of 216 apartment units in December of 2001 and converted the apartments to condominiums in August of 2006. Defendant, Fenwick Plantation Tarragon, LLC f/k/a Fenwick Tarragon Apartments, LLC, is the agent and/or alter ego of Defendants, Charleston Tarragon Manager, LLC and Tarragon Development Corporation. Defendants, Fenwick Plantation Tarragon, LLC f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon Manager, LLC and Tarragon Development Corporation are in control of and are the alter ego of The Board of Directors of Twelve Oaks at Fenwick Plantation Property

Owners Association, Inc. Accordingly, jurisdiction over the Defendant is proper in this Court under South Carolina Code Ann. § 36-2-802 (1976).

3. Defendant Charleston Tarragon Manager, LLC, is a limited liability company organized under the laws of the State of Delaware and is the developer of and performed repairs and modifications to the property commonly known as Twelve Oaks at Fenwick Plantation and purchased the property in December of 2001 consisting of 216 apartment units and converted the apartments to condominiums in August of 2006. Defendant, Charleston Tarragon Manager, LLC is the manager and/or member and/or agent and/or alter ego of Defendants, Fenwick Plantation Tarragon, LLC f/k/a Fenwick Tarragon Apartments, LLC, and Tarragon Development Corporation. Defendants, Fenwick Plantation Tarragon, LLC f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon Manager, LLC and Tarragon Development Construction are in control of and are the alter ego of The Board of Directors of Twelve Oaks at Fenwick Plantation Property Owners Association, Inc. Accordingly, jurisdiction over the Defendant is proper in this Court under South Carolina Code Ann. § 36-2-802 (1976).

4. Defendant Tarragon Development Corporation, upon information and belief, is a Nevada corporation and is the developer of and performed repairs and modifications to the property commonly known as Twelve Oaks at Fenwick Plantation and

purchased the property consisting of 216 apartment units and converted the apartments to condominiums in August of 2006. Defendant, Tarragon Development Corporation is the manager and/or member and/or agent and/or alter ego of Defendants, Fenwick Plantation Tarragon, LLC f/k/a Fenwick Tarragon Apartments, LLC and Charleston Tarragon Manager, LLC. Defendants, Fenwick Plantation Tarragon, LLC, f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon Manager, LLC and Tarragon Development Corporation are in control of and are the alter ego of The Board of Directors of Twelve Oaks at Fenwick Plantation Property Owners Association, Inc. Accordingly, jurisdiction over the Defendant is proper in this Court under South Carolina Code Ann. § 36-2-802 (1976).

5. That the Plaintiffs have made requests to the developer, Board and management company of Twelve Oaks at Fenwick Property Owners Association, Inc. to investigate concerns of water intrusion and mold growth in the walls of the Plaintiffs unit and other common areas and to conduct a regime wide inspection to include cutting into the buildings to determine the conditions of the Plaintiffs unit and the other buildings as evidenced by the letter dated September 22, 2007, sent to Twelve Oaks at Fenwick Plantation Owners Association attached hereto as Exhibit A and allegations in Paragraphs 5-10 of this Complaint. Prior thereto the Plaintiffs have contacted

Tarragon regarding possible mold problems and Tarragon customer care wrote the Plaintiffs on May 31, 2007 indicating that the situation would be reviewed. The Plaintiffs also provided Tarragon with a report from Environmental Services and Testing regarding mold problems that were investigated in 2003. The Plaintiffs emailed Julie Sanchez at Jsanchez@tarragon.com seeking further assistance on June 1, 2007. On June 29, 2007, a representative from Tarragon and Skye-Tec, an inspection company hired by the Defendants, came to Plaintiffs unit for a visual inspection and stated that they would be back within one week to perform intrusive observations into the wall cavity and perform mold testing. On July 9, 2007, the Plaintiffs contacted the representative from Tarragon (Quentin) regarding the inspection and testing of the wall cavity and was told that he would check with his supervisor and get back with the Plaintiffs. The Plaintiff called Tarragon customer care to express frustration and was told by Desiree at the Risk Management Division that the management team was in the process of sending the Plaintiffs a letter. Desiree provided the Plaintiffs with the name and phone number of Apryl Matthews who is a Tarragon Risk Management Analyst. Apryl Matthews indicated that she had seen the Plaintiffs file and that the Plaintiffs unit had been previously remediated and that the development team makes the decisions and that they would be meeting in the next few days. The Plaintiff

called Quentin at Tarragon again who indicated at the pre-closing inspection and the visual inspection from Skye Tec just the week before showed no problems. On July 10, 2007, the Plaintiffs contacted Randy Still, P.E. of H2L who was involved in 2003 repairs prior to the Plaintiffs' purchase of Unit 224, and Mr. Still refused to provide the Plaintiffs with the engineering report. The Plaintiffs thereafter contacted Diane Wilson to inquire about the homeowners association performing an investigation and was informed that the homeowners association had yet to be formed and that Community Management Group was serving in that capacity. On August 13, 2007, the Plaintiffs received a letter from Jerry Watson of Community Management Group for Twelve Oaks at Fenwick Plantation Property Owners Association, Inc. indicating that Skye Tec had inspected the Plaintiffs' unit and the unit above and adjacent to the Plaintiffs and found only a very faint odor, if actually any at all, and that no destructive or invasive inspections or testing is authorized by the developer.

6. Twelve Oaks at Fenwick Plantation Property Owners Association, Inc. which is controlled by the developer, Fenwick Plantation Tarragon, LLC, a South Carolina Limited Liability Company, f/k/a Fenwick Tarragon Apartments, LLC, a South Carolina Limited Liability Company, Charleston Tarragon Manager, LLC, a Delaware Limited Liability Company, and Tarragon

Development Corporation, A Nevada Corporation has refused to investigate or take further action as evidenced by the response from Community Management Group on behalf of Twelve Oaks at Fenwick Plantation Property Owners Association dated October 1, 2007 and attached hereto as Exhibit B.

7. The Plaintiff thereafter sent Twelve Oaks at Fenwick Plantation Property Owners Association a letter dated November 17, 2007 attached hereto as Exhibit C informing them that an engineer has identified construction deficiencies and that claims exist against the developer and contractors who built these buildings and demanded that the association file suit against the developer and contractors.

8. The Plaintiffs got no response to the November 17, 2007 letter, and on December 11, 2007 telephoned Jerry Watson at Community Management Group to inquire as to why there was no response and when the Property Owners Association was going to file suit against the developer and contractor who built the buildings.

9. The Plaintiff was informed by Jerry Watson in her December 11, 2007 telephone conversation that the developer was in control of the Board of the Property Owners Association and that the developer was not going to sue itself and that the developer and/or board had done everything it was going to do to investigate and pursue any claims.

10. The Plaintiff sent a letter dated December 12, 2007 to the Twelve Oaks at Fenwick Plantation Property Owners Association confirming his conversation with Jerry Watson and confirming that the homeowners association was not going to file suit against the developer and contractors. A copy of the December 13, 2007 letter from the Plaintiff to the Twelve Oaks at Fenwick Plantation Property Owners Association is attached hereto as Exhibit D.

11. The class of Plaintiffs consists of all persons, corporations, partnerships, unincorporated associations or other entities that own in whole or in part any unit in the Regime.

12. The Court has jurisdiction over the parties and subject matters hereto and that the allegations out of which this action arises from the board's failure to enforce rights and remedies and involve the development, construction, repair and sale of units and management and maintenance of the buildings at issue in the County of Charleston, State of South Carolina.

CLASS ACTION ALLEGATIONS

13. The class action is brought by Plaintiffs as a derivative class action pursuant to Rule 23(b)(1) of the South Carolina Rules of Civil Procedure on behalf of the Board of Directors of Twelve Oaks at Fenwick Plantation Property Owners Association, Inc. since the board is controlled by the

Defendants, and the board refuses to investigate and/or maintain an action against itself and as representatives of the Class defined herein pursuant to Rule 23(a) of the South Carolina Rules of Civil Procedure, to recover monetary damages from the Defendants, Fenwick Plantation Tarragon, LLC f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon Manager, LLC and Tarragon Development Corporation for breaches of fiduciary duties, negligence, gross negligence, recklessness, wantonness, willfulness, bad faith, mismanagement, breach of express and implied warranties, negligent misrepresentation, fraud, unfair trade practices, unconscionable conduct and waste with respect to their duties as a developer in the development, sale of administration, care, and maintenance and/or repair of the buildings and units at issue.

14. As described in Paragraph 11 above, the class of Plaintiffs consists of individuals, corporations, partnerships, unincorporated associates or other entities that currently or in the future will own, in whole or in part, any unit in the buildings (hereinafter "Class").

15. The Class does not include any former owner of a unit in the Regime.

16. The Class is sufficiently numerous that joinder of all members is impractical.

17. Plaintiffs, Mark F. Teseniar and Nan M. Teseniar, will fairly and adequately protect the interests of the Class as Class representatives. The interests of the Class representative are coincident with, and not antagonistic to those of the other Class members and Plaintiffs are represented by experienced and able counsel.

18. There are questions of law and fact common to the Class. Common questions of law include the liability of Defendants for, among other things as more particularly described below, negligence, gross negligence, recklessness, willfulness, bad faith, breach of warranties, negligent misrepresentations, unfair trade practices and whether these wrongful acts or omissions of all of the Defendants caused or will cause the Class to suffer damages.

19. Plaintiffs', derivative claim is brought by the Plaintiffs, a shareholder in Twelve Oaks at Fenwick Plantation Property Owners Association, Inc. as of the time the Plaintiffs purchased their unit because of the Twelve Oaks at Fenwick Plantation Property Owners Association, Inc. being controlled by the Defendants for their failure to enforce rights which would be against the Defendants themselves and for claims of all other unit owners that are similarly situated.

20. Plaintiffs' claims are typical of the Class members' claims and derive from a common nucleus of operative

facts in that the Defendants, at all times relevant, are or were either charged with duties as a developer and/or in the sale and disclosure of conditions and/or repair of the buildings and units at issue. Each Class member has been or will be similarly injured by the Defendants' wrongful acts or omissions in the development, sale, and/or repair of the buildings and units at issue and the interests and rights of the members, such that the interest of the Plaintiffs, as Class representatives, are consistent with those of the members of the Class.

21. For the reasons described above and further explained below, a class action is especially appropriate in this case to promote judicial efficiency and to protect Class members' interests and rights as common questions of law and fact clearly predominate over individual issues.

22. Moreover, class treatment is a superior method for the fair and efficient adjudication of the issues in dispute because it permits a large number of injured parties, a joinder of who is impracticable, to prosecute their common claims in a single forum simultaneously. Moreover, the class action provides an efficient method whereby the relative rights of the Class Members and Defendants can be fairly managed without unnecessary expense or duplication.

23. If Class members were to pursue individual litigation, it would be unduly burdensome to the South Carolina

courts within which the individual litigation would proceed. Individual litigation would magnify the delay and expense to all parties in the court system of resolving the controversy engendered by Defendants' course of conduct with respect to the development, sale of units, and/or repair of the buildings and units at issue and in safeguarding the rights of the Class. By contrast, the class action device presents far fewer management difficulties and provides the benefits of unitary adjudication, economies of scale, and comprehensive supervision by a single court. Concentrating this litigation in one forum will aid judicial economy and efficiency, promote parity among the claims of the individual Class members, and result in judicial consistency. Notice for the pendency and any resolution of this action can be provided to all Class members by first class mail.

24. The expense and burden of individual litigation of a case of this magnitude makes it impractical for individual Class members to seek redress for the wrongs done to them and, therefore, requires consolidation of all such claims in one action.

25. Given the scope of harm inflicted by Defendants and the egregiousness of their misconduct, the prosecution of separate actions by individual members of the Class would create a risk of adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of

the interests of the other members who are not parties to the adjudication or substantially impair or impede their ability to protect their interests.

26. Prosecution of this matter as a class action will most likely eliminate the possibility of repetitious litigation and provide redress for Class members who would not or could not prosecute this complex litigation on an individual basis.

27. Plaintiffs, Mark F. Teseniar and Nan M. Teseniar, both for the derivative claim pursuant to Rule 23(b)(1) and the class claim pursuant to Rule 23(a) of the South Carolina Rules of Civil Procedure as Class members envision no unusual difficulty in the management of this action as a class action.

28. Certification of this action as a class action under Rule 23 of the South Carolina Rules of Civil Procedure is appropriate.

FACTUAL ALLEGATIONS

29. The Defendants are under a duty of to develop, sell and disclose the condition of the buildings and units and to make full, fair and accurate disclosures to prospective purchasers regarding the condition of the property and the useful life of its common elements and the cost to remedy and code violations.

30. The Defendants, Fenwick Plantation Tarragon, LLC f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon

Manager, LLC and Tarragon Development Corporation purchased the buildings in December of 2001, and units and converted the rental units to condominiums in August of 2006.

31. The buildings contained construction defects that resulted in water intrusions and conditions conducive to mold growth and the Defendants made repairs prior to converting the apartments to condominiums and such repairs were ineffective and known to or should have known to be ineffective to Fenwick Plantation Tarragon, LLC f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon Manager, LLC and Tarragon Development Corporation. These Defendants, Fenwick Plantation Tarragon, LLC, f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon Manager, LLC and Tarragon Development Corporation have committed breaches of fiduciary duties, negligence, gross negligence, recklessness, wantonness, willfulness, breach of warranties, fraud, misrepresentation, bad faith, mismanagement, unconscionable conduct and waste with respect to their developing, repair, and selling of the buildings and units at issue. These wrongful acts and omissions by all Defendants have caused and will cause the Plaintiffs and the Class members to incur and continue to incur substantial money damages.

32. The Plaintiffs have repeatedly attempted to have the Board and management company of Twelve Oaks at Fenwick Plantation Owners Association, Inc. investigate and address

deficiencies but since the Defendants control the Board, the Defendants will not investigate or bring claims against themselves thereby failing to protect, assert and/or enforce rights which belong to the Property Owners Association.

**FOR A FIRST CAUSE OF ACTION
(DECLARATORY JUDGMENT)
AS TO FENWICK PLANTATION TARRAGON, LLC F/K/A FENWICK TARRAGON
APARTMENTS, LLC, CHARLESTON TARRAGON MANAGER, LLC, AND
TARRAGON DEVELOPMENT CORPORATION**

33. Plaintiffs repeat and re-allege Paragraphs 1 through 32 above as if fully set forth verbatim.

34. The Defendants in converting the apartments to condominiums filed the Master Deed and By-laws of Twelve Oaks at Fenwick Plantation Horizontal Property Regime in the Charleston County RMC office in Book E 594 page 684.

35. The Master Deed contains an arbitration provision, restrictions on a unit owners right to a jury trial, limitations on the Associations ability to file lawsuits, prohibitions and/or limitations of lawsuits brought by unit owners, the Defendants having the sole right to appoint directors and the Alternative Dispute Resolution Procedures attached as Exhibit G to the Master Deed and by-laws, none of these terms of which were contained in the contract for the sale of the unit and therefore not bargained for and lack consideration and are unconscionable and void.

36. The contract of sale for Unit 224 between the Plaintiffs and Defendants contains an "as-is" provision as well as a disclaimer of all warranties both "express and implied including but not limited to warranties of merchant ability, fitness for a particular purpose, habitability, design or condition or quality of the unit" and that the buyer "releases seller from any liability or consequential damages to any person, the unit or any other property resulting from a defect and (c) waives all other claims relating to the matters set forth above." The disclaimer of warranties and release language are unconscionable, were not conspicuous being contained on pages eight and nine of the contract, were not known to the buyer and were not specifically bargained for and therefore are unenforceable and void.

37. Plaintiffs believe that the unconscionable, oppressive, unknown and not bargained for terms and conditions of the Master Deed and by-laws including those terms set forth in Paragraphs 34 and 35 of this Complaint as set forth above should be declared unenforceable and/or void.

**FOR A SECOND CAUSE OF ACTION
(Negligence, Gross Negligence, Carelessness,
Recklessness, Willfulness and Wantonness)
AS TO FENWICK PLANTATION TARRAGON, LLC F/K/A FENWICK TARRAGON
APARTMENTS, LLC, CHARLESTON TARRAGON MANAGER, LLC, AND
TARRAGON DEVELOPMENT CORPORATION**

38. Plaintiffs repeat and re-allege Paragraphs 1 through 37 above as if fully set forth verbatim.

39. The Defendants, Fenwick Plantation Tarragon, LLC, f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon Manager, LLC and Tarragon Development Corporation, by and through their agents, servants and employees undertook and were under a duty to develop, design, repair and sell the buildings and units that should have been constructed and /or repaired in accordance with the building code, construction industry standards and practices and in accordance with all requirements imposed by the laws and statutes of the State of South Carolina.

40. The Defendants, Fenwick Plantation Tarragon, LLC, f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon Manager, LLC and Tarragon Development Corporation, were negligent, grossly negligent, careless, reckless, willful and wanton, in developing, repairing and selling the buildings and units at issue. Such negligence, gross negligence, carelessness, recklessness, willfulness and wantonness, includes but is not limited to the following particulars, to-wit:

- a. In failing to use due care in development, repair and sale of the buildings and units at issue;
- b. In designing, developing and implementing a scope and repair in which it was inevitable that water would intrude into the buildings and units at issue causing damage to the wall system;
- c. In improperly installing and repairing the stucco and exterior wall system including related flashings and weather proofing;
- d. In designing, developing and implementing repairs which failed to provide an adequate water management system;

- e. In designing, developing, repairing and selling the buildings and units at issue which fail to provide sufficient barriers against the intrusion of water into the wall system and an adequate avenue for exit of water that gets into the system resulting in water damage to the units;
- f. In designing, developing and selling units and buildings constructed and/or repaired in violation of applicable building codes, standard building practices, relevant product specifications and accepted construction industry standards and practices; and
- g. In failing to disclose conditions conducive to water intrusion and/or the existence of prior water intrusion conditions prior to the sale of the units.
- h. In violating SC Code Section 27-31-430.
- i. In violating SC Code Section 33-31-830.
- j. Other deficiencies or failures as will be proven at trial.

41. That as a direct and proximate result of the negligence, gross negligence, carelessness, willfulness, wantonness of the Defendants, Fenwick Plantation Tarragon, LLC, f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon Manager, LLC and Tarragon Development Corporation, the Plaintiffs and similarly situated unit owners have suffered actual, incidental, consequential, and special damages including but not limited to the expense of having to hire experts to investigate the causes of the water intrusion and conditions conducive to mold growth, construction, repair and remediation defects and failures set forth above and having to spend substantial sums of money in order to renovate, correct, repair and restore the buildings and units at issue to make it safe and habitable. Additionally, the Plaintiffs and the Class have been

injured and otherwise damaged in that water and moisture have repeatedly and/or continuously intruded and continues to intrude into the building and units at issue causing damage and deterioration to the finish and structural elements of the buildings and units at issue, all of which will be required to corrected and repaired and result in the loss of use of the units during said repairs.

FOR A THIRD CAUSE OF ACTION

(Breach of Contract)

(AS TO FENWICK PLANTATION TARRAGON, LLC F/K/A FENWICK TARRAGON APARTMENTS, LLC, CHARLESTON TARRAGON MANAGER, LLC, AND TARRAGON DEVELOPMENT CORPORATION)

42. Each and every allegation contained in Paragraphs 1 through 41 above are incorporated herein by express reference as though fully set forth.

43. That at all times herein, the Plaintiffs, entered into a contract with the Defendants for the purchase of their condominium known as Unit 224 at Twelve Oaks at Fenwick Plantation located in Johns Island, South Carolina.

44. That at all relevant times herein, the Defendants, by and through their agents, servants and employees had an obligation and duty to sell, design, develop and/or repair the buildings and to provide materials and services in accordance with the applicable building codes, in conformance with accepted construction and industry standards, in conformity with component product manufacturer installation instructions and

specifications and in complying with the disclosures laws and statutes of the State of South Carolina.

45. That the Defendants breached the contract with the Plaintiffs by failing to develop, sell and repair said buildings and units in accordance with the applicable building codes, in conformance with accepted construction and industry standards, in conformity with component product manufacturer installation instructions and specifications, and in compliance with the disclosure laws and statutes of this State all of which have directly and proximately caused defects and deficiencies in the residence which will need to be or have been corrected, repaired and/or replaced and are in breach of the aforesaid contracts. Such breaches includes but is not limited to the following particulars, to-wit:

- a. In failing to use due care in development, repair and sale of the buildings and units at issue;
- b. In designing, developing and implementing a scope and repair in which it was inevitable that water would intrude into the buildings and units at issue causing damage to the wall system;
- c. In improperly installing and repairing the stucco and exterior wall system including related flashings and weather proofing;
- d. In designing, developing and implementing repairs which failed to provide an adequate water management system;
- e. In designing, developing, preparing, repairing and selling the buildings and units at issue which fail to provide sufficient barriers against the intrusion of water into the wall system and an adequate avenue for exit of

- water that gets into the system resulting in water damage to the units;
- f. In designing, developing and selling units and buildings constructed and/or repaired in violation of applicable building codes, standard building practices, relevant product specifications and accepted construction industry standards and practices; and
 - g. In failing to disclose conditions conducive to water intrusion and/or the existence of prior water intrusion conditions prior to the sale of the units.
 - h. In violating SC Code Section 27-31-430.
 - i. In violating SC Code Section 33-31-830.
 - j. Other deficiencies or failures as will be proven at trial.

46. That as a direct and proximate result of the Defendants' breach of contracts with the Plaintiffs, the Plaintiffs have suffered actual, direct, incidental, consequential and special damages including, but not limited to, the expenses associated with having to hire experts to investigate the causes of the defects set forth above and having to spend substantial sums of money in order to renovate, correct, repair and restore the buildings and units to make them safe and habitable. Additionally, Plaintiffs have been injured and otherwise damaged in that there has been a continuous exposure to moisture and water that has intruded into the subject buildings and units causing and resulting in damage to walls, rot, deterioration and other damages to the finish and structural elements. All of which has or will require the Plaintiffs to expend great amounts of money to correct and repair as well as to suffer the loss, use and enjoyment of their

properties as well as loss of value in depreciation by virtue of the defects and damages aforesaid.

**FOR A FOURTH CAUSE OF ACTION
(Breach of Warranty of Habitability, Breach of
Warranty Against Latent Defects, Breach of Warranty of
Workmanlike Services, Breach of Warranty for Fitness for a
Particular Purpose and Breach of Warranty of Merchantability
and Serviceability)
(AS TO FENWICK PLANTATION TARRAGON, LLC. F/K/A FENWICK
TARRAGON APARTMENTS, LLC, CHARLESTON TARRAGON MANAGER, LLC,
AND TARRAGON DEVELOPMENT CORPORATION)**

47. Each and every allegation contained in Paragraphs 1 through 46 above are incorporated herein by express reference as though fully set forth.

48. That the Defendants implicitly and/or expressly warranted that the subject units, buildings and common areas would be habitable and fit for its intended uses as condominiums, and that said units would be designed, developed, constructed, repaired and remodeled in a fit, serviceable, good and workmanlike fashion in accordance with the applicable building codes, accepted building component manufacturing standards and specifications and accepted construction industry standards applicable thereto and that the subject buildings and units would be merchantable, free from latent defects and fit for the particular purpose for which it was developed, built and sold.

49. That Defendants breached said warranties by designing, selling, supervising and/or failing to supervise, remodeling or repairing the subject residences in such manner as to be in violation of applicable building codes, not in conformance with accepted construction and industry standards, not in conformity with component product manufacturer installation instructions, and not in conformity with the laws and statutes of this State.

50. As a direct and proximate result of the Defendants' breach of these warranties, the Plaintiffs have suffered actual, direct, incidental, consequential and special damages, including but not limited to, the expenses associated with having to hire experts to investigate the causes of the defects set forth above and having to spend substantial sums of money in order to renovate, correct, repair and restore the buildings and units to make them safe and habitable. Additionally, Plaintiffs have been injured and otherwise damaged in that moisture has intruded into the subject buildings and units causing rot, deterioration and other damages to the finish and structural elements. All of which has or will require the Plaintiffs to expend great amounts of money to correct and repair as well as to suffer the loss, use and enjoyment of their properties as well as loss of value in depreciation by virtue of the defects and damages aforesaid.

**FOR A FIFTH CAUSE OF ACTION
(Negligent Misrepresentation)
(AS TO FENWICK PLANTATION TARRAGON, LLC. F/K/A FENWICK
TARRAGON APARTMENTS, LLC, CHARLESTON TARRAGON MANAGER, LLC,
AND TARRAGON DEVELOPMENT CORPORATION)**

51. Each and every allegation contained in Paragraphs 1 through 50 above are incorporated herein by express reference as though fully set forth.

52. The Defendants, through their agents and/or employers, advertisements, literature and other written materials, made representations and non-disclosures to the Plaintiffs and the public, including the Plaintiffs about the quality of the construction of the subject buildings and units suitability for habitation and low maintenance.

53. As set forth above, the above-described representations and non-disclosures made by the Defendants and their agents to Plaintiffs were untrue and were misrepresentations or non-disclosures of material facts and were made in such a manner that, by the exercise of reasonable and ordinary care, the Defendants knew or should have known that they were false and that the Plaintiffs could and would reasonably and justifiably rely on such representations and/or non-disclosures in purchasing, making and/or authorizing payment and accepting the subject residences.

54. As a direct, foreseeable and proximate result of Defendants' negligent misrepresentations and non-disclosures, and failing to disclose that the residences were not constructed in accordance with applicable building codes, not in conformance with accepted construction and industry standards, not in conformity with component product manufacturer installation instructions, and that the buildings and units leaked and had conditions conducive to the growth of mold, the Plaintiffs have relied on such representations and nondisclosures and have suffered actual, direct, incidental, consequential and special damages, including but not limited to, the expenses associated with having to hire experts to investigate the causes of the defects set forth above and having to spend substantial sums of money in order to renovate, correct, repair and restore the buildings and units to make them safe and habitable. Additionally, Plaintiffs have been injured and otherwise damaged in that moisture has intruded and continues to intrude into the subject buildings and units causing rot, deterioration and other damages to the finish and structural elements. All of which has or will require the Plaintiffs to expend great amounts of money to correct and repair as well as to suffer the loss, use and enjoyment of their properties as well as loss of value in depreciation by virtue of the defects and damages aforesaid.

FOR AN SIXTH CAUSE OF ACTION

(Fraud)

**(AS TO FENWICK PLANTATION TARRAGON, LLC, F/K/A FENWICK
TARRAGON APARTMENTS, LLC, CHARLESTON TARRAGON MANAGER, LLC,
AND TARRAGON DEVELOPMENT CORPORATION)**

55. Each and every allegation contained in Paragraphs 1 through 54 above are incorporated herein by express reference as though fully set forth.

56. The Defendant(s), Fenwick Plantation Tarragon, LLC f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon Manager, LLC, and Tarragon Development Corporation and/or their agents or employees made material and false representations and nondisclosures, including the concealment and nondisclosure of latent and hidden damages and defective conditions to the Plaintiffs regarding the condition of the buildings and units, quality of construction, the compliance with building codes, the compliance with manufacturers recommendations and specification and compliance with industry standards and the Defendant(s), Fenwick Plantation Tarragon, LLC, f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon Manager, LLC, and Tarragon Development Corporation and their agents and/or employees knew of the falsity of such representations and nondisclosures or these representations and nondisclosures were made with reckless disregard for the truth.

57. The Defendant(s), Fenwick Plantation Tarragon, LLC f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon

Manager, LLC, and Tarragon Development Corporation failed to disclose and/or concealed defective conditions that were known or should have been known, and induced the Plaintiffs to purchase the unit by concealing and/or failing to disclose latent defects and/or hidden conditions and damages to the buildings and units that were not apparent to a reasonable person.

58. These representations and nondisclosures made by the Defendant(s), Fenwick Plantation Tarragon, LLC, f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon Manager, LLC, and Tarragon Development Corporation, and/or their agents or employees were made with the intention that the Plaintiffs act upon them and the Plaintiffs did not know these representations and nondisclosures were false.

59. The Plaintiffs relied on these representations and nondisclosures and had the right to rely thereon.

60. As a direct and proximate result of the Defendant(s), Fenwick Plantation Tarragon, LLC, f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon Manager, LLC, and Tarragon Development Corporation's, misrepresentations, nondisclosures, concealment, fraud and/or constructive fraud, the Plaintiffs have suffered actual, direct, incidental, consequential and special damages, including but not limited to, the expenses associated with having to hire experts to

investigate the causes of the defects set forth above and having to spend substantial sums of money in order to renovate, correct, repair and restore the buildings and units to make it safe and habitable. Additionally, Plaintiffs have been injured and otherwise damaged in that excessive water and moisture exists and has intruded and continues to intrude into the building and unit at issue causing damage and deterioration and to the finish and structural elements of the buildings and units, all of which will be required to be corrected and repaired and result in the loss of use of the unit during said repairs.

**FOR A SEVENTH CAUSE OF ACTION
(Unfair Trade Practices)
(AS TO FENWICK PLANTATION TARRAGON, LLC F/K/A FENWICK TARRAGON
APARTMENTS, LLC, CHARLESTON TARRAGON MANAGER, LLC, AND
TARRAGON DEVELOPMENT CORPORATION)**

61. Each and every allegation contained in Paragraphs 1 through 60 above are incorporated herein by express reference as though fully set forth.

62. The Defendants are "persons" within the meaning of South Carolina Code § 39-5-10(a).

63. The Defendants, by their actions in developing, designing, selling, repairing, supervising and overseeing construction and/or repair activities are engaged in commerce within the meaning of South Carolina Code §39-5-10(b).

64. The Defendants, by their action(s) described hereinabove, including representations to the Plaintiffs that induced them to purchase units at issue in this case, constitute unfair and deceptive practices within the meaning of South Carolina Code §39-5-20(a).

65. The Defendants' act(s) are capable of repetition and, upon information and belief and in accord with the allegations herein, have been repeated.

66. The Defendants' conduct affects the public interest of the people of South Carolina.

67. The Defendants knew or should have reasonably known, that their conduct violated the Unfair Trade Practices Act.

68. As a direct, foreseeable and proximate result of the Defendants' unfair and deceptive practices, the Plaintiffs have suffered actual, direct, incidental, consequential and special damages, including but not limited to, the expenses associated with having to hire experts to investigate the causes of the defects set forth above and having to spend substantial sums of money in order to renovate, correct, repair and restore the buildings and units to make them safe and habitable. Additionally, Plaintiffs have been injured and otherwise damaged in that moisture has intruded into the building and units causing rot, deterioration and other damages to the finish and

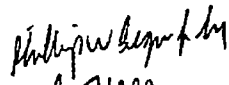
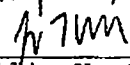
structural elements. All of which has or will require the Plaintiffs to expend great amounts of money to correct and repair as well as to suffer the loss, use and enjoyment of their properties as well as loss of value in depreciation by virtue of the defects and damages aforesaid.

RELIEF REQUESTED

WHEREFORE, the Plaintiffs and the Class respectfully pray that this Court certify this action as a Class Action under Rule 23 (a) and (b)(1) of the South Carolina Rules of Civil Procedure, hold the Defendants liable for the conduct complained of herein, enter a judgment against the Defendants and in favor of the Plaintiffs and the Class for the relief as requested in this Complaint, and award the Plaintiffs and the Class their costs and attorneys fees, and for such other and further relief as may be deemed appropriate.

Plaintiffs and the Class further demand a jury trial with respect to all issues so triable.

SEGUI LAW FIRM, LLC

By: 


Phillip W. Segui, Jr.
864 Lowcountry Blvd., Ste. A
Charleston, SC 29413
(843) 576-2074
pseguilawfirm.com

THE CHAKERIS LAW FIRM

By: *Jm Tm*
John T. Chakeris
P. O. Box 397
Charleston, SC 29402
(843) 853-5678
john@chakerislawfirm.com

AND

LEATH BOUCH & CRAWFORD, LLP

W. Jefferson Leath, Jr.
By: *Jm Tm*
W. Jefferson Leath, Jr.
P. O. Box 59
Charleston, SC 29402
(843) 937-8811
Attorneys for Plaintiffs
jl@leathbouchlaw.com

Charleston, South Carolina

Dated: 11/3/, 2008

Exhibit A

September 22, 2007

Twelve Oaks at Fenwick Plantation
Property Owners Association
C/O Community Management Group, Inc.
349 Folly Road
Charleston, SC 29412

Dear Sirs:

I am the owner of unit 224, Twelve Oaks at Fenwick, and I am writing you, as I understand that the HOA Board has the ultimate responsibility under the Master Deed to investigate and repair problems with areas of the property which are common to the development.

I am concerned about what may be a significant mold condition in my walls, and other common areas of my property, and I also have concerns that these problems may be caused by water coming in behind the building exteriors. I think these problems are probably more extensive than just my unit, and feel that the Board should have a regime-wide inspection performed by a qualified independent inspector with authority to cut into the buildings if necessary to determine the condition of my unit and the buildings.

I have previously attempted to get this situation fully investigated and remedied through Tarragon Corporation Customer Care, but in spite of my repeated attempts, nothing significant has been done. I understand that the developer may still be in control of the overall property, and if indeed this is the situation, then this inspection is all the more critical in order to give the property owners a baseline assessment of the property condition prior to turnover to the homeowners.

I am asking for a written response to this letter within two weeks outlining the name of an inspector, background qualifications, and a date for commencement of the inspection of the property at Twelve Oaks at Fenwick. Please send response to Mark Teseniar, 1662 Back Creek Rd., Charleston, SC 29412.

Sincerely,

Mark Teseniar
Owner of Unit 224
Twelve Oaks at Fenwick Plantation



October 1, 2007

Mark Teseniar
1662 Back Creek Rd.
Charleston, SC 29412

Mr. Teseniar:

In response to your letter dated September 22, 2007, previous inspections have been conducted on your property, the unit above yours and the unit adjacent. Based upon those inspections conducted by SkyTec and overseen by Tarragon Development, no further testing will be done at this time. There was no evidence that there was any issue behind the walls and the Developer is not authorizing any invasive inspections or testing behind the walls.

The previous offer by Tarragon to provide a de-ionization of your unit still stands. Please let us know if you have any further questions.

Respectfully,

A handwritten signature in dark ink, appearing to read "Jerry P. Watson", is written over the typed name.

Jerry P. Watson
Management Director for
Twelve Oaks at Fenwick Plantation

COMMUNITY MANAGEMENT GROUP
349 Folly Road, Suite 2B • Charleston, SC 29412
Telephone 843-795-8484 • Fax 843-795-8482 • www.cmgcharleston.com

Exhibit C

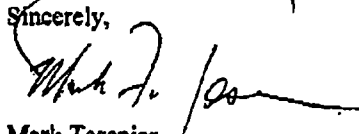
November 17, 2007

Twelve Oaks at Fenwick Plantation
Property Owners Associations
C/O Community Management Group
349 Folly Road
Charleston, Sc 29412

Dear Sirs:

I am the owner of Unit 224, Twelve Oaks at Fenwick, and I have written you before about problems that exist. I have hired an engineer to come and inspect my unit and have been informed that there are stucco installation problems, flashing problems, and other problems that are contributing to water intrusion and probable mold problems with my unit. Upon speaking with the engineer, I believe that these problems exist at other buildings as well. The Association is responsible for the upkeep of the exterior of my building and all other buildings at Twelve Oaks, therefore is also responsible for pursuing this claim. The claim exists against the developer that has previously refused to investigate my concerns regarding mine and the other buildings. I request that you immediately file suit against the developer of the condominiums and contractors that built the property. Please notify me within ten days that you will be doing this. Please send the lawsuit papers to 1662 Back Creek Rd., Charleston, SC 29412.

Sincerely,



Mark Teseniar
Owner of Unit 224
Twelve Oaks at Fenwick Plantation

Exhibit D

December 13, 2007

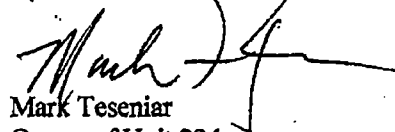
Twelve Oaks at Fenwick Plantation
Property Owners Association, Inc.
Attn: Jeri Watson
c/o Community Management Group, Inc.
349 Folly Road
Charleston, SC 29412

Dear Ms. Watson,

I appreciate your speaking with me on Tuesday, December 11, 2007 about my prior correspondence to the Property Owners Association dated November 17, 2007. As you know, I contacted you because I did not receive a response from you or the Property Owners Association regarding my November 17 letter. When I asked you on the phone about the homeowners association filing suit against the developer, you indicated that the developer was in control of the homeowners association and essentially was not going to sue itself. You also indicated that the developer had already told you that it (as a corporate entity) had already done all that it intended to do with regard to my complaints. When I asked you who on the Board I should speak to regarding this, you indicated that there was no one else for me to speak to because everything comes back to you anyway.

As you also indicated, it will be necessary for me to proceed with an attorney.

Sincerely,



Mark Teseniar
Owner of Unit 224
Twelve Oaks at Fenwick Plantation

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MARK F. TESENIAR AND NAN M. TESENIAR,
on behalf of themselves and others
similarly situated,

Plaintiffs,

vs.

FENWICK PLANTATION TARRAGON, LLC, A
SOUTH CAROLINA LIMITED LIABILITY
COMPANY, f/k/a FENWICK TARRAGON
APARTMENTS, LLC, A SOUTH CAROLINA
LIMITED LIABILITY COMPANY, CHARLESTON
TARRAGON MANAGER, LLC, A DELAWARE
LIMITED LIABILITY COMPANY, AND
TARRAGON DEVELOPMENT CORPORATION, A
NEVADA CORPORATION,

Defendants.

) IN THE CIRCUIT COURT FOR THE
) NINTH JUDICIAL CIRCUIT

) 2007-CP-10-49

) VERIFICATION OF COMPLAINT

BY

JULIE J. KIRK
CLERK OF COURT

2008 JAN -4 PM 2:22

FILED

I HEREBY CERTIFY that the foregoing is a true and
correct Verification of the Complaint in connection with
this lawsuit.

BY: Mark F. Teseniar
MARK F. TESENIAR

BY: Nan M. Teseniar
NAN M. TESENIAR

SWORN to before me this
27 day of December, 2007.

Ch. L. L. L.
Notary Public For South Carolina
My Commission Expires: 11-15-2014

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MARK F. TESENIAR AND NAN M. TESENIAR,
on behalf of themselves and others similarly situated,
and TWELVE OAKS AT FENWICK PROPERTY
OWNERS ASSOCIATION, INC. (from December 16,
2008 to present),

Plaintiffs,

vs.

FENWICK PLANTATION TARRAGON, LLC, A
SOUTH CAROLINA LIMITED LIABILITY
COMPANY, f/k/a FENWICK TARRAGON
APARTMENTS, LLC, A SOUTH CAROLINA
LIMITED LIABILITY COMPANY, CHARLESTON
TARRAGON MANAGER, LLC, A DELAWARE
LIMITED LIABILITY COMPANY, TARRAGON
DEVELOPMENT CORPORATION, A NEVADA
CORPORATION, SUMMIT CONTRACTORS
GROUP, INC., SUMMIT CONTRACTORS, INC.,
FUGLEBERG KOCH ARCHITECTS, INC.,
DEVELOPMENT, COMPLIANCE & INSPECTIONS,
INC., H2L CONSULTING ENGINEERS, TWELVE
OAKS AT FEWICK PROPERTY OWNERS
ASSOCIATION, INC. (from August 8, 2006 to
December 15, 2008), PROFESSIONAL PLASTERING
& STUCCO, INC., JOHNSON COMPANIES, INC.,
LOS CAMPOS, INC., NORTH FLORIDA
FRAMING, INC., BEST MASONRY & TOOL
SUPPLY, L.P., as successor in interest to BEST
MASONRY & TOOL SUPPLY, INC., as successor in
interest to MAGNA WALL, INC., ALL SOUTH
VINYL PRODUCTS, INC., MARQUEZ
CONSTRUCTION, INC., J.T. WALKER
INDUSTRIES, INC., J.T. INDUSTRIES d/b/a
GENERAL ALUMINUM CORPORATION AND
GENERAL ALUMINUM COMPANY OF TEXAS,
LP, J.R. HOBBS CO. -ATLANTA, LLC f/k/a JRH
MERGER CO., LLC, JAMIE HELMAN, individually,
SCOTT FERGUSON, individually, CHRIS COBBS,
Individually, FEDERAL INSURANCE COMPANY,
MARIA ARIAS, MIQUEL ROSALES, APS
ENTERPRISES UNLIMITED, INC., HR ELECTRIC,
A.M. JACOBS, INC., MICKEY MASON d/b/a MASON
CONTRACTORS, KMAC OF THE CAROLINAS,
INC., and NEO CORPORATION,

Defendants.

IN THE CIRCUIT COURT FOR THE
NINTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2008-CP-10-49

**NORTH FLORIDA FRAMING,
INC.'S THIRD PARTY
COMPLAINT
(Jury Trial Demanded)**

FILED
2010 AUG -5 PM 3:36
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

NORTH FLORIDA FRAMING, INC.,

Third-Party Plaintiff,

vs.

NAVA GUZMAN CONSTRUCTION, INC.,

Third-Party Defendant.

COMES NOW, Defendant/Third-Party Plaintiff, North Florida Framing, Inc. (hereinafter, "North Florida"), through its undersigned counsel, by way of a Third-Party Complaint, alleges and states that:

1. North Florida is a corporation organized and existing under the laws of the State of Florida.
2. Upon information and belief, Third-Party Defendant, Nava Guzman Construction, Inc. ("Nava Guzman"), was during the time pertinent to this action conducting business in Charleston County, South Carolina.
3. North Florida is a Defendant in the action Mark F. Teseniar and Nan M. Teseniar, on behalf of themselves and other similarly situated, and Twelve Oaks at Fenwick Property Owners Association, Inc., regarding the property, Twelve Oaks at Fenwick Plantation ("The Property").
4. Defendant Summit Contractors Inc./Summit Contractors Group, Inc. ("Summit"), and Defendant Federal Insurance Company ("Federal") have asserted cross-claims against North Florida.
5. Summit contracted with North Florida to provide work on The Property at issue in this case.

6. Upon information and belief, North Florida entered into an agreement with Nava Guzman to perform as a subcontractor with respect to work on The Property.
7. The parties, matters, and all things hereinafter alleged are within the jurisdiction of this Court.

**FOR A FIRST CAUSE OF ACTION AGAINST
THIRD-PARTY DEFENDANT NAVA GUZMAN CONSTRUCTION, INC.
(Negligence)**

8. The above paragraphs are incorporated herein as if repeated verbatim.
9. Third-Party Defendant Nava Guzman Construction, Inc. performed work on The Property at issue in this case under agreement with North Florida.
10. A suit has been filed against North Florida by Plaintiffs in which Plaintiffs assert that North Florida's improper construction of The Property caused damage to Plaintiffs' property. North Florida has denied any liability for damages alleged.
11. Defendants Summit and Federal have asserted cross-claims against North Florida. North Florida has denied any liability for damages alleged.
12. If the allegations, which North Florida denies, are proven true, then Nava Guzman was careless, negligent, and grossly negligent in the work they performed, and in other respects as may become known through the course of discovery.
13. As a result of the alleged negligence of Nava Guzman, North Florida has been sued and has incurred costs and expenses and may incur damages as a result of the alleged negligence of Nava Guzman.
14. As a result of the alleged negligence of Nava Guzman, it is liable to North Florida for all damages, costs, and expenses North Florida incurs or may incur as a result of the allegations asserted.

FOR A SECOND CAUSE OF ACTION AGAINST
THIRD-PARTY DEFENDANT NAVA GUZMAN CONSTRUCTION, INC.
(Breach of Contract)

15. The above paragraphs, not inconsistent herewith, are incorporated herein as if repeated verbatim.
16. The agreement with Third-Party Defendant Nava Guzman Construction, Inc. required Nava Guzman to provide construction services that would produce a quality product, free from defects, and otherwise in conformance with construction industry customs, practices, and standards. All work was to be performed in a proper workmanlike manner.
17. If the Plaintiffs' allegations regarding the damage to The Property and/or the cross-claims are true, as alleged, then Nava Guzman breached its contract with North Florida.
18. In the event that North Florida is liable to Plaintiffs and/or Cross-Claimants, which is denied, then such liability arose from the acts of Nava Guzman and breach of contract with North Florida, and therefore North Florida is entitled to indemnity, in whole or in part, from Nava Guzman, and all attorney fees, expenses, and costs incurred in defending Plaintiffs' claims and Cross-Claimants' claims and other damages.

FOR A THIRD CAUSE OF ACTION AGAINST
THIRD-PARTY DEFENDANT NAVA GUZMAN CONSTRUCTION, INC.
(Breach of Express and Implied Warranties)

19. The above paragraphs, not inconsistent herewith, are incorporated herein as if repeated verbatim.
20. Upon information and belief, pursuant to the agreement, implied and express warranties were provided by Third-Party Defendant Nava Guzman Construction, Inc. to North Florida that the work and/or products supplied would be free of defects, merchantable, and fit for its particular purpose. At the time of the agreement, Nava Guzman had reason

to know the particular purpose that its work and/or product required and that North Florida was relying on Nava Guzman for its skill and judgment in applying and doing its work within code, industry standards, and manufacturers' specifications.

21. Nava Guzman expressly and/or impliedly warranted its work and/or products supplied to be free of defects in order to provide a soundly constructed project.
22. In the event Plaintiffs and/or Cross-Claimants establish liability for damages alleged, such liability will establish breach of these warranties to North Florida. As a result of Nava Guzman's alleged breach of their express warranties, implied warranties of proper workmanship, merchantability, and fitness for its particular purpose, North Florida has incurred costs and expenses and may incur damages.
23. As a results of Nava Guzman's alleged breach of its warranties, North Florida is entitled to recover from Nava Guzman all of its costs, expenses, and damages as a result of Plaintiffs' allegations and Cross-Claimants' allegations.

FOR A FOURTH CAUSE OF ACTION AGAINST
THIRD-PARTY DEFENDANT NAVA GUZMAN CONSTRUCTION, INC.
(Indemnity)

24. The above paragraphs, not inconsistent herewith, are incorporated herein as if repeated verbatim.
25. If the Plaintiffs' allegations regarding the damage to The Property or the cross-claims are true, and if North Florida is found liable for any such damage, which is specifically denied, the damages were caused by the sole acts or omissions of the Third-Party Defendant Nava Guzman Construction, Inc.
26. The damages alleged were due to the primary or active fault of Nava Guzman and/or authorized agents, servants, or employees. To the extent liability or damages are imposed

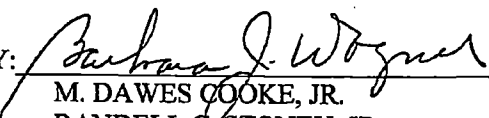
against North Florida, North Florida alleges its liability to Plaintiffs and Cross-Claimants, if any at all, is only secondary or passive based on Nava Guzman's conduct in its duties in the construction of The Property and the Plaintiffs' and Cross-Claimants' alleged damages were solely and proximately caused by the primary or active fault of Nava Guzman.

27. North Florida pleads that the right of full legal and equitable indemnity exists in its favor against Nava Guzman because North Florida is exposed to liability in this case, if at all, due to the primary wrongful acts and/or omissions of Nava Guzman, in which North Florida did not join; that to the extent Plaintiffs and/or Cross-Claimants recover against North Florida, North Florida alleges that Nava Guzman is liable to North Florida as to all or part of Plaintiffs' claims and Cross-Claimants' claims, and Nava Guzman must indemnify North Florida, including all attorney fees and costs incurred in defending Plaintiffs' and Cross-Claimants' claims, including all damages incurred or which may be incurred.

WHEREFORE Defendant/Third-Party Plaintiff North Florida Framing, Inc. having asserted these claims, prays for a trial by jury and for judgment against Third-Party Defendant Nava Guzman Construction, Inc. for costs of this action, and for such other and further relief as this Court deems just and appropriate in this matter.

Respectfully submitted,

BARNWELL WHALEY PATTERSON & HELMS, LLC

BY: 

M. DAWES COOKE, JR.

RANDELL C. STONEY, JR.

BARBARA J. WAGNER

885 Island Park Drive (29492)

P. O. Drawer H

Charleston, SC 29402

843-577-7700 FAX 843-77-7708

rstoney@barnwell-whaley.com

bwagner@barnwell-whaley.com

ATTORNEYS FOR NORTH FLORIDA FRAMING, INC.

August 4, 2010
Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that on August 5, 2010, I mailed or delivered a true copy of the foregoing pleading to counsel of record.

Phillip W. Segui, Jr., Esquire
Segui Law Firm, LLC
864 Lowcountry Blvd., Suite A
Charleston, South Carolina 29464
(843) 884-1865
pseguil@seguilawfirm.com

John T. Chakeris, Esquire
The Chakeris Law Firm
Post Office Box 397
Charleston, South Carolina 29402
(843) 853-5678
john@chakerislawfirm.com

W. Jefferson Leath, Jr., Esquire
Leath Bouch Crawford & von Keller, LLP
Post Office Box 59
Charleston, South Carolina 29402
(843) 937-8811
jl@leathbouchlaw.com

Jesse A. Kirchner, Esquire
Thurmond Kirchner & Timbes, P.A.
15 Middle Atlantic Wharf, Suite 101
Charleston, South Carolina 29401
(843) 937-8000
jkirchner@tktlawfirm.com

Andrew S. Halio, Esquire
Halio & Halio
13 North Adgers Wharf
Charleston, South Carolina 29402
(843) 577-5200
ashalio@bellsouth.net

Justin O'Toole Lucey, Esquire
Justin O'Toole Lucey, PA
Post Office Box 806
Mt. Pleasant, South Carolina 29465
(843) 849-8400
jlucey@lucey-law.com

Jeremy A. Moulton, Esquire
The Moulton Law Firm
925 Railroad Street
Conyers, Georgia 30012
(770) 483-4406
Jeremy@moultonfirm.com

James D. Smith, Jr., Esquire
McAngus Goudelock & Courie, LLC
Post Office Box 877
Charleston, South Carolina 29402
(843) 576-2900
jsmith@mgclaw.com

Michael B.T. Wilkes, Esquire
Ellen S. Cheek, Esquire
Wilkes Bowers, P.A.
127 Dunbar Street, Suite 200
Spartanburg, South Carolina 29306
(864) 591-2355
mwilkes@wilkesbowers.com
echeel@wilkesbowers.com

S. Markey Stubbs, Esquire
Baker, Ravenel & Bender, LLP
3710 Landmark Drive, Suite 400
Columbia, South Carolina 29204
(803) 799-9091
mstubbs@brblegal.com

David S. Cobb, Esquire
Turner, Padgett, Graham & Laney, PA
Post Office Box 22129
Charleston, South Carolina 29413
(843) 576-2803
dcobb@turnerpadgett.com

J. Blanton O'Neal, IV, Esquire
Hood Law Firm, LLC
Post Office Box 1508
Charleston, South Carolina 29402
(843) 577-1211
blanton.oneal@hoodlaw.com

Charles G. Blackburn, Esquire
Murphy & Grantland, PA
Post Office Box 6648
Columbia, South Carolina 29260
(803) 782-4100
cblackburn@murphygrantland.com

R. Bryan Barnes, Esquire
J. Geoff Osburn, Jr., Esquire
Rogers Townsend & Thomas, P.C.
Post Office Box 100200
Columbia, South Carolina 29202
(803) 771-7900
barnes@rtt-law.com

FILED
2010 AUG -5 PM 3:36
JULIE J. ARMSTRONG
CLERK OF COURT

J. Patrick Norris, Esquire
M. Elizabeth Jowers, Esquire
Kent T. Stair, Esquire
Carlock, Copeland & Stair, LLP
40 Calhoun Street, Suite 400
Charleston, South Carolina 29401
(843) 727-0307
pnorris@carlockcopeland.com
bjowers@carlockcopeland.com
kstair@carlockcopeland.com

Everett A. Kendall, II, Esquire
Christy E. Mahon, Esquire
Sweeny Wingate & Barrow P.A.
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233
eak@swblaw.com

Christina A. Craddock, Esquire
John V. Burch, Esquire
Bovis, Kyle & Burch, LLC
200 Ashford Center North, Suite 500
Atlanta, Georgia 30338-2668
(770) 391-9100
cac@boviskyle.com

josborn@rtt-law.com

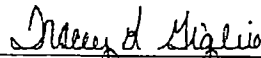
Dunn D. Hollingsworth, Esquire
Robertson & Hollingsworth
177 Meeting Street, Suite 300
Charleston, South Carolina 29401
(843) 723-6470
ddh@roblaw.net

James A. Bruorton, IV, Esquire
Rosen, Rosen & Hagood, LLC
134 Meeting Street, Suite 200
Charleston, South Carolina 29401
(843) 577-6726
cbruorton@rrhlawfirm.com

Kelley Shull Cannon, Esquire
Howser, Newman & Besley, LLC
Post Office Box 12009
Columbia, South Carolina 29211
(803) 758-6000
kcannon@hnblaw.com

Christopher M. Adams, Esquire
Collins & Lacy, P.C.
1330 Lady Street, Sixth Floor
Columbia, South Carolina 29201
(803) 256-2660
cadams@collinsandlacy.com

Barnwell Whaley Patterson & Helms, LLC



Tracey L. Giglio, Legal Secretary

BARNWELL WHALEY

PATTERSON & HELMS LLC

Attorneys for
businesses &
professionals
since 1938

Randell C. Stoney, Jr.
rstoney@barnwell-whaley.com

August 5, 2010

59.003

The Honorable Julie J. Armstrong
Clerk of Court, Charleston County
100 Broad Street, Suite 106
Charleston, SC 29401-2258

Re: *Mark F. Teseniar and Nan M. Teseniar, on behalf of themselves and others similarly
situated v. Fenwick Plantation Tarragon, LLC, et al.*
Civil Action No.: 2008-CP-10-49
Our File No.: 59.003

Dear Madam Clerk:

Enclosed herewith please find an original and two copies of Defendant/Third-Party Plaintiff North Florida Faming, Inc.'s Third-Party Complaint, Summons and Civil Action Coversheet in the above-captioned matter. I would appreciate you filing the originals and returning the file-stamped copies to me with our firm courier, Mitchell.

Thanking you in advance for your kindness, I remain

Sincerely,



Randell C. Stoney, Jr.

RCSjr/sh
Enclosure (as stated)

cc: James D. Smith, Jr., Esquire
Phillip W. Segui, Jr., Esquire
John T. Chakeris, Esquire
W. Jefferson Leath, Jr., Esquire
Jesse A. Kirchner, Esquire
Andrew S. Halio, Esquire
Justin O'Toole Lucey, Esquire

William C. Helms, III
M. Dawes Cooke, Jr.
B.C. Killough*
Randell C. Stoney, Jr.

Phillip S. Ferderigos
K. Michael Barfield
Ernest B. Lipscomb, III*
J. Gail Rahn

Todd M. Musheff
Craig E. Burgess
Lucinda Gardner Wichmann
John W. Fletcher

John A. Jones
Alissa DeCarlo
Barbara J. Wagner, Ph.D.
Jeremy E. Bowers

885 Island Park Drive, Charleston, SC 29492 Mail: P.O. Drawer H, Charleston, SC 29402 P 843.577.7700 F 843.577.7708 www.barnwell-whaley.com

* Registered patent attorney

The Honorable Julie J. Armstrong
August 5, 2010
Page 2 of 2

Michael B.T. Wilkes, Esquire
Ellen S. Cheek, Esquire
S. Markey Stubbs, Esquire
David S. Cobb, Esquire
J. Blanton O'Neal, IV, Esquire
Charles G. Blackburn, Esquire
M. Elizabeth Jowers, Esquire
Jeremy A. Moulton, Esquire
Everett A. Kendall, II, Esquire
Christy E. Mahon, Esquire
Christina A. Craddock, Esquire
Christopher M. Adams, Esquire
R. Bryan Barnes, Esquire
J. Geoff Osburn, Jr., Esquire
Dunn D. Hollingsworth, Esquire
James A. Bruorton, IV, Esquire
Kelley Shull Cannon, Esquire

{Client\Matter\000059\0003\CSP\00233410.DOC}

William C. Helms, III

M. Dawes Cooke, Jr.

B.C. Killough*

Randell C. Stoney, Jr.

Phillip S. Ferderigos

K. Michael Barfield

Ernest B. Lipscomb, III*

J. Gail Rahn

Todd M. Musheff

Craig E. Burgess

Lucinda Gardner Wichmann

John W. Fletcher

John A. Jones

Alissa DeCarlo

Barbara J. Wagner, Ph.D.

Jeremy E. Bowers

885 Island Park Drive, Charleston, SC 29492 Mail: P.O. Drawer H, Charleston, SC 29402 P 843.577.7700 F 843.577.7708 www.barnwell-whaley.com

* Registered patent attorney

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MARK F. TESENIAR, ET AL.

☐ Plaintiff

v.

Fenwick Plantation Tarragon, Llc, Et Al.

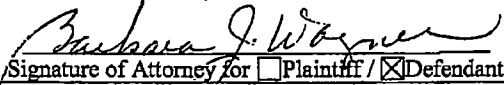
☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2008-CP-10-0049

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: John T. Chakeris, Esquire, Bar No. 7060 Address: P.O. Box 397, Charleston, SC 29402 phone: (843) 853-5678 fax: (843) 853-5677 e-mail: john@chakerislawfirm.com other:		Defendant's Attorney: Barbara J. Wagner, Esquire, Bar No. 76307 Address: 885 Island Park Drive, Charleston, SC 29492 phone: (843) 577-5700 fax: (843) 577-7708 e-mail: rstoney@barnwell-whaley.com other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Motion to Bifurcate Trial Estimated Time Needed: 30 minutes Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
 Signature of Attorney for ☐ Plaintiff / ☒ Defendant		May 2, 2011 Date submitted	
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE _____ CODE: _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: _____		Date Filed: _____	
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____			

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 08-CP-10-0049

Mark F. Teseniar and Nan M.
Tesenlar, on behalf of themselves and
other similarly situated, and Twelve
Oaks at Fenwick Property Owners
Association, Inc. (from Dec. 16, 2008 to
present),)

Plaintiffs,)

v.)

Fenwick Plantation Tarragon, LLC, A
South Carolina Limited Liability
Company, f/k/a Fenwick Tarragon
Apartments, LLC, A South Carolina
Limited Liability Company, Charleston
Tarragon Manager, LLC, A Delaware
Limited Liability Company, Tarragon
Development Corp., A Nevada
Corporation, Summit Contractors Group,
Inc., Summit Contractors, Inc.,
Fugleberg Koch Architects, Inc.,
Development, Compliance &
Inspections, Inc., H2L Consulting
Engineers, Twelve Oaks at Fenwick
Property Owners Association Inc.,
(from August 8, 2006 to December 15,
2008), Professional Plastering & Stucco,
Inc., Johnson Companies, Inc., d/b/a
Johnson Roofing, Inc., Los Campos,
Inc., North Florida Framing, Inc., Best
Masonry & Tool Supply, Inc., as
successor in interest to Manga Wall,
Inc., All South Vinyl Products, Inc.,
Marquez Construction Inc., J.T. Walker
Industries, Inc., J.T. Industries d/b/a
General Aluminum Corporation, and
General Aluminum Company of Texas
LP, J.R. Hobbs Co. Atlanta, LLC f/k/a
JRH Merger Co., LLC., Jamie Helman,
individually, Scott Ferguson, individually,
and Chris Cobbs, individually and
Federal Insurance Company, Maria)

Complex Case Designation Order

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2010 SEP 10 PM 4:07

FILED

Defendants.

IT IS FUTHER ORDERED that this case be assigned to the Honorable Roger Young to hear and handle all pre-trial motions and other matters pertaining to this case.


Chief Judge for Administrative Purposes

FORM 4

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

Case No.: 2008-CP-10-49

Mark F Teseniar, et al etc

versus

Fenwick Plantation Tarragon LLC

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and the verdict has been rendered.
- ☐ **DECISION BY COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. nonsuit)
☐ Rule 43(k), SCRCP (Settled); ☐ Other - _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding Arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING THE LOWER COURT TRIBUNAL OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

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

This case is Ordered assigned to Judge Kristi Lea Harrington for a date certain trial to begin on Monday May 9, 2011.

Dated at Charleston, South Carolina, this 11/18, 2010.

PRESIDING JUDGE

This judgment was entered on the _____ Day of _____, 20____, and a copy mailed first class this _____ Day of _____, 20____, to attorneys of record or to parties (when appearing pro-se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

SCCA SCRCP Form 4 Revised 6/2008

Clerk of Court

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MARK F. TESENIAR AND NAN M. TESENIAR,
on behalf of themselves and others similarly situated,
and TWELVE OAKS AT FENWICK PROPERTY
OWNERS ASSOCIATION, INC. (from December 16,
2008 to present),

Plaintiffs,

vs.

FENWICK PLANTATION TARRAGON, LLC, A
SOUTH CAROLINA LIMITED LIABILITY
COMPANY, f/k/a FENWICK TARRAGON
APARTMENTS, LLC, A SOUTH CAROLINA
LIMITED LIABILITY COMPANY, CHARLESTON
TARRAGON MANAGER, LLC, A DELAWARE
LIMITED LIABILITY COMPANY, TARRAGON
DEVELOPMENT CORPORATION, A NEVADA
CORPORATION, SUMMIT CONTRACTORS
GROUP, INC., SUMMIT CONTRACTORS, INC.,
FUGLEBERG KOCH ARCHITECTS, INC.,
DEVELOPMENT, COMPLIANCE & INSPECTIONS,
INC., H2L CONSULTING ENGINEERS, TWELVE
OAKS AT FEWICK PROPERPTY OWNERS
ASSOCIATION, INC. (from August 8, 2006 to
December 15, 2008), PROFESSIONAL PLASTERING
& STUCCO, INC., JOHNSON COMPANIES, INC.,
LOS CAMPOS, INC., NORTH FLORIDA
FRAMING, INC., BEST MASONRY & TOOL
SUPPLY, L.P., as successor in interest to BEST
MASONRY & TOOL SUPPLY, INC., as successor in
interest to MAGNA WALL, INC., ALL SOUTH
VINYL PRODUCTS, INC., MARQUEZ
CONSTRUCTION, INC., J.T. WALKER
INDUSTRIES, INC., J.T. INDUSTRIES d/b/a
GENERAL ALUMINUM CORPORATION AND
GENERAL ALUMINUM COMPANY OF TEXAS,
LP, J.R. HOBBS CO. -ATLANTA, LLC f/k/a JRH
MERGER CO., LLC, JAMIE HELMAN, individually,
SCOTT FERGUSON, individually, CHRIS COBBS,
Individually, FEDERAL INSURANCE COMPANY,
MARIA ARIAS, MIQUEL ROSALES, APS
ENTERPRISES UNLIMITED, INC., HR ELECTRIC,
A.M. JACOBS, INC., MICKEY MASON d/b/a MASON
CONTRACTORS, KMAC OF THE CAROLINAS,
INC., and NEO CORPORATION,

Defendants.

IN THE CIRCUIT COURT FOR THE
NINTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2008-CP-10-49

FILED
2011 APR 29 PM 4:43
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

_____)
)
PROFESSIONAL PLASTERING & STUCCO, INC.,)
)

Third-Party Plaintiff,)
)

vs.)
)

MARIA ARIAS, MIQUEL ROSALES, LUIS)
MARTINEZ, VILLAGOMEZ PAINTING, INC., D.M.)
PAINTING, and APS ENTERPRISES UNLIMITED,)
INC.,)
)

Third-Party Defendants.)
)

_____)
)
APS ENTERPRISES UNLIMITED, INC.,)
)

Third-Party Plaintiff,)
)

vs.)
)

C&N STUCCO AND PLASTERING, INC.,)
)

Third-Party Defendant.)
)

_____)
)
NORTH FLORIDA FRAMING, INC.,)
)

Third-Party Plaintiff,)
)

vs.)
)

NAVA GUZMAN CONSTRUCTION, INC.,)
)

Third-Party Defendant.)
)

The Defendants, North Florida Framing, Inc. and Marquez Construction, Inc., hereinafter, "NFF", by and through its attorneys, hereby submits this Trial Brief pursuant to Rule 16 (c) of the South Carolina Rules of Civil Procedure:

(1) STATEMENT OF THE FACTS OF THE CASE

This is an action by a class of homeowner represented by Mark F. Teseniar and Nan M. Teseniar and a homeowners' association, Twelve Oaks at Fenwick Property Owners Association,

Inc. (from December 16, 2008 to present), for money damages due to, among other things, alleged defective design and construction of an apartment complex that was later converted to condominiums. Plaintiffs allege that, among other deficiencies in design and construction, the flashing, secondary weather barrier, windows, doors, and siding were installed improperly. Plaintiffs brought this action against various entities involved in the original construction, repair and conversion to condominiums of the buildings:

- Developer: Fenwick Plantation Tarragon, LLC, Charleston Tarragon Manager, LLC, and Tarragon Development corp. (collectively "Tarragon")
- General Contractor: Summit Contractors Group, Inc. ("Summit")
- Architect: Fugleberg Koch Architects, Inc. ("FKA")
- Inspector of the buildings in conjunction with the conversion: Development, Compliance & Inspections, Inc.
- Engineering firm that inspected and directed some repairs: H2L consulting Engineers
- Homeowners' association as it was composed from August 8, 2006 to December 15, 2006: Twelve Oaks at Fenwick Property Owners Association, Inc.
- Subcontractors that installed the stucco: Professional Plastering & Stucco, Inc. ("PP&S")
- Sub-subcontractors to the stucco subcontractor who provided labor: Maria Arias, individually, and Miguel Rosales, individually, and APS Enterprises Unlimited, Inc.
- Subcontractor that installed the roof: Johnson Companies, Inc.
- Subcontractor that installed and provided HVAC system: J.R. Hobbs Co. – Atlanta, LLC
- Subcontractor that installed handrails: All South Vinyl Products, Inc.

- Subcontractor that installed the exterior paint, caulk and sealants: Los Campos, Inc.
- Subcontractor that framed the buildings and installed the secondary weather barrier, windows and siding: North Florida Framing, Inc. and Marquez Construction, Inc. (collectively, "NFF")
- Window manufacturer: General Aluminum Company of Texas, LP
- Stucco manufacturer: Best Masonry & Tool Supply, L.P., as successor in interest to Magna Wall, Inc.
- Various other subcontractors and manufacturers, and the member of the board of the homeowners' association from August 8, 2006 to December 15, 2008 as individuals.

Plaintiffs pled the following causes of action against NFF: negligence, gross negligence, carelessness, recklessness, willfulness, wantonness (second cause of action in Second Amended Complaint), breach of warranty of habitability, breach of warranty against latent defects, breach of warranty of workmanlike services, breach of warranty for fitness for a particular purpose, breach of warranty of merchantability and serviceability (fourth cause of action), and unfair trade practices (eighth cause of action).

Summit filed cross claims against PP&S, Johnson Companies, Inc., Los Campos, NFF, All South Vinyl Products, Inc., General Aluminum, and J.R. Hobbs, Co. for negligence, breach of contract, breach of express and implied warranties, and indemnity.

(2) EXHIBITS

The Defense may use the following exhibits at trial in this matter:

- a. Affidavits of Myles I. Glick, AIA
- b. Deposition transcript of Donnie King, January 20, 2011

- c. Deposition transcripts of Tacy McGinty, March 11, 2010, and September 21 - 22, 2011
- d. Deposition transcript of Deryl Parnell, January 21, 2011
- e. Deposition transcript of Clyde "Buddy" Reeves, October 20, 2010
- f. Deposition transcript of Timothy Burns, April 15, 2011
- g. Deposition transcript of Claude McNabb, March 24, 2011
- h. Deposition transcript of Edmund Willis, April 13, 2011
- i. Deposition transcript of Robert Burrige, April 4, 2011
- j. Deposition transcript of Steven Watkins, April 26, 2011
- k. Deposition transcript of Patrick Fitch, February 10 -11, 2011
- l. Deposition transcripts of Myles Glick, February 12, 2010, April 2, 2010, and June 30, 2010
- m. All exhibits identified in the depositions taken in this case, including, but not limited to:
- n. Exhibits 52, 69, 85, 102, 106 113, 114, 121, 122, and 123 to Tacy McGinty's deposition
- o. Exhibits 1 and 3 to Edmund Willis' deposition
- p. Exhibits 4 and 16 to Claude McNabb's deposition
- q. Summit 26958 through Summit 26974
- r. FKA 4316 through 4342
- s. Exhibit 5 to Donnie King's deposition
- t. Exhibit 5 to Myles Glick's February 12, 2010 deposition
- u. Exhibits 1 to Steven Watkins' deposition
- v. Exhibits 2, 3, 4, 5, 7, 8, 31, 32, 33, 34, 35, 36, 37, 42, 43, 44, 45, 46, 50, 57, 58, 60, 61, 62, and 63 to Patrick Fitch's deposition

(3) WITNESSES

At this time, NFF anticipates calling the following witnesses:

- a. David Anderson (NFF)
- b. Timothy Rickborn (NFF expert)
- c. Myles I. Glick (Plaintiffs' expert, appearing by deposition)
- d. Donnie King (Professional Plastering & Stucco, appearing by deposition)
- e. Tacy McGinty (Summit, appearing by deposition)
- f. Deryl Parnell (Summit, appearing by deposition)
- g. Clyde Reeves (Summit, appearing by deposition)
- h. Timothy Burns (Tarragon, appearing by deposition)
- i. Claude McNabb (Tarragon, appearing by deposition)
- j. Edmund Willis (Summit, appearing by deposition)
- k. Robert Burrige (Tarragon, appearing by deposition)
- l. Steven Watkins (Plaintiffs' and Summit's expert, appearing by deposition)
- m. Patrick Fitch (Fugleberg Koch Architect, Inc., appearing by deposition)

(4) UNUSUAL PROBLEMS RELATING TO EVIDENCE

None.

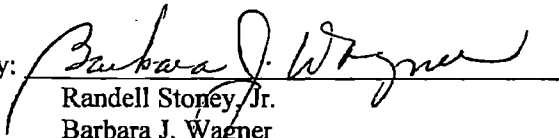
(5) UNUSUAL QUESTIONS OR MATTERS WHICH SHOULD BE BROUGHT TO THE ATTENTION OF THE COURT

None.

(6) SETTLEMENT NEGOTIATIONS

This case was mediated twice: July 19-20, 2010, and January 25-26, 2011. Plaintiffs demanded \$4,000,000.00 at the July 2010 mediation. NFF did not make a counteroffer. NFF offered \$50,000.00 at the January 2011 mediation. Settlement negotiations continued following the second mediation. NFF desires to negotiate a reasonable settlement, but has been unsuccessful to date.

BARNWELL WHALEY PATTERSON & HELMS, LLC

By: 
Randell Stoney, Jr.
Barbara J. Wagner
P.O. Drawer H
Charleston, SC 29402-0197
(843) 577-7700
Fax: (843) 577-7708

ATTORNEYS FOR DEFENDANTS NORTH FLORIDA
FRAMING, INC. AND MARQUEZ CONSTRUCTION, INC.

April 29, 2011
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MARK F. TESENIAR AND NAN M. TESENIAR,
on behalf of themselves and others similarly situated,
and TWELVE OAKS AT FENWICK PROPERTY
OWNERS ASSOCIATION, INC. (from December 16,
2008 to present),

Plaintiffs,

vs.

FENWICK PLANTATION TARRAGON, LLC, A
SOUTH CAROLINA LIMITED LIABILITY
COMPANY, f/k/a FENWICK TARRAGON
APARTMENTS, LLC, A SOUTH CAROLINA
LIMITED LIABILITY COMPANY, CHARLESTON
TARRAGON MANAGER, LLC, A DELAWARE
LIMITED LIABILITY COMPANY, TARRAGON
DEVELOPMENT CORPORATION, A NEVADA
CORPORATION, SUMMIT CONTRACTORS
GROUP, INC., SUMMIT CONTRACTORS, INC.,
FUGLEBERG KOCH ARCHITECTS, INC.,
DEVELOPMENT, COMPLIANCE & INSPECTIONS,
INC., H2L CONSULTING ENGINEERS, TWELVE
OAKS AT FEWICK PROPERTY OWNERS
ASSOCIATION, INC. (from August 8, 2006 to
December 15, 2008), PROFESSIONAL PLASTERING
& STUCCO, INC., JOHNSON COMPANIES, INC.,
LOS CAMPOS, INC., NORTH FLORIDA
FRAMING, INC., BEST MASONRY & TOOL
SUPPLY, L.P., as successor in interest to BEST
MASONRY & TOOL SUPPLY, INC., as successor in
interest to MAGNA WALL, INC., ALL SOUTH
VINYL PRODUCTS, INC., MARQUEZ
CONSTRUCTION, INC., J.T. WALKER
INDUSTRIES, INC., J.T. INDUSTRIES d/b/a
GENERAL ALUMINUM CORPORATION AND
GENERAL ALUMINUM COMPANY OF TEXAS,
LP, J.R. HOBBS CO. -ATLANTA, LLC f/k/a JRH
MERGER CO., LLC, JAMIE HELMAN, individually,
SCOTT FERGUSON, individually, CHRIS COBBS,
Individually, FEDERAL INSURANCE COMPANY,
MARIA ARIAS, MIQUEL ROSALES, APS
ENTERPRISES UNLIMITED, INC., HR ELECTRIC,
A.M. JACOBS, INC., MICKEY MASON d/b/a MASON
CONTRACTORS, KMAC OF THE CAROLINAS,
INC., and NEO CORPORATION,

Defendants.

IN THE CIRCUIT COURT FOR THE
NINTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2008-CP-10-49

**DEFENDANTS NORTH FLORIDA
FRAMING, INC.'S AND MARQUEZ
CONSTRUCTION, INC.'S
MOTION TO BIFURCATE TRIAL
AS TO LIABILITY AND DAMAGES**

FILED
2011 MAY -2 PM 3:30
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

PLEASE TAKE NOTICE that counsel for the Defendants North Florida Framing, Inc. and Marquez Construction, Inc. (collectively "NFF"), by and through their undersigned counsel, shall move before the Court of Common Pleas, Ninth Judicial Circuit, for an Order Bifurcating the trial of Plaintiffs' claims for liability and damages into separate trial phases. Defendants ask that the case be tried in two phases to avoid prejudice to the Defendants and jury confusion on the threshold issue of liability threatened by the introduction of evidence relevant only to Plaintiffs' claims for compensatory damages, as well as promote judicial economy. Phase I would consist of a trial as to liability on all claims against NFF, and any other defendants at trial. Phase II would consist of a trial on Plaintiffs' claim for damages, including liability for punitive damages and the amount of punitive damages, if any. Evidence relevant only to Plaintiffs' damages claim, including damages estimate(s) and testimony and/or evidence from damages expert(s), should be excluded until Phase II. As discussed more fully below, bifurcating the trial into two phases will avoid prejudice to NFF and jury confusion, while saving judicial resources.

ARGUMENT

"Trial judges have discretion as to whether to bifurcate a trial." See Durham v. Vinson, 360 S.C. 639, 644 n.2, 602 S.E.2d 760 (2004). This includes wide-ranging discretion to separate issues of liability and damages to prevent prejudice and jury confusion, and to promote judicial expediency and economy. South Carolina Rule of Civil Procedure 42(b) provides:

The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim,...or of any separate issue...always preserving inviolate the right of trial by jury as declared by the Constitution or as given by a statute of the State.

The Durham Court further encouraged trial courts to bifurcate complex cases, "particularly when bifurcation helps to clarify and simplify the issues. Durham, 360 S.C. at 644 n.2.

Bifurcation is appropriate here because the evidence on Plaintiffs' claims for damages will include substantial evidence and testimony related to the substantial damages estimate, \$15,748,225.56 (Pls' Pre-Trial Br. 7 (April 29, 2011)), which is alleged to be due to Defendants' alleged conduct. The mixing of evidence of liability and damages would create a substantial risk of prejudice and jury confusion under South Carolina Rule of Evidence 403. In this case, Plaintiffs' claims for liability will center on whether these Defendants, and any non-settling Defendants, were negligent and grossly negligent in failing to design, construct, and/or repair the buildings in a workman like fashion and in accordance with the building code, industry standards and accepted construction industry standards and practices, whether those remaining Defendants breached warranties, and whether those remaining Defendants engaged in action(s) constituting unfair and deceptive practice within the meaning of the South Carolina Unfair Trade Practices Act, S.C. Code § 39-5-20(a). (Pls' 4th Amended Class Action Complaint ¶¶ 85-101, 107-110, 137-141 (March 15, 2010)). The evidence will also center on whether any such alleged negligence proximately caused Plaintiffs' claimed damages. NFF expects Plaintiffs will attempt to introduce wide-ranging evidence in support of their claim for damages. NFF anticipates Plaintiffs will want to taint the jury during the liability phase with evidence of their *total* repair estimate, which totals eight figures. This evidence, however, bears no relation to the specific liability issues related to NFF – whether NFF performed its work in a negligent manner.

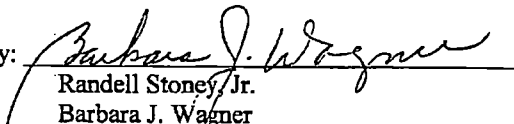
In addition, Plaintiffs have taken over the defense of Summit Contractors, Inc., which has filed cross-claims against NFF for negligence, breach of contract, breach of warranties, and indemnity. (Def. Summit's Answer to 2nd Amended Complaint and Cross Claims ¶¶ 124-143 (July 14, 2009)).

To allow the fact-specific evidence on Plaintiffs' claims for damages to contaminate the evidence related to liability in this case would work a gross prejudice to NFF and threaten its right to a fair trial. Commingling these two types of evidence will serve only to confuse and rile the jury, thus impairing its ability to assess whether Plaintiffs have proved their negligence claims. The potential for prejudice and jury confusion to NFF is reason enough to bifurcate the trial of this case.

Bifurcation is appropriate in this instant action because the issues of liability and damages are distinct and a trial of each alone will not result in injustice. Deferring the trial of Plaintiffs' claim for damages also has the potential to greatly expedite the trial, conserve judicial resources and simplify complex issues involved in this case. Simply put, because a finding of liability is required for damages to be awarded, a defense verdict on Plaintiffs' claim for liability necessarily will eliminate the need for presentation of additional evidence and argument on damages. It would be significantly shorter to try the liability phase of this case separately because of the extensive evidence and testimony regarding Plaintiffs' damages. See generally Creighton v. Coligny Plaza Ltd. Partnership, 334 S.C. 96, 512 S.E.2d 510 (Ct. App. 1998). This is highlighted by the magnitude of evidence and the time in which the parties have to present it. The instant action is set for a date certain for three weeks, beginning on May 9, 2011. To date, approximately 36 depositions have been taken. This includes at least three experts for the Plaintiffs and potentially approximately eight to ten experts for the remaining Defendants. The liability phase alone, without any evidence or testimony related to damages, will likely consist of 25-30 fact witnesses. Bifurcation, therefore, has the potential to shorten these proceedings substantially and eliminate the need for evidence that is only relevant to damages. Moreover, bifurcation will simplify for the jury the complex construction issues and theories that the

damages phase would necessarily require (without the risk of confusion or prejudice in the process). Finally, in considering convenience, expedition, and judicial economy, bifurcation is proper because it would eliminate the expense of numerous witnesses, located both out of state and in-state, as well as additional fact witness to testify to damages if the jury enters a verdict in favor of the Defendants in the liability trial.

BARNWELL WHALEY PATTERSON & HELMS, LLC

By: 
Randell Stoney, Jr.
Barbara J. Wagner
P.O. Drawer H
Charleston, SC 29402-0197
(843) 577-7700
Fax: (843) 577-7708

ATTORNEYS FOR DEFENDANTS NORTH FLORIDA
FRAMING, INC. AND MARQUEZ CONSTRUCTION, INC.

May 2, 2011
Charleston, South Carolina

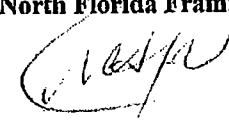
Kim Sansbury

From: Jlucey [jlucey@lucey-law.com]
Sent: Friday, May 06, 2011 3:05 PM
To: Kim Sansbury
Subject: Fwd: Teseniar - North Florida Framing

Sent from my iPhone

Begin forwarded message:

From: Jlucey <jlucey@lucey-law.com>
Date: May 6, 2011 3:02:10 PM EDT
To: "Randell C. Stoney, Jr." <rstonej@barnwell-whaley.com>
Cc: "Gary S. Kull" <gkull@cmk.com> — *NY Law firm?*
Subject: Re: Teseniar - North Florida Framing

Agreed.  

Sent from my iPhone

On May 6, 2011, at 2:58 PM, "Randell C. Stoney, Jr." <rstonej@barnwell-whaley.com> wrote:

Justin,

Below is what I believe to be the terms of the proposed settlement:

- 1) Plaintiffs have settled with Crum & Forster and Scottsdale on behalf of North Florida Framing and Marquez Const. for a contribution of \$400,000;
- 2) Plaintiff enters a Covenant not to Execute with N.F.F. and Marquez as to all assets of both companies except any non-paying insurance policies, including Mt. Hawley;
- 3) Plaintiff is granted an assignment of those rights and claims belonging to N.F.F. and Marquez against all other parties, including but not limited to:
 - (a) claims against its subcontractors to include Nava Guzman;
 - (b) N.F.F. & Marquez Insured status on subcontractor policies;
 - (c) Crum & Forster and Scottsdale's rights relating to this suit, including but not limited to rights of subrogation, indemnity, contribution, and pro rata allocation (for both payment and defense) against non-settling parties and carriers, including Mt. Hawley;
- 4) Upon the Plaintiffs completion of their collection of funds from non-settling parties and carriers, to whatever extent they may collect any funds, Plaintiff will satisfy and retire any outstanding judgment(s) against N.F.F. and Marquez, and shall file a Stipulation of Dismissal with Prejudice in favor of N.F.F. and Marquez;
- 5) Plaintiffs consent to counsel for N.F.F. and Marquez employed by Crum & Forster and Scottsdale, withdrawing from the case, and shall permit Mt. Hawley to substitute new counsel should it reverse its position of refusing to defend and indemnify in this matter, provided however, this shall not provide a basis for a delay in the trial of this lawsuit.

I look forward to your comments,

Randell

From: Justin Lucey [mailto:jlucey@lucey-law.com]
Sent: Friday, May 06, 2011 1:18 PM
To: Randell C. Stoney, Jr.
Subject: Re: Tesenlar - North Florida Framing

Randall:

Below is an edited version of the letter. Most changes are called out in italics.

Justin

Gary:

This is to confirm that we have settled Plaintiffs' claims against *the carriers for North Florida Framing & Marquez Construction (hereinafter collectively referred to as NFF)*, Crum & Forster Insurance and Scottsdale Insurance and *covenanted not to execute on NFF*, for \$_____ and an assignment of rights, with Plaintiffs reserving all claims against all other parties. The assignment of rights includes, but is not limited to, NFF's claims against its subcontractors, including Nava Guzman; NFF's insured status on its subcontractor policies; and Crum & Foster and Scottsdale's rights relating to this suit including, but not limited to, rights of subrogation, indemnity, contribution, and pro rata allocation (for both payment and defense) against non-settling parties and carriers, including Mt. Hawley Insurance.

In consideration thereof, Plaintiffs will provide NFF with a Covenant Not to Execute on NFF's assets *except on non-paying NFF insurance policies, including Mt. Hawley. Plaintiff consents to NFF counsel employed by C&F and Scottsdale to withdraw from the case and shall permit Mt. Harley to subsitute new counsel should it reverse its refusal to defend and indemnify in this matter, provided however, this shall not provide a basis for a delay in the trial of this matter.* After Plaintiffs complete their collection against non-settling parties and carriers, Plaintiffs will satisfy any outstanding judgments against NFF and shall file a Dismissal of NFF with Prejudice.

Settling parties shall provide Plaintiffs with copies of all communications with Mt. Hawley.

Sample assignment forms are attached. Any dispute as to language in the settlement documents shall be submitted to the mediator or presiding judge for final binding resolution and shall not be a ground for setting aside this settlement, which shall be irrevocable once countersigned.

Gary, if this confirmation comports with your understanding of our agreement, I would appreciate it if you would first confirm by email; and then print this email, and, in accordance with our local rules and practice, affix your signature and scan the same back to me and I will do the same.

Justin Lucey

On Fri, May 6, 2011 at 11:38 AM, Alden Stair <astair@lucey-law.com> wrote:

Mr. Stoney:

Please see attached letter and assignment of claims which Justin asked me to send to you in connection with the above-referenced matter.

Thanks,

Alden

Alden J. Stair

Justin O'Toole Lucey, P.A.

415 Mill Street

Mount Pleasant, SC 29464

843.849.8400 phone

843.849.8406 fax

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) CASE NO.: 2008-CP-10-0049

MARK F. TESENIAR and NAN M.)
TESENIAR, et al,)
)
 PLAINTIFFS,)
)
VS.)
)
FENWICK PLANTATION TARRAGON,)
LLC, ET AL,)
)
 DEFENDANTS.)

JURY TRIAL

VOLUME 1

held before the Honorable Kristi L. Harrington
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Charleston County Courthouse
Charleston, South Carolina
on Monday, May 9, 2011, Commencing at 11:28 a.m.

SUSAN "MIA" PERRON, CVR-CM
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 31865
Charleston, South Carolina 29417-1865
1-706-231-6028

COPY

1 applies, but I don't think that's going to affect the
2 trial.

3 THE COURT: All right. Mr. Leath?

4 MR. LEATH: Ours is only with regard to the
5 opening, Your Honor.

6 We propose to use in our opening some slides and
7 photographs of the property and some of the
8 investigation. And we gave it to counsel either on
9 Friday or before that, I think, to Mr. McCloud, also,
10 for your review. Hopefully we don't have a problem
11 with that but if we do, I would like to address it
12 now.

13 THE COURT: Were there any objections to the
14 photograph --

15 And they were all contained on the disk; is that
16 correct?

17 MR. LEATH: Yes, Your Honor.

18 We may have modified them to add two. One is a
19 site plan and one is an overview, like an aerial
20 overview. But those would be the only modifications.

21 THE COURT: Any objections?

22 MR. ANDERSON: Your Honor, they're a part of
23 Mr. Glick's evidence anyway, and we've agreed to these
24 photos coming in, so we'll let it stand.

25 THE COURT: All right. Thank you.

MIA PERRON, CVR-CM

-59-

1 All right. And with that, are there other
2 pretrial motions?

3 MR. LEATH: That takes care of them.

4 THE COURT: Okay.

5 MR. LEATH: Thank you.

6 THE COURT: Mr. Lucey?

7 MR. LUCEY: Yes, ma'am.

8 There still are several settlement matters --

9 THE COURT: Right. I'm just trying to make sure
10 so that then those -- those of you who are not
11 involved in the putting the settlement on the record
12 can take this few moments and get ready for your
13 opening.

14 MR. LUCEY: Yes, ma'am.

15 One matter I have involves a part of a
16 settlement but it also involves a legal matter for the
17 Court so --

18 THE COURT: For this trial?

19 MR. LUCEY: Yes, ma'am.

20 THE COURT: I'll be happy to hear from you.

21 MR. LUCEY: Ma'am, the first one -- we reached a
22 settlement with North Florida Framing with the two
23 carriers that were insuring them and defending them in
24 this case. And we've reached a settlement with those
25 carriers and we've reached a covenant with North

MIA PERRON, CVR-CM

-60-

1 Florida Framing.

2 We have agreed that the attorneys for those
3 carriers, Barnwell Whaley, being Randal Stoney and
4 Barbara Wagner, we have a consent order for them to be
5 relieved as counsel.

6 If I may approach the bench?

7 THE COURT: You may.

8 [Whereupon, Mr. Lucey proffers documents to the
9 Court]

10 THE COURT: All right. You may continue.

11 MR. LUCEY: Yes, ma'am.

12 With that, ma'am, North Florida Framing is
13 actually still in the case but they have a covenant.
14 They -- it is the call of the case. They're not here.
15 We ask the Court to place them in default. We have
16 one other defendant that's already in default and
17 there's a default hearing set in front of Judge
18 Scarborough in several weeks time. We would ask that
19 North Florida Framing be referred to that same default
20 hearing for a final resolution.

21 THE COURT: All right. Does anyone -- I'll be
22 happy to hear -- have any position?

23 Mr. Anderson?

24 MR. ANDERSON: As I understand it, he's
25 indicating that North Florida Framing is still part of

MIA PERRON, CVR-CM

-61-

1 this trial, although they have -- he's trying to place
2 them in default; is that correct? We would --

3 THE COURT: Mr. Lucey?

4 MR. ANDERSON: Simply put, we would object to
5 that. Either -- we believe that they -- if they've
6 got a settlement, they've got a settlement.

7 MR. LUCEY: Mr. Anderson's client does not have
8 any claims pending against North Florida Framing and
9 it's my understanding is they do not have standing to
10 object to a default by North Florida Framing.

11 We are here at a scheduled trial. North Florida
12 Framing is not here to defend themselves and we would
13 ask that they be placed in default and that be
14 referred to the default hearing. Again, it's already
15 been referred to Judge Scarborough.

16 MS. MANN: Your Honor, I believe -- it comes
17 down to this. The nuts and bolts of it is whether
18 what -- what they're doing is, I assume, would be to
19 keep them in as name only so that they can have a
20 joint and several liability verdict and try to impugn
21 North Florida's Framing fault to both defendants,
22 which would severely prejudice us because we cannot
23 take up a defense with them at this point.

24 Do you see what I'm saying? They're going to
25 say that North -- our allegation has been that North
MIA PERRON, CVR-CM

-62-

1 Florida Framing installed the windows where the water
2 is intruding. If they keep them as a defendant in the
3 case, they're going to be able to say that all the
4 defendants together are jointly and severally liable
5 for them. We can't -- and it's very difficult for us
6 to defend North Florida Framing's work when they're
7 not a party to this lawsuit and haven't been a
8 defendant before.

9 MR. LUCEY: If I may, Your Honor?

10 THE COURT: You may.

11 MR. LUCEY: Respectfully, I think counsel
12 misheard me.

13 We're not seeking to keep them in this trial.
14 We're asking for our default and we're asking that
15 they be referred to the default hearing that's already
16 been scheduled for the other default defendants, which
17 is the developer and the developer entities.

18 MS. MANN: Then no objection, Your Honor. As
19 long as they are not trying to keep them in for a
20 joint and several liability in this case, we have no
21 objection to that at all. I apologize, Your Honor.

22 THE COURT: All right. Well, where are they?
23 Where are they in the -- the attorneys were at the
24 pretrial, right -- conference; correct?

25 MR. LUCEY: Yes. Those attorneys have settled

MIA PERRON, CVR-CM

-63-

1 for their carriers.

2 There is a third carrier that's refusing to
3 defend the insured, North Florida Framing. North
4 Florida has been given a covenant by the plaintiff, a
5 covenant not to execute, except as to the proceeds, if
6 any, that are procured from that recalcitrant third
7 carrier at some other date and time. In the present
8 context, North Florida Framing no longer has any
9 interest in this proceeding, nor do we have any
10 interest against them in this proceeding. And the two
11 active carriers that were defending have agreed to pay
12 us a substantial sum of money to settle the current
13 liability and get their attorneys out of the cases.

14 THE COURT: All right. Your order relieving
15 counsel has been -- consent order relieving counsel
16 has been signed.

17 MR. LUCEY: Thank you, ma'am.

18 THE COURT: Your request is granted. Do you
19 have an order or will a Form 4 be sufficient?

20 MR. LUCEY: Form 4 is sufficient, Your Honor.
21 Thank you.

22 THE COURT: All right. Anything before we put
23 the settlement? Other than the settlement, is that
24 the only remaining --

25 MR. TRAVIS: I'm Britt Travis, here for Young
MIA PERRON, CVR-CM

-64-

1 Clement, for Nava Gooseman, and we've also reach a
2 settlement. I don't know if you wanted to hear it
3 before we put everything on the record, as well. We
4 were actually a third-party defendant from North
5 Florida Framing. We've reached a settlement with --
6 settle the terms with plaintiffs to pay them a
7 substantial amount of money and -- under terms of --
8 agreeing to that the defendant indemnifies us in this
9 trial. Since they're not in this trial, I don't think
10 that's -- it doesn't matter.

11 And then, also, as far -- there's a declaratory
12 judgment action regarding this case that the
13 plaintiffs have brought. They agreed to dismiss that
14 one, as well, and to keep this settlement contained
15 into this litigation.

16 There's also a North Carolina declaratory
17 judgment against my carrier and they've agreed not to
18 utilize this part of the consideration to settle --
19 these -- the same attorneys agree not to utilize this
20 as a portion of that litigation and that this
21 settlement would be contained in this lawsuit and it
22 would not be used against us later on.

23 MR. KIRCHNER: Your Honor, we've agreed with
24 those terms.

25 And I think if it's easy enough, I can read the
MIA PERRON, CVR-CM

-65-

1 list of the settlements that we've agreed to, I can
2 read those into the record, if you would like.

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

4 MR. KIRCHNER: Your Honor, with APS Stucco, the
5 plaintiffs have settled for \$100,000. Magna Wall,
6 \$637,500, North Florida Framing, \$400,000 plus the
7 situations that Mr. Lucey mentioned, Albert Gooseman,
8 Mr. Travis' client, was \$137,500, and General
9 Aluminum, Mr. Cobbs's client, he mentioned that
10 before, \$12,500, for a total of \$1,287,500.

11 We've also reached a settlement with one of the
12 insurance carriers for Professional Plastering -- AIG,
13 formerly doing business as Audubon, that settlement is
14 for \$100,000, on the representation that that is an
15 actual exhaustion of their policy limits for I believe
16 the policy year of 2002 to 2003.

17 MS. MANN: Yes, Your Honor. That would be for a
18 complete exhaustion. Hypothetically, if there was a
19 little bit more money that had not been exhausted,
20 that would be offset so I assume that would also go to
21 the settlement.

22 And there are certain stipulations between
23 counsel which we don't need to put on the record. But
24 that will be for the exhaustion of the Chartis policy
25 period.

MIA PERRON, CVR-CM

-66-

1 MR. KIRCHNER: That's correct, Your Honor.

2 THE COURT: All right.

3 MR. KIRCHNER: So that actually brings the total
4 up to \$1,387,500, assuming that there is not some
5 additional full dollars to actually exhaust their
6 policies.

7 THE COURT: All right. And where are your
8 clients? Is this --

9 MR. KIRCHNER: Mr. Jessup is here.

10 THE COURT: Mr. Chestner?

11 MR. KIRCHNER: Mr. Jessup. He's the board
12 president.

13 THE COURT: I'm sorry.

14 Mr. Jessup, you have indicated -- you've heard
15 what Mr. Kirchner has indicated to the Court as to the
16 nature of the settlements?

17 MR. JESSUP: Yes, Your Honor.

18 THE COURT: Have you been informed of all of the
19 settlements and the terms and conditions thereof?

20 MR. JESSUP: Yes, Your Honor.

21 THE COURT: Are you in agreement with --

22 MR. JESSUP: Yes --

23 THE COURT: -- those settlements?

24 MR. JESSUP: Yes, Your Honor.

25 THE COURT: Have you been satisfied with the

MIA PERRON, CVR-CM

-67-

1 services of Mr. Kirchner?

2 And, Mr. Kirchner, who else has Mr. Jessup been
3 dealing with?

4 MR. KIRCHNER: All of us, Your Honor: Mr.
5 Sequi, Mr. Chakeris, Mr. Leath, Mr. Lucey.

6 THE COURT: All right. Have you been satisfied
7 with the services of your counsel?

8 MR. JESSUP: Yes, Your Honor.

9 THE COURT: Any complaints about the way they've
10 handled this matter?

11 MR. JESSUP: No, Your Honor.

12 THE COURT: All right. Thank you.

13 MR. JESSUP: Thank you.

14 MR. KIRCHNER: Thank you, Your Honor.

15 THE COURT: All right. Anything further,
16 regarding the settlement, to be placed on the record?

17 MR. KIRCHNER: Nothing from the plaintiffs, Your
18 Honor --

19 THE COURT: All right. Anything from the
20 defendants, regarding the settlement, to be placed on
21 the record?

22 MS. MANN: No, Your Honor.

23 THE COURT: All right. Counsel, you may now
24 leave.

25 UNIDENTIFIED: Thank you, Your Honor.

MIA PERRON, CVR-CM

-68-

1 THE COURT: All right.

2 MR. MCCANTS: Good afternoon, Your Honor. I'm
3 John McCants. I'll reintroduce myself. I'm counsel
4 for National Fire -- Insurance Company. We met
5 briefly the other day and I introduced one of -- I was
6 here on behalf of -- we were the insurer for
7 Professional Plastering for a one-year period. And I
8 had submitted samples or examples of special
9 interrogatories. I had suggested -- renew the
10 suggestion that the matter be taken up at an
11 appropriate time with the jury charge after the
12 evidence has been submitted.

13 THE COURT: All right. Thank you. We will
14 address that matter at the appropriate time.

15 All right. Gentlemen, anything else?

16 MR. KIRCHNER: Your Honor, the only other thing
17 is for our PowerPoint. If I may just have a few
18 moments just to hook up whatever it is I need to --

19 THE COURT: You may. I have over-anticipated
20 how long that we were going to be. So as soon as the
21 jury gets here. That will give us a few minutes. But
22 they're not supposed to be back until 2:30. Once they
23 all get here we'll get started, since we're a little
24 bit ahead, and we'll begin with opening statements.

25 And do we anticipate that Mr. Glick will be the
MIA PERRON, CVR-CM

-69-

1 demonstrate that they were doing about twenty-million
2 dollars worth of business in their best year. And
3 they had a set -- and you'll hear about them -- of
4 specific specification and installation requirements
5 from Magna Wall, as well as their contract obligated
6 them to put this up correctly. That's the rule that
7 was broken, the rule that's important. They had to
8 follow the specific directions and instructions
9 correctly in order to give the owners an effective
10 water-management system and, instead, what the owners
11 got was a water-trapping system.

12 We're going to prove these things to you. We're
13 going to prove them with a qualified architect. We're
14 going to prove to you what should have been done,
15 we're going to prove to you what was done, we're going
16 to prove to you what was not done, we're going to
17 prove to you what the damage is, we're going to prove
18 to you what the repair fix is and why and as well as
19 the cost. And while in a project this big there may
20 have been others that contributed partially to this
21 particular problem, we'll show you that Professional
22 Plastering was the major cause of the stucco
23 deficiencies, the rot and deterioration, that exists
24 on this project.

25 The defendants may say that it's not as bad as
MIA FERRON, CVR-CM

-86-

1 we say it is. You'll listen to this evidence for
2 yourself and make up your mind. They may say others
3 contributed. Others may have contributed to some
4 small degree. These folks were the major cause. And
5 they may say, well, it's not as expensive to repair as
6 we say it is. That is your job and your judgment call
7 in this case to determine that. Again, if you find
8 that they're a contributing cause -- and they are
9 major -- then they're responsible.

10 Well, what are the consequences to the
11 homeowners in this case and where are they? Happily
12 for everyone here, us as well as you-all, when we
13 started this case it was much, much larger than just
14 having this stucco issue. We had many other issues
15 and many other defendants. They had roofing problems,
16 they had framing problems, windows, and mechanical
17 problems, and happily we've been able to resolve those
18 problems with these other defendants. And that's why
19 they're not here right now.

20 You'll hear that we have an overall estimate
21 from ProCon, a highly-skilled professional corporation
22 which does this type of mediation and repair all
23 around -- not only this part of the country, but all
24 over the country, for the total repairs to this
25 project of about \$15,718,000.

MIA PERRON, CVR-CM

-87-

1 The other parties have already resolved this for
2 approximately eight million, their part of it. What's
3 left, that has not been resolved by the entity
4 largely, if not wholly, responsible for these stucco
5 problems which is the bulk of the building envelope
6 with these associated damages -- is about 7.2 million
7 dollars. That's an estimate. That's what we're here
8 about.

9 Now, when you finally hear all the evidence and
10 you listen to everything that's been said, you'll have
11 two things to decide. One of them is, the first
12 thing, was Professional Plastering a contributing
13 cause to these stucco problems and their related
14 damages at Twelve Oaks. And we believe you'll find
15 clearly, and the answer will be, yes, we have proved
16 it.

17 If you find that, as we believe you will, the
18 second question you will answer is how much will it
19 cost to remedy those problems to which Professional
20 Plastering contributed. And we believe it will be the
21 difference between the estimate we will prove to you
22 of the overall damages and what the other persons
23 paid. They paid their fair share. Professional
24 Plastering has not, which is why we need your help.

25 This is an important case for these homeowners.

MIA PERRON, CVR-CM

-88-

1 They are trying to get buildings they can live in and
2 they can sell. They, and we, appreciate your
3 attention to this large and important case.

4 THE COURT: Mr. Anderson?

5 MR. ANDERSON: Thank you, Your Honor. May it
6 please the Court.
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

- - -
- - -
- - -

MIA PERRON, CVR-CM

-89-

1 A. I would say that I started it. But others have
2 taken it quite a bit further, and they deserve the credit.

3 Q. All right. After Kiawah, what kind of work did
4 you do?

5 A. In March of 1981, I went into my business. I
6 have thirteen employees and I do both commercial work and
7 residential work.

8 Q. Okay. And what is the name of your firm?

9 A. It's Glick-Boehm, Associates.

10 Q. Okay. And where is your office?

11 A. Right up here on King Street.

12 Q. All right. Tell us a little bit about the type
13 of work that you do today, if you could.

14 A. I do a mixture of work. I'm a practicing
15 architect and I do some forensic work, which was mentioned
16 earlier in the opening.

17 Some of the work that I've done, that you may
18 have seen, is Moultrie Middle School, the farmer's market
19 in Mount Pleasant, the IMax complex next to the aquarium
20 downtown, the new animal shelter on Remount Road, projects
21 of that nature.

22 Q. And it come up a little bit earlier, and you
23 just mentioned it again, forensic architecture. Could you
24 explain in layman's terms to the jury kind of what that
25 means, as far as how you do your job or what is -- what is

MIA PERRON, CVR-CM

-100-

1 your aim with that type of work?

2 A. Forensic architecture is really the analysis of
3 what went wrong with a building, whether it's water
4 intrusion or a structural failure.

5 And it takes a combination of I call it
6 inquisitiveness, just like a detective is looking for
7 clues to why something happened, in combination with
8 construction knowledge and a strong design knowledge of
9 architecture.

10 Q. Are you basically trying to solve a mystery, of
11 sorts, as to what went wrong?

12 A. Yes.

13 I mean, you usually have a picture of what's in
14 a building, because anyone could see what's in a building.
15 You just take a picture of it. But what's not in the
16 building and what's not done properly is really what the
17 focus of the forensic investigation is.

18 Q. Mr. Glick, have you had an opportunity to
19 testify in court prior to today?

20 A. Yes, I have.

21 Q. Okay. How many times would you estimate you've
22 given architectural expert opinion in court?

23 A. Well, I've been in court between five and seven
24 times giving an opinion. I've done over 400 forensic
25 investigations, starting in 1981.

MIA PERRON, CVR-CM

-101-

1 Q. All right. And tell us a little bit about maybe
2 the type of forensic -- or some of the higher-line
3 forensic projects that -- give us sort of an idea of the
4 type forensic projects you're involved with.

5 A. Some of the projects I'm involved with right
6 now, forensically, are eight or nine multi-family
7 condominium projects very similar to Twelve Oaks; the
8 Beaufort County Complex, I'm rebuilding that right now
9 from a forensic investigation that I did in 2004; and
10 looking at different office buildings, smaller law-firm-
11 type offices, things of that nature.

12 Q. Anything that stands out as far as even the jury
13 may be aware of?

14 A. Well, I think about two years ago they took
15 every brick off of this building because of water
16 intrusion.

17 I was the forensic architect hired by Charleston
18 County to investigate the sources of water intrusion and
19 to be the architect responsible for the re-cladding of
20 this entire complex that we're sitting in today.

21 Q. And have you ever failed to be qualified as an
22 expert in court where you were offered to provide expert
23 testimony?

24 A. I've never failed to qualify as an expert in
25 design -- architecture, design, construction, forensic

MIA PERRON, CVR-CM

-102-

1 architecture, no.

2 MR. SEQUI: Your Honor, at this point we would
3 like to have Mr. Glick qualified as an expert witness
4 in the areas of architecture, forensic architecture,
5 and construction, please.

6 MR. ANDERSON: That's without objection.

7 THE COURT: Ladies and gentlemen of the jury,
8 normally a person cannot give opinion testimony.
9 Normally, when a person testifies they must testify as
10 to either what they saw, heard, or sensed by smell or
11 something of that nature. There is an exception when
12 someone is qualified because of their education or
13 experience. They will then be permitted to give their
14 opinion in certain areas, if the Court qualifies them
15 in that way.

16 This witness will be qualified in the area of
17 architecture, forensic architecture, and design
18 construction, to give opinion testimony in those
19 areas. That does not mean that you must accept the
20 opinion. It is simply evidence for you to use in any
21 way that you see fit.

22 Mr. Sequi.

23 MR. SEQUI: Thank you, Your Honor.

24 Q. [Mr. Sequi] Mr. Glick, to kind of move things
25 along most efficiently -- or most efficiently as possible,

MIA PERRON, CVR-CM

-103-

1 can we agree that all the opinions that you will give us
2 today, or on Wednesday if we don't finish with you today,
3 will be to a reasonable degree of certainty in the areas
4 of architecture, forensic architecture, and construction,
5 unless you state otherwise?

6 A. Yes.

7 Q. Thank you.

8 Are you familiar with the project known as
9 Twelve Oaks Fenwick --

10 A. Yes.

11 Q. -- located off Maybank Highway down on Johns
12 Island?

13 A. Yes, I am.

14 Q. All right. And have you had an opportunity to
15 perform an investigation of that -- of some of the
16 problems out there?

17 A. Yes. I visited the site on four occasions.

18 Q. Okay. And give us a ballpark, as far as the
19 time periods involved. When was the first time you went
20 out there?

21 A. The first time I went out there was shortly
22 after a conversation, September of 2008, with Mr. John
23 Chakeris.

24 I then went out in October of 2008 to walk
25 through the interior of a number of units to look at

MIA PERRON, CVR-CM

-104-

1 water- intrusion concerns. I also walked around the
2 entire project, just to get a feel for how the buildings
3 were built in terms of consistency. There are a lot of
4 buildings and I could tell a lot by walking around the
5 facility.

6 And then back in the latter part of October of
7 2008, I did a destructive test, which is basically going
8 on site with the help of a contractor, making some holes
9 where I think there could be some issues, to help me
10 define better -- because I can't see behind the walls
11 without doing what we call destructive test holes -- and
12 made six holes that day, analyzed them, and then did a
13 fourth visit, which was six more destructive test holes,
14 in March of 2009.

15 Q. All right. You mentioned these words holes.
16 Are those the openings we saw in the slides where the
17 stucco had been removed to expose what was behind it?

18 A. Yes.

19 Q. Why do you do that?

20 A. Well, I had the plans and the specifications.
21 But things change in the field. And you want to make sure
22 how a project is really built before you can really
23 analyze it and try to find the reasons for the problems.

24 Q. Was anybody else consulting with you
25 professionally as part of your overall investigation when

MIA PERRON, CVR-CM

-105-

1 you initially went out there?

2 A. Yes.

3 There were a lot of construction deficiencies in
4 many categories. Russell Meese was there to investigate
5 the roof. Mr. Lenny Greene was a mechanical engineer
6 looking at mechanical problems. And Mr. Tom Carlson, with
7 Callite Construction, who's assisting me with his crews,
8 to cut these holes that we talked about.

9 Q. Okay. And when did you focus -- in what areas
10 did you focus your attention on?

11 A. Well, I focused my attention on the exterior
12 shell, which was a combination of the Magna Wall stucco
13 system that was mentioned earlier; the roof intersections
14 with walls when you had a lower gabled roof hitting a wall
15 -- and we'll show -- I'll show pictures of that later --
16 the Hardiplank system, which is on some of the bay
17 windows, and those kind of areas.

18 Q. Okay. And Mr. Leath mentioned in his opening
19 statement a mention of rules for people to look to in sort
20 of providing them things. What type of materials have you
21 reviewed or relied upon in formulating your opinions as a
22 result of your investigation in this case?

23 A. Well, the biggest starting point for architects
24 and contractors is what the law says, and that is the
25 building code.

MIA PERRON, CVR-CM

-106-

1 When the permits were issued for this project,
2 it was the 2000 IBC, which is the International Building
3 Code. The year of the building code is never the year
4 that you build the project or issue the permits. So those
5 are off by a couple of years, for different reasons,
6 legislatively.

7 That book is about a three- to four-inch binder
8 and it's based on performance specifications. That book
9 refers to evaluation tests. Magna Wall, like many
10 products -- because there are hundreds of thousands of
11 products that construction people use, are then referred
12 to by the code that they have to meet certain performance
13 characteristics. So there's different testing third-party
14 arms-length laboratories that say different products meet
15 the different requirements of the building code.

16 But the code is what you have to build by. It
17 doesn't matter what the contract says. You have to build
18 by the building code. That's what we have to follow.

19 Q. In these evaluation reports, are these sort of
20 approved exceptions to the building code because of
21 something different about the system?

22 A. They're not exceptions to it. But what's very
23 significant about the evaluation report is in the
24 compliance section or the conditions of use of the Magna
25 Wall product. For instance, it specifically says that

MIA PERRON, CVR-CM

-107-

1 this product will meet the building code and its
2 performance requirements if the building product is
3 installed in accordance with the Magna Wall
4 specifications.

5 So you have to follow the specifications. And
6 one of their specifications is that the installer has to
7 be a certified installer, which means he needs to know how
8 to put the product up and shouldn't necessarily need to
9 rely on everybody else telling him that it was not put up
10 right or put up correctly. He's supposed to know by law.

11 Q. Now, Mr. Glick, there's a few things I'm going
12 to want into evidence and I'm going to ask you to bear
13 with me.

14 MR. SEQUI: I ask the jury to bear with me.

15 May I approach the witness, Your Honor?

16 THE COURT: You may.

17 Q. [Mr. Sequi] I'm going to hand you what's been
18 marked as Plaintiff's Exhibits Numbers 5 and Number 6,
19 please, and ask if you'll identify those for us, please.

20 A. Exhibit Number 5 is the National Evaluation
21 Services, Incorporated. This is a third-party testing
22 agency. It's NER-459. And this is the -- what I call the
23 compliance report that says Magna Wall meets the
24 performance characteristics of the building code, given
25 the conditions that I explained earlier.

MIA PERRON, CVR-CM

-108-

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF CHARLESTON	)	COURT OF COMMON PLEAS
Mark T. Teseniar, et al	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Case No. 08-CP-10-0049
	)	
Fenwick Plantation Tarragon, LLC	)	
et al	)	
	)	
Defendants.	)	

PARTIAL TRANSCRIPT OF JURY TRIAL
May 11-13, 2011

The within transcript is a portion of the jury trial held in the above-captioned action on May 10 through May 13, 2011, before The Honorable Kristie L. Harrington, in Courtroom 4C of the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina; attended by Counsel, as follows:

APPEARANCES:

Jesse Kirchner , Esq.
Phillip Sequi, Esq.
John Chakeris, Esq.
Jefferson Leath, Jr., Esq.
Justin Lucey, Esq.
Appearing for Plaintiffs

J.J. Anderson, Esq.
Christy Mahon
Appearing for Defendants

Vivian Cross, Court Reporter
Transcribed by
Deborah Garrison
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 901
Johns Island, South Carolina 29457
dGarrison@sccourts.org

1 the only parties that did wrong. Everybody
2 did wrong that was in the suit." The only
3 difference is -- huge difference, huge
4 difference -- the only difference is all the
5 other parties have stepped up to the plate and
6 taken responsibility for what they did wrong.

7 MR. ANDERSON: May we approach?

8 THE COURT: You may.

9 (OFF RECORD BENCH CONFERENCE)

10 THE COURT: Ladies and gentlemen,
11 please remember that I will instruct you on
12 the law applicable to this case at the close
13 of closing arguments. Mr. Lucey?

14 MR. LUCEY: Yes, ma'am. As I said,
15 there's only one party left in this case.
16 Eight million has been paid by those other
17 participants that they want to blame for some
18 of the problems. And we're good with that,
19 that eight million has been paid. And we're
20 not going to ask you for it again.

21 But as we stated, Mr. Leath,
22 plaintiffs' counsel, conceded to you on day
23 one, hour one, other people were at fault.
24 That's not the question.

25 The question is -- the two questions that

1 Mr. Leath posed in his opening, which we
2 believe, that the judge will pose to you in
3 just a few minutes. That this defendant,
4 Professional Plaster and Stucco -- that this
5 defendant materially caused some of the
6 defects that we've shown you this week. That
7 they materially contributed to that rotten
8 wood.

9 The only testimony you've heard this
10 week on proximate causation has been by Mr.
11 Glick who testified unequivocally on Monday,
12 during direct examination, Wednesday, during
13 cross examination, and this morning during
14 rebuttal, that it is the defectively-installed
15 stucco system that has proximately caused --
16 that's a legal term that's saying directly
17 caused the damage, the rot, the problems we've
18 shown you at Twelve Oaks. That is the
19 question.

20 The next question is -- which we'll
21 get to in a moment -- is damages. How much?
22 What's it going to take to fix it? But before
23 we get there, I'd like to address some other
24 admissions which I wrote down this morning
25 that y'all heard this week -- admissions by

1 either the defendant or their agents that they
2 brought to trial to testify on their behalf.

3 Mr. King -- never onsite, never saw
4 or checked his company's work. Never onsite
5 during original construction. Never onsite
6 when they went back to try to fix a couple of
7 things in the breezeways.

8 And let's pause on that breezeway
9 for a second, because I'll be honest with you,
10 I missed that. That's an additional defense
11 they have. They showed you two letters from
12 2004 regarding -- one from 2004 and one from
13 June 2002, regarding, in 2004, some re-
14 flashing they were doing, and in 2002
15 regarding whether or not the breezeways were
16 ready for them to start work -- two letters to
17 the general contractor. And they wanted
18 somehow -- they bring these letters to you, by
19 the way, about four times again in the context
20 of those depositions they read to you
21 yesterday. They want to somehow extrapolate
22 that because twice they wrote the general
23 contractor on things that we're really not
24 here litigating -- that somehow they put the
25 general contractor on notice that they were

1 going to defectively install stucco.

2 But you recall I asked Mr. King to
3 stand up and to show you the letter where he
4 told the general contractor that he wasn't
5 going to put casing beads in around the
6 windows. He didn't have a letter, did he?

7 I asked him to stand up and show you
8 the letter that he sent to the general
9 contractor that he wasn't going to put the
10 weep screed in at the base of the walls. He
11 didn't have a letter.

12 He didn't have a letter that
13 pertained to any of the defects that we've
14 shown you this week. This is smoke and
15 mirrors. That's why they read it to you four
16 times in those depositions yesterday.

17 Back to the admissions -- we've
18 already talked about the admissions regarding
19 the violation of the building code. There's
20 another important admission by Mr. King that's
21 really relevant and I think you'll find it
22 ties into what the law is that the judge is
23 going to instruct you, although hers will be
24 more in legalese.

25 He admitted to you on the witness

1 stand that each subcontractor on the job site
2 -- each one has an independent duty to comply
3 with the building code -- each one. What does
4 that tell you? It tells you that all that
5 stuff they read to you out of depositions that
6 some other people violated the building codes
7 too doesn't matter. One question. One
8 question -- did Professional Plaster violate
9 the building code?

10 He admitted to you that his sub-
11 contract required him to check the substrate,
12 in other words check the surfaces of the
13 buildings before he applied his product or
14 Professional Plastering's product. And that,
15 essentially what Mr. Glick had already told
16 you, a subcontractor buys the substrate, so to
17 speak, takes responsibility for the substrate
18 that they apply their product to. In other
19 words, if you conceal somebody else's defect,
20 it's your problem now.

21 Why was that important? The un-
22 controverted proof was that Professional
23 Plaster and Stucco covered up the missing
24 kickout flashing at the roof/wall inter-
25 sections. They also covered up the reverse

1 lap, the back lap moisture barrier, the felt
2 with a title. They covered it up with their
3 product. This is before we get to the fact
4 that they back-lapped their own product, the
5 lath paper. Before you get to that, they
6 covered up the back lapped moisture barrier on
7 the structure that was there when they went to
8 apply their product.

9 Their contract made them responsible
10 for checking all those services before they
11 applied the product. And let me pause there.
12 Because we're talking about kickout flashing,
13 and I know we had admissions. But you all
14 will recall that we showed the defendant Sheet
15 106 in the Glick photograph group that's in
16 evidence that's Plaintiffs' Exhibit 19. This
17 is my copy with all the tags -- your copy
18 right here. 106, we showed him the hole at
19 the end of the metal at the end of the roof
20 where his stucco was. And then we showed you
21 a blowup of that hole showing that the water
22 just flows right in the wall. But he kept
23 denying that that was causing any problem.

24 Well, because of time -- because we
25 tried to get this case done quickly for you

1 all, most of what you saw this week were
2 photographs out of Exhibit 20, the PowerPoint
3 -- the Glick PowerPoint that just had some of
4 the highlights. But in the jury room you're
5 going to have this complete set of photos.
6 And what's unique about these Glick photos is
7 they actually progressed with the testing. So
8 not only does he first show you the hole where
9 there should have been kickout flashing --
10 this is a separate issue. One, there's no
11 kickout flashing. He covers up --
12 Professional Plaster and Stucco covers up the
13 lack of kickout flashing. They then leave a
14 hole in the structure.

15 Well, Mr. Glick's photographs are
16 sequential. You get a blowup of that hole,
17 you get the surrounding area and then they've
18 got a peel back for you and the stucco
19 underneath that hole. And when you get there,
20 to slide 117, you see the rotted-out joists,
21 the beam's gone, the truss plate's rusted --
22 all right under that hole that Professional
23 Plastering wouldn't admit was causing problems
24 to the structure.

25 And we have slide 117 -- you've

1 heard a lot about contingencies this week.
2 See that rusted truss plate and those roof
3 trusses that are gone? Rusted truss plates
4 are in these estimates. Those are the type of
5 things that you finally uncover a structure
6 and you have that contingency allowance for
7 it. That is why the engineer, the architects
8 require a ten percent contingency in a proper
9 repair estimate.

10 This isn't isolated. We can only
11 show you so many. I believe this is test cut
12 number six. If you flip back in this book to
13 test cut number seven and you'll find the same
14 thing -- different location, same kickout --
15 missing kickout, hole in the wall, rotted
16 beams underneath.

17 Mr. King also told you that he
18 folded Professional Plaster and Stucco after
19 this suit was filed. And lo, and behold,
20 opens up -- two, no three new multi-million
21 dollar stucco companies at the same address.

22 What did Mr. Pusheck admit? Their
23 damage expert -- what did he admit in their
24 behalf? He admitted to you that at least nine
25 buildings need repairing. And that's at least

1 \$4.2 Million dollars. He admitted to you that
2 if it's twelve buildings, it at least \$5
3 Million dollars.

4 The judge will also charge you about
5 your role in examining the credibility of the
6 witnesses. You were in the same courtroom
7 with me when Mr. Pusheck denied that Exhibit
8 24, the document he produced, entitled
9 "estimate" wasn't an estimate. How do you do
10 that? You were also in the room when we used
11 the items mentioned in his own estimate,
12 Exhibit 24, from June of 2010 to contradict
13 the unit costs that he produced during the
14 middle of trial, at 7:00 a.m. on Wednesday
15 morning. When we did that, you all recall we
16 actually took -- we asked him what were the
17 items inside that \$10.50 per square foot of
18 stucco? And we took those same items on his
19 estimate from six months earlier, and we
20 showed with just square-foot prices that
21 \$10.50 during trial was \$13.13 six months ago.
22 And he still hadn't added in all the
23 accessories, which would take it to over
24 \$15.50 a foot. What does that mean to you?
25 Well, we've heard testimony all week that

1 there's a quarter of a million feet of stucco
2 on this property. His estimate with his \$5.00
3 a foot, that's already a one and a quarter
4 million dollar error in his estimate.

5 And then what happened after we
6 showed that with his own numbers? He started
7 backing away from his own estimate. He
8 started saying again that's not really an
9 estimate. 'That's a budget.' I'm sorry.
10 What's the difference between an estimate and
11 a budget?

12 Now, we're talking about the
13 credibility and we talk about Mr. Pusheck in
14 just a moment. I'll remind you of something
15 else. I want to remind you that in the last
16 case in Charleston County where he was sworn
17 under oath he changed his estimate -- this
18 half million dollar estimate that existed the
19 day before. In twenty-four hours he changed
20 that estimate to \$1.8 Million dollars -- a
21 three hundred and fifty percent increase at
22 soon as he was placed under oath.

23 And then you saw all his numbers on
24 the overhead projector. You see all these
25 numbers. You've got these numbers. I think

1 we can all conclude that he's really, really
2 good with numbers and that apparently repair
3 estimates, according to this witness, that
4 they can be manipulated. You can just change
5 your numbers. The stucco just changes from
6 \$15 a square foot to \$10 a square foot because
7 you're in the middle of trial.

8 My clients are in a numbers game.
9 My clients didn't go all the way up to
10 Maryland to get somebody to come down and
11 change his numbers three times for you. My
12 client brought to trial a South Carolina
13 contractor who told you what it's going to
14 cost to do this job in addition to his
15 Charleston architect that told you what was
16 going to have to be done on this job. And
17 that Charleston architect, you'll recall, was
18 involved in the repairs of this very structure
19 we're in here today, the Charleston County
20 Court House, just in the last couple of years.
21 He was involved in the repair of the Beaufort
22 office buildings. He was involved in the IMAX
23 design, the animal shelter design -- one dear
24 to my hear, Moultrie Middle School, where my
25 daughter goes. That was a local architect who

1 makes his living in this community,
2 representing homeowners and contractors and
3 buildings and advising and sharing his
4 testimony with you. He had as much
5 credibility as any witness in this courtroom,
6 I would submit to you.

7 Let me talk to you about the
8 damages. We have an estimate in evidence,
9 Plaintiff's Exhibit Number 15, the ProCon
10 estimate, \$15.7 Million. This is an older
11 estimate. It applied to everybody who was in
12 the case. You have frankly been told
13 repeatedly this week that the plaintiffs have
14 been paid \$8 Million dollars.

15 In opening, Mr. Leath asked you for
16 the difference. He said he would like for you
17 to award us \$15.7 Million less the eight
18 million that we've been paid. That's \$7.7
19 Million.

20 Just to make sure that everybody was
21 correct about the numbers, Mr. Gallagher also
22 produced what's been admitted into evidence as
23 Plaintiff's Exhibit 14. It itemized the
24 stucco-related-only damages in this case. It
25 totals \$8.7 Million, a million dollars more

1 than what we have remaining on the original
2 estimate.

3 We're not asking for that extra
4 million. We're still only asking for what we
5 haven't been paid on the total job, even
6 though the total stucco damages are documented
7 by Mr. Gallagher at \$8.7 Million.

8 When the defendants discussed their
9 estimate, Defendant's Exhibit Number 3, they
10 tried to confuse, as best I could tell, what's
11 actually in Mr. Gallagher's estimate by
12 talking about siding, windows and various
13 other things. There is no siding and there is
14 no windows in Mr. Gallagher's \$8.7 Million
15 stucco estimate. How do you know that? He
16 actually lists up here the sections out of his
17 original estimate where he took the numbers as
18 being stucco related.

19 For example, section seven, which
20 has the window replacement is not anywhere
21 referenced on here, and you won't find that
22 money in this estimate. There are no windows.
23 There is no window work in this estimate, even
24 though you heard Mr. Glick tell you on Monday
25 that to repair the substrate, we must remove

1 the windows, because the substrate runs under
2 the window flange and the substrates are
3 rotted. Even though Mr. Gallagher could have
4 put it in here, he did not.

5 You heard from the defendant's
6 damage expert about what he thought it would
7 cost. You also heard that the company that
8 submitted the bid for you to consider this
9 week, CRW, Carolina Restoration and
10 Waterproofing, has no employees. You heard
11 him tell you that he doesn't charge ten and
12 ten, profit and overhead, because he self-
13 performs all his work. Now, I ask you how do
14 you do that if you have no employees? But
15 nonetheless, if you go to their defense damage
16 expert's itemization of the entire job --
17 they've still got it at almost \$10 Million,
18 even with a fifth of the line items zeroed
19 out. And their second estimate is still at \$5
20 Million, even though it excludes many of the
21 stucco repair items and has the trial costs
22 he used that don't match his costs from last
23 year.

24 And one last note on the damages,
25 because that's what this is all about. It's

1 obvious that the stucco's not applied right.
2 The damage is overwhelming. The physical
3 damage. The question left is what's it going
4 to cost to repair this? Let me ask you --
5 you're aware that this damage expert that came
6 here this week on behalf of the defendants was
7 selected by Professional Plastering's team
8 here at trial, their repairman. Now, let me
9 ask you -- if you had your investment account
10 with Bernie Madoff and you lost all your
11 money, would you let Bernie's attorney
12 recommend to you who should repair it -- who
13 should invest your last few dollars? What
14 kind of credence would you give their repair
15 recommendation, when they're still trying to
16 argue about whether or not they really did
17 cause any damage.

18 What are the defects that were
19 proven at trial? Stucco defects -- stucco in
20 contact with roof shingles, no casing beads at
21 the windows, no weep screeds at the base of
22 walls, stucco too thin and too thick and the
23 differential causing cracking, installed
24 reverse weather lap, paper-backed lath paper.
25 I don't have enough fingers.

1 Six -- not taking the paper out
2 between the paper-back lath so the lap could
3 combine.

4 Seven -- not corrosive-resistant
5 fasteners.

6 Eight -- unembedded lath. In other
7 words, stucco lacking any structural
8 integrity.

9 Next -- I've forgotten my number --
10 next, sill flashing trapping water, covering
11 up the defects of others.

12 The absent kickout flashing at the
13 roofs, covering up the reverse weather lap of
14 the moisture membrane.

15 Flat decorative bands with no
16 sealant in the joint between the bands. You
17 heard from Mr. Glick just talk about that
18 again just this morning, that every building
19 here -- and the pictures are right there.
20 Every building out there -- twelve buildings
21 that has decorative bands around each floor
22 and around all the windows, there's no sealant
23 at the band intersection. All those bands are
24 water access points, three hundred sixty
25 degrees on each of three and a half floors on

1 every of the twelve structures out at Fenwick,
2 in addition to the window problems you saw,
3 the weep screed at the bottom, et cetera.

4 I need to address some legalese with
5 you briefly. Plaintiff has essentially
6 brought two claims. One's called negligence.
7 One's called breach of implied warranty. The
8 negligence claim basically says you didn't do
9 what you're supposed to do. You had a duty to
10 do something -- in other words, in this case,
11 apply the stucco properly. You breached it.
12 In other words, you didn't do it. And that
13 that breach proximately caused damage to
14 plaintiffs who, in this case, as you know, the
15 plaintiffs are the homeowners association
16 that's responsible for the common elements and
17 the two hundred and sixteen homeowners.
18 That's it. That's negligence. Duty, breach,
19 proximately caused damages.

20 There's an additional aspect of
21 negligence, though. Plaintiff believes that
22 they showed gross negligence or reckless
23 negligence, which the judge will give you the
24 definitions of, and that they're entitled to a
25 charge on punitive damages. And we believe

1 the judge will instruct you that violation of
2 the building code, in and of itself, in and of
3 itself, is sufficient evidence of recklessness
4 and willfulness for you, the jury, to award
5 punitive damages.

6 So that's negligence and gross
7 negligence. And sometimes that violation of
8 the building code is a violation of statute,
9 violation of law. Sometimes it's referred to
10 as negligence per se. So you might hear that
11 term in the charge.

12 The second cause of action or claim,
13 so to speak, legal claim that the plaintiffs
14 have asserted in this case is called breach of
15 implied warranty of workmanship, good
16 workmanship. And, basically, we believe the
17 judge will instruct you that every
18 construction activity within this state comes
19 with an implied warranty, in other words,
20 something that the law provides. An implied
21 warranty that you will do that work
22 competently and in conformance with industry
23 standards, which we've already heard, part of
24 industry standards is the building code, doing
25 it the way you're supposed to do it. So we've

1 brought a second claim based on the breach of
2 implied warranty of workmanlike service.

3 The judge, as I said, is going to
4 charge you on the law, the elements, that we
5 call them, of each of those claims. She's
6 also going to charge you on the legal matter
7 that Mr. Leath briefly addressed in the
8 opening and I briefly addressed which is we do
9 not need to prove that this defendant was the
10 sole cause of our damage. We only need to
11 prove that he was a substantial cause of the
12 damage.

13 Lastly, or second to last, I'd like
14 to briefly talk to you about the verdict form
15 that the judge is going to give you to decide
16 this case. It's going to have both of those
17 claims on there. It's going to ask you
18 whether or not we've proved our case. And
19 let's about -- what does it mean for a
20 plaintiff to prove his case? Imagine a scale.
21 It starts balanced at the beginning of this
22 trial. If we tip this scale every so slightly
23 in our favor, then we have proved our case to
24 you.

25 The judge's instructions will tell

1 you. We tipped that scale just like this.
2 That's our burden of proof as to our actual
3 damages, as to that \$7.7 Million that we're
4 asking for. That's our burden of proof.

5 Now, she might tell you we have a
6 little higher burden of proof on the punitive
7 damages, because we need to be more
8 convincing. But I'll leave that to her
9 charge. Whatever she charges you, we believe
10 we've proved it. We believe we've proved
11 beyond a doubt they were reckless and willful
12 and repeatedly violated our state laws by
13 violating the building code. So we believe we
14 have proved by clear and convincing evidence
15 our case.

16 You have seen the saga. You've seen
17 the saga. You know about our two hundred and
18 sixteen clients. But the saga's not over.
19 Y'all will write the last chapter. The judge
20 is going to give this case to you. You are
21 the ones that have the opportunity, the
22 responsibility and the opportunity to right
23 the wrongs the plaintiffs have shown you this
24 week. You are the ones that have the
25 opportunity to help those homeowners get their

1 homes fixed. You have the opportunity to
2 complete their repair recovery so they can
3 embark upon their final journey which is that
4 eighteen to twenty-four month repair process
5 that they're going to undertake.

6 You also have the opportunity to
7 punish the wrongdoer, to vindicate my clients,
8 the two hundred and sixteen homeowners and the
9 homeowners association, to right the wrong
10 without ever having to deal with this
11 situation. There's only one way for you to do
12 that. One. That's an award of punitive
13 damages, to send a message to this defendant
14 and other subcontractors in this state, or as
15 in this case, subcontractors that travel to
16 this state from out of state, to send a
17 message to prevent matters like this from
18 occurring again.

19 Now, you heard that Professional
20 Plaster and Stucco was grossing \$20 Million a
21 year -- \$20 Million a year before they folded
22 shut after this lawsuit was filed. I
23 respectfully suggest to use that number to
24 send a message. And, yes, Professional
25 Plaster and Stucco is defunct. Don't concern

1 yourselves about whether or not we'll ever see
2 a dime of it. But send a message. Right the
3 wrong that you've seen. Help my clients get
4 their houses back. Thank you.

5 THE COURT: Mr. Anderson?

6 MR. ANDERSON: May it please the
7 Court? Thank you, Your Honor.

8 Good afternoon. I want to thank you
9 for the attention that you've given to this
10 case. I know that some of our presentation
11 was really pretty agonizing for both of us.
12 But it was information that we had to present
13 to you from witnesses who are outside the
14 scope of subpoenas in this case. We had the
15 general contractor's representation, Tacy
16 McGinty, who was from Florida. And then we
17 also had the owner's representative, Mr.
18 McNabb, who is in Texas. And the only way
19 that we could present their testimony to you
20 was through deposition. And I appreciate the
21 attention that you gave to our readers during
22 that time period.

23 Now, I'd like to correct what I
24 perceive to be a misinterpretation by the
25 plaintiffs of our case. We have tried to

1 present to you and give you a view into what
2 occurs on a job site. Some of you may have
3 been on a job site before and know how it
4 works with contractors and the interplay of
5 subcontractors going back and forth. But some
6 of you may not have been. So we want you to
7 understand the complexities of that particular
8 area.

9 And when we did that we did most of
10 it through the testimony of Tacy McGinty. Her
11 testimony was important because she and Mr.
12 McNabb are the only two witnesses that you
13 have heard from that were actually there at
14 the job site while the work was being
15 performed.

16 Now, Mr. Lucey is upset that we
17 brought the corporate representative for
18 Professional Stucco and Plastering here to
19 participate in this trial. He came up because
20 he's concerned with this matter. And we
21 didn't present to you or bring up past
22 employees who are no longer with the company
23 who were actually on the job site and may
24 have done some supervision and so forth.

25 So he's asking you to punish

1 Professional Plastering for choosing a
2 business model, essentially. And we ask you
3 to look at the overall performance. And when
4 he talks about punitive damages, what he's
5 saying is the willful, wanton conduct of the
6 workers in that they intentionally were up
7 there saying, "Hey, let's make this part a
8 quarter of an inch, and put a little eighth of
9 an inch up here," and so forth. When actually
10 they're up there, they've got a trowel and
11 they've got a whole wall. And they've got to
12 get this plaster up. And they're moving down
13 the wall. And their primary goal is to keep
14 it level on the outside. So they're moving a
15 trowel back and forth, moving up and down.
16 And it's done by hand. Nothing is machine-
17 precised. It's done by hand.

18 And so you're not going to get an
19 absolute three-eighths, one-half, perfect
20 thickness all the way down unless it's done in
21 a factory or something and is bought in
22 panels. Stucco doesn't go up like that.
23 Anytime you have anybody putting a substance
24 like cement up, it's going to have variations
25 in it. Look at bricks. Look at the brickwork

1 that you have. Unless it has been machine-
2 tooled or decoratively tooled, there's going
3 to be a variation in how it's applied. That's
4 just human nature.

5 Now, so I would submit to you that
6 the workers out there were not intentionally
7 doing something to harm the current homeowners
8 out there eleven years later or ten years
9 later. And we would ask you not to consider
10 punitive damages on that basis.

11 I would ask you not to transfer what
12 may be a proper righteous indignation against
13 the people that sold it to them, Tarragon, the
14 people that built it, the people that had the
15 investigation done in 2003, the ones that had
16 the repair done in 2004, and then converted
17 them into condos in 2005 and sold them in
18 2006. They may have an intentional act in
19 that level, but certainly not with the workers
20 out on the -- at the wall putting the cement
21 up.

22 Now, the plaintiffs have also missed
23 what we were showing as far as the other
24 subcontractors. We are not blaming any
25 defects in the stucco that have been presented

1 on the other contractors. What occurs and
2 what you are to analyze when the judge tells
3 you is that was there negligence? And you
4 make the decision yes or now, that they were
5 negligent, that the application may have been
6 improper or it may have been correct, or part
7 of it was improper, part of it was correct and
8 it's mixed. And, number two, is were there
9 damages as a result of that application of
10 stucco? Was the wood rot directly caused by
11 the negligent application of the stucco?

12 And this is where you need to focus.
13 The damage is consistent. It's at the window
14 corners. It's at the edge of the balcony.
15 And it's at where the roof and the wall
16 intersection meets. It is consistent both by
17 Mr. Glick's testimony on the first day, where
18 he verified that those types of damages appear
19 under the Tyvek -- excuse me, under the
20 HardiPlank as well as under the stucco. And
21 I'd like you to analyze it when you look back
22 there for a moment -- what if we have
23 HardiPlank over the entire building, no
24 stucco? You'd have the same damages.

25 The upper floors with the HardiPlank

1 show the damage the same as the windows on the
2 lower areas under the stucco. And, basically,
3 what we're dealing with is I'd ask you when
4 you analyze it to ask yourself where does the
5 water get into the wood? Mr. Glick testified
6 this morning that the way that they wrapped
7 the windows, they brought the Tyvek up, cut an
8 X in it and folded it back in. That's what
9 they were told to do. That's what the plans
10 said. And that left a gap at the corners.
11 There's a gap in the coverage of the wood at
12 the corners. In addition, the sill flashing,
13 the peel-and-stick that was put in at the base
14 of the windows was improperly installed.

15 So we have a situation, whether it's
16 under the HardiPlank or under the stucco,
17 where that condition exists and your point of
18 entry becomes where the break at the corners
19 is with the Tyvek. It's not -- and that's
20 where the water gets into the wall sections up
21 against the wood. And you have to get the
22 water up against the wood before we have rot.
23 That is consistent throughout the buildings,
24 from the testimony.

25 Now, how did that work? You have

1 heard a lot from different contracts and we
2 read you some language as to who was
3 responsible for what part of the building.
4 Well, Tacy McGinty, the project manager, the
5 person in charge of the project, told you
6 exactly who did that work. She said the walls
7 were put up by -- and by that I mean -- excuse
8 me, the wood sheathing was put up by North
9 Florida Framing. The building wrap, whether
10 it's primary or secondary, but the building
11 wrap up against the wood was put up by North
12 Florida Framing. The windows were supposed to
13 be wrapped with the peel-and-seal. And that
14 was put in by North Florida Framing.

15 The Z-bar -- and we had this read
16 specifically out of the contract yesterday --
17 the Z-flashing at the top, the piece that is
18 at the top, that was put in and required by
19 contract to be put in by North Florida
20 Framing. And then on top of it the window was
21 taped across the top. We showed you a window
22 so that you could see what was being done
23 there. And that was taped across the top.
24 When they do that tape, if you remember the
25 pictures, that tape across the top is wider

1 than the Z-flashing. If you have a piece of
2 tape that extends across the entire top of the
3 window, you have pieces on both sides of the
4 window, and you have one across the bottom of
5 the window.

6 Well, what does that do to your
7 ability to visualize what is behind the
8 window? You can't see it. The critical point
9 where the Tyvek meets the window -- if you see
10 one of the pictures with tape, you can't see
11 whether the lap is over the top or if it's
12 inside because of the tape. So, in addition,
13 your stucco applicators come in and they put
14 up the lath, the paper-backed lath so that
15 when the people with the trowels and the
16 cement come up, they are faced with a wall
17 that is -- has a black background and silver
18 mesh. And they start putting their stucco up.

19 It's not reasonable or required for
20 Professional Plastering to pull that tape off
21 to double check. They are presented with a
22 finished product. They're told by the general
23 contractor that wall is ready. They go up,
24 they look and they make sure that the tape is
25 on, because that's the last piece that North

1 Florida Framing is supposed to put in place on
2 there. And if it's on and you've got
3 essentially the big pieces in place, then they
4 go to work.

5 So we ask you when you analyze it to
6 look at that. Now, the same occurred
7 underneath the HardiPlank. You remember the
8 HardiPlank has again the building wrap and
9 then the tape.

10 One thing I'm curious from Mr.
11 Glick's -- and this may have been mistaken by
12 him, but the primary weather barrier he
13 indicated was the first one you come to as you
14 go in. But when you're building a building,
15 you're not starting on the outside and working
16 in. You don't put up the stucco and then try
17 to put wrap behind it and plywood. You're
18 building from the inside out. So for a
19 builder, the first layer of building wrap to
20 go on is the Tyvek or the white material in
21 the pictures. That's your primary wrap. And
22 the other reason that it would be primary is
23 because it runs from the top of the building
24 to the bottom and runs from side to side.

25 Now, Mr. Lucey spent a lot of time

1 about the sealant at the buildouts. The
2 buildouts were a problem. They required
3 Professional Plastering to raise the stucco to
4 about an inch in thickness around the window,
5 with that band around the windows. If you
6 look at the pictures, some of the cuts, where
7 they show variations in thickness -- a lot of
8 those cuts are pieces of the band that they've
9 cut through and you're seeing the wall coming
10 down to the band and then the band being built
11 out. So you'll see these big bulges of
12 stucco. That's actually up against the
13 window.

14 Now, what's the complaint about the
15 bands? The complaint is lack of sealant.
16 They're not sealed properly.

17 What did we learn from Mr. Glick,
18 from Tacy McGinty, who was on the site and
19 from the information given to you in the
20 contracts? Who was responsible for that
21 sealant? Los Campos is responsible for that
22 sealant. If the sealant's missing, that is
23 Los Campos's responsibility. That is not
24 Professional Plastering's responsibility.

25 Professional Plastering is done with

1 its job and has moved on to the next building
2 or gone home by the time they come around to
3 do the sealant. Mr. Glick -- I asked him the
4 paint and sealant were done after it was
5 cured. And he said, "Well, I hope it's
6 cured." It takes a day or so to cure the
7 stucco. So the stucco applicator is no longer
8 there. He's gone from the job. And it is Los
9 Campos coming behind him who then applied that
10 caulk.

11 Now, the other thing that was
12 interesting from Mr. Glick's presentation was
13 the blocking of the flashing, the Z-flashing
14 at the head. He had several pictures of that
15 in earlier presentations, and then he removed
16 some where he showed you the before-and-after
17 manipulation of the titling of the furrow.
18 And his initial concerns about what was
19 causing the water to back up was, in fact, the
20 fact that the flashing had been sealed. They
21 put a string of caulk or sealant across an
22 opening that would not allow water to come
23 through. And it was supposed to be left as an
24 open drain, and that had been caulked shut.
25 So again this is Los Campos coming behind

1 Professional Plastering.

2 We asked Tacy McGinty a number of
3 questions about specifically the kickout
4 flashing. And if you remember her testimony,
5 her testimony indicated that kickout flashing
6 was not on the plans. It wasn't on the
7 drawings by the architect. It wasn't there.
8 She further indicated in her testimony that
9 kickout flashing was not delegated to any
10 subcontractor. It was nobody's job on that
11 job to put in kickout flashing. The
12 architects didn't spec it, didn't require it.
13 And on top of that, the general contractor
14 didn't award a contract to anyone to go behind
15 and put in the kickout flashing.

16 Now, our client indicated that ought
17 to be kickout flashing. There isn't any
18 covering up of the kickout flashing. You
19 can't cover up -- you can't stucco over
20 kickout flashing. As Mr. Glick admitted when
21 I asked him questions about it, he just said
22 -- and also Donnie King -- I said "Can you see
23 kickout flashing when you're walking around a
24 jobsite?" He said, "If you know what you're
25 looking for." And that is exactly the way

1 that they would have checked that. But there
2 wasn't anybody looking for it because it
3 wasn't on the plans and it wasn't given in a
4 contract to anybody. We don't know whether or
5 not there was a conversation onsite about
6 "hey, there's no kickout flashing here. Well,
7 it's not in the contract. Keep moving. Keep
8 putting your stucco on." That's the response
9 that they got at the breezeways, was just keep
10 moving. Keep moving.

11 Mr. Lucey's absolutely right. I
12 thought that my client had written a letter.
13 That would have been perfect. And that letter
14 wasn't written. But the two letters that he
15 referred to concerning the breezeway, that is
16 an excellent defense. It's an excellent
17 defense for Professional Plastering. They
18 said the substrate's not ready. It's not, you
19 know -- we can't do this. It won't come out
20 right, and we won't be held responsible. And
21 the general contractor said okay, we
22 understand that. We want it done anyway. So
23 what happens? Two years later they cut it all
24 out and they're back up there and they ask him
25 to replaster it after there had been some

1 minor repairs done.

2 Now, again, very clearly, the letter
3 even says "you're coming in to do the labor.
4 We're going to direct you exactly how to do
5 it, and you are not responsible for that
6 area." So that would be an area that should
7 be deducted from any consideration on damages.
8 That is something that should go into the
9 column of Summit Contracting.

10 There's no real trick about this.
11 They said, "We don't think we're responsible."
12 And Summit said, "You're right. We're
13 responsible, and we'll pick up the tab for
14 it." Now, the owner and Summit, if it had
15 been Pro Plastering's responsibility, could
16 have charged Pro Plastering for that job.
17 They could have said, "Listen, we want you to
18 come back in here and do it for free and buy
19 all the materials." That didn't happen. They
20 got paid to do that.

21 Now, Mr. Lucey was kind enough to
22 leave the numbers up here for me. There's
23 been a lot of complaints about the fact that
24 we came in with a proposal and the proposal
25 was drawn up as late as it was. Because when

1 you look at this proposal there's a couple of
2 things that you'll find in this proposal that
3 you will not find in Mr. Gallagher's list of
4 \$15 Million.

5 Number one -- and what's important
6 about it is that a number of these are
7 protective measures for the homeowner. Number
8 one is that the proposal has in there
9 information and costing for a bond, a bond
10 against the work being performed. That's not
11 in Mr. Gallagher's or ProCon's. There's no
12 bond. There's no guaranty on this job or on
13 the work to be done. There's nothing in his
14 that covers that.

15 Number two, what did he tell you?
16 He said, "We need to do a whole bunch more
17 work. I'm not going to stick to that number
18 until I get drawings and I get all these other
19 people in to help me. And, you know, you need
20 to come up with a million-five to get an
21 architect on board," and so forth. The repair
22 world on commercial property really doesn't
23 work that way.

24 This is -- now, the other thing, the
25 other thing is there's no acceptance sheet on

1 Mr. Gallagher's exhibit. There's nothing on
2 there where he says, "I will do it for this
3 price, and I will do it today." This is a
4 binding contract. If the homeowner had signed
5 this, then Mr. Pusheck and his company would
6 have been set up to do the work. That is how
7 committed and sure he was of his number. He
8 was willing to take a signature on the line
9 right then. That's what that means.

10 Now, he alerted the homeowners to
11 the fact that most of your damage and the
12 information that we have covers only nine
13 buildings. The information from Mr. Glick and
14 from the other people indicates damage in nine
15 buildings. So they priced the nine buildings
16 that they knew the damage to be there. And
17 then they gave them an alternative, if they
18 want to do all twelve buildings, then this is
19 what it'll cost to do the other twelve.
20 That's why it's priced that way.

21 Now, there wasn't really -- when we
22 look at this comparative study that was done
23 between C. A. Winman and ProCon, I found it
24 interesting that the plaintiffs would use our
25 exhibit instead of having Mr. Gallagher

1 prepare a separate one. But if you'll look,
2 the line items and so forth -- and remember
3 the testimony of Mr. Gallagher. What did Mr.
4 Gallagher tell us? He said, "Well, you know,
5 this is really -- it's really not a proposal.
6 It's a budget. You know, I put it together to
7 get an idea of where we're going. This is a
8 general, first-time attempt, and this is what
9 I believe it'll cost. Now, there may be some
10 big changes later." If you look at the number
11 of allowances and contingencies in there,
12 you'll see that his testimony on how this was
13 put together is not much different than what
14 Mr. Pusheck said when he was cross checking.
15 He was cross checking it to make sure that
16 we're not paying \$300 per square foot for
17 lumber or something like that, just to double
18 check the numbers, and to put in numbers on
19 his first go-through, like Mr. Gallagher,
20 approximately what it would cost.

21 No one has offered to fix the
22 buildings at this price. Nobody has given a
23 contract or any commitment to do that work.
24 Nobody. And there's a reason for that.

25 Now, I'm going to talk to you again

1 about -- when you talk about the difference in
2 prices between the settlement amount and the
3 \$15 Million -- that's the number that the
4 plaintiffs are asking for -- a comparative
5 study was done between -- on the bid, the \$8
6 Million bid that they gave you and the stucco
7 numbers that would be in this document. Now,
8 you will not be allowed to take this back into
9 the jury room with you, but I'm going to put
10 it back up and just point out a couple of
11 things that I would like you to remember as
12 you're considering your verdict.

13 As Mr. Pusheck told you, down here,
14 the comparison between ProCon's number, the
15 three million -- and this was done by breaking
16 out all the fees, take out everything
17 extraneous and -- same square footage, and
18 both of them had the same scope. That is, the
19 same type of fix materialwise together. And
20 they come out together within eight -- about
21 nine percent, 8.7 percent of each other.
22 That's the difference when we just do the raw
23 construction cost.

24 When you move over here and you add
25 in the fees that are being charged by ProCon,

1 you get an \$870,000 difference in how the
2 numbers are calculated and what the client
3 would have to pay -- what the homeowners at
4 Fenwick would be required to pay, for the same
5 work -- \$870,000, a 68.6 percent increase or
6 difference.

7 So what we have is \$2.895 Million to
8 do the stucco against the -- I'm sorry, I read
9 the number incorrectly. You have a \$3.662 is
10 what that number is. The \$3.662 Million to do
11 the stucco as against the \$8 Million -- \$8.7
12 Million that Mr. Gallagher would charge under
13 his current value. That's a forty percent
14 markup in the way it is in the -- it's
15 calculated, it's compounded in his \$15 Million
16 assessment. And by "compounding", that means
17 that you do each ten percent differently. So
18 you end up with being overcharged, I believe,
19 almost twenty-three percent.

20 You are tasked with doing several
21 things, and one of those is to determine
22 credibility of witnesses. Now, you will be
23 told that -- to use your common sense and
24 indicators -- whatever you use to determine
25 whether or not the person you're talking to is

1 an honest person. And you do the same thing
2 back in the jury room. There's nothing
3 special. There's no magic formula. It is
4 what you determine, you know, who's telling
5 the truth and who isn't.

6 Now, if you determine that part of a
7 person's testimony is good, is accurate, is
8 truthful, you can accept it. If you feel that
9 they've gone too far in another area, you can
10 reject it. So you can partially believe or
11 you can partially disbelieve a witness. Or
12 you can believe everything they say or nothing
13 they say. So you're not restricted in how you
14 analyze a person's truthfulness in applying
15 the information that you got. So you can do
16 it, and you can believe part of what Mr. Glick
17 says. You can say, "Well, I'm not sure I
18 understand or am following in this area." And
19 you can do the same thing with Donnie King and
20 Mr. Pusheck or any of the other witnesses.

21 I thought it particularly interest-
22 ing when Mr. Glick this morning was talking
23 about the amount of onsite supervision that
24 his office gives a project. And he felt that
25 giving this project a million five hundred

1 worth of onsite supervision was required.
2 He's got to check materials. You've got to do
3 all these other things to make sure that they
4 put them up in the right sequence -- all the
5 things that we talked about that are the
6 general contractor's job and that the
7 architect is supposed to check off.

8 If it takes that to do a repair,
9 imagine what it took to do the initial
10 building. Now, the reason that we bring out
11 the inspections is not to say, "Hey, you
12 didn't catch me, you know, therefore it
13 doesn't count." The reason we bring that up
14 is that the system that is established is to
15 create a good work product. It doesn't always
16 do that. But at the time that the stucco was
17 put up it was inspected by the architect. I
18 know that that word causes architects to have
19 shivers, but they looked at the stucco. They
20 looked at the lath. They looked at the Tyvek
21 or the building wrap. And what that indicates
22 is it was done properly in their professional
23 judgment.

24 Now, that is was done properly -- so the
25 message sent to Professional Plastering was,

1 "Your job's okay. Keep doing it the way
2 you're doing it." Same message comes from the
3 general contractor. The general contractor
4 checks it. And you heard from Tacy McGinty
5 how careful they were in checking it and the
6 seriousness with which they took it. They're
7 required to give a sworn statement that it's
8 done properly. And you'll see that -- we put
9 up on the exhibits folder. But that sworn
10 statement -- so they have sworn under oath
11 that the stucco was applied properly at the
12 time in the original construction.

13 You also had Mr. McNabb who was down
14 there reviewing it, looking at it. And he was
15 the owner's representative and was saying,
16 "This looks good to me. Let's keep moving."
17 So you've got all these people who are telling
18 you that whatever the application that they're
19 doing is, it's correct.

20 Now, you've got all these people who
21 have said that and they put it on the record
22 and signed were sworn for it. And then eight
23 years later or six years later, excuse me,
24 bingo, it's bad, without any notice to Mr.
25 King or anybody else. Just all of a sudden

1 it's horrible. The buildings are going to
2 fall down. The trusses are coming apart. The
3 beams are rotting, and the whole place is
4 going to collapse.

5 I believe that that's a little bit
6 of hyperbole by Mr. Glick in that he didn't
7 report to the building inspector, which is a
8 requirement which you would do if there was a
9 real danger out there. That's not to say it
10 doesn't need to be fixed and that there's
11 problems out there. That's just to say that
12 the level of the amount of damages need to be
13 kept in perspective.

14 But you've got -- all of these
15 various people are coming in and looking at it
16 and saying it's okay. That's the problem. So
17 you've got a contractor who was encouraged.
18 Even before they started the job what did they
19 have to do? What did Tacy McGinty tell you?
20 They did a mock-up. They built a false wall
21 and the trades come in and show how they're
22 going to do it. They demonstrate to the
23 architect and to the general contractor, "This
24 is what we're going to build." And they put
25 up this wall, this mock wall, and everybody

1 comes in and looks at it and so forth and
2 says, "That's it. Keep doing it that way on
3 the rest of the buildings." So there's a
4 practice run and they're told that what
5 they've done is either good or bad.

6 So that is not hiding behind a
7 failure to discover or 'he didn't catch me,
8 your security was bad' -- whatever the example
9 of the bank robbery was. That's not the
10 purpose of it. The only thing that we're
11 saying is that we've got all these people
12 telling you that you're doing it correctly.
13 They continue to do it, and it was accepted by
14 the owner.

15 Now, one thing that Tacy McGinty
16 said -- and I hope that you all caught it,
17 because it was toward the end of it -- and
18 that was the owner has the option to accept
19 the work regardless of how it comes out.
20 Tarragon is a corporation that's around
21 building apartments and has the option of
22 saying, "The building's okay. Here's your
23 check. I'm going to go work on it as an
24 apartment, and we're going to do that." That
25 is an option that they have. And so they can

1 accept that work. And there's nothing that
2 Mr. King or anybody else can do about that.
3 They'd paid, and told to be gone.

4 So that is who the buildings were
5 built for, was Tarragon. And when the owner
6 says the job's over, the job's over.

7 THE COURT: Five minutes, Mr.
8 Anderson.

9 MR. ANDERSON: Thank you, Your
10 Honor.
11 There's one additional detail that I wanted to
12 talk about. If you remember, Tacy McGinty
13 talked about a waterproofing meeting that they
14 had. And she said that in that waterproofing
15 meeting they approved doing the windows by
16 putting the stucco in the slide. The general
17 contractor decided that that was the way to do
18 it and instructed the stucco applicator to do
19 it. So, again, he's doing what he's supposed
20 to on the job, because he's instructed to do
21 it that way. And, in addition, the Z-flashing
22 on the top, the piece of metal that sits up
23 there, they were told to put the stucco down
24 hard onto the Z-flashing and then to be the J-
25 bead at the top of the build-out. That's how

1 they were able to do the build-out. You may
2 see in one of the photos a little tiny white
3 little clear-looking spot. That is the J-bead
4 that's in the build-out. But that assembly
5 was approved, somewhat very critically
6 approved.
7 The problems that were testified to by Mr.
8 Glick occurred at -- here's the wall sheathing
9 and then there is the building paper. I'm
10 going to take that to mean the wrap. He
11 doesn't have paper-backed lath up there. But
12 it happened between the wall paper or, excuse
13 me, the weather barrier sheet, the white
14 material that you'll see in the photos, and
15 the work. That's where all the damage is.
16 The question to ask is how does the water get
17 back there? Who put up the material that is -
18 - that material? Who made the cuts to put in
19 the windows that allowed the slits down at the
20 bottom of the corners and so forth? It was
21 not Professional Plastering. What
22 Professional Plastering is saying is that even
23 though there may be defects in our work, it
24 does not -- it's not the proximate cause.
25 It's not a proximate cause of water getting

1 behind the paper. Because in order for the
2 water to get behind the building wrap or the
3 building paper, there has to be something
4 wrong with the building paper. And there has
5 to be something -- and as Mr. Glick told you,
6 water comes through stucco. It's not
7 waterproof. And they anticipate the water's
8 going to be coming through the stucco.
9 So what we would ask you is, after you've
10 listened to the judge's instructions, listen
11 carefully to the proximate cause charge and
12 then analyze this specifically, looking at the
13 building as a whole. Because that's how the
14 system works. You have to take into account
15 the entire building and the entire system. If
16 you focus just on the stucco, you can find
17 places. It's not a perfect job. And there's
18 always some defect that you can find. But is
19 that defect what caused the water to get
20 behind the weather barrier and cause the
21 damage?

22 We think that the evidence has shown that it
23 is not the cause of those damages. Thank you.

24 THE COURT: Five minutes, Mr.
25 Leath.

1 MR. LEATH: Thank you, Your Honor.
2 Five minutes. Thank you all very much. I'm
3 proud and I commend you for everything you've
4 done and I'm proud of you for listening to it.
5 It's a big case.

6 When we started it, we told you
7 we'd prove some things. We proved them.
8 We told you that there were rules and that
9 Professional Plastering broke them. We told
10 you that the breaking of those rules caused
11 significant damages to our two hundred sixteen
12 homeowners. We told you that it was
13 important, critical in the rules, that a
14 stucco applicator had to strictly conform to
15 the manufacturer's specifications and the
16 building code and the rules and regulations.
17 That's been proved.

18 We've proved to you every aspect of
19 the case that we told you we would do. And
20 now, we also asked you during the opening,
21 that you have two things to decide. One is
22 was Professional Plastering, a, not the, major
23 contributor to these problems? That's not
24 only been proved. That's been admitted. I
25 think you can get beyond that aspect of your

1 deliberations very quickly. Because the
2 defendants have not put up any witness to
3 contrast that, to contest that. They haven't.
4 You haven't heard it.

5 All of the evidence is to the effect
6 that they are a major cause of this problem.
7 The real question for deliberations here is
8 what's the appropriate cost that should be
9 allocated to them.

10 Now, if you'll recall, the analysis
11 done by Mr. Gallagher was that the stucco
12 itself, just that portion of it, repair would
13 cost \$8.7 Million. But we're not asking for
14 that. We're asking for less than that, and
15 Mr. Lucey explained that.

16 And why is that? Because it
17 wouldn't be fair and wouldn't be appropriate
18 for us to ask you for more than the total
19 repair on these buildings, which is \$15,778.00
20 as you'll see in Mr. Gallagher's estimate.
21 And, yes, some of the other folks have paid
22 some part of Professional Plastering's part.
23 You have heard and another thing that we told
24 you in the opening is that the defendants
25 would likely try to blame others. They have

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MARK F. TESENIAR and NAN M. TESENIAR, on behalf of
themselves and others similarly situated, and TWELVE
OAKS AT FENWICK PROPERTY OWNERS ASSOCIATION,
INC., (from December 16, 2008 to present),

Plaintiffs,

vs.

FENWICK PLANTATION TARRAGON, LLC, A SOUTH
CAROLINA LIMITED LIABILITY COMPANY F/K/A
FENWICK TARRAGON APARTMENTS, LLC, A SOUTH
CAROLINA LIMITED LIABILITY COMPANY, CHARLESTON
TARRAGON MANAGER, LLC, A DELAWARE LIMITED
LIABILITY COMPANY, TARRAGON DEVELOPMENT
CORPORATION, A NEVADA CORPORATION, SUMMIT
CONTRACTORS GROUP, INC., SUMMIT CONTRACTORS,
INC., FUGLEBERG KOCH ARCHITECTS, INC.,
DEVELOPMENT, COMPLIANCE & INSPECTIONS, INC.,
H2L CONSULTING ENGINEERS, TWELVE OAKS AT
FENWICK PROPERTY OWNERS ASSOCIATION, INC. (from
August 8, 2006 to December 15, 2008), PROFESSIONAL
PLASTERING & STUCCO, INC., JOHNSON COMPANIES,
INC., D/B/A JOHNSON ROOFING, INC., LOS CAMPOS,
INC., NORTH FLORIDA FRAMING, INC., BEST MASONRY
& TOOL SUPPLY, L.P. AS SUCCESSOR IN INTEREST TO
BEST MASONRY & TOOL SUPPLY, INC., AS SUCCESSOR
IN INTEREST TO MAGNA WALL, INC., ALL SOUTH VINYL
PRODUCTS, INC., MARQUEZ CONSTRUCTION, INC., J.T.
WALKER INDUSTRIES, INC., J.T. INDUSTRIES D/B/A
GENERAL ALUMINUM CORPORATION, AND GENERAL
ALUMINUM COMPANY OF TEXAS, LP, J.R. HOBBS CO.-
ATLANTA, LLC F/K/A JRH MERGER CO., LLC, JAMIE
HELMAN, INDIVIDUALLY, SCOTT FERGUSON,
INDIVIDUALLY, AND CHRIS COBBS, INDIVIDUALLY, AND
FEDERAL INSURANCE COMPANY, MARIA-ARIAS,
MIQUEL ROSALES, APS ENTERPRISES UNLIMITED, INC.,
HR ELECTRIC, A.M. JACOBS, INC., MICKEY MASON
D/B/A MASON CONTRACTORS, KMAC OF THE

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
2008-CP-10-0049

CONSENT ORDER RELIEVING COUNSEL

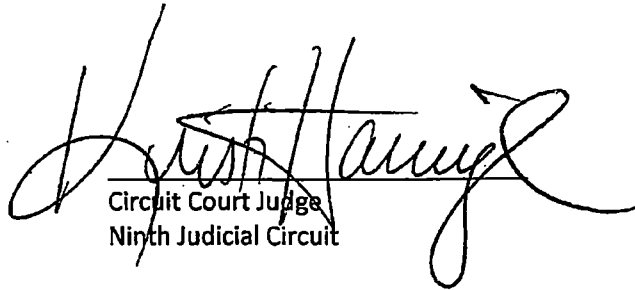
2011 MAY 18 PM 3:29
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

FILED

Handwritten signature

On motion of North Florida Framing, Inc. and Marquez Construction, Inc. and with consent of Plaintiff it is hereby ordered that Barnwell Whaley Patterson and Helms, LLC and attorneys Randell C. Stoney, Jr. and Barbara J. Wagner are relieved as counsel for North Florida Framing, Inc. and Marquez Construction, Inc.

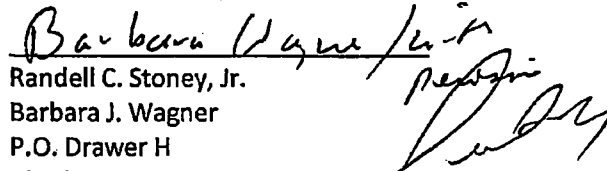
AND IT IS SO ORDERED!


Circuit Court Judge
Ninth Judicial Circuit

May 9, 2011
Charleston, South Carolina

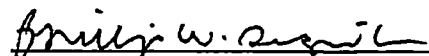
WE SO MOVE:

BARNWELL WHALEY PATTERSON AND HELMS, LLC

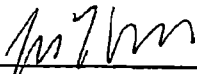

Randell C. Stoney, Jr.
Barbara J. Wagner
P.O. Drawer H
Charleston, SC 29492
(843) 577-7700
Email: rstoney@barnwell-whaley.com

WE SO CONSENT:

SEGUI LAW FIRM PC

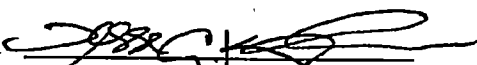

Phillip W. Segui, Jr., Esquire
864 Lowcountry Blvd., Suite A
Mt. Pleasant, SC 29464
(843) 884-1865
Email: psegui@segulawfirm.com

THE CHAKERIS LAW FIRM



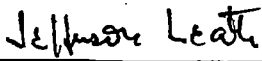
John T. Chakeris, Esquire
231 Calhoun Street
P. O. Box 397
Charleston, SC 29402
(843) 853-5678
Email: john@chakerislawfirm.com

THURMOND KIRCHNER TIMBES & YELVERTON, P.A.



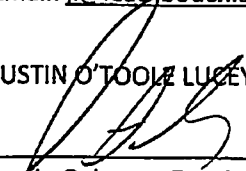
Jesse A. Kirchner, Esquire
15 Middle Atlantic Wharf, Suite 101
Charleston, SC 29401
(843) 937-8000
Email: jkirchner@tktylawfirm.com

LEATH, BOUCH & SEEKINGS, LLP



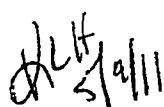
W. Jefferson Leath, Jr., Esquire
P. O. Box 59
Charleston, SC 29402
(843) 937-8811
Email: jl@leathbouchlaw.com

JUSTIN O'TOOLE LUCEY, P.A.



Justin O. Lucey, Esquire
415 Mill Street
Mt. Pleasant, SC 29464
(843) 849-8400
E-mail: jlucey@lucey-law.com

Attorneys for Plaintiffs


JLT
5/9/11



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 08-CP-10-0049

MARK F. TESENIAR and NAN M.
TESENIAR, on behalf of themselves and
others similarly situated, and TWELVE
OAKS AT FENWICK PROPERTY
OWNERS ASSOCIATION, INC., (from
December 16, 2008 to present),

Plaintiffs,

vs.

NOTICE OF MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF A PARTIAL
SETTLEMENT OF A CLASS ACTION

FENWICK PLANTATION TARRAGON,
LLC, A SOUTH CAROLINA LIMITED
LIABILITY COMPANY, f/k/a FENWICK
TARRAGON APARTMENTS, LLC, A
SOUTH CAROLINA LIMITED LIABILITY
COMPANY, CHARLESTON
TARRAGON MANAGER, LLC, A
DELAWARE LIMITED LIABILITY
COMPANY, TARRAGON
DEVELOPMENT CORPORATION, A
NEVADA CORPORATION, SUMMIT
CONTRACTORS GROUP, INC.,
SUMMIT CONTRACTORS, INC.,
FUGLEBERG KOCH ARCHITECTS,
INC., DEVELOPMENT, COMPLIANCE &
INSPECTIONS, INC., H2L
CONSULTING ENGINEERS, TWELVE
OAK AT FENWICK PROPERTY
OWNERS ASSOCIATION, INC., (from
August 8, 2006 to December 15, 2008),
PROFESSIONAL PLASTERING &
STUCCO, INC., JOHNSON
COMPANIES, INC., d/b/a JOHNSON
ROOFING, INC., LOS CAMPOS, INC.,
NORTH FLORIDA FRAMING, INC.,
BEST MASONRY & TOOL SUPPLY,
INC., as successor in interest to MAGNA
WALL, INC., ALL SOUTH VINYL
PRODUCTS, INC., MARQUEZ
CONSTRUCTION, INC., J.T. WALKER
INDUSTRIES, INC., J.T. INDUSTRIES
d/b/a GENERAL ALUMINUM
CORPORATION, and GENERAL
ALUMINUM COMPANY OF TEXAS, LP,

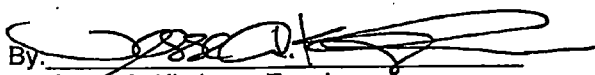
FILED
2011 MAY 19 AM 11:39
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

.Defendants.

YOU WILL PLEASE TAKE NOTICE, that the Plaintiffs, by and through their undersigned counsel, will move before this Honorable Court, pursuant to Rule 23 SCRPC, ten (10) days hereafter at the Charleston County Judicial Center located at 100 Broad Street, for an Order preliminarily approving the terms of the partial settlement reached by and amongst certain parties as outlined in Exhibit "1" attached hereto and allowing for the mailing and distribution of notice of partial class settlement as outlined in Exhibit "2" attached hereto setting forth the process for objection by class members and a hearing date for final approval.

(Signature page to follow).

THURMOND KIRCHNER TIMBES & YELVERTON, P.A.

By. 

Jesse A. Kirchner, Esquire
15 Middle Atlantic Wharf, Suite 101
Charleston, SC 29401
843-937-8000
jkirchner@tktylawfirm.com

-and-

W. Jefferson Leath, Esquire
LEATH BOUCH & CRAWFORD
92 Broad Street
Charleston, SC 29401
843.937-8811

Justin O. Lucey, Esquire
JUSTIN O'TOOLE LUCEY, P.A.
415 Mill Street
Mt. Pleasant, SC 29464
843.849-8400

John T. Chakeris, Esquire
THE CHAKERIS LAW FIRM
231 Calhoun Street
Charleston, SC 29401
843.853.5678

Phillip W. Segui, Jr., Esquire
THE SEGUI LAW FIRM
864 Lowcountry Blvd., Suite A
Mt. Pleasant, SC 29464
843.884.1865

Attorneys for the Plaintiffs

May 19, 2011
Charleston, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 08-CP-10-0049

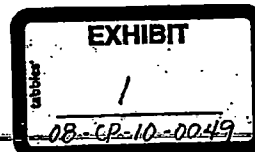
MARK F. TESENIAR and NAN M.
TESENIAR, on behalf of themselves and
others similarly situated, and TWELVE
OAKS AT FENWICK PROPERTY
OWNERS ASSOCIATION, INC., (from
December 16, 2008 to present),

Plaintiffs,

vs.

FENWICK PLANTATION TARRAGON,
LLC, A SOUTH CAROLINA LIMITED
LIABILITY COMPANY, f/k/a FENWICK
TARRAGON APARTMENTS, LLC, A
SOUTH CAROLINA LIMITED LIABILITY
COMPANY, CHARLESTON
TARRAGON MANAGER, LLC, A
DELAWARE LIMITED LIABILITY
COMPANY, TARRAGON
DEVELOPMENT CORPORATION, A
NEVADA CORPORATION, SUMMIT
CONTRACTORS GROUP, INC.,
SUMMIT CONTRACTORS, INC.,
FUGLEBERG KOCH ARCHITECTS,
INC., DEVELOPMENT, COMPLIANCE &
INSPECTIONS, INC., H2L
CONSULTING ENGINEERS, TWELVE
OAKS AT FENWICK PROPERTY
OWNERS ASSOCIATION, INC., (from
August 8, 2006 to December 15, 2008),
PROFESSIONAL PLASTERING &
STUCCO, INC., JOHNSON
COMPANIES, INC., d/b/a JOHNSON
ROOFING, INC., LOS CAMPOS, INC.,
NORTH FLORIDA FRAMING, INC.,
BEST MASONRY & TOOL SUPPLY,
INC., as successor in interest to MANGA
WALL, INC., ALL SOUTH VINYL
PRODUCITS, INC., MARQUEZ
CONSTRUCTION, INC., J.T. WALKER
INDUSTRIES, INC., J.T. INDUSTRIES
d/b/a GENERAL ALUMINUM
CORPORATION, and GENERAL
ALUMINUM COMPANY OF TEXAS, LP,

ORDER PRELIMINARILY APPROVING
CLASS ACTION PARTIAL SETTLEMENT,
ATTORNEYS' FEES, APPROVING
SETTLEMENT NOTICE PROGRAM, AND
SETTING FINAL HEARING



J.R. HOBBS CO.-ATLANTA, LLC f/k/a)
 JRH MERGER CO., LLC., JAMIE)
 HELMAN, individually, SCOTT)
 FERGUSON, individually, and CHRIS)
 COBBS, individually and FEDERAL)
 INSURANCE COMPANY, MARIA)
 ARIAS, MIQUEL ROSALES, APS)
 ENTERPRISES, UNLIMITED, INC., HR)
 ELECTRIC, A.M. JACOBS, INC.,)
 MICKEY MASON, d/b/a MASON)
 CONTRACTORS KMAC OF THE)
 CAROLINAS, INC., and NEO)
 CORPORATION,)
)
 Defendants.)
)

Plaintiffs moved this Court, pursuant to Rule 23 SCRPC, for preliminary approval of a partial settlement of the above-captioned class action. The settlements were placed on the record on Monday, May 9, 2011 before the Court.

The above captioned action involves claims for construction deficiencies and undisclosed defects in common elements and limited common elements combined within the Twelve Oaks at Fenwick Property Owners Association (hereinafter the "POA"). At the time suit was originally filed, the governing board of directors of the POA was still controlled by the developers. As such, a class of condominium unit owners was certified by this Court on or about October 16, 2008. Ultimately, the developers turned over control of the POA to the homeowners and the POA was added as a party-plaintiff in this proceeding. As such, the POA, in essence, took over the claims concerning damage and repairs to common elements as defined by the governing documents of the POA, namely the Master Deed. The suit also involves class action allegations asserting claims on behalf of the individual condominium unit owners at Twelve Oaks for loss of use, interior damage and the like.

On Monday, May 9, 2011, counsel indicated that Plaintiffs have reached a full, final and complete settlement with the following Defendants: **Best Masonry & Tool Supply, Inc.,**

Page 2 of 7

as a successor in interest to Magna Wall, Inc., North Florida Framing, Inc., Marquez Construction, Inc., Nava Guzman, Inc., APS Enterprises Unlimited, Inc., J.T. Industries d/b/a General Aluminum Corporation, and General Aluminum Company of Texas, LP (hereinafter referred to as the "Settling Defendants") in the amount of One Million Two Hundred Eighty-Seven Thousand Five Hundred and No/100 Dollars (\$1,287,500.00). The attorneys for the POA and the class have advised the Court that the POA intends to allot the members of the Settlement Class One Hundred Twenty-Eight Thousand Seven Hundred Fifty and No/100 Dollars (\$128,750.00) (the "Class Fund") as the class' gross portion of the settlement proceeds from the settlement with the Settling Defendants. This Partial Settlement only ends the Plaintiff's claims against the Settling Defendants. Plaintiffs' claims, including class claims, shall continue with respect to the non-settling Defendants. With respect to the class claims, this ten percent (10.0%) apportionment to the Class Fund is with respect to this Partial Settlement only and shall not be deemed binding on any future recovery or settlement with the non-settling Defendants. Class Representatives and Class Counsel may petition the Court for approval of whatever portion of any future recovery or settlement with the non-settling Defendants they deem necessary to make the class whole with respect to their actual damages and attorney's fees.

The Court has reviewed the record in connection with the motion and has considered all supporting evidence in the record and as presented by counsel at the hearing.

NOW, THEREFORE, good cause appearing, the Court hereby ORDERS the following:

1. Preliminary Partial Settlement Approval

This Partial Settlement satisfies Rule 23 SCRCP criteria for preliminary approval:

- (a) The Partial Settlement is sufficiently fair, adequate, and reasonable to justify notice to those affected, along with an opportunity to be heard, pursuant to South Carolina Rule of Civil Procedure Rule 23;
- (b) The Partial Settlement substantially fulfills the purposes and objectives of this Action, and provides benefits to Class Members, without the costs, risks, and delays of further litigation at the trial and appellate levels, and does not require a finding or admission of liability by Settling Defendants;
- (c) The allocation to the Class of 10% of the gross settlement proceeds is fair and reasonable taking into consideration, among other factors, the nature, extent and scope of repairs contemplated by the POA;
- (d) The proposed Notice Plan submitted by the Class Counsel provides individual notice to all known Class Members and all Class Members who can be identified through reasonable efforts and constitutes the best notice practicable under the circumstances of this action;
- (e) The settlement negotiations culminating in the Partial Settlement occurred at arm's length; there was sufficient investigation and discovery; the counsel for Plaintiffs are experienced in similar litigation; and the number of anticipated objections to the Partial Settlement is small compared to the class size;
- (f) The Partial Settlement does not disclose grounds to doubt its fairness or other obvious deficiencies, such as unduly preferential treatment of class representative Plaintiffs or of segments of the class, or excessive compensation for Class Counsel, and appears to fall within the range of possible approval.

As indicated above, this Partial Settlement only ends the Plaintiffs' claims against the Settling Defendants. Plaintiffs' claims, including class claims, shall continue with respect to

the non-settling Defendants. The Court therefore grants preliminary approval to the Partial Settlement. The Partial Settlement shall be submitted to Class Members for their consideration and for a Fairness Hearing, as provided below.

2. Settlement Class Definition

The settlement class is defined as follows:

All persons or entities who own a condominium unit at Twelve Oaks at Fenwick Plantation who did not opt out of the Class and who are not affiliated with the developer or developer-related entities, FENWICK PLANTATION TARRAGON, LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY, f/k/a FENWICK TARRAGON APARTMENTS, LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY, CHARLESTON TARRAGON MANAGER, LLC, A DELAWARE LIMITED LIABILITY COMPANY, TARRAGON DEVELOPMENT CORPORATION, A NEVADA CORPORATION.

3. Notice

The Court approves, as to form and content, the Notice of Proposed Partial Settlement of Class Action (attached hereto as Exhibit "A") and approves it for mailing to Class Members. The Court finds that this Notice form provides Class Members with all of the information necessary to make an informed decision regarding the fairness of the Partial Settlement.

The Court finds that the mailing and distribution of the Notice to the last known address of each of the class members provided to the POA meets the requirements of Rule 23 and due process, and shall constitute due and sufficient notice to all persons entitled thereto and shall be deemed effective when deposited in the United States Mail, sufficient first class postage affixed thereon. Such notice is the best practicable notice under the circumstances of this case; it complies with due process, and it provides sufficient notice to bind all Class Members, regardless of whether a particular Class Member receives actual notice.

4. Standing to Object

Any Class Member who has timely filed notice of opposition to approval of the Partial Settlement may appear at the Fairness Hearing to show why the Partial Settlement should not be approved as fair, reasonable, and adequate, or why Judgment should or should not be entered thereon, or why attorney fees and expenses should or should not be awarded to Class Counsel out of the Claims made under the Partial Settlement. Any Class Member who wishes to object to the Settlement must file with the Court and serve upon Plaintiffs' Counsel a written Notice of Objection on or before _____. The Notice of Objection must state the reasons for the objection and, must demonstrate the objecting Class Member's membership in the Settlement Class. Only persons who have filed and served Notices of Objection will be entitled to be heard at the Fairness Hearing. Any Class Member who does not make his or her objection in the manner provided shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness or adequacy of the Partial Settlement as incorporated in the Partial Settlement and/or to any award of attorney fees and expenses to Class Counsel, unless otherwise ordered by the Court.

5. Final Approval

A final approval hearing (the "Fairness Hearing") shall be held before this Court on _____ at ____:____.m. at **Charleston County Court of Common Pleas, 100 Broad St., Charleston, South Carolina**, to determine whether: (1) the Settlement is fair, reasonable, and adequate and should receive final approval from the Court; (2) notice has been given to Class Members in accordance with this Order; (3) a Judgment as provided in the Partial Settlement should be entered herein; and (4) the one-third percentage that Class Counsel is authorized to take as their attorney fees and expenses

is fair and reasonable and should receive approval from the Court. The Court finds that this date allows adequate time for Class Members and their counsel to support, oppose, or object to the Partial Settlement.

6. Further Matters

This Court shall retain jurisdiction of this matter until it is concluded.

IT IS SO ORDERED.

Honorable Kristi Lea Harrington
Chief Administrative Judge
Ninth Judicial Circuit

This _____ day of _____, 2011

_____, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 08-CP-10-0049

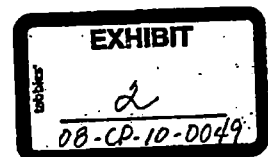
MARK F. TESENIAR and NAN M.)
TESENIAR, on behalf of themselves and)
others similarly situated, and TWELVE)
OAKS AT FENWICK PROPERTY)
OWNERS ASSOCIATION, INC., (from)
December 16, 2008 to present),)

Plaintiffs,)

vs.)

NOTICE OF PROPOSED PARTIAL
SETTLEMENT OF CLASS ACTION
AND FINAL HEARING

FENWICK PLANTATION TARRAGON,)
LLC, A SOUTH CAROLINA LIMITED)
LIABILITY COMPANY, f/k/a FENWICK)
TARRAGON APARTMENTS, LLC, A)
SOUTH CAROLINA LIMITED LIABILITY)
COMPANY, CHARLESTON)
TARRAGON MANAGER, LLC, A)
DELAWARE LIMITED LIABILITY)
COMPANY, TARRAGON)
DEVELOPMENT CORPORATION, A)
NEVADA CORPORATION, SUMMIT)
CONTRACTORS GROUP, INC.,)
SUMMIT CONTRACTORS, INC.,)
FUGLEBERG KOCH ARCHITECTS,)
INC., DEVELOPMENT, COMPLIANCE &)
INSPECTIONS, INC., H2L)
CONSULTING ENGINEERS, TWELVE)
OAKS AT FENWICK PROPERTY)
OWNERS ASSOCIATION, INC., (from)
August 8, 2006 to December 15, 2008);)
PROFESSIONAL PLASTERING &)
STUCCO, INC., JOHNSON)
COMPANIES, INC., d/b/a JOHNSON)
ROOFING, INC., LOS CAMPOS, INC.,)
NORTH FLORIDA FRAMING, INC.,)
BEST MASONRY & TOOL SUPPLY,)
INC., as successor in interest to MANGA)
WALL, INC., ALL SOUTH VINYL)
PRODUCITS, INC., MARQUEZ)
CONSTRUCTION, INC., J.T. WALKER)
INDUSTRIES, INC., J.T. INDUSTRIES)
d/b/a GENERAL ALUMINUM)



CORPORATION, and GENERAL)
ALUMINUM COMPANY OF TEXAS, LP,)
J.R. HOBBS CO.-ATLANTA, LLC f/k/a)
JRH MERGER CO., LLC., JAMIE)
HELMAN, individually, SCOTT)
FERGUSON, individually, and CHRIS)
COBBS, individually and FEDERAL)
INSURANCE COMPANY, MARIA)
ARIAS, MIQUEL ROSALES, APS)
ENTERPRISES, UNLIMITED, INC., HR)
ELECTRIC, A.M. JACOBS, INC.,)
MICKEY MASON, d/b/a MASON)
CONTRACTORS KMAC OF THE)
CAROLINAS, INC., and NEO)
CORPORATION,)
Defendants,)

TO: ALL CLASS MEMBERS, being all persons and/or entities who own a condominium unit within Twelve Oaks at Fenwick Plantation who did not opt-out of the Class Action:

PLEASE READ THIS NOTICE CAREFULLY
YOUR RIGHTS MAY BE AFFECTED BY THIS SETTLEMENT

You were previously sent a Notice of Class Action and exclusion form on November 26, 2008. That Notice explained the litigation, contained the exclusion form for opting out of the Class Action, and explained how counsel fees and expenses would be paid in the event of a settlement. You also previously received two separate Notices of a Final Settlement with certain Defendants totaling \$5,960,000.00 and \$777,500.00.

This Notice is provided to advise you that another partial settlement has been reached with some of the Defendants which will provide monies to individual unit owners in partial settlement of your claims for loss of use and interior damages, in addition to monies being provided to the Property Owners Association regime in partial settlement of the claims for damages to the common elements.

The overall gross amount of the partial settlement is One Million Two Hundred Eighty-Seven Thousand Five Hundred and No/100 Dollars (\$1,287,500.00). The gross portion of the partial settlement being awarded to the Class is One Hundred Twenty-Eight Thousand Seven

Hundred Fifty and No/100 Dollars (\$128,750.00). Out of the gross amount, the agreed upon one-third deduction of Forty-Two Thousand Nine Hundred Sixteen and 67/100 Dollars (\$42,916.67) will be taken by Class Counsel as attorneys' fees, leaving a net amount to be distributed to the Class of Eighty-Five Thousand Eight Hundred Thirty-Three and 33/100 Dollars (\$85,833.33). The expenses of the litigation thus far will be deducted from the POA's share of the recovery. The balance of the settlement funds, less attorney's fees and expenses, will be paid to the POA for repairs to the common elements.

YOU ARE HEREBY NOTIFIED that a hearing will take place in the Court of Common Pleas at the Charleston County Judicial Center located at 100 Broad Street, Charleston, South Carolina, pursuant to Rule 23 SCRPC, to approve this settlement, class counsel fees, and expenses, before the Honorable Kristi Lea Harrington on _____, _____, 2011 beginning at _____:_____.m. If you agree with the terms of this partial settlement, YOU DO NOT HAVE TO ATTEND THIS HEARING – NO FURTHER ACTION WILL BE REQUIRED ON YOUR PART AND YOU WILL RECEIVE YOUR DISTRIBUTION FROM THE SETTLEMENT PROCEEDS. If you have a valid, legal reason to object to this settlement and you wish to appear at the hearing to voice your objections, you must provide the Clerk of Court and Class Counsel a written notice of your intention to appear at the hearing to object. This notice must be sent to the Clerk of Court at 100 Broad Street, Charleston, South Carolina, 29401 and Class Counsel at the address indicated below, along with your written objection, postmarked by _____, _____, 2011.

In the event you have assigned or pledged your rights to receive proceeds from this Class Action to some other individual or entity, please notify Class Counsel of this fact, submitting the names and addresses of those assignees.

If you have any questions about this notice or this procedure, DO NOT CONTACT THE COURT. Rather, please contact Class Counsel listed below:

W. Jefferson Leath, Esquire
LEATH BOUCH & CRAWFORD
92 Broad Street
Charleston, SC 29401
843.937-8811
jl@leathbouchlaw.com

Jesse A. Kirchner, Esquire
THURMOND KIRCHNER TIMBES & YELVERTON, P.A.
15 Middle Atlantic Wharf, Suite 101
Charleston, SC 29401
843-937-8000
jkirchner@tktylawfirm.com

Justin O. Lucey, Esquire
JUSTIN O'TOOLE LUCEY, P.A.
415 Mill Street
Mt. Pleasant, SC 29464
843.849-8400
Jlucey@lucey-law.com

John T. Chakeris, Esquire
THE CHAKERIS LAW FIRM
231 Calhoun Street
Charleston, SC 29401
843.853.5678
john@chakerislawfirm.com

Phillip W. Segui, Jr., Esquire
THE SEGUI LAW FIRM
864 Lowcountry Blvd., Suite A
Mt. Pleasant, SC 29464
843.884.1865
pseguil@sequilawfirm.com

Attorneys for the Plaintiffs

CERTIFICATE OF SERVICE

Pursuant to Rule 5(b)(1), SCRCP and counsel's regular business practices, I, Cathi P. Adkins, an employee of THURMOND KIRCHNER TIMBES & YELVERTON, P.A., do hereby certify that I have this date, electronically mailed a true and correct copy of the **Plaintiffs' Notice of Motion and Motion for Preliminary Approval of a Partial Settlement of a Class Action** to the following counsel of record:

Attorneys for Professional Plastering & Stucco, Inc.

Everett A. Kendall, II, Esquire
Christy E. Mahon, Esquire
Sweeny, Wingate & Barrow, P.A.
P.O. Box 12129
Columbia, SC 29211
eak@swblaw.com
cem@swblaw.com

-and-

Jonathan J. Anderson, Esquire
Anderson Reynolds & Stephens, LLC
37 1/2 Broad St.
Charleston, SC 29401
janderson@arlawsc.com

Attorneys for North Florida Framing, Inc. and Marquez Construction, Inc.

Randell C. Stoney, Jr., Esquire
Barbara J. Wagner, Esquire
Barnwell Whaley Patterson & Helms, LLC
885 Island Park Drive, PO Drawer H
Charleston, SC 29492
rstone@barnwell-whaley.com
bwagner@barnwell-whaley.com

Attorney for APS Enterprises, Inc.

Roy P. Maybank, Esquire
Jason A. Daigle, Esquire
Maybank Law Firm, LLC
P.O. Box 12579
Charleston, SC 29422
roy@maybanklaw.com
jason@maybanklaw.com

Attorney for Development, Compliance & Inspections, Inc.

J. Blanton O'Neal, IV, Esquire
Hood Law Firm, LLC
172 Meeting Street
Charleston, SC 29401
Blanton.oneal@hoodlaw.com

Attorney for General Aluminum Company of Texas, LP

David S. Cobb, Esquire
Turner Padgett Graham & Laney, P.A.
P.O. Box 22129
Charleston, SC 29413
dcobb@turnerpadgett.com

Attorneys for Best Masonry & Tool Supply, L.P. as successor in interest to Best Masonry & Tool Supply, Inc. as successor in interest to Magna Wall, Inc.

R. Bryan Barnes, Esquire
J. Geoffrey Osborn, Jr., Esquire
Rogers Townsend & Thomas, PC
220 Executive Center Dr., Winthrop Bldg.
P.O. Box 100200
Columbia, SC 29202-3200
barnes@rtt-law.com
josborn@rtt-law.com

Attorney for Nava Guzman Construction, Inc.

M. Britain Travis, Esquire
Young Clement Rivers, LLP
P.O. Box 993
Charleston, SC 29402-0993
btravis@ycrlaw.com

Attorney for C&N Stucco and Plastering, Inc.

William A. Scott, Esquire
Rogers Townsend & Thomas, PC
775 St. Andrews Blvd.
Charleston, SC 29407
bscott@rtt-law.com

Attorney for KMAC of the Carolinas, Inc.

Robert D. Waltz, Esquire
Keaveny Law Firm, LLC
445 Folly Road
Charleston, SC 29412
bwaltz@keavenylawfirm.com

FILED
2011 MAY 19 AM 11:39
JULIE J. ANDERSON
CLERK OF COURT

Attorneys for H2L Consulting Engineers

Michael B. T. Wilkes, Esquire
Ellen S. Cheek, Esquire
Wilkes Bowers, P.A.
127 Dunbar Street, Suite 200
Spartanburg, SC 29306
mwilkes@wilkesbowers.com
echeel@wilkesbowers.com

**Attorney for Johnson Companies, Inc., d/b/a
Johnson Roofing, Inc.**

Charles G. Blackburn, Esquire
Murphy & Grantland, P.A.
P.O. Box 6648
Columbia, SC 29260
cblackburn@murphygrantland.com

Attorneys for NEO Corporation

Christopher M. Adams, Esquire
Charles Appleby, Esquire
Collins & Lacy, P.C.
1330 Lady Street, Sixth Floor
Post Office Box 12487
Columbia, SC 29211
cadams@collinsandlacy.com
cappleby@collinsandlacy.com

By:


Cathi P. Adkins
Paralegal to Jesse A. Kirchner

This 19 day of May, 2011
Charleston, South Carolina

THURMOND KIRCHNER TIMBES & YELVERTON, P.A.
ATTORNEYS & COUNSELORS AT LAW

15 MIDDLE ATLANTIC WHARF, SUITE 101
CHARLESTON, SOUTH CAROLINA 29401

Paul R. Thurmond
Jesse A. Kirchner
Michael A. Timbes*
Matthew E. Yelverton**
Steven D. Epps
Christopher P. Deters
David L. Barnes, Jr.

Phone: 843.937.8000
Fax: 843.937.4200
www.tktylawfirm.com

*Also admitted in Georgia
**Also admitted in North Carolina

May 19, 2011

VIA HAND DELIVERY

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

Re: Mark F. Teseniar and Nan M. Teseniar, et al. v. Fenwick Plantation
Tarragon, LLC, a South Carolina Limited Liability Company f/k/a Fenwick
Plantation, et al.

Case No.: 2008-CP-10-0049

Dear Ms. Armstrong:

Enclosed for filing please find the original and one (1) copy of Plaintiffs' Notice of Motion and Motion for Preliminary Approval of a Partial Settlement of a Class Action, in connection with the above-referenced matter. I have also enclosed a motion coversheet and this firm's check in the amount of Twenty Five and No/100 Dollars (\$25.00) representing the filing fee associated with this matter. I would appreciate it very much if you would file this pleading with the Court and return a file-stamped copy to me via my courier.

Your assistance with this matter is greatly appreciated.

With best regards, I remain

Very truly yours,

Cathi P. Adkins

Cathi P. Adkins
Paralegal to Jesse A. Kirchner

JAK/cpa
Enclosure
cc: All Counsel of Record (via electronic mail only)



STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 08-CP-10-0049

MARK F. TESENIAR and NAN M.)
TESENIAR, on behalf of themselves and)
others similarly situated, and TWELVE)
OAKS AT FENWICK PROPERTY)
OWNERS ASSOCIATION, INC., (from)
December 16, 2008 to present),)

Plaintiffs,)

vs.)

FINAL ORDER APPROVING CLASS
ACTION PARTIAL SETTLEMENT AND
ATTORNEYS' FEES

FENWICK PLANTATION TARRAGON,)
LLC, A SOUTH CAROLINA LIMITED)
LIABILITY COMPANY, f/k/a FENWICK)
TARRAGON APARTMENTS, LLC, A)
SOUTH CAROLINA LIMITED LIABILITY)
COMPANY, CHARLESTON)
TARRAGON MANAGER, LLC, A)
DELAWARE LIMITED LIABILITY)
COMPANY, TARRAGON)
DEVELOPMENT CORPORATION, A)
NEVADA CORPORATION, SUMMIT)
CONTRACTORS GROUP, INC.,)
SUMMIT CONTRACTORS, INC.,)
FUGLEBERG KOCH ARCHITECTS,)
INC., DEVELOPMENT, COMPLIANCE &)
INSPECTIONS, INC., H2L)
CONSULTING ENGINEERS, TWELVE)
OAKS AT FENWICK PROPERTY)
OWNERS ASSOCIATION, INC., (from)
August 8, 2006 to December 15, 2008),)
PROFESSIONAL PLASTERING &)
STUCCO, INC., JOHNSON)
COMPANIES, INC., d/b/a JOHNSON)
ROOFING, INC., LOS CAMPOS, INC.,)
NORTH FLORIDA FRAMING, INC.,)
BEST MASONRY & TOOL SUPPLY,)
INC., as successor in interest to MANGA)
WALL, INC., ALL SOUTH VINYL)
PRODUCTS, INC., MARQUEZ)
CONSTRUCTION, INC., J.T. WALKER)
INDUSTRIES, INC., J.T. INDUSTRIES)
d/b/a GENERAL ALUMINUM)
CORPORATION, and GENERAL)
ALUMINUM COMPANY OF TEXAS, LP,)

FILED
2011 JUN 10 PM 1:38
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Handwritten signature and date:
6/10/11

J.R. HOBBS CO.-ATLANTA, LLC f/k/a)
 JRH MERGER CO., LLC., JAMIE)
 HELMAN, individually, SCOTT)
 FERGUSON, individually, and CHRIS)
 COBBS, individually and FEDERAL)
 INSURANCE COMPANY, MARIA)
 ARIAS, MIQUEL ROSALES, APS)
 ENTERPRISES, UNLIMITED, INC., HR)
 ELECTRIC, A.M. JACOBS, INC.,)
 MICKEY MASON, d/b/a MASON)
 CONTRACTORS KMAC OF THE)
 CAROLINAS, INC., and NEO)
 CORPORATION,)
)
 Defendants.)
)

This matter was before the Court upon Plaintiffs' motion for a Fairness Hearing to finally approve the settlement reached with the Settling Defendants¹. A Fairness Hearing was conducted on June 10, 2011 beginning at 1:00 p.m. at the Charleston County Judicial Center located at 100 Broad Street, Charleston, South Carolina.

The above-captioned action involves claims for construction deficiencies and undisclosed defects in common elements and limited common elements combined within the Twelve Oaks at Fenwick Property Owners Association (hereinafter the "POA"). At the time suit was originally filed, the governing board of directors of the POA was still controlled by the developers. As such, a class of condominium unit owners was certified by this Court on or about October 16, 2008. Ultimately, the developers turned over control of the POA to the homeowners and the POA was added as a party-plaintiff in this proceeding. As such, the POA, in essence, took over the claims concerning damage and repairs to common elements as defined by the governing documents of the POA, namely the Master Deed. The suit also

¹ Settling Defendants are Best Masonry & Tool Supply, Inc., as a successor in interest to Magna Wall, Inc., North Florida Framing, Inc., Marquez Construction, Inc., Nava Guzman, Inc., APS Enterprises Unlimited, Inc., J.T. Industries d/b/a General Aluminum Corporation, and General Aluminum Company of Texas, LP.

Page 2 of 8
 6/10/11

involves class action allegations asserting claims on behalf of the individual condominium unit owners at Twelve Oaks for loss of use, interior damage and the like.

As a result of lengthy, arms-length negotiations, Plaintiffs have reached a full, final and complete settlement with the Settling Defendants in the amount of One Million Two Hundred Eighty-Seven Thousand Five Hundred and No/100 Dollars (\$1,287,500.00) (the "Partial Settlement"). The Class Representatives and the Board of Directors for the POA have advised the Court that the POA intends to allot the members of the Settlement Class One Hundred Twenty-Eight Thousand Seven Hundred Fifty and No/100 Dollars (\$128,750.00) (the "Class Settlement Fund") as the class' gross portion of the settlement proceeds from the settlement with the Settling Defendants.

To date, the POA and its attorneys have expended various costs, including expert fees, in the prosecution of the above-captioned action. In this Partial Settlement, the POA has agreed to bear all of the expenses of the litigation to date such that the only deduction from the Class Settlement Fund will be the attorney's fees. In this regard, the Notice of Class Action and exclusion form, which was circulated on or about November 26, 2008 to all class members, indicated that class counsel would petition the Court for attorneys' fees not to exceed forty percent (40.0%), plus expenses and costs. The Notice of Proposed Partial Settlement of Class Action and Final Hearing, which was circulated on or about June 3, 2011 to all class members, indicated that Class Counsel would petition the Court to award Class Counsel only one-third of the Class Settlement Fund recovery as their attorneys' fee. Class Counsel has petitioned the Court for a one-third attorneys' fee from the Class Settlement Fund, in the amount of Forty-Two Thousand Nine Hundred Sixteen and 67/100 Dollars (\$42,916.67), and for the recovery of no costs and expenses from the Class Settlement Fund, and the Class Representatives have agreed to the same.

From the evidence presented, I find that an allocation to the Class of One Hundred Twenty-Eight Thousand Seven Hundred Fifty and No/100 Dollars (\$128,750.00) is fair and reasonable. I find that an allocation of ten percent (10.0%) of this Partial Settlement is fair and reasonable taking into consideration, among other factors, the nature and extent of the repairs to the common elements and limited common elements contemplated by the POA.

Based on the record before the Court and the testimony presented, the Court makes the following findings of fact and conclusions of law:

NOW, THEREFORE, good cause appearing, the Court hereby finds the following:

1. The Court has received an Affidavit from Christine Petit, legal assistant to Plaintiffs' attorney, John T. Chakeris, Esq., dated June 9, 2011, affirming that the "Notice of Proposed Partial Settlement of Class Action and Final Hearing" was sent to each class member in accordance with the "Order Preliminarily Approving Class Action Partial Settlement, Attorneys' Fees, Approving Settlement Notice Program, and Setting Final Hearing" entered by the Honorable Kristi Lea Harrington on June 3, 2011. I, therefore, find that proper and reasonable notice of this Final Hearing has been sent to each class member. The Affidavit further affirms that Christine Petit has examined the records of the Clerk of Court in the above-captioned matter and that no objections to the settlement by any class member have been filed or received.

2. Plaintiffs' counsel and the Class Representatives have asked the Court to approve the attorneys' fees. With respect to attorneys' fees, the Supreme Court of South Carolina has approved contingency fee agreements and has set forth factors which must be considered by this Court in determining the reasonableness of the attorneys' fees. The factors, and my findings in regard thereto, are as follows:

- (a) The nature, extent and difficulty of the case. This lawsuit was commenced in February of 2008. This litigation involves claims for design and construction

Page 4 of 8
6/10/11

deficiencies and undisclosed defects in an apartment complex which was later converted to condominiums for sale to the public. The litigation has been extremely complex and difficult. The prosecution of this case thus far has taken more than three years and has resulted in many hours being expended by the legal teams for both sides. The Plaintiffs have engaged experts to determine the nature and extent of the deficiencies as well as experts to determine the cost of repairing the deficiencies. Extensive written discovery has been conducted and more than thirty-five thousand documents have been exchanged among the parties. Many depositions been taken, with many occurring outside of South Carolina, involving much travel, time and expense.

- (b) Professional standing of counsel. Class Counsel is made up of five different law firms, Leath Bouch & Seekings, Thurmond Kirchner Timbes & Yelverton, The Chakeris Law Firm, The Segui Law Firm, and Justin O'Toole Lucey, PA, all of which are in good standing with the legal community and enjoy excellent reputations. Among the class counsel, the individual attorneys, W. Jefferson Leath, Jr., Jesse A. Kirchner, John T. Chakeris, Phillip W. Segui, Jr., and Justin O. Lucey, have handled large and complicated construction deficiency cases ranging from single family residences, to multi-family projects, government projects and hospital projects and they are well known for their expertise in this area of the law. The Class Counsel are well experienced in class action litigation.
- (c) The contingency of compensation. In this case, the Class Representatives specifically requested Class Counsel to take this matter on a contingency fee basis, and it was agreed in writing by the Class Representatives and by Class Counsel that they be compensated on a contingency basis. In this case, there

Page 5 of 8

were significant questions concerning insurance coverage and insurance availability among the Settling Defendants and other contingencies upon which a successful recovery depended. Despite these obstacles, Class Counsel were able to bring this matter to a partial resolution.

(d) Beneficial results obtained. Two mediations have occurred spanning five full days and many hours were spent negotiating outside of the mediation setting in an effort to secure the settlement obtained. It is clear that the results obtained in this Partial Settlement are excellent. Including this Partial Settlement, Class Counsel has thus far recovered \$8,025,000.00 by way of a gross settlement for the project.

(e) Legal fees for similar services. Construction defect cases are typically handled on a contingency fee basis ranging from 33.33% to 40.0% in South Carolina. The Notice of Class Action and exclusion form, which was circulated on or about November 26, 2008 to all class members, indicated that class counsel would petition the Court for attorneys' fees not to exceed forty percent (40.0%), plus expenses and costs. Because Class Counsel now only petition the Court for a one-third fee and no expenses or costs, the Court finds that a contingency fee of One-Third (1/3) is fair and reasonable and should be approved by this Court.

3. Less the Class Counsel attorneys' fee, the net payment to the class totals Eighty-Five Thousand Eight Hundred Thirty-Three and 33/100 Dollars (\$85,833.33). The Court finds that this amount is fair and reasonable given that the bulk of the damages discovered thus far in this case involve common or limited common elements which the POA controls and the POA is bearing all expenses of the litigation. The POA shall place Eighty-Five Thousand Eight Hundred Thirty-Three and 33/100 Dollars (\$85,833.33) (the "Class

Page 6 of 8

[Handwritten signature]
6/10/11

Fund") into an interest bearing account in a federally insured institution in the name of the Twelve Oaks at Fenwick Property Owners Association. The Class Fund shall be held in a separate fund by the POA and disbursed in accordance with this Order. The Class Fund shall be kept separate from any other funds belonging to the POA. The principal and any interest accruing from the Class Fund shall be used in the following priorities:

- (a) The POA shall disburse the Class Fund to class members in accordance with their respective percentage of ownership in the common elements as set forth in the Master Deed, increased to reflect the two units that opted out of the Class. The POA shall keep precise records of all monies expended from the Class Fund and shall provide an accounting for examination by any class member or, if requested, by the Court.
- (b) It is further ordered that prior to any disbursement of settlement funds to any class member, that member's regime fees and assessments must be brought current or, in the alternative, that class member's settlement funds shall be applied toward payment of past due regime fees, assessments or fines, and the balance, if any, be paid to the class member.

4. It also appearing to the Court that no objection has been made by any class member and that proper notice was given of the hearing to each of the known class members.

5. From the evidence before the Court, the testimony presented, and the arguments of counsel, the Court finds that all the criteria of Rule 23 SCRPC have been met and that this settlement should be approved.

6. Upon payment of the settlement proceeds by the Settling Defendants, the Class Representatives are authorized to execute a general release(s) as to the Settling Defendants,

Page 7 of 8
6/10/11

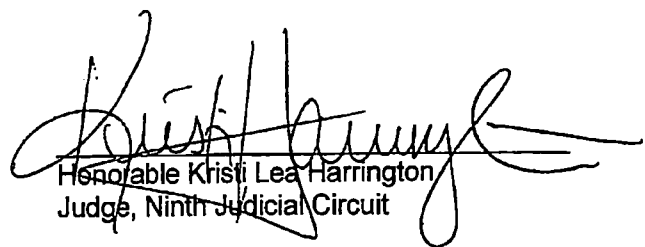
and/or settlement agreement(s) on behalf of the Class and an order(s) or stipulation(s) ending this case and all class claims with prejudice against the Settling Defendants.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED as follows:

- (a) Attorneys fees in the amount of Forty-Two Thousand Nine Hundred Sixteen and 67/100 Dollars (\$42,916.67) shall be paid to Class Counsel in connection with the class claims and the same is hereby declared reasonable and such fee is hereby approved;
- (b) The settlement of the class action as to the Settling Defendants and the allocation to the class the net sum of Eighty-Five Thousand Eight Hundred Thirty-Three and 33/100 Dollars (\$85,833.33) is reasonable and proper and is hereby approved under the terms and conditions of distribution set forth herein;
- (c) Upon payment of the settlement proceeds by the Settling Defendants, the Class Representatives are authorized to execute a general release(s) as to the Settling Defendants, and/or settlement agreements on behalf of the Class and an order(s) or stipulation(s) ending this case and all class claims with prejudice against the Settling Defendants; and
- (d) This Court shall retain jurisdiction of this matter until it is concluded.

IT IS SO ORDERED.

This 10th day of June, 2011
Charlotte, South Carolina


Honorable Kristi Lea Harrington
Judge, Ninth Judicial Circuit

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 08-CP-10-0049

MARK F. TESENIAR and NAN M.)
TESENIAR, on behalf of themselves and)
others similarly situated, and TWELVE)
OAKS AT FENWICK PROPERTY)
OWNERS ASSOCIATION, INC., (from)
December 16, 2008 to present),)

Plaintiffs,)

vs.)

AFFIDAVIT OF CHRISTINE PETIT

FENWICK PLANTATION TARRAGON,)
LLC, A SOUTH CAROLINA LIMITED)
LIABILITY COMPANY, f/k/a FENWICK)
TARRAGON APARTMENTS, LLC, A)
SOUTH CAROLINA LIMITED LIABILITY)
COMPANY, CHARLESTON)
TARRAGON MANAGER, LLC, A)
DELAWARE LIMITED LIABILITY)
COMPANY, TARRAGON)
DEVELOPMENT CORPORATION, A)
NEVADA CORPORATION, SUMMIT)
CONTRACTORS GROUP, INC.,)
SUMMIT CONTRACTORS, INC.,)
FUGLEBERG KOCH ARCHITECTS,)
INC., DEVELOPMENT, COMPLIANCE &)
INSPECTIONS, INC., H2L)
CONSULTING ENGINEERS, TWELVE)
OAKS AT FENWICK PROPERTY)
OWNERS ASSOCIATION, INC., (from)
August 8, 2006 to December 15, 2008),)
PROFESSIONAL PLASTERING &)
STUCCO, INC., JOHNSON)
COMPANIES, INC., d/b/a JOHNSON)
ROOFING, INC., LOS CAMPOS, INC.,)
NORTH FLORIDA FRAMING, INC.,)
BEST MASONRY & TOOL SUPPLY,)
INC., as successor in interest to MANGA)
WALL, INC., ALL SOUTH VINYL)
PRODUCITS, INC., MARQUEZ)
CONSTRUCTION, INC., J.T. WALKER)
INDUSTRIES, INC., J.T. INDUSTRIES)
d/b/a GENERAL ALUMINUM)

BY

CHRISTINE PETIT
CLERK OF COURT

2011 JUN -9 PM 1:33

FILED

2011

CORPORATION, and GENERAL)
 ALUMINUM COMPANY OF TEXAS, LP,)
 J.R. HOBBS CO.-ATLANTA, LLC f/k/a)
 JRH MERGER CO., LLC., JAMIE)
 HELMAN, individually, SCOTT)
 FERGUSON, individually, and CHRIS)
 COBBS, individually and FEDERAL)
 INSURANCE COMPANY, MARIA)
 ARIAS, MIQUEL ROSALES, APS)
 ENTERPRISES, UNLIMITED, INC., HR)
 ELECTRIC, A.M. JACOBS, INC.,)
 MICKEY MASON, d/b/a MASON)
 CONTRACTORS KMAC OF THE)
 CAROLINAS, INC., and NEO)
 CORPORATION,)
 Defendants,)

PERSONALLY APPEARED before me, Christine Petit, who, first being duly sworn, deposes and says:

1. That I am the legal secretary to John T. Chakeris, Esquire.

2. In accordance with the Order Preliminary Approving Class Action Partial Settlement, Attorneys' Fees, Approving Settlement Notice Program, and Setting Final Hearing by the Honorable Kristi Lea Harrington, I, Christine Petit sent the Notice the Proposed Partial Settlement of Class Action and Final Hearing to each of the class members at their last known address provided by the Property Owners Association via the U.S. Postal Service First Class Mail.

3. That no written objections to the Partial Settlement have been received by the Chakeris Law Firm by any class member.

4. I have also examined the case file at the Clerk of Court for Charleston County and no written objections are included in the case file by any class member as of the date of my affidavit.



CHRISTINE PETIT

SWORN to before me this
9 day of June, 2011.



Notary Public for South Carolina
My Commission Expires: 8-5-12



STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

COVENANT NOT TO EXECUTE

WHEREAS, Plaintiffs Mark F. Teseniar and Nan M. Teseniar filed a class action lawsuit in the Charleston County Court of Common Pleas, Civil Action No. 2008-CP-10-0049, on behalf of themselves and the other co-owners of the Twelve Oaks at Fenwick Horizontal Property Regime, and Twelve Oaks at Fenwick Property Owners Association, Inc. (from December 16, 2008 to present) joined the lawsuit as a named Plaintiff, seeking damages against various Defendants, including North Florida Framing, Inc. and Marquez Construction, Inc. (hereinafter collectively referred to as "NFF") for negligence, gross negligence, carelessness, recklessness, willfulness and wantonness, breach of warranty of habitability, breach of warranty against latent defects, breach of warranty of workmanlike services, breach of warranty of fitness for a particular purpose, breach of warranty of merchantability and serviceability, and unfair trade practices arising out of the construction, repair, remediation, abatement, investigation and maintenance of Twelve Oaks at Fenwick Horizontal Property Regime, all of which is set forth in the Fourth Amended Complaint in the lawsuit referenced above; and

WHEREAS, the Court certified the lawsuit as a class action by order filed October 20, 2008; and

WHEREAS, the Plaintiffs have settled all claims against NFF's carriers, Crum and Foster and Scottsdale Insurance, for a payment of Four Hundred Thousand and 00/100 Dollars (\$400,000.00); and

NOW THEREFORE, in partial consideration of the payment of Four Hundred Thousand and 00/100 Dollars (\$400,000.00) by or on behalf of NFF, and other assignments being given contemporaneously herewith, the receipt of which is hereby acknowledged, Mark F. Teseniar

and Nan M. Teseniar, individually and on behalf of all persons, firms, corporations, partnerships, associations, trusts, or legal entities owning condominiums at Twelve Oaks at Fenwick Horizontal Property Regime, their heirs, personal representatives, successors and assigns, and Twelve Oaks at Fenwick Property Owners Association, Inc. (from December 16, 2008 to present) (hereinafter "Plaintiffs"), do covenant not to execute on NFF's assets except insurance policies (and related rights) issued by carriers which have not contributed to the within settlement, specifically including Mt. Hawley Insurance Co.

Upon the completion of all collection activity pertaining to the aforementioned assignments, Plaintiffs shall dismiss NFF from this suit with prejudice and satisfy any outstanding judgments against NFF and shall release and forever discharge NFF, their officers, directors, employees, agents, heirs, personal representatives, successors and assigns, and their insurers and indemnitors, of and from any and all claims, demands, damages, actions, causes of action, or suits of law or in equity, of whatsoever kind or nature, for or because of any act or omission by anyone prior to and including the date hereof on account of any and all damages resulting to or resulting from the construction, repair, remediation, abatement, investigation, and maintenance of the property known as Twelve Oaks at Fenwick Horizontal Property Regime including all claims that were or could have been set forth against NFF in Civil Action No. 2008-CP-10-0049.

The covenant specifically includes any rights Plaintiff now have or may have against NFF by virtue of rights procured by assignment or otherwise from third parties, including Summit Contractors. Further, Crum and Foster and Scottsdale are forever discharged by Plaintiff with regards to these policies issued to NFF.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 7 day of
July, 2011.

WITNESSES:

Chitt

Jim Tim

Mark F. Teseniar
Mark F. Teseniar

Nan M. Teseniar
Nan M. Teseniar

Twelve Oaks at Fenwick POA
(December 16, 2008 to present)

By: _____

Its: _____

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of

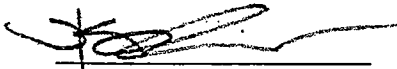
_____, 2011.

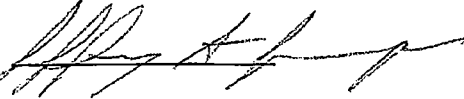
WITNESSES:

Mark F. Teseniar

Nan M. Teseniar

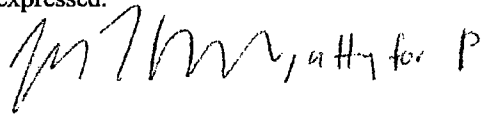
Twelve Oaks at Fenwick POA
(December 16, 2008 to present)



By: 

Its: HOA BOARD PRESIDENT
JEFFREY A JESSUP

I, the undersigned attorney for Plaintiffs, hereby certify that the contents, meanings and effects of the foregoing Covenant Not to Execute have been carefully and fully explained by me and I recommended the execution of said Covenant Not to Execute for the consideration therein expressed.

Justin Lucey, atty for P

Justin Lucey, Esquire
Attorney for Plaintiffs

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi L. Harrington, Circuit Court Judge

Case No. 2008-CP-10-0049

FILED
2011 JUL 22 AM 11:20
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Mark Teseniar and Nan Teseniar, on behalf of themselves and others similarly situated,
and Twelve Oaks at Fenwick Property Owners Association, Inc. Respondents
v.

Fenwick Plantation Tarragon, LLC, A South Carolina Limited Liability Company, F/K/A
Fenwick Tarragon Apartments, LLC, A South Carolina Limited Liability Company, Charleston
Tarragon Manager, LLC, A Delaware Limited Liability Company, Tarragon Development
Corporation, A Nevada Corporation, Summit Contractors Group, Inc., Summit Contractors, Inc.,
Fugleberg Koch Architects, Inc, Development, Compliance & Inspections, Inc., H2L Consulting
Engineers , Twelve Oaks At Fenwick Property Owners Association, Inc., (From August 8, 2006
To December 15, 2008), Professional Plastering & Stucco, Inc., Johnson Companies, Inc., D/B/A
Johnson Roofing, Inc., Los Campos, Inc ., North Florida Framing, Inc., Best Masonry & Tool
Supply, L.P. As Successor In Interest To Best Masonry & Tool Supply, Inc., As Succesor In
Interest To Magna Wall, Inc., All South Vinyl Products, Inc., Marquez Construction, Inc., J.T.
Walker Industries, Inc., J.T. Industries D/B/A General Aluminum Corporation, And General
Aluminum Company Of Texas, LP, J.R. Hobbs Co.-Atlanta, LLC F/K/A JRH Merger Co., LLC.,
Jamie Helman, Individually, Scott Ferguson, Individually, And Chris Cobbs, Individually, And
Federal Insurance Company, Maria Arias, Miquel Rosales, APS Enterprises Unlimited, Inc., HR
Electric, A.M. Jacobs, Inc., Mickey Mason D/B/A Mason Contractors, KMAC of the Carolinas,
Inc. and NEO Corporation,

Of Whom Professional Plastering & Stucco, Inc. is the Appellant

And

APS Enterprises Unlimited, Inc. Respondents

v.

C & N Stucco and Plastering, Inc.

AMENDED/ CORRECTED
NOTICE OF APPEAL

FILED
2011 JUL 22 AM 11:20
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Professional Plastering & Stucco, Inc. appeals the Order of the Honorable Kristi L. Harrington granting APS Enterprises Unlimited, Inc.'s Motion for Summary Judgment (Exhibit A) that was signed May 9, 2011, filed May 11, 2011, copy obtained on May 19, 2011 and written notice was received on May 20, 2011. A motion pursuant to Rule 59(e) was filed on May 20, 2011. An Order denying the Rule 59(e) Motion (Exhibit B) was signed July 13, 2011, filed July 19, 2011, and notice of the signing of the Order was received via e-mail on July 18, 2011.

Professional Plastering & Stucco, Inc. appeals the judgment of the Honorable Kristi L. Harrington (Exhibit C) dated May 13, 2011 that was entered following the return of a jury verdict in favor of the Respondents, and the Order of the Honorable Kristi L. Harrington denying the Appellant's Motion for New Trial Absolute, Motion for Judgment Notwithstanding the Verdict, Motion for New Trial *Nisi Remittitur*, and Motion for Set-Off (collectively "Appellant's Post Trial Motions") (Exhibit D). The Order denying Appellant's Post Trial Motions was signed June 15, 2011, filed June 17, 2011 and written notice of the Order was received on June 21, 2011. A motion pursuant to Rule 59(e) was filed on June 29, 2011. An Order denying the Rule 59(e) Motion (Exhibit B) was signed July 13, 2011, filed July 19, 2011, and notice of the signing of the Order was received via e-mail on July 18, 2011.

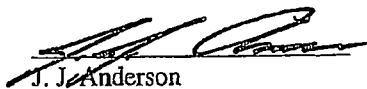
Further, Professional Plastering & Stucco, Inc. appeals the consolidated Order of the Honorable Kristi L. Harrington (Exhibit B) denying the Rule 59(e) Motions to Alter

or Amend the Court's denial of Professional Plastering & Stucco, Inc.'s Post Trial
Motions and the Rule 59(e) Motion to Alter or Amend the Court's granting of APS
Enterprises Unlimited, Inc.'s Motion for Summary Judgment.

This appeal is timely pursuant to Rule 203 of the South Carolina Appellate Court
Rules.

Respectfully submitted,

ANDERSON REYNOLDS
& STEPHENS, LLC



J. J. Anderson
37 1/2 Broad Street
P O Box 87
Charleston, SC 29402
843-723-0185

SWEENEY WINGATE
& BARROW, PA
Everett A. Kendall
Christy E. Mahon
1515 Lady Street
P O Box 12129
Columbia, SC 29211
803-256-2233
*Attorneys for Appellant Professional
Plastering & Stucco, Inc.*

Other Counsel of Record and Interested Parties

Phillip W. Segui, Jr., Esquire
Segui Law Firm, LLC
864 Lowcountry Boulevard, Suite A
Mt. Pleasant, South Carolina 29464
843-884-1865

John T. Chakeris, Esquire
The Chakeris Law Firm
Post Office Box 397
Charleston, South Carolina 29402
843-853-5678

W. Jefferson Leath, Jr., Esquire
Michael S. Seekings, Esquire
Leath, Bouch & Seekings, LLP
Post Office Box 59
Charleston, South Carolina 29402
843-937-8811

Jesse A. Kirchner, Esquire
Thurmond, Kirchner & Timbes, P.A.
15 Mid-Atlantic Wharf, Suite 101
Charleston, South Carolina 29401
843-937-8000

Justin O. Lucey, Esquire
Justin O'Toole Lucey, P.A.
Post Office Box 806
Mount Pleasant, South Carolina 29465-0806
843-849-8400

Attorneys for Respondents
Mark Teseniar and Nan Teseniar, on behalf of themselves and others similarly situated,
and Twelve Oaks at Fenwick Property Owners Association, Inc.

Roy P. Maybank, Esquire
Jason A. Daigle, Esquire
Maybank Law Firm, LLC
P O Box 12579
Charleston, SC 29407
843-766-8101
Attorneys for Respondents
APS Enterprises Unlimited, Inc.

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi L. Harrington, Circuit Court Judge

Case No. 2008-CP-10-0049

FILED
2011 JUL 22 AM 11:20
JULIE J. ARSHSTRONG
CLERK OF COURT
BY _____

Mark Teseniar and Nan Teseniar, on behalf of themselves and others similarly situated, and
Twelve Oaks at Fenwick Property Owners Association, Inc. Respondents,

v.

Fenwick Plantation Tarragon, LLC, A South Carolina Limited Liability Company, F/K/A Fenwick
Tarragon Apartments, LLC, A South Carolina Limited Liability Company, Charleston Tarragon
Manager, LLC, A Delaware Limited Liability Company, Tarragon Development Corporation, A
Nevada Corporation, Summit Contractors Group, Inc., Summit Contractors, Inc, Fugleberg Koch
Architects, Inc, Development, Compliance & Inspections, Inc., H2L Consulting Engineers , Twelve
Oaks At Fenwick Property Owners Association, Inc., (From August 8, 2006 To December 15,
2008), Professional Plastering & Stucco, Inc., Johnson Companies, Inc., D/B/A Johnson Roofing,
Inc., Los Campos, Inc ., North Florida Framing, Inc., Best Masonry & Tool Supply, L.P. As
Successor In Interest To Best Masonry & Tool Supply, Inc., As Succesor In Interest To Magna
Wall, Inc., All South Vinyl Products, Inc., Marquez Construction, Inc., J.T. Walker Industries, Inc.,
J.T. Industries D/B/A General Aluminum Corporation, And General Aluminum Company Of
Texas, LP, J.R. Hobbs Co.-Atlanta, LLC F/K/A JRH Merger Co., LLC., Jamie Helman,
Individually, Scott Ferguson, Individually, And Chris Cobbs, Individually, And Federal Insurance
Company, Maria Arias, Miquel Rosales, APS Enterprises Unlimited, Inc., HR Electric, A.M.
Jacobs, Inc., Mickey Mason D/B/A Mason Contractors, KMAC of the Carolinas, Inc. and NEO
Corporation,

Of Whom Professional Plastering & Stucco, Inc. is the Appellant

And

APS Enterprises Unlimited, Inc. Respondents

v.

C & N Stucco and Plastering, Inc.

AMENDED/CORRECTED

PROOF OF SERVICE

FILED
2011 JUL 22 AM 11:20
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

I certify that I have served Appellant's Notice of Appeal by depositing a copy in the U. S. mail, postage paid on July 20, 2011 addressed to Respondents' attorneys as set forth below:

Phillip W. Segui, Jr., Esquire
Segui Law Firm, LLC
864 Lowcountry Boulevard, Suite A
Mt. Pleasant, South Carolina 29464

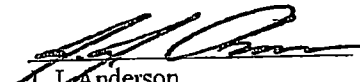
John T. Chakeris, Esquire
The Chakeris Law Firm
Post Office Box 397
Charleston, South Carolina 29402

W. Jefferson Leath, Jr., Esquire
Michael S. Seekings, Esquire
Leath, Bouch & Seekings, LLP
Post Office Box 59
Charleston, South Carolina 29402

Jesse A. Kirchner, Esquire
Thurmond, Kirchner & Timbes, P.A.
15 Mid-Atlantic Wharf, Suite 101
Charleston, South Carolina 29401

Justin O. Lucey, Esquire
Justin O'Toole Lucey, P.A.
Post Office Box 806
Mount Pleasant, South Carolina 29465-0806

Roy P. Maybank, Esquire
Jason A. Daigle, Esquire
Maybank Law Firm, LLC
P O Box 12579
Charleston, SC 29407



J. J. Anderson
S. C. Bar Number 383
Anderson Reynolds & Stephens, LLC
37 ½ Broad Street
P O Box 87
Charleston, SC 29402
843-723-0185

*Attorneys for Appellant Professional
Plastering & Stucco, Inc.*

July 21, 2011

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 08-CP-10-0049

MARK F. TESENIAR and NAN M.
TESENIAR, on behalf of themselves and
others similarly situated, and TWELVE
OAKS AT FENWICK PROPERTY
OWNERS ASSOCIATION, INC., (from
December 16, 2008 to present),

Plaintiffs,

vs.

ORDER OF DISMISSAL AS TO
CERTAIN DEFENDANTS
(WITH PREJUDICE)

FENWICK PLANTATION TARRAGON,
LLC, A SOUTH CAROLINA LIMITED
LIABILITY COMPANY, f/k/a FENWICK
TARRAGON APARTMENTS, LLC, A
SOUTH CAROLINA LIMITED LIABILITY
COMPANY, CHARLESTON)
TARRAGON MANAGER, LLC, A)
DELAWARE LIMITED LIABILITY)
COMPANY, TARRAGON)
DEVELOPMENT CORPORATION, A)
NEVADA CORPORATION, SUMMIT)
CONTRACTORS GROUP, INC.,)
SUMMIT CONTRACTORS, INC.,)
FUGLEBERG KOCH ARCHITECTS,)
INC., DEVELOPMENT, COMPLIANCE &)
INSPECTIONS, INC., H2L)
CONSULTING ENGINEERS, TWELVE)
OAK AT FENWICK PROPERTY)
OWNERS ASSOCIATION, INC., (from)
August 8, 2006 to December 15, 2008),)
PROFESSIONAL PLASTERING &)
STUCCO, INC., JOHNSON)
COMPANIES, INC., d/b/a JOHNSON)
ROOFING, INC., LOS CAMPOS, INC.,)
NORTH FLORIDA FRAMING, INC.,)
BEST MASONRY & TOOL SUPPLY,)
INC., as successor in interest to MANGA)
WALL, INC., ALL SOUTH VINYL)
PRODUCITS, INC., MARQUEZ)
CONSTRUCTION, INC., J.T. WALKER)
INDUSTRIES, INC., J.T. INDUSTRIES)
d/b/a GENERAL ALUMINUM)
CORPORATION, and GENERAL)
ALUMINUM COMPANY OF TEXAS, LP,)

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2011 AUG -8 PM 1:21

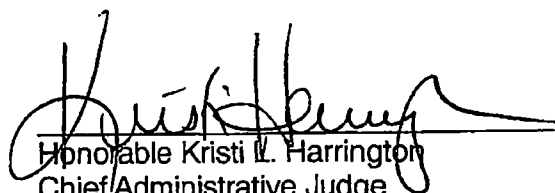
FILED

J.R. HOBBS CO.-ATLANTA, LLC f/k/a)
 JRH MERGER CO., LLC., JAMIE)
 HELMAN, individually, SCOTT)
 FERGUSON, individually, and CHRIS)
 COBBS, individually and FEDERAL)
 INSURANCE COMPANY, MARIA)
 ARIAS, MIQUEL ROSALES, APS)
 ENTERPRISES, UNLIMITED, INC., HR)
 ELECTRIC, A.M. JACOBS, INC.,)
 MICKEY MASON, d/b/a MASON)
 CONTRACTORS KMAC OF THE)
 CAROLINAS, INC., NEO)
 CORPORATION, and NAVA GUZMAN)
 CONSTRUCTION COMPANY, INC.,)
 Defendants.)

IT APPEARING TO THE COURT that the Plaintiffs have reached a full, final and complete settlement with Best Masonry & Tool Supply, Inc., as a successor in interest to Magna Wall, Inc., Nava Guzman Construction Company, Inc., APS Enterprises Unlimited, Inc., JT Industries d/b/a General Aluminum Corporation, and General Aluminum Company of Texas, LP (hereinafter "Settling Defendants").

NOW, THEREFORE, PURSUANT TO RULE 41(a)(2) of the South Carolina Rules of Civil Procedure, the Court hereby dismisses, *with prejudice*, the above-caption matter as to the Settling Defendants, with all parties to bear their own costs. Notwithstanding the foregoing, this Order does not dismiss or otherwise affect the pending crossclaims or other claims not yet asserted that Best Masonry & Tool Supply, Inc. as a successor in interest to Magna Wall, Inc. may have against Professional Plastering & Stucco, Inc. Additionally, this Order does not dismiss or otherwise affect the pending crossclaims and third party claims or other claims not yet asserted that APS Enterprises Unlimited, Inc. may have against Professional Plastering & Stucco, Inc. and/or C&N Stucco and Plastering, Inc. Further, this Order does not affect any claims by and among any parties not dismissed herein.

IT IS SO ORDERED!


Honorable Kristi L. Harrington
Chief Administrative Judge
Ninth Judicial Circuit

Aug 1, 2011
Charleston, South Carolina.

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 08-CP-10-0049

MARK F. TESENIAR and NAN M.
TESENIAR, on behalf of themselves and)
others similarly situated, and TWELVE)
OAKS AT FENWICK PROPERTY)
OWNERS ASSOCIATION, INC., (from)
December 16, 2008 to present),)

Plaintiffs,)

vs.)

ORDER OF DEFAULT AS TO DEFENDANT,
NORTH FLORIDA FRAMING, INC. AND
ORDER OF REFERENCE TO MASTER IN
EQUITY FOR DAMAGES HEARING

FENWICK PLANTATION TARRAGON,)
LLC, A SOUTH CAROLINA LIMITED)
LIABILITY COMPANY, f/k/a FENWICK)
TARRAGON APARTMENTS, LLC, A)
SOUTH CAROLINA LIMITED LIABILITY)
COMPANY, CHARLESTON)
TARRAGON MANAGER, LLC, A)
DELAWARE LIMITED LIABILITY)
COMPANY, TARRAGON)
DEVELOPMENT CORPORATION, A)
NEVADA CORPORATION, SUMMIT)
CONTRACTORS GROUP, INC.,)
SUMMIT CONTRACTORS, INC.,)
FUGLEBERG KOCH ARCHITECTS,)
INC., DEVELOPMENT, COMPLIANCE &)
INSPECTIONS, INC., H2L)
CONSULTING ENGINEERS, TWELVE)
OASK AT FENWICK PROPERTY)
OWNERS ASSOCIATION, INC., (from)
August 8, 2006 to December 15, 2008),)
PROFESSIONAL PLASTERING &)
STUCCO, INC., JOHNSON)
COMPANIES, INC., d/b/a JOHNSON)
ROOFING, INC., LOS CAMPOS, INC.,)
NORTH FLORIDA FRAMING, INC.,)
BEST MASONRY & TOOL SUPPLY,)
INC., as successor in interest to MANGA)
WALL, INC., ALL SOUTH VINYL)
PRODUCITS, INC., MARQUEZ)
CONSTRUCTION, INC., J.T. WALKER)
INDUSTRIES, INC., J.T. INDUSTRIES)
d/b/a GENERAL ALUMINUM)
CORPORATION, and GENERAL)
ALUMINUM COMPANY OF TEXAS, LP,)

BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

2011 AUG -9 AM 9:53

FILED

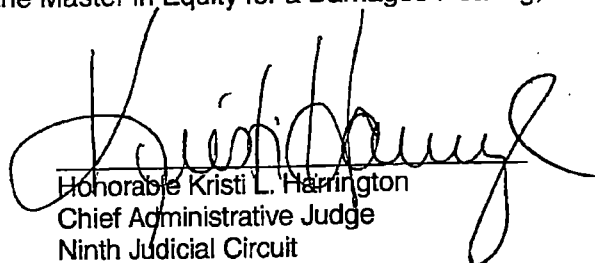
J.R. HOBBS CO.-ATLANTA, LLC f/k/a)
JRH MERGER CO., LLC., JAMIE)
HELMAN, individually, SCOTT)
FERGUSON, individually, and CHRIS)
COBBS, individually and FEDERAL)
INSURANCE COMPANY, MARIA)
ARIAS, MIQUEL ROSALES, APS)
ENTERPRISES, UNLIMITED, INC., HR)
ELECTRIC, A.M. JACOBS, INC.,)
MICKEY MASON, d/b/a MASON)
CONTRACTORS KMAC OF THE)
CAROLINAS, INC., NEO)
CORPORATION, and NAVA GUZMAN)
CONSTRUCTION COMPANY, INC.,)

Defendants.)

UPON THE CALL of the case on May 9, 2011, after counsel for Defendant, North Florida Framing, Inc., had been granted leave to withdraw from the case, Plaintiffs called the Court's attention to Defendant, North Florida Framing, Inc.'s failure to appear for the trial of the case and moved for an Order of Default against Defendant, North Florida Framing, Inc., which was granted. Further, Plaintiffs moved for the claim and default against Defendant, North Florida Framing, Inc., be referred to the Master In Equity for a Damages Hearing, which was granted.

IT IS SO ORDERED!

August 3, 2011
Charleston, South Carolina.


Honorable Kristi L. Harrington
Chief Administrative Judge
Ninth Judicial Circuit

TRANS

Transcript 5-14-13 Scarborough



STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	FOR THE NINTH JUDICIAL CIRCUIT
MARK N. TESENIAR, ET AL,	) CASE NO.:2008-CP-10-0049
Plaintiff,	
VS.	
FENWICK PLANTATION TARRAGON, LLC,	
Defendants.	

Hearing before the
Honorable Mikell R. Scarborough, reported by Bernadette A.
Cali, CSR and Notary Public, on May 14,
2013 at 100 Broad Street, Charleston, South Carolina.

A P P E A R A N C E S

For the Plaintiff Hunter Higgison, Esq.
 Chakiris Law Firm
 Charleston, S.C.

For the Defendant: No appearance

Bernadette A. Cali, CSR
Notary Public

♀

1 THE COURT: This is Teseniar versus Fenwick
2 Plantation. Who is the victim today?

Transcript 5-14-13 Scarborough
MS. HIGGISON: North Florida Framing, Inc.

THE COURT: Okay. All right.

This is a separate entity than the last
default damages hearing which was an
individual, if I remember right?

MS. HIGGISON: That was done.

THE COURT: All right. I see an Order of
Default in the file from August of 2011; proof of
service for notice of hearing. Looks like it was
sent April 15, 2013; today's date. That was
served on the agent for service of process?

MS. HIGGISON: It went to the registered
agent, David Anderson. And we did receive one
green card. We sent it to two separate addresses.
One was a street address, one was a PO box. We
received a green card in the mail from the last
known street address. It was signed by a
Catherine Anderson. And the regular mail letter
that we sent to that street address never came
back. Then, I believe it was last week, I
received the certified letter back from the PO box
address. But we haven't heard anything from
anyone other than the green card was signed.

THE COURT: It came back?

MS. HIGGISON: Yes, I have the originals.

(Hands up document.)

THE COURT: Sure. All right. Thank you.

(pause)

THE COURT: So the actual registered agent
address was returned unclaimed. The other one was

Page 2

Transcript 5-14-13 Scarborough

8 signed for by Catherine Anderson, although it was
9 addressed to David Anderson, registered agent for
10 North Florida Framing. All right.

11 Very good then. I'll find they've been
12 provided with notice of the hearing for today.
13 This is a default damages hearing?

14 MS. HIGGISON: Yes, Your Honor.

15 THE COURT: All right, Ms. Higgison, you may
16 proceed.

17 MS. HIGGISON: This is another default
18 damages hearing arising out of Twelve Oaks, which
19 as you know is on Johns Island just on the other
20 side of the Stono River. In lieu of having a
21 witness here today we have prepared testimony from
22 Miles Glick and Robert Gallagher(phonetic). And
23 Robert Gallagher has prepared our repair estimate.

24 THE COURT: Tell me what Mr. Glick says needs
25 to be done and what Mr. Gallagher says it would

8

4

1 cost.

2 MS. HIGGISON: For North Florida Framing they
3 were engaged in framing the buildings. They
4 installed the secondary weather barrier, the
5 windows, the doors and related flashings out at
6 Twelve Oaks. The damages, there was significant
7 water intrusion, damage to the sheathing,
8 structural framing members, and all of that will
9 require extensive repairs. And Mr. Gallagher's
10 repair estimate for all of the damages at Twelve
11 Oaks is 15,748,225.56.

Transcript 5-14-13 Scarborough
12 THE COURT: 15,748,225.56?
13 MS. HIGGISON: Yes, sir.
14 THE COURT: Okay. Damages sought. And he's
15 broken out how he got that?
16 MS. HIGGISON: It's in his report in the
17 back.
18 THE COURT: All right. I'm assuming, is that
19 joint and several?
20 MS. HIGGISON: Yes, Your Honor.
21 THE COURT: Very good. All right. If you'll
22 hand that up. And did you bring a proposed order?
23 MS. HIGGISON: I did, with my Form 4C.
24 THE COURT: She's on the ball. Isn't she?
25 (Hands up document.)

♀

5

1 MS. HIGGISON: Prepared testimony.
2 THE COURT: Very good.
3 (pause)
4 THE COURT: Is the report of Mr. Gallagher
5 the same or similar to the one that was previously
6 entered in against, I think, the Defendant
7 Marquez(phonetic)?
8 MR. CHAKIRIS: It is, Your Honor. And I
9 don't believe it was Defendant Marquez. I believe
10 it was one of the Fenwick Plantation Tarragon
11 related entities, but it's the same estimate, Your
12 Honor.
13 THE COURT: Okay. Got you.
14 (pause)
15 THE COURT: Ms. Higgison, I have executed
16 your Order, as well as the Form 4C. And I'll be
Page 4

Transcript 5-14-13 Scarborough

17 glad to give that to you if you would like to take
18 it down and file it or --

19 MS. HIGGISON: I can take it down and file
20 it.

21 THE COURT: Very well. Thank you, ma'am.

22 MS. HIGGISON: Thank you.

23 THE COURT: Thanks for your prompt
24 presentation. Very well done.

25 MS. HIGGISON: Thank you.

♀

6

1 THE COURT: All right, Mr. Chakiris.

2 MR. CHAKIRIS: Thank you very much.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21
22
23
24
25

♀
†

STATE OF SOUTH CAROLINA)

C E R T I F I C A T E

COUNTY OF CHARLESTON)

I, Bernadette Cali Leland, Notary Public, do hereby certify that the within hearing was taken and transcribed by me; and that the foregoing pages are a true and accurate transcript of the within proceedings. I further certify that the persons were present as stated.

I further certify that I am not of counsel or kin to any of the parties to this action, nor am I interested in the result of said action.

IN WITNESS WHEREOF, I have hereunto subscribed my name, this July 1, 2015.

Bernadette Cali Leland, CSR
Notary Public
My Commission Expires
April 5, 2020

Transcript 5-14-13 scarborough

♀

Page 7

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MARK F. TESENIAR and NAN M. TESENIAR, on
behalf of themselves and others similarly situated,
and TWELVE OAKS AT FENWICK PROPERTY
OWNERS ASSOCIATION, INC., (from December
16, 2008 to present),

Plaintiffs,

vs.

FENWICK PLANTATION TARRAGON, LLC, A
SOUTH CAROLINA LIMITED LIABILITY
COMPANY F/K/A FENWICK TARRAGON
APARTMENTS, LLC, A SOUTH CAROLINA
LIMITED LIABILITY COMPANY, CHARLESTON
TARRAGON MANAGER, LLC, A DELAWARE
LIMITED LIABILITY COMPANY, TARRAGON
DEVELOPMENT CORPORATION, A NEVADA
CORPORATION, SUMMIT CONTRACTORS
GROUP, INC., SUMMIT CONTRACTORS, INC.,
FUGLEBERG KOCH ARCHITECTS, INC.,
DEVELOPMENT, COMPLIANCE &
INSPECTIONS, INC., H2L CONSULTING
ENGINEERS, TWELVE OAKS AT FENWICK
PROPERTY OWNERS ASSOCIATION, INC. (from
August 8, 2006 to December 15, 2008),
PROFESSIONAL PLASTERING & STUCCO,
INC., JOHNSON COMPANIES, INC., D/B/A
JOHNSON ROOFING, INC., LOS CAMPOS, INC.,
NORTH FLORIDA FRAMING, INC., BEST
MASONRY & TOOL SUPPLY, L.P. AS
SUCCESSOR IN INTEREST TO BEST
MASONRY & TOOL SUPPLY, INC., AS
SUCCESSOR IN INTEREST TO MAGNA WALL,
INC., ALL SOUTH VINYL PRODUCTS, INC.,
MARQUEZ CONSTRUCTION, INC., J.T. WALKER
INDUSTRIES, INC., J.T. INDUSTRIES D/B/A
GENERAL ALUMINUM CORPORATION, AND
GENERAL ALUMINUM COMPANY OF TEXAS,
LP, J.R. HOBBS CO.-ATLANTA, LLC F/K/A JRH
MERGER CO., LLC, JAMIE HELMAN,
INDIVIDUALLY, SCOTT FERGUSON,
INDIVIDUALLY, AND CHRIS COBBS,
INDIVIDUALLY, AND FEDERAL INSURANCE
COMPANY, MARIA ARIAS, MIQUEL ROSALES,
APS ENTERPRISES UNLIMITED, INC., HR
ELECTRIC, A.M. JACOBS, INC., MICKEY
MASON D/B/A MASON CONTRACTORS, KMAC
OF THE CAROLINAS, INC., AND NEO
CORPORATION,

Defendants.

IN THE CIRCUIT COURT

CASE NO.: 2008-CP-10-0049

ORDER GRANTING JUDGMENT
AGAINST NORTH FLORIDA
FRAMING, INC.

FILED
2013 MAY 14 AM 10:28
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____



This matter came before me on May 14, 2013, for a Default Damages hearing pursuant to an Order of Default for North Florida Framing, Inc., and an Order of Reference for a Damages Hearing entered on August 9, 2011. Present at the hearing were counsel for Plaintiffs, Hunter Higgison, Esquire, and John T. Chakeris, Esquire. No one appeared on behalf of North Florida Framing, Inc.

The complaint in this matter alleges that North Florida Framing, Inc. was involved in constructing various elements at the Twelve Oaks at Fenwick Plantation community, which resulted in extensive construction deficiencies. As a result of these deficiencies, it is further alleged that North Florida Framing, Inc., was negligent with respect to the construction of the buildings at Twelve Oaks at Fenwick Plantation and that this negligence resulted in significant water intrusion and damage to the sheathing, structural framing members, and other building components which will require Plaintiffs to make extensive repairs.

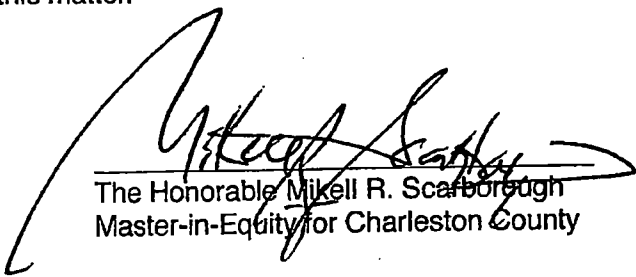
Plaintiffs have produced evidence of the need to repair the construction deficiencies which caused significant water intrusion and damage to the sheathing, structural framing members, and other building components, as well as a repair estimate. Plaintiffs' repair estimate has been produced by a qualified expert, Robert A. Gallagher, the President of Procon & Associates, Inc., and the estimate totals Fifteen Million Seven Hundred Forty Eight Thousand Two Hundred Twenty Five and 56/100 Dollars (\$15,748,225.56). Through the prepared testimony of Robert A. Gallagher, Plaintiffs have demonstrated that this repair estimate is necessitated by improper construction which has resulted in significant water intrusion and damage to the



sheathing, structural framing members, and other building components for which North Florida Framing, Inc. is responsible for. *MTI*

Accordingly, it is ORDERED, ADJUDGED, AND DECREED that judgment be granted in favor of Plaintiffs against defaulting Defendant, North Florida Framing, Inc., jointly and severally, in the amount of Fifteen Million Seven Hundred Forty Eight Thousand Two Hundred Twenty Five and 56/100 Dollars (\$15,748,225.56), which represents repair costs associated with this matter.

IT IS SO ORDERED!


The Honorable Mikell R. Scarborough
Master-in-Equity for Charleston County

Charleston, South Carolina
May 14, 2013

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MARK F. TESENIAR, ET AL

Plaintiff(s)

vs.

MT. HAWLEY INSURANCE COMPANY

Defendant(s)

Submitted By: Hunter James, Esq.

Address: 864 Lowcountry Blvd., Suite A
Mount Pleasant, SC 29464

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2015-CP-10-2994

SC Bar #: 78877

Telephone #: (843) 884-1865

Fax #:

Other:

E-mail: hjames@segullawfirm.com

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

DOCKETING INFORMATION (Check all that apply)

*If Action Is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☒ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 -NI- ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Declaratory Judgment ☐ Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Administrative Law/Relief ☐ Reinstate Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of-State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (610)		

Submitting Party Signature: Hunter JamesDate: 5/21/15

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

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

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

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

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

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

STATE OF SOUTH CAROLINA.

COUNTY OF CHARLESTON

MARK F. TESENIAR AND NAN M.
TESENIAR, on behalf of themselves and
others similarly situated, and TWELVE
OAKS AT FENWICK PROPERTY
OWNERS ASSOCIATION, INC. (from
December 16, 2008 to present)

Plaintiffs.)

v.

MT. HAWLEY INSURANCE COMPANY.

Defendant.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO. 2015-CP-10-2994

SUMMONS
(Non-Jury)
(Declaratory Judgment)

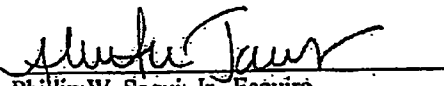
2015 MAY 26 PM 4:33
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and are required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the subscribers at 864 Lowcountry Blvd., Ste. A, Mount Pleasant, South Carolina 29464, within thirty (30) days after the service thereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

SEGUI LAW FIRM PC



Phillip W. Segui, Jr., Esquire
Hunter James, Esquire
864 Lowcountry Blvd., Suite A
Mt. Pleasant, SC 29464
(843) 884-1865
psegui@segulawfirm.com
hjames@segulawfirm.com

Mount Pleasant, South Carolina
May 21, 2015

THE CHAKERIS LAW FIRM

John T. Chakeris, Esquire
231 Calhoun Street
P. O. Box 397
Charleston, SC 29402
(843) 853-5678
john@chakerislawfirm.com

LEATH, BOUCH & SEEKINGS, LLP

W. Jefferson Leath, Jr., Esquire
P. O. Box 59
Charleston, SC 29402
(843) 937-8811
jl@leathbouchlaw.com

**THURMOND KIRCHNER TIMBES &
YELVERTON, P.A.**

Jesse A. Kirchner, Esquire
15 Middle Atlantic Wharf, Suite 101
Charleston, SC 29401
(843) 937-8000
jkirchner@tktylawfirm.com

Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MARK F. TESENIAR AND NAN M.
TESENIAR, on behalf of themselves and
others similarly situated, and TWELVE
OAKS AT FENWICK PROPERTY
OWNERS ASSOCIATION, INC. (from
December 16, 2008 to present)

Plaintiffs,

v.

MT. HAWLEY INSURANCE COMPANY,

Defendant.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO. 2015-CP-10-2994

COMPLAINT
(Non-Jury)
(Declaratory Judgment)

2015 MAY 26 PM 4:33
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

Plaintiffs, complaining of the Defendant above-named, allege as follows:

1. Plaintiffs are owners of a residential condominium project known as Twelve Oaks at Fenwick Plantation (hereinafter "Twelve Oaks"), in Charleston County, consisting of 216 residential dwelling units. This project is exhibiting severe construction deficiencies regarding the exterior building envelopes of all of the buildings. North Florida Framing, Inc., was involved in major aspects of the construction which led to the deficiencies, and was named as a Defendant in Civil Action Number 2008-CP-10-0049. Plaintiffs properly served North Florida Framing, Inc. in Civil Action Number 2008-CP-10-0049 pursuant to the South Carolina Rules of Civil Procedure. An Order of Default as to North Florida Framing, Inc. was entered in Civil Action Number 2008-CP-10-0049 on August 9, 2011 (attached as "Exhibit A"), and a judgment in the amount of \$15,748,225.56 was entered against North Florida Framing, Inc. (hereinafter "North Florida") on May 14, 2013 (attached as "Exhibit B").

2. Defendant, Mt. Hawley Insurance Company (hereinafter "Mt. Hawley"), is a foreign corporation that issued policies of insurance to North Florida insuring its property and interests in this state, which policies were in effect from 2001 through 2004, and of which these Plaintiffs are constructive third-party beneficiaries and judgment creditors.

3. This Court has jurisdiction over the parties and subject matter hereto.

FACTUAL ALLEGATIONS

4. Plaintiffs brought suit against North Florida in Civil Action Number 2008-CP-10-0049 and properly served North Florida pursuant to the South Carolina Rules of Civil Procedure. An Order of Default as to North Florida was entered in Civil Action Number 2008-CP-10-0049 on August 9, 2011 (See Exhibit A) and a judgment in the amount of \$15,748,225.56 was entered was entered against North Florida on May 14, 2013 (See Exhibit B).

5. Mt. Hawley issued its insurance policy numbered MGL0124405 to North Florida on May 1, 2001 such that the policy period expired on May 1, 2002. Mt. Hawley issued its insurance policy numbered MGL0132152 to North Florida on May 1, 2002 such that the policy period expired on May 1, 2003. Mt. Hawley issued its insurance policy numbered MGL0134726 to North Florida on May 1, 2003 such that the policy period expired on May 1, 2004. Mt. Hawley was properly put on notice regarding its insured, North Florida's, involvement in Civil Action Number 2008-CP-10-0049.

6. North Florida performed framing of the buildings and installation of the secondary weather barrier, windows, doors, and related flashings and siding on the Fenwick project in Charleston County, such that the policies were written to insure property and interests in South Carolina.

7. Plaintiffs have filed this Declaratory Judgment action to determine insurance coverage for the construction deficiencies in Civil Action Number 2008-CP-10-0049.

CLAIMS

8. This claim is made pursuant to the South Carolina Declaratory Judgment Act, SC. Code § 15-53-10, *et. seq.*, in that Plaintiffs allege that damages have been caused to them by virtue of the negligent acts of North Florida.

9. Plaintiffs allege that because there has been a judgment entered in favor of Plaintiffs against North Florida in the amount of \$15,748,225.56, Plaintiffs are the beneficiaries of and judgment creditors to the insurance coverage policy limits of Mt. Hawley in accordance with the terms of the policies referenced above.

10. Pursuant to South Carolina Statutory Authority, § 38-61-10 of the South Carolina Code of Laws, all contracts of insurance on property, lives, or interests in this State are considered to have been issued in this State and are subject to this State's decisional law.

11. That South Carolina has and does recognize the concept of "continuous trigger" with multiple policies of insurance where occurrences such as damages to buildings occur over time due to the continual and repeated exposure to the same generally harmful conditions.

12. That Mt. Hawley and refused to fulfill its contractual obligations and did not provide counsel for North Florida to defend the defective construction claims which the Plaintiffs in the underlying litigation alleged to have a value exceeding \$15 million.

13. Plaintiffs allege that Mt. Hawley is obligated under its policies for no longer just up to the total occurrence limit for each of the policy years for North Florida, but now, as Mt. Hawley had an obligation to defend and waived that opportunity, and likewise has waived any insurance policy defenses—including any limiting endorsement or exclusions—that may have

applied, Mt. Hawley is therefore responsible for the full judgment amount including any otherwise non-covered damage as well as any amount in excess of the policy limits.

**COLLECTION AS A CREDITOR ARISING FROM JUDGMENT AGAINST
NORTH FLORIDA**

14. An Order of Default as to North Florida was entered in Civil Action Number 2008-CP-10-0049 on August 9, 2011 (See Exhibit A), and a judgment in the amount of \$15,748,225.56 was entered against North Florida on May 14, 2013 (See Exhibit B).

15. Mt. Hawley is obligated under its policies for the full payment and satisfaction of this judgment.

16. Plaintiffs are informed that a justiciable controversy exists between and among the parties, that the parties have a legal and actual interest in each of said matters, and that each of said matters is ripe for resolution. Plaintiffs ask that this Court inquire into the dispute between and among the parties, review the policies of insurance issued by Mt. Hawley, and issue a Declaratory Judgment that Mt. Hawley is obligated to insure North Florida for the claims made by the Plaintiffs for no longer just up to the total occurrence limit for each of the policy years for North Florida, but now, as Mt. Hawley had an obligation to defend and waived that opportunity, and likewise have waived any insurance policy defenses—including any limiting endorsement or exclusions—that may have applied, Mt. Hawley is therefore responsible for the full judgment amount including any otherwise non-covered damage as well as any amount in excess of the policy limits.

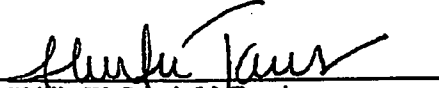
WHEREFORE, the Plaintiffs pray as follows:

That the Court issue an Order declaring the rights of the parties under the policies of insurance issued by Mt. Hawley in regards to the claims made and the judgment awarded against

North Florida, and further declare that Mt. Hawley is required to insure and indemnify North Florida and pay the judgment against North Florida up to and beyond the full amount of their policy coverage as alleged above, as well as for the attorneys fees and cost of this action.

Mount Pleasant, South Carolina
May 21, 2015

SEGUI LAW FIRM PC



Phillip W. Segui, Jr., Esquire
Hunter James, Esquire
864 Lowcountry Blvd., Suite A
Mt. Pleasant, SC 29464
(843) 884-1865
psegui@seguilawfirm.com
hjames@seguilawfirm.com

THE CHAKERIS LAW FIRM

John T. Chakeris, Esquire
231 Calhoun Street
P. O. Box 397
Charleston, SC 29402
(843) 853-5678
john@chakerislawfirm.com

LEATH, BOUCH & SEEKINGS, LLP

W. Jefferson Leath, Jr., Esquire
P. O. Box 59
Charleston, SC 29402
(843) 937-8811
jl@leathbouchlaw.com

**THURMOND KIRCHNER TIMBES &
YELVERTON, P.A.**

Jesse A. Kirchner, Esquire
15 Middle Atlantic Wharf, Suite 101
Charleston, SC 29401
(843) 937-8000
jkirchner@tktylawfirm.com

Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 08-CP-10-0049

MARK F. TESENIAR and NAN M.
TESENIAR, on behalf of themselves and
others similarly situated, and TWELVE
OAKS AT FENWICK PROPERTY
OWNERS ASSOCIATION, INC., (from
December 16, 2008 to present),

Plaintiffs,

vs.

ORDER OF DEFAULT AS TO DEFENDANT,
NORTH FLORIDA FRAMING, INC. AND
ORDER OF REFERENCE TO MASTER IN
EQUITY FOR DAMAGES HEARING

FENWICK PLANTATION TARRAGON,
LLC, A SOUTH CAROLINA LIMITED
LIABILITY COMPANY, f/k/a FENWICK
TARRAGON APARTMENTS, LLC, A
SOUTH CAROLINA LIMITED LIABILITY
COMPANY, CHARLESTON
TARRAGON MANAGER, LLC, A
DELAWARE LIMITED LIABILITY
COMPANY, TARRAGON
DEVELOPMENT CORPORATION, A
NEVADA CORPORATION, SUMMIT
CONTRACTORS GROUP, INC.,
SUMMIT CONTRACTORS, INC.,
FUGLEBERG KOCH ARCHITECTS,
INC., DEVELOPMENT, COMPLIANCE &
INSPECTIONS, INC., H2L
CONSULTING ENGINEERS, TWELVE
OAK AT FENWICK PROPERTY
OWNERS ASSOCIATION, INC., (from
August 8, 2006 to December 15, 2008),
PROFESSIONAL PLASTERING &
STUCCO, INC., JOHNSON
COMPANIES, INC., d/b/a JOHNSON
ROOFING, INC., LOS CAMPOS, INC.,
NORTH FLORIDA FRAMING, INC.,
BEST MASONRY & TOOL SUPPLY,
INC., as successor in interest to MANGA
WALL, INC., ALL SOUTH VINYL
PRODUCTS, INC., MARQUEZ
CONSTRUCTION, INC., J.T. WALKER
INDUSTRIES, INC., J.T. INDUSTRIES
d/b/a GENERAL ALUMINUM
CORPORATION, and GENERAL
ALUMINUM COMPANY OF TEXAS, LP,

2011 AUG -9 AM 9:53
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

FILED

EXHIBIT A

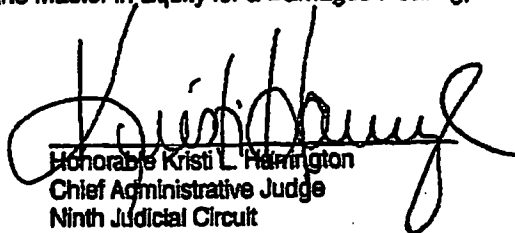
J.R. HOBBS CO.-ATLANTA, LLC f/k/a
JRH MERGER CO., LLC., JAMIE
HELMAN, individually, SCOTT
FERGUSON, individually, and CHRIS
COBBS, individually and FEDERAL
INSURANCE COMPANY, MARIA
ARIAS, MIQUEL ROSALES, APS
ENTERPRISES, UNLIMITED, INC., HR
ELECTRIC, A.M. JACOBS, INC.,
MICKEY MASON, d/b/a MASON
CONTRACTORS KMAC OF THE
CAROLINAS, INC., NEO
CORPORATION, and NAVA GUZMAN
CONSTRUCTION COMPANY, INC.,

Defendants.

UPON THE CALL of the case on May 9, 2011, after counsel for Defendant, North Florida Framing, Inc., had been granted leave to withdraw from the case, Plaintiffs called the Court's attention to Defendant, North Florida Framing, Inc.'s failure to appear for the trial of the case and moved for an Order of Default against Defendant, North Florida Framing, Inc., which was granted. Further, Plaintiffs moved for the claim and default against Defendant, North Florida Framing, Inc., be referred to the Master In Equity for a Damages Hearing, which was granted.

IT IS SO ORDERED!

August 3, 2011
Charleston, South Carolina.


Honorable Kristi L. Harrington
Chief Administrative Judge
Ninth Judicial Circuit

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2008-CP-10-0049

Mark F. Tesenlar and Nan M. Tesenlar, on behalf of
themselves and others similarly situated, and Twelve
Oaks At Fenwick Property Owners Association, Inc.,
(From December 16, 2008 to present)
PLAINTIFF(S)

North Florida Framing, Inc., et al.

DEFENDANT(S)

Submitted by: Hunter Higglison, Esq.	Attorney for: Plaintiff

DISPOSITION TYPE (CHECK ONE)

JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

XX DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.

ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other

ACTION STRICKEN (CHECK REASON): Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other

DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE): Affirmed; Reversed; Remanded; Other

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

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

ORDER INFORMATION

This order does not end the case.

Additional Information for the Clerk:

Please see attached Order Granting Judgment Against North Florida Framing, Inc.

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Mark F. Tesenlar and Nan M. Tesenlar, on behalf of themselves and others similarly situated, and Twelve Oaks At Fenwick Property Owners Association, Inc., (From December 16, 2008 to present)	North Florida Framing, Inc.	\$15,748,225.56
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

EXHIBIT B

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge 

Judge Code 3062

Date 5/14/13

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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

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

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MARK F. TESENIAR and NAN M. TESENIAR, on behalf of themselves and others similarly situated, and TWELVE OAKS AT FENWICK PROPERTY OWNERS ASSOCIATION, INC., (from December 16, 2008 to present),

Plaintiffs,

vs.

FENWICK PLANTATION TARRAGON, LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY F/K/A FENWICK TARRAGON APARTMENTS, LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY, CHARLESTON TARRAGON MANAGER, LLC, A DELAWARE LIMITED LIABILITY COMPANY, TARRAGON DEVELOPMENT CORPORATION, A NEVADA CORPORATION, SUMMIT CONTRACTORS GROUP, INC., SUMMIT CONTRACTORS, INC., FUGLEBERG KOCH ARCHITECTS, INC., DEVELOPMENT, COMPLIANCE & INSPECTIONS, INC., H2L CONSULTING ENGINEERS, TWELVE OAKS AT FENWICK PROPERTY OWNERS ASSOCIATION, INC. (from August 8, 2006 to December 15, 2008), PROFESSIONAL PLASTERING & STUCCO, INC., JOHNSON COMPANIES, INC., D/B/A JOHNSON ROOFING, INC., LOS CAMPOS, INC., NORTH FLORIDA FRAMING, INC., BEST MASONRY & TOOL SUPPLY, L.P. AS SUCCESSOR IN INTEREST TO BEST MASONRY & TOOL SUPPLY, INC., AS SUCCESSOR IN INTEREST TO MAGNA WALL, INC., ALL SOUTH VINYL PRODUCTS, INC., MARQUEZ CONSTRUCTION, INC., J.T. WALKER INDUSTRIES, INC., J.T. INDUSTRIES D/B/A GENERAL ALUMINUM CORPORATION, AND GENERAL ALUMINUM COMPANY OF TEXAS, LP, J.R. HOBBS CO.-ATLANTA, LLC F/K/A JRH MERGER CO., LLC, JAMIE HELMAN, INDIVIDUALLY, SCOTT FERGUSON, INDIVIDUALLY, AND CHRIS COBBS, INDIVIDUALLY, AND FEDERAL INSURANCE COMPANY, MARIA ARIAS, MIQUEL ROSALES, APS ENTERPRISES UNLIMITED, INC., HR ELECTRIC, A.M. JACOBS, INC., MICKEY MASON D/B/A MASON CONTRACTORS, KMAC OF THE CAROLINAS, INC., AND NEO CORPORATION,

Defendants.

IN THE CIRCUIT COURT

CASE NO.: 2008-CP-10-0049

**ORDER GRANTING JUDGMENT
AGAINST NORTH FLORIDA
FRAMING, INC.**

FILED
2013 MAY 14 AM 10:28
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

This matter came before me on May 14, 2013, for a Default Damages hearing pursuant to an Order of Default for North Florida Framing, Inc., and an Order of Reference for a Damages Hearing entered on August 9, 2011. Present at the hearing were counsel for Plaintiffs, Hunter Higgison, Esquire, and John T. Chakeris, Esquire. No one appeared on behalf of North Florida Framing, Inc.

The complaint in this matter alleges that North Florida Framing, Inc. was involved in constructing various elements at the Twelve Oaks at Fenwick Plantation community, which resulted in extensive construction deficiencies. As a result of these deficiencies, it is further alleged that North Florida Framing, Inc., was negligent with respect to the construction of the buildings at Twelve Oaks at Fenwick Plantation and that this negligence resulted in significant water intrusion and damage to the sheathing, structural framing members, and other building components which will require Plaintiffs to make extensive repairs.

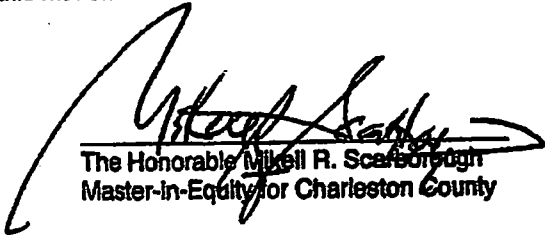
Plaintiffs have produced evidence of the need to repair the construction deficiencies which caused significant water intrusion and damage to the sheathing, structural framing members, and other building components, as well as a repair estimate. Plaintiffs' repair estimate has been produced by a qualified expert, Robert A. Gallagher, the President of Procon & Associates, Inc., and the estimate totals Fifteen Million Seven Hundred Forty Eight Thousand Two Hundred Twenty Five and 56/100 Dollars (\$15,748,225.56). Through the prepared testimony of Robert A. Gallagher, Plaintiffs have demonstrated that this repair estimate is necessitated by improper construction which has resulted in significant water intrusion and damage to the



sheathing, structural framing members, and other building components for which North Florida Framing, Inc. is responsible for ~~part~~

Accordingly, it is ORDERED, ADJUDGED, AND DECREED that judgment be granted in favor of Plaintiffs against defaulting Defendant, North Florida Framing, Inc., jointly and severally, in the amount of Fifteen Million Seven Hundred Forty Eight Thousand Two Hundred Twenty Five and 56/100 Dollars (\$15,748,225.56), which represents repair costs associated with this matter.

IT IS SO ORDERED!



The Honorable Mikell R. Scarborough
Master-in-Equity for Charleston County

Charleston, South Carolina
May 17, 2013

Summons and complaint of
within entitled cause received at
this office and service accepted
in accordance with law
this 2 day of Jan 2015

Raymond A. Famer

Director of Insurance
and Attorney to Accept Service
Columbia, SC

§ 15-38-50. Effect of release, covenant not to sue, or not to..., SC ST § 15-38-50

Code of Laws of South Carolina 1976 Annotated
Title 15. Civil Remedies and Procedures
Chapter 38. South Carolina Contribution Among Tortfeasors Act

Code 1976 § 15-38-50

§ 15-38-50. Effect of release, covenant not to sue, or not to enforce judgment.

Currentness

When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:

(1) it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide, but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and

(2) it discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.

Credits

HISTORY: 1988 Act No. 432, § 5.

Notes of Decisions (15)

COPYRIGHT (C) 2016 BY THE STATE OF SOUTH CAROLINA

Code 1976 § 15-38-50, SC ST § 15-38-50

Current through 2016 Act No. 147, effective March 15, 2016, subject to technical revisions by the Code Commissioner as authorized by law before official publication.

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2011-CP-07-3885

PLANTATION POINT HORIZONTAL
PROPERTY REGIME OWNERS
ASSOCIATION, INC., JENNIFER M.
WELSH n/k/a JENNIFER WORRELL,
ELIZABETH A. HINCHEY, NANNETTE J.
MANNING, NANNETTE J. MANNING as
Successor Trustee of the 4J Trust
Agreement dated March 28, 2000, JAMES
D. MANNING, AND JOHN DOE AND MARY
ROE, individually and on behalf of others
similarly situated

Plaintiffs,

vs.

ASHLEY PLANTATION LIMITED
PARTNERSHIP, ASHLEY PLANTATION
DEVELOPMENT CORPORATION,
COLONIAL REALTY LIMITED
PARTNERSHIP, COLONIAL
PROPERTIES TRUST, KINGS ASHLEY
PLANTATION APARTMENTS, LLC,
KINGS CL ASSOCIATES, LP, KINGS CL
REALTY, LLC, CONTRAVEST
CONSTRUCTION CO. A/K/A
CONTRAVEST BUILDERS,
CONTRAVEST, INC., COASTAL
FRAMING, INC. F/K/A GWB, INC.,
TERMINIX SERVICE, INC., CHARLAN
BROCK AND ASSOCIATES, INC.,
PROFESSIONAL PLASTERING &
STUCCO, INC., FORUM
CONSTRUCTION, INC., SANTANA
CONSTRUCTION, ATLAS ELECTRICAL
COMPANY, INC. n/k/a AMERICAN
RESIDENTIAL SERVICES OF SOUTH
CAROLINA, INC. NORMA GONZALES,
ORKIN, LLC, CAROLINA TERMITE &
PEST CONTROL, INC., ACTION PEST
CONTROL, INC., WRIGHT CONTRACTING
CO., CONSTRUCTION ANALYSIS
SYSTEMS, INC., WELLINGTON
PROFESSIONAL STUCCO AND
DRYWALL, INC., WELLINGTON
PROFESSIONAL STUCCO AND
DRYWALL I, INC., DONNIE M. KING,

FINAL ORDER
APPROVING CLASS ACTION
PARTIAL SETTLEMENT

2014 JUN 5 PM 3:02

CONSTRUCTION OFFICES OF)
 STANFORD, INC., HORIZON, INC., BEST)
 MASONRY & TOOL SUPPLY, L.P. as)
 successor in interest to BEST MASONRY &)
 TOOL SUPPLY, INC., as successor in)
 interest to MAGNA WALL, INC., KEENAN)
 HOPKINS SCHMIDT & STOWELL)
 CONTRACTORS, INC., RUPERT)
 CHAMBERS, CHAMBERS ENTERPRISES)
 OF AMERICA, INC. d/b/a CHAMBERS)
 STUCCO, JORGE BATRES, IMPERIAL)
 PLASTERING, INC., MARCOS CORDAVA,)
 SEBASTIAN LOPEZ, DAVID GODINEZ,)
 JESSE J. MILLER, SONNY WRIGHT)
 ROOFING AND CONTRACTING, ISLAND)
 GLASS & BUILDING PRODUCTS, INC.,)
 LANDMARK RESIDENTIAL)
 MANAGEMENT, LLC, KINGS)
 ACQUISITIONS, LLC, KINGS)
 ACQUISITIONS II, LLC, ELCO)
 LANDMARK RESIDENTIAL HOLDINGS,)
 LLC, PARAMOUNT COMPANIES OF)
 FLORIDA, LLC, CFH GROUP, LLC, CHF)
 INVESTORS, LLC, JOHN DOE 2)
 Defendants.)

This matter came before the Court pursuant to Plaintiffs' Motion for a Fairness Hearing to finally approve¹ the settlement reached with ContraVest, Inc., ContraVest Construction Co. a/k/a ContraVest Builders, Ashley Plantation Limited Partnership, Ashley Plantation Development Corporation, Professional Plastering & Stucco, Inc., Donnie M. King, Wellington Professional Stucco and Drywall, Inc., Wellington Professional Stucco and Drywall I, Inc., Construction Offices of Sanford, Inc., Colonial Realty Limited Partnership, Colonial Properties Trust, Kings Ashley Plantation Apartments, LLC, Kings CL Associates, LP, Kings CL Realty, LLC, Landmark Residential Management, LLC, Kings Acquisitions, LLC, Kings Acquisitions II, LLC, ELCO Landmark Residential Holdings, LLC, ELCO Landmark Residential Holdings II, LLC, Paramount Companies of Florida, LLC, CFH Group, LLC, CFH Investors, LLC, Keenan Hopkins Schmidt & Stowell Contractors, Inc., Forum Construction, Inc., Imperial Plastering, Inc., Marcos

¹ Preliminary approval of the settlement was granted by Order of this Court dated May 5, 2014.

Page 2 of 11

Cordova, Atlas Electrical Company, Inc. n/k/a American Residential Services of South Carolina, Inc., Horizon, Inc., Best Masonry & Tool Supply, LP as successor in interest to Best Masonry & Tool Supply, Inc. as successor in interest to Magna Wall, Inc., and Island Glass & Building Products, Inc., (hereinafter the "Settling Defendants") and to approve Class Counsels' attorneys' fees. A Final Fairness Hearing was conducted on June 5, 2014 beginning at 2:00 p.m. at the Beaufort County Judicial Center located at 102 Ribaut Road, Beaufort, South Carolina.

The above-captioned action involves claims for damages resulting from latent construction defects contained within the buildings comprising Plantation Point Horizontal Property Regime Owners Association, Inc. (hereinafter the "Association"). This matter was initially filed September 16, 2011 seeking damages for all common element and limited common element deficiencies, as well as individual damages associated with loss of use, by the individual Plaintiffs pursuant to their status as owners of individual condominium units within the Association, as well as owners of an undivided interest in the common elements and limited common elements as tenants-in-common with all other unit owners pursuant to the terms of the Association's Master Deed. Subsequently, the Board of Directors for the Association joined the litigation seeking to recover damages for construction deficiencies contained within the common elements and limited common elements. As such, the Association, in essence, took over the claims concerning damage and repairs to the common elements as defined by the governing documents of the Association, namely the Master Deed. The individual Plaintiffs continued to maintain their claims for common element damage in support of the Association, but also advanced additional claims for which the Association does not have standing to assert – namely, loss of use of their individual "Units" as defined by the governing documents.

The Plaintiffs have reached a full, final and complete settlements with the Settling Defendants as follows:

SETTLING DEFENDANT	GROSS SETTLEMENT AMOUNT
ContraVest, Inc., ContraVest Construction Co. a/k/a ContraVest Builders, Ashley Plantation Limited Partnership, and Ashley Plantation Development Corporation ("ContraVest")	\$3,300,000.00 ²
Professional Plastering & Stucco, Inc., Donnie M. King, Wellington Professional Stucco and Drywall, Inc., Wellington Professional Stucco and Drywall I, Inc., and Construction Offices of Sanford, Inc.	\$2,600,000.00
Colonial Realty Limited Partnership and Colonial Properties Trust	\$1,250,000.00
Kings Ashley Plantation Apartments, LLC, Kings CL Associates, LP, Kings CL Realty, LLC, Landmark Residential Management, LLC, Kings Acquisitions, LLC, Kings Acquisitions II, LLC, ELCO Landmark Residential Holdings, LLC, ELCO Landmark Residential Holdings II, LLC	\$700,000.00
Paramount Companies of Florida, LLC, CFH Group, LLC, CFH Investors, LLC	\$500,000.00
Keenan Hopkins Schmidt & Stowell Contractors, Inc.	\$2,750,000.00
Forum Construction, Inc.	\$90,000.00
Imperial Plastering, Inc.	\$250,000.00
Marcos Cordova	\$95,000.00
Atlas Electrical Company, Inc. n/k/a American Residential Services of South Carolina, Inc.	\$100,000.00
Horizon, Inc.	\$100,000.00
Best Masonry & Tool Supply, LP as successor in interest to Best Masonry & Tool Supply, Inc. as successor in interest to Magna Wall, Inc.	\$30,000.00
Island Glass & Building Products, Inc.	\$250,000.00
TOTAL	\$12,015,000.00

The Association and the Class Representatives have advised the Court that the Association and the Class Representatives have agreed that One Million Two Hundred One Thousand Five Hundred and No/100 Dollars (\$1,201,500.00 - the "Class Settlement Fund") will be allotted to the Class as their gross portion of the settlement proceeds from the settlement with the Settling Defendants. This Partial Settlement only ends the Plaintiffs' claims against the Settling Defendants. Plaintiffs' claims, including Class claims, shall continue with respect to all

² ContraVest has separately confessed judgment in favor of the Association in the amount of \$9,000,000.00. The Association, not the class, will separately pursue collection of that judgment against assets of ContraVest as set forth in the documents memorializing that settlement.

non-settling Defendants³. With respect to the Class claims, this apportionment to the Class Fund is with respect to this Partial Settlement only and this percentage apportionment shall not be deemed binding but may indicate appropriate later apportionment on any future recovery or settlement with the non-settling Defendants. Class Representatives and Class Counsel may petition the Court for approval of whatever portion of any future recovery or settlement with the non-settling Defendants they deem necessary to make the class whole with respect to their actual damages for the Court's consideration.

To date, the Association and its attorneys have expended in excess of \$150,000.00 to pay various expenses and costs, including expert fees, in the investigation and prosecution of this matter. In this settlement, the Association has agreed to bear all of the expenses of the litigation such that the only deduction from the Class Settlement Fund will be the attorney's fees and the stipend for the Class Representatives. In this regard, the Notice of Class Action and Partial Settlement, which was circulated on or about May 6, 2014 to all class members, indicated that class counsel would petition the Court for attorneys' fees not to exceed thirty-five percent (35%). Class Counsel has petitioned the Court for a thirty-five percent attorneys' fee from the Settlement Fund pursuant to a written fee agreement with the Class Representatives, in the amount of Four Hundred Twenty Thousand Five Hundred Twenty-Five and No/100 Dollars (\$420,525.00), and for the recovery of no costs and expenses from the Class Settlement Fund, and the Class Representatives have agreed to the same. Further the Notice of Class Action and Partial Settlement provided that the Class Representatives petitioned the Court for a stipend to Jennifer Worrell and Elizabeth Hinchey in the amount of \$10,000.00 each and to Nannette Manning and James Manning in the amount of \$5,000.00 each. As a result of the deductions set forth above, the net award to the Class will be **Seven Hundred Fifty Thousand Nine Hundred Seventy-Five and No/100 Dollars (\$750,975.00)** (the "Class Fund").

³ The only non-settling defendants are those in default. Those claims are being referred to the Beaufort County Master-In-Equity for default proceedings and damages hearing(s).

From the evidence presented, I find that an allocation of the gross settlement proceeds to the Class of \$1,201,500.00 is fair and reasonable taking into consideration, among other factors, the nature and extent of the repairs to the common elements contemplated by the Association.

Based on the record before the Court and the testimony presented, the Court makes the following findings of fact and conclusions of law:

NOW, THEREFORE, good cause appearing, the Court hereby finds the following:

1. The Court has received an Affidavit from Shannon K. Toth, paralegal to Class Counsel, Jesse A. Kirchner, Esq., dated June 3, 2014 affirming that the "Notice of Class Action and Partial Settlement" was sent to each class member in accordance with the "Order Preliminarily Approving the Partial Settlement, Attorneys' Fees, Notice Program, and Setting a Final Hearing" entered by Judge Carmen T. Mullen on May 5, 2014. I, therefore, find that proper and reasonable notice of this Final Hearing has been sent to each class member. The Affidavit further affirms that Class Counsel has not received any objection to the settlement by any class member. The Court has also received an Affidavit from Autumn Logan, paralegal to Class Counsel, Gregory M. Alford, Esq., dated June 3, 2014 affirming that she has examined the records of the Clerk of Court in the above-captioned matter and that no objections to the settlement by any class member have been filed with the Court.

2. Class Counsel and the Class Representatives have asked the Court to approve the attorneys' fees. With respect to attorneys' fees, the Supreme Court of South Carolina has approved contingency fee agreements and has set forth factors which must be considered by this Court in determining the reasonableness of the attorneys' fees. The factors, and my findings in regard thereto, are as follows:

- (a) The nature, extent and difficulty of the case. This lawsuit was commenced in September of 2011. This litigation involves claims for design and construction deficiencies and latent defects in condominiums designed, developed, built and

converted by the various Defendants. The litigation has been extremely complex and difficult. The prosecution of this case thus far has taken more than two and one-half years and has resulted in many hours being expended by the legal teams for both sides. The Plaintiffs have engaged experts to determine the nature and extent of the deficiencies as well as experts to determine the cost of repairing the deficiencies. Numerous depositions have been taken involving much time and expense, with the bulk of the depositions occurring out of state. Extensive written discovery has been conducted resulting in voluminous documents having been exchanged among the parties.

- (b) Professional standing of counsel. Class Counsel is made up of three different law firms, Thurmond Kirchner Timbes & Yelverton, Alford Law Firm, and The Capell Law Firm, all of which are in good standing with the legal community and enjoy excellent reputations. Among the Class Counsel, the individual attorneys, Jesse A. Kirchner, Gregory M. Alford, Thomas Williams, and Glynn L. Capell, have handled large and complicated construction deficiency cases. Class Counsel are well-experienced in class action litigation.
- (c) The contingency of compensation. In this case, the Class Representatives, as well as the Association, specifically requested Class Counsel to take this matter on a contingency fee basis, and it was agreed in writing by the Class Representatives, the Association and by Class Counsel that they be compensated on a contingency basis. There were significant questions concerning insurance coverage and insurance availability among the Settling Defendants and other contingencies upon which a successful recovery depended. Despite the obstacles this case presented, Class Counsel were able to bring this matter to a resolution as to the Settling Defendants.

- (d) Beneficial results obtained. Five days were spent in mediation and many hours spent negotiating outside of the mediation setting in an effort to secure the settlement obtained. Class Counsel has thus far recovered \$12,140,000.00 for the Plantation Point complex, ten percent (10.0%) of which has been allotted to the Class. I find the results obtained in this settlement are beneficial to the Class.
- (e) Legal fees for similar services. Construction defect cases are typically handled on a contingency fee basis ranging from ~~33.33%~~ ^{28% (CW)} to 40.0% in South Carolina. The Notice of Settlement, which was circulated on or about May 6, 2014 to all class members, indicated that Class Counsel would petition the Court for attorneys' fees not more than Thirty-Five percent (35%), plus expenses and costs. Because Class Counsel now petition the Court a thirty-five percent fee and no expenses or costs and no class members objected to the same, the Court finds that a contingency fee of Thirty-Five percent (35%) is fair and reasonable and should be approved by this Court.

3. Class Representatives have petitioned this Court to receive a stipend to Jennifer Worrell and Elizabeth Hinchey in the amount of \$10,000.00 each and to Nannette Manning and James Manning in the amount of \$5,000.00 each. As indicated above, the Class Representatives, rather than the Board of Directors, originally initiated this action for the Association. Over the two and one-half years this case has been pending, Class Representatives have attended numerous meetings and strategy sessions with Class Counsel and have participated in answering extensive written discovery. The Class Representatives have been deposed by a numerous defendants in this case. Additionally, Class Representatives attended the various mediations and otherwise participated in settlement negotiations outside the mediation setting. Further, the Notice of Class Action and Partial Settlement provided that the Class Representatives petitioned the Court for a stipend to Jennifer Worrell and Elizabeth Hinchey in the amount of \$10,000.00 each and to Nannette Manning and James Manning in the

amount of \$5,000.00 each and no class member objected to the same. The Court, therefore, finds that a stipend to Jennifer Worrell and Elizabeth Hinchey in the amount of \$10,000.00 each and to Nannette Manning and James Manning in the amount of \$5,000.00 each is fair and reasonable and should be approved.

4. Less the Class Counsel attorneys' fee and the stipend to the Class Representatives, the net payment to the Class from the Class Settlement Fund totals **Seven Hundred Fifty Thousand Nine Hundred Seventy-Five and No/100 Dollars (\$750,975.00)** (the "Class Fund"). The Court finds that this amount is fair and reasonable given that the bulk of the damages discovered in this case involve common elements which the Association controls pursuant to the governing documents. The Association shall place the Class Fund into an interest bearing account in a federally insured institution in the name of Plantation Point Horizontal Property Regime Owners Association, Inc. The Class Fund shall be held in a separate account by the Association and disbursed in accordance with this Order. The Class Fund shall be kept separate from any other funds belonging to the Association. The principal and any interest accruing from the Class Fund shall be used in the following priorities:

- (a) The Association shall disburse the Class Fund to class members in accordance with their respective percentage of ownership in the common elements as set forth in the Master Deed, increased to reflect the two units that opted out of the Class. The Association shall keep precise records of all monies expended from the Class Fund and shall provide an accounting for examination by any class member or, if requested, by the Court. The record title holder as of the date of this order will be entitled to the proceeds.
- (b) It is further ordered that prior to any disbursement of settlement funds to any class member, that member's regime fees and assessments must be brought current or, in the alternative, that class member's settlement funds shall be applied toward

payment of past due regime fees, assessments or fines, and the balance, if any, be paid to the class member.

5. It also appearing to the Court that no objection has been made by any class member and that proper notice was given of the hearing to each of the known class members.

6. From the evidence before the Court, the testimony presented, and the arguments of counsel, the Court finds that all the criteria of Rule 23 SCRPC have been met and that this settlement should be approved.

7. Upon payment of the settlement proceeds, the Class Representatives are authorized to execute a general release(s), and/or settlement agreement(s) on behalf of the Class and an order(s) or stipulation(s) ending this case and all class claims with prejudice as to the Settling Defendants. The claims against the non-settling defendants shall continue.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED as follows:

- (a) Attorneys' fees in the amount of Four Hundred Twenty Thousand Five Hundred Twenty-Five and NO/100 Dollars (\$420,525.00) shall be paid to Class Counsel in reference to the class claims and the same is hereby declared reasonable and such fee is hereby approved;
- (b) A stipend to Jennifer Worrell and Elizabeth Hinchey in the amount of \$10,000.00 each and to Nannette Manning and James Manning in the amount of \$5,000.00 each is hereby declared reasonable and appropriate and such stipend is hereby approved;
- (c) The settlement of the class action and the allocation to the class the net sum of **Seven Hundred Fifty Thousand Nine Hundred Seventy-Five and No/100 Dollars (\$750,975.00)** is reasonable and proper and is hereby approved under the terms and conditions set forth herein;
- (d) The Class Representatives are authorized to execute a general release(s) and/or settlement agreements on behalf of the Class and order(s) or stipulation(s) ending

this case and all class claims with prejudice as to the Settling Defendants. However, the releases do not become effective for a Settling Defendant until that Settling Defendant's settlement funds have been tendered to Class Counsel and no stipulation or order of dismissal shall be filed until all settlement funds have been tendered to Class Counsel;

- (e) All settlement funds approved herein are due to Class Counsel no later than ten (10) days from the date of this Order. Any settlement funds not received by this deadline shall accrue daily interest to the Plaintiffs at the statutory rate for Judgments in this State. Should the Plaintiffs be forced to file a Motion to Compel the Settlement or a Rule to Show Cause for non-compliance with this Order, Plaintiffs shall be awarded all attorneys' fees and costs associated with the same; and

- (f) This Court shall retain jurisdiction of this matter until it is concluded.

IT IS SO ORDERED.


Carmen T. Mullen
Judge, Fourteenth Judicial Circuit

This 5 day of June, 2014
Beaufort, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2011-CP-07-3885

PLANTATION POINT HORIZONTAL
PROPERTY REGIME OWNERS
ASSOCIATION, INC., JENNIFER M.
WELSH n/k/a JENNIFER WORRELL,
ELIZABETH A. HINCHEY, NANNETTE J.
MANNING, NANNETTE J. MANNING as
Successor Trustee of the 4J Trust
Agreement dated March 28, 2000, JAMES
D. MANNING, AND JOHN DOE AND MARY
ROE, individually and on behalf of others
similarly situated

Plaintiffs,

vs.

ASHLEY PLANTATION LIMITED
PARTNERSHIP, ASHLEY PLANTATION
DEVELOPMENT CORPORATION,
COLONIAL REALTY LIMITED
PARTNERSHIP, COLONIAL
PROPERTIES TRUST, KINGS ASHLEY
PLANTATION APARTMENTS, LLC,
KINGS CL ASSOCIATES, LP, KINGS CL
REALTY, LLC, CONTRAVEST
CONSTRUCTION CO. A/K/A
CONTRAVEST BUILDERS,
CONTRAVEST, INC., COASTAL
FRAMING, INC. F/K/A GWB, INC.,
TERMINIX SERVICE, INC., CHARLAN
BROCK AND ASSOCIATES, INC.,
PROFESSIONAL PLASTERING &
STUCCO, INC., FORUM
CONSTRUCTION, INC., SANTANA
CONSTRUCTION, ATLAS ELECTRICAL
COMPANY, INC. n/k/a AMERICAN
RESIDENTIAL SERVICES OF SOUTH
CAROLINA, INC. NORMA GONZALES,
ORKIN, LLC, CAROLINA TERMITE &
PEST CONTROL, INC., ACTION PEST
CONROL, INC., WRIGHT CONTRACTING
CO., CONSTRUCTION ANALYSIS
SYSTEMS, INC., WELLINGTON
PROFESSIONAL STUCCO AND
DRYWALL, INC., WELLINGTON
PROFESSIONAL STUCCO AND
DRYWALL I, INC., DONNIE M. KING,

AFFIDAVIT OF SHANNON K. TOTH

CONSTRUCTION OFFICES OF)
 STANFORD, INC., HORIZON, INC., BEST)
 MASONRY & TOOL SUPPLY, L.P. as)
 successor in interest to BEST MASONRY &)
 TOOL SUPPLY, INC., as successor in)
 interest to MAGNA WALL, INC., KEENAN)
 HOPKINS SCHMIDT & STOWELL)
 CONTRACTORS, INC., RUPERT)
 CHAMBERS, CHAMBERS ENTERPRISES)
 OF AMERICA, INC. d/b/a CHAMBERS)
 STUCCO, JORGE BATRES, IMPERIAL)
 PLASTERING, INC., MARCOS CORDAVA,)
 SEBASTIAN LOPEZ, DAVID GODINEZ,)
 JESSE J. MILLER, SONNY WRIGHT)
 ROOFING AND CONTRACTING, ISLAND)
 GLASS & BUILDING PRODUCTS, INC.,)
 LANDMARK RESIDENTIAL)
 MANAGEMENT, LLC, KINGS)
 ACQUISITIONS, LLC, KINGS)
 ACQUISITIONS II, LLC, ELCO)
 LANDMARK RESIDENTIAL HOLDINGS,)
 LLC, PARAMOUNT COMPANIES OF)
 FLORIDA, LLC, CFH GROUP, LLC, CHF)
 INVESTORS, LLC, JOHN DOE 2)
)
 Defendants.)
)

PERSONALLY APPEARED before me, Shannon K. Toth, who, first being duly sworn, deposes and says:

1. That I am a Paralegal to Jesse A. Kirchner, Esquire.
2. In accordance with the "Order Preliminarily Approving the Partial Settlement, Attorneys' Fees, Notice Program, and Setting a Final Hearing" entered by the Honorable Carmen T. Mullen, dated May 5, 2014, I, Shannon K. Toth, sent the "Notice of a Proposed Settlement of Class Action and Final Hearing" to each of the class members at their last known address provided by the Association via the U.S. Postal Service First Class Mail on May 6, 2014.
3. That no written objections to the Partial Settlement have been received by counsel for the Plaintiffs by any class member.

AFFIANT FURTHER SAYETH NAUGHT.

Shannon K. Toth
Shannon K. Toth

SWORN to before me this

3 day of June, 2014.

[Signature]

Notary Public for South Carolina

My Commission Expires: 9/13/21

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2011-CP-07-3885

FILED
JUN -3 PM 1:22
J. ROSENEAU
CLERK OF COURT
BEAUFORT COUNTY, S.C.

PLANTATION POINT HORIZONTAL)
PROPERTY REGIME OWNERS)
ASSOCIATION, INC., JENNIFER M.)
WELSH n/k/a JENNIFER WORRELL,)
ELIZABETH A. HINCHEY, NANNETTE J.)
MANNING, NANNETTE J. MANNING as)
Successor Trustee of the 4J Trust)
Agreement dated March 28, 2000, JAMES)
D. MANNING, AND JOHN DOE AND MARY)
ROE, individually and on behalf of others)
similarly situated)

Plaintiffs,

AFFIDAVIT OF AUTUMN LOGAN

vs.

ASHLEY PLANTATION LIMITED)
PARTNERSHIP, ASHLEY PLANTATION)
DEVELOPMENT CORPORATION,)
COLONIAL REALTY LIMITED)
PARTNERSHIP, COLONIAL)
PROPERTIES TRUST, KINGS ASHLEY)
PLANTATION APARTMENTS, LLC,)
KINGS CL ASSOCIATES, LP, KINGS CL)
REALTY, LLC, CONTRAVEST)
CONSTRUCTION CO. A/K/A)
CONTRAVEST BUILDERS,)
CONTRAVEST, INC., COASTAL)
FRAMING, INC. F/K/A GWB, INC.,)
TERMINIX SERVICE, INC., CHARLAN)
BROCK AND ASSOCIATES, INC.,)
PROFESSIONAL PLASTERING &)
STUCCO, INC., FORUM)
CONSTRUCTION, INC., SANTANA)
CONSTRUCTION, ATLAS ELECTRICAL)
COMPANY, INC. n/k/a AMERICAN)
RESIDENTIAL SERVICES OF SOUTH)
CAROLINA, INC. NORMA GONZALES,)
ORKIN, LLC, CAROLINA TERMITE &)
PEST CONTROL, INC., ACTION PEST)
CONROL, INC., WRIGHT CONTRACTING)
CO., CONSTRUCTION ANALYSIS)
SYSTEMS, INC., WELLINGTON)
PROFESSIONAL STUCCO AND)
DRYWALL, INC., WELLINGTON)
PROFESSIONAL STUCCO AND)
DRYWALL I, INC., DONNIE M. KING,)

CONSTRUCTION OFFICES OF)
 STANFORD, INC., HORIZON, INC., BEST)
 MASONRY & TOOL SUPPLY, L.P. as)
 successor in interest to BEST MASONRY &)
 TOOL SUPPLY, INC., as successor in)
 interest to MAGNA WALL, INC., KEENAN)
 HOPKINS SCHMIDT & STOWELL)
 CONTRACTORS, INC., RUPERT)
 CHAMBERS, CHAMBERS ENTERPRISES)
 OF AMERICA, INC. d/b/a CHAMBERS)
 STUCCO, JORGE BATRES, IMPERIAL)
 PLASTERING, INC., MARCOS CORDAVA,)
 SEBASTIAN LOPEZ, DAVID GODINEZ,)
 JESSE J. MILLER, SONNY WRIGHT)
 ROOFING AND CONTRACTING, ISLAND)
 GLASS & BUILDING PRODUCTS, INC.,)
 LANDMARK RESIDENTIAL)
 MANAGEMENT, LLC, KINGS)
 ACQUISITIONS, LLC, KINGS)
 ACQUISITIONS II, LLC, ELCO)
 LANDMARK RESIDENTIAL HOLDINGS,)
 LLC, PARAMOUNT COMPANIES OF)
 FLORIDA, LLC, CFH GROUP, LLC, CHF)
 INVESTORS, LLC, JOHN DOE 2)
)
 Defendants.)

PERSONALLY APPEARED before me, Autumn Logan, who, first being duly sworn, deposes and says:

1. That I am a Paralegal to Gregory M. Alford, Esquire.
2. I have examined the case file at the Clerk of Court for Beaufort County and no written objections are included in the case file by any class member as of the date of my affidavit.

AFFIANT FURTHER SAYETH NAUGHT.

Autumn Logan
Autumn Logan

SWORN to before me this

3rd day of June, 2014.

Katrina A. Scott

Notary Public for South Carolina

My Commission Expires: 4-25-21

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 08-CP-10-0049

MARK F. TESENIAR and NAN M.)
TESENIAR, on behalf of themselves and)
others similarly situated, and TWELVE)
OAKS AT FENWICK PROPERTY)
OWNERS ASSOCIATION, INC., (from)
December 16, 2008 to present),)

NOTICE OF PROPOSED SETTLEMENT OF
CLASS ACTION
AND FINAL HEARING

Plaintiffs,

vs.

PROFESSIONAL PLASTERING &
STUCCO, INC.,

Defendants.

2015 JUN 25 PM 12:49
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

TO: ALL CLASS MEMBERS, being all persons and/or entities who own a condominium unit within Twelve Oaks at Fenwick Plantation who did not opt-out of the Class Action:

PLEASE READ THIS NOTICE CAREFULLY
YOUR RIGHTS MAY BE AFFECTED BY THIS SETTLEMENT

The above-captioned matter was tried May 9-13, 2011 resulting in a verdict against the Defendant, Professional Plastering & Stucco, Inc. The verdict was appealed by Professional Plastering & Stucco, Inc. and was overturned by the South Carolina Court of Appeals. A Petition for Certiorari was denied by the South Carolina Supreme Court, effectively upholding the Court of Appeals decision. The Court of Appeals has remanded the case back to the trial court for a new trial. Since the remand, the parties have participated in another mediation and this Notice is provided to advise you that a settlement has been reached with Professional Plastering & Stucco, Inc.

The overall gross amount of this settlement with Professional Plastering & Stucco, Inc. is Ninety-Two Thousand Five Hundred and No/100 Dollars (\$92,500.00). These settlement funds are in addition to the settlement approved by the Court on September 13, 2014 in the amount of

\$1,300,000.00. In addition, the Plaintiffs have negotiated a settlement with Professional Plastering & Stucco, Inc.'s alleged joint venture partner, Keenan Hopkins Schmidt & Stowell Contractors, Inc. in the amount of \$160,000.00 bringing the total gross settlement concerning the Twelve Oaks project to \$9,577,500.00.

The prior gross settlements paid to the Class in this matter total \$932,500.00. Given the total of the prior payments to the Class coupled with the large expense to the POA to repair the common elements of Twelve Oaks, the POA and the Class Representatives have agreed to allot the entire \$92,500.00 (as well as the \$160,000.00 KHS&S settlement), less attorneys' fees and expenses, to the POA for repairs to the buildings and common elements of Twelve Oaks.

YOU ARE HEREBY NOTIFIED that a hearing will take place in the Court of Common Pleas at the Charleston County Judicial Center located at 100 Broad Street, Charleston, South Carolina, pursuant to Rule 23 SCRPC, to approve this settlement, class counsel fees, and expenses, before the Honorable Kristi Lea Harrington on **July 29, 2015 beginning at 9:30 a.m.** If you agree with the terms of this partial settlement, YOU DO NOT HAVE TO ATTEND THIS HEARING – NO FURTHER ACTION WILL BE REQUIRED ON YOUR PART. If you have a valid, legal reason to object to this settlement and you wish to appear at the hearing to voice your objections, you must provide the Clerk of Court and Class Counsel a written notice of your intention to appear at the hearing to object. This notice must be sent to the Clerk of Court at 100 Broad Street, Charleston, South Carolina, 29401 and Class Counsel at the address indicated below, along with your written objection, postmarked by **July 22, 2015**.

In the event you have assigned or pledged your rights to receive proceeds from this Class Action to some other individual or entity, please notify Class Counsel of this fact, submitting the names and addresses of those assignees.

If you have any questions about this notice or this procedure, DO NOT CONTACT THE COURT. Rather, please contact Class Counsel listed below:

W. Jefferson Leath, Esquire
LEATH BOUCH & SEEKINGS
92 Broad Street
Charleston, SC 29401
843.937-8811
jl@leathbouchlaw.com

Jesse A. Kirchner, Esquire
THURMOND KIRCHNER TIMBES & YELVERTON, P.A.
15 Middle Atlantic Wharf, Suite 101
Charleston, SC 29401
843-937-8000
jkirchner@tktylawfirm.com

Justin O. Lucey, Esquire
JUSTIN O'TOOLE LUCEY, P.A.
415 Mill Street
Mt. Pleasant, SC 29464
843.849-8400
Jlucey@lucey-law.com

John T. Chakeris, Esquire
THE CHAKERIS LAW FIRM
231 Calhoun Street
Charleston, SC 29401
843.853.5678
john@chakerislawfirm.com

Phillip W. Segui, Jr., Esquire
THE SEGUI LAW FIRM
864 Lowcountry Blvd., Suite A
Mt. Pleasant, SC 29464
843.884.1865
pseguilawfirm.com

Attorneys for the Plaintiffs



Julie J. Armstrong
Charleston County Clerk of Court

Charleston County
Circuit Court Case Details
Public Index

Charleston County Home Page Clerk of Court Home Page Magistrates Court SC Judicial Home Page Search Tips

Switch View

Mark F Teseniar , plaintiff, et al VS Fenwick Plantation Tarragon Llc A Sc Limited Liability Co Et , defendant, et al

Case Number:	2008CP1000049	Court Agency:	Common Pleas	Filed Date:	01/04/2008
Case Type:	Common Pleas	Case Sub Type:	Special-Comp/Oth 699	File Type:	Non-Jury
Status:	Settled	Assigned Judge:	Harrington, Kristi Lea		
Disposition:	Withdrawn or Settled by Parties	Disposition Date:	03/26/2015	Disposition Judge:	Clerk Of Court C P, G S, And Family Court
Original Source Doc:		Original Case #:		Restore Reason:	Reopen Case for Appeal
Judgment Number:	2008CP1000049	Court Roster:			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Professional Plastering & Stucco Inc Etc	Order from Court of Appeals Granting Motion for Costs	Filing		10/25/2016-13:16		---
Professional Plastering & Stucco Inc Etc	Judgment/Taxation of Costs	Judgment		10/25/2016-13:14		---
Aps Enterprises Unlimited Inc Etc	Judgment/Taxation of Costs	Judgment		10/25/2016-13:14		---
Professional Plastering & Stucco Inc Etc	Judgment/Taxation of Costs	Judgment		10/25/2016-13:13		---
Teseniar, Nan M	Judgment/Taxation of Costs	Judgment		10/25/2016-13:13		---
Teseniar, Mark F	Judgment/Taxation of Costs	Judgment		10/25/2016-13:13		---
Professional Plastering & Stucco Inc Etc	Judgment/Taxation of Costs	Judgment		10/25/2016-13:13		---
	Notice of Appeal by Mt Hawley Insurance Company, proof/srv	Filing		02/01/2016-08:51		---
	Order/Mt Hawley Inc mot to intervene is denied	Order		01/19/2016-09:53		---
	Materials in support of Mt Hawleys Motion to Intervene	Filing		01/12/2016-09:07		---
	Order Evidence Destruction - contact clerk within 30 days	Order		12/22/2015-12:26		---
Infinger, Marvin D.	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015-14:41		---
Infinger, Marvin D.	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015-14:41		---
Segui, Phillip Ward Jr.	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015-14:41		---
Segui, Phillip Ward Jr.	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015-14:41		---
Chakeris, John T.	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015-14:41		---
Chakeris, John T.	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015-14:41		---
Smith, Bachman S. IV	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015-14:41		---
Smith, Bachman S. IV	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015-14:41		---
Leath, W. Jefferson Jr.	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015-14:41		---
Leath, W. Jefferson Jr.	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015-14:41		---
Kirchner, Jesse A.	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015-14:41		---
Kirchner, Jesse A.	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015-14:41		---
Lucey, Justin O'Toole	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015-14:41		---
Lucey, Justin O'Toole	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015-14:41		---
Jowers, M. Elizabeth	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015-14:41		---
Jowers, M. Elizabeth	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015-14:41		---
Kendall, Everett Augustus II	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015-14:41		---
		Action				---

Kendall, Everett Augustus II	Roster/Notice of Motions Roster Publication Sent			11/09/2015- 14:41		---
Blackburn, Charles Grant	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
Blackburn, Charles Grant	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
Hollingsworth, Dunn Denson	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
Hollingsworth, Dunn Denson	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
O'Neal, John Blanton IV	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
O'Neal, John Blanton IV	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
Wilkes, Michael B.T.	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
Wilkes, Michael B.T.	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
Halio, Andrew Steven	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
Halio, Andrew Steven	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
Daigle, Jason Alan	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
Daigle, Jason Alan	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
Bruerton, James Atkinson IV	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
Bruerton, James Atkinson IV	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
Mahon, Christy Elizabeth	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
Mahon, Christy Elizabeth	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
Osborn, James Geoffrey Jr.	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
Osborn, James Geoffrey Jr.	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
Cannon, Kelley S.	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
Cannon, Kelley S.	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
Cobb, David Starr	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
Cobb, David Starr	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
Stubbs, Sidney Markey	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
Stubbs, Sidney Markey	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
Rothschild, Amy B.	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
Rothschild, Amy B.	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
Cheek, Ellen S.	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
Cheek, Ellen S.	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
Adams, Christopher M.	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
Adams, Christopher M.	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
Mims, Kevin W.	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
Mims, Kevin W.	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
Waltz, Robert David	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
Waltz, Robert David	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
Jones, Michal Cooper	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
Jones, Michal Cooper	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
Scott, William A.	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
Scott, William A.	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
Anderson, Jonathan J.	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
Anderson, Jonathan J.	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
Travis, M. Brittain	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
Travis, M. Brittain	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
McCants, John Lucius		Action				---

	Roster/Notice of Motions Roster Publication Sent			11/09/2015- 14:41		
McCants, John Lucius	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
Barnes, Robert Bryan	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
Barnes, Robert Bryan	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
Martin, Curtis Brent	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
Martin, Curtis Brent	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
Maybank, Roy Pearce	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
Maybank, Roy Pearce	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
Wegener, Danielle Beck	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
Wegener, Danielle Beck	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
Epting, Andrew K. Jr.	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
Epting, Andrew K. Jr.	Roster/Notice of Motions Roster Publication Sent	Action		11/09/2015- 14:41		---
	Stipulation Of Dismissal of certain defendant W/ prejudice	Filing		11/06/2015- 08:37		---
	Miscellaneous Document	Filing		10/19/2015- 13:26		---
	Final Order approving class action settlement	Order		08/04/2015- 11:32		---
	Settlement Agreement	Filing		07/29/2015- 11:22		---
Epting, Andrew K. Jr.	Motion/Motion Filing Fee	Filing		07/28/2015- 16:13		---
Epting, Andrew K. Jr.	Motion/Intervene by Mt. Hawley Insurance Company, crt/srv	Motion		07/28/2015- 11:01	01/14/2016- 11:01	---
	Letter from Atty Danielle Wegener re Settlement Agreement	Filing		07/28/2015- 10:59		---
	Affidavit/Affidavit of J Ashley Garrett	Filing		07/27/2015- 08:57		---
	Miscellaneous Document	Filing		07/21/2015- 08:57		---
Teseniar, Mark F	Order/Preliminarily approving class action partial	Order		06/25/2015- 10:38		---
Kirchner, Jesse A.	Motion/Preliminary Approval of Settlement by plaintiff	Motion		06/24/2015- 16:19	11/09/2015- 16:19	---
Teseniar, Mark F	Motion/Motion Filing Fee	Filing		06/24/2015- 15:47		---
	Order/Crt grants APS Enterprises mot to reconsider & denies	Order		05/13/2015- 12:08		---
	ADR/Mediation Results Report/Fully Settled	Filing		03/26/2015- 10:01		---
	Master order-case sent back to circuit crt	Order		01/22/2015- 09:29	03/26/2015- 09:29	---
Aps Enterprises Unlimited Inc Etc	Motion/Motion Filing Fee	Filing		10/28/2014- 10:18	03/26/2015- 10:18	---
Maybank, Roy Pearce	Motion/Motion to Request Rule by defendant, crt/srv	Motion		10/27/2014- 15:59	03/26/2015- 15:59	---
	Remittitur Fr Crt Of Appeals- remand case for new trial etc	Filing		09/04/2014- 11:00	03/26/2015- 11:00	---
	Order fr Supreme Crt-pet for writ of certiorari is denied	Order		08/25/2014- 09:44	03/26/2015- 09:44	---
	Miscellaneous Document	Filing		05/05/2014- 09:11	03/26/2015- 09:11	---
	Order/fr Crt of Appeals- appeal is dismissed	Order		04/09/2014- 11:01	03/26/2015- 11:01	---
Teseniar, Mark F	Order Fr Supreme Crt-denying the petition etc	Order		03/21/2014- 11:14	03/26/2015- 11:14	---
	Order/Order for partial settlement & atty fees is approved	Order		09/19/2013- 09:34	03/26/2015- 09:34	---
	Final Order approving class action partial settlement & atty	Order		09/13/2013- 11:54	03/26/2015- 11:54	---
	Affidavit/Affidavit of J Ashley Garrett	Filing		09/11/2013- 09:11	03/26/2015- 09:11	---
National Fire & Marine Insurance Company	Response to plaintiffs Mot/Preliminary Approval, crt/srv	Filing		08/09/2013- 10:48	03/26/2015- 10:48	---
	Order Preliminarily approving class action partial	Order		08/08/2013- 08:39	03/26/2015- 08:39	---
Teseniar, Mark F	Motion/Motion Filing Fee	Filing		07/19/2013- 16:15	03/26/2015- 16:15	---
Kirchner, Jesse A.		Motion				---

	Motion/Preliminary Approval of Settlement by plntff, crt/srv			07/19/2013-10:01	03/26/2015-10:01	---
Tesenlar, Mark F	Order/Judgment Against North Florida Framing	Order		05/14/2013-09:52	03/26/2015-09:52	---
Tesenlar, Mark F	Judgment/Judgment	Judgment		05/14/2013-09:51	03/26/2015-09:51	---
Professional Plastering & Stucco Inc Etc	Return in Opposition to Motion/Reconsideration, crt/srv	Filing		03/15/2013-16:23	03/26/2015-16:23	---
Tesenlar, Mark F	Motion/Motion Filing Fee	Filing		02/22/2013-16:34	03/26/2015-16:34	---
Lucey, Justin O'Toole	Motion/Reconsideration by plaintiff	Motion		02/22/2013-14:12	03/26/2015-14:12	---
	Master's Order on Donnie King's Mot to dismiss rule to show	Order		02/08/2013-16:27	03/26/2015-16:27	---
	Plaintiffs Memo in Opposition to Mot/Dismiss, crt/srv	Filing		01/04/2013-13:26	03/26/2015-13:26	---
Wegener, Danielle Beck	Motion/Motion Filing Fee	Filing		01/03/2013-16:17	03/26/2015-16:17	---
Anderson, Jonathan J.	Motion/Motion For Emergency Hearing by Donnie King, crt/srv	Motion		01/03/2013-10:52	03/26/2015-10:52	---
Tesenlar, Mark F	Motion/Motion Filing Fee	Filing		11/14/2012-08:52	03/26/2015-08:52	---
Segul, Phillip Ward Jr.	Motion/Motion For Expedited Hearing by plaintiff	Motion		11/13/2012-09:51	03/26/2015-09:51	---
	Service/Corrected Certificate Of Service	Filing		10/26/2012-11:15	03/26/2015-11:15	---
Anderson, Jonathan J.	Motion/Motion Filing Fee	Filing		10/25/2012-15:44	03/26/2015-15:44	---
Anderson, Jonathan J.	Motion/Dismiss Rule to Show Cause by Donnie King, crt/srv	Motion		10/25/2012-09:39	03/26/2015-09:39	---
	Service/Affidavit Of Service	Filing		10/11/2012-09:42	03/26/2015-09:42	---
Professional Plastering & Stucco Inc Etc	Order/Professional Plastering mot for reconsideration denied	Order		09/27/2012-11:20	03/26/2015-11:20	---
	Service/Certificate Of Service	Filing		09/11/2012-10:58	03/26/2015-10:58	---
Professional Plastering & Stucco Inc Etc	Motion/Motion Filing Fee	Filing		09/10/2012-14:10	03/26/2015-14:10	---
Wegener, Danielle Beck	Motion/Reconsideration by defendant & crt/srv	Motion		09/10/2012-13:20	03/26/2015-13:20	---
	Miscellaneous Document	Filing		09/05/2012-13:12	03/26/2015-13:12	---
Tesenlar, Mark F	Order to show cause, order of reference for supplemental	Order		08/24/2012-11:01	03/26/2015-11:01	---
Tesenlar, Mark F	Verified Petition/Order for Supplemental Proceedings	Filing		08/24/2012-11:00	03/26/2015-11:00	---
Tesenlar, Mark F	Affidavit/Affidavit of Phillip Segul	Filing		08/24/2012-10:59	03/26/2015-10:59	---
Professional Plastering & Stucco Inc Etc	Return to Rule to Show Cause & Petition, crt/srv	Filing		08/17/2012-16:30	03/26/2015-16:30	---
Tesenlar, Mark F	Order/Order Filing Fee	Filing		08/14/2012-14:23	03/26/2015-14:23	---
Tesenlar, Mark F	Order/Order Filing Fee	Filing		08/14/2012-14:21	03/26/2015-14:21	---
Aps Enterprises Unlimited Inc Etc	Motion/Motion Filing Fee	Filing		03/06/2012-10:59	03/26/2015-10:59	---
Daigle, Jason Alan	Motion/Join & Compel Attendance by defendant & crt/srv	Motion		03/05/2012-11:23	03/26/2015-11:23	---
	Miscellaneous Documents (2)	Filing		02/17/2012-13:50	03/26/2015-13:50	---
	Order/from crt of appeals-appeal is held in abeyance	Order		01/30/2012-11:01	03/26/2015-11:01	---
	Letter fr/SC Court of Appeals in re: Notice of Appeal	Filing		08/09/2011-15:09	03/26/2015-15:09	---
Koenig, Robert	Order of default as to defnt North Florida Framing	Order		08/09/2011-12:26	03/26/2015-12:26	---
	Order-defnt Professional Plastering mot to alter or amend	Order		08/09/2011-12:23	03/26/2015-12:23	---
Tesenlar, Mark F	Order/Dismissal as to certain defnts	Order		08/08/2011-09:29	03/26/2015-09:29	---
Anderson, Jonathan J.	Motion/Substitution of Ntc/Appeal & proof/srv by dfndnt, srv	Motion		07/22/2011-10:06	03/26/2015-10:06	---
Professional Plastering & Stucco Inc Etc	Appeal/Notice of Appealling Order from 5/9/11 Amended & srv	Filing		07/22/2011-10:05	03/26/2015-10:05	---
Professional Plastering & Stucco Inc Etc	Appeal/Notice of Appealling Order from 5/19/11 & proof/srv	Filing		07/22/2011-10:00	03/26/2015-10:00	---
Professional Plastering & Stucco Inc Etc	Order/Defnt mot to alter or amend is denied	Order		07/19/2011-10:07	03/26/2015-10:07	---
		Filing				---

Professional Plastering & Stucco Inc Etc	Motion/Motion Filing Fee-Alter or Amend Judgment			06/29/2011-16:41	03/26/2015-16:41	
Anderson, Jonathan J.	Motion/Alter or Amend Judgment by defendant & crt/srv	Motion		06/29/2011-09:28	07/19/2011-09:28	---
	Stipulation/Dismissal with prejudice/General Aluminum Cmpny	Filing		06/22/2011-09:30	03/26/2015-09:30	---
Koenig, Robert	Order/Order-denies all of the defnt's post trial motions	Order		06/17/2011-09:59	03/26/2015-09:59	---
Tesenlar, Mark F	Master/Master's Order for Damages Award	Order		06/14/2011-11:32	03/26/2015-11:32	---
Tesenlar, Mark F	Judgment/Judgment	Judgment		06/14/2011-11:05	03/26/2015-11:05	---
Tesenlar, Mark F	Judgment/Judgment	Judgment		06/14/2011-11:02	03/26/2015-11:02	---
Tesenlar, Mark F	Judgment/Judgment	Judgment		06/14/2011-11:01	03/26/2015-11:01	---
National Fire & Marine Insurance Company	Appeal/Notice of Appealing Order from 5/13/11	Filing		06/13/2011-13:39	03/26/2015-13:39	---
Tesenlar, Mark F	Order/Final order approving class action partial settlement	Order		06/10/2011-14:25	03/26/2015-14:25	---
	Order/Dismissal as to certain defnts	Order		06/10/2011-14:22	03/26/2015-14:22	---
	Affidavit/Affidavit of Christine Petit	Filing		06/09/2011-11:21	03/26/2015-11:21	---
Professional Plastering & Stucco Inc Etc	Reply/Support of Defendants Post-Trial Motions	Filing		06/01/2011-10:06	03/26/2015-10:06	---
	Memo/Oppos by all plntffs to dfndnt post trial motions & srv	Filing		05/27/2011-16:08	03/26/2015-16:08	---
Aps Enterprises Unlimited Inc Etc	Motion/Motion Filing Fee-to alter	Filing		05/24/2011-09:42	03/26/2015-09:42	---
Professional Plastering & Stucco Inc Etc	Substitution of Exhibit	Filing		05/24/2011-08:57	03/26/2015-08:57	---
Professional Plastering & Stucco Inc Etc	Motion/Motion Filing Fee-for new trial	Filing		05/23/2011-16:57	03/26/2015-16:57	---
Professional Plastering & Stucco Inc Etc	Motion/Motion Filing Fee	Filing		05/23/2011-16:55	03/26/2015-16:55	---
Professional Plastering & Stucco Inc Etc	Motion/Motion Filing Fee-for Judgment	Filing		05/23/2011-16:54	03/26/2015-16:54	---
Professional Plastering & Stucco Inc Etc	Motion/Motion Filing Fee	Filing		05/23/2011-16:52	03/26/2015-16:52	---
Dalgie, Jason Alan	Motion/Alter or Amend by dfndnt/3rd prty plntff & crt/srv	Motion		05/23/2011-16:10	03/26/2015-16:10	---
	Stipulation/Dismissal with prjdc as to Johnson Companies Inc	Filing		05/23/2011-14:16	03/26/2015-14:16	---
Professional Plastering & Stucco Inc Etc	Memo/Support of its Motion for New Trial Absolute	Filing		05/23/2011-10:21	03/26/2015-10:21	---
Anderson, Jonathan J.	Motion/Set Off by defendant	Motion		05/23/2011-10:07	03/26/2015-10:07	---
Anderson, Jonathan J.	Motion/New Trial Nisi Remittitur by defendant	Motion		05/23/2011-10:06	03/26/2015-10:06	---
Anderson, Jonathan J.	Motion/Judgment notwithstanding the verdict by defendant	Motion		05/23/2011-10:04	03/26/2015-10:04	---
Anderson, Jonathan J.	Motion/Alter or Amend Order, by defendant	Motion		05/20/2011-15:10	03/26/2015-15:10	---
Professional Plastering & Stucco Inc Etc	Motion/Motion Filing Fee	Filing		05/20/2011-14:57	03/26/2015-14:57	---
Kirchner, Jesse A.	Motion/Preliminary Approval/Partial sttlmnt by plntffs & srv	Motion		05/19/2011-13:17	03/26/2015-13:17	---
Tesenlar, Mark F	Motion/Motion Filing Fee-FOR PRELIMINARY APPROVAL	Filing		05/19/2011-11:45	08/24/2012-11:45	---
North Florida Framing Inc Etc	Order/Relieve Counsel-Randell Stoney & Barbara Wagner	Order		05/18/2011-13:20	03/26/2015-13:20	---
Tesenlar, Mark F	Order/Jury Verdict in favor of Pitff	Order		05/16/2011-13:44	03/26/2015-13:44	---
Tesenlar, Mark F	Judgment/Judgment	Judgment		05/16/2011-13:44	03/26/2015-13:44	---
Professional Plastering & Stucco Inc Etc	Judgment/Judgment	Judgment		05/16/2011-13:44	03/26/2015-13:44	---
National Fire & Marine Insurance Company	Memorandum	Filing		05/12/2011-13:58	03/26/2015-13:58	---
	Order/Order granting APS Enterprises Mot for sum judg	Order		05/11/2011-16:54	03/26/2015-16:54	---
C&N Stucco And Plastering Inc Etc	Order/Order granting 3rd party defnt mot for sum judg	Order		05/11/2011-08:48	03/26/2015-08:48	---
	5th Amended Summons And Complaint, jury trial demanded	Filing		05/09/2011-10:07	03/26/2015-10:07	---
	Deposition Designations/Donnie M King by all Plntffs & srv	Filing		05/06/2011-14:32	03/26/2015-14:32	---
	Motion/Motion Filing Fee	Filing				

Professional Plastering & Stucco Inc Etc			05/05/2011-15:46	03/26/2015-15:46	
Professional Plastering & Stucco Inc Etc	Motion/Motion Filing Fee	Filing	05/05/2011-15:44	03/26/2015-15:44	
Anderson, Jonathan J.	Motion/Exclude by defendant	Motion	05/05/2011-11:35	03/26/2015-11:35	
Anderson, Jonathan J.	Motion/Quash Greg Sirois Depo by defendant & crt/srv	Motion	05/05/2011-11:32	03/26/2015-11:32	
Daigle, Jason Alan	Motion/In Limine by defendant & crt/srv	Motion	05/05/2011-10:59	03/26/2015-10:59	
Aps Enterprises Unlimited Inc Etc	Motion/Motion Filing Fee-in limine	Filing	05/05/2011-09:48	03/26/2015-09:48	
Aps Enterprises Unlimited Inc Etc	Answer/Amended Answer & crt/srv	Filing	05/04/2011-14:22	03/26/2015-14:22	
Aps Enterprises Unlimited Inc Etc	Answer/Amended Answer & crt/srv	Filing	05/04/2011-14:12	03/26/2015-14:12	
Aps Enterprises Unlimited Inc Etc	Answer/Amended Answer & crt/srv	Filing	05/04/2011-14:09	03/26/2015-14:09	
Daigle, Jason Alan	Motion/Rqst for Special Verdict Form by defendant & crt/srv	Motion	05/04/2011-14:07	03/26/2015-14:07	
Maybank, Roy Pearce	Motion/Sever by defendant & crt/srv	Motion	05/04/2011-14:05	03/26/2015-14:05	
Aps Enterprises Unlimited Inc Etc	Motion/Motion Filing Fee-request for special verdict	Filing	05/04/2011-12:36	03/26/2015-12:36	
Aps Enterprises Unlimited Inc Etc	Motion/Motion Filing Fee-motion to sever	Filing	05/04/2011-12:35	03/26/2015-12:35	
Professional Plastering & Stucco Inc Etc	Notice/Filing Original Deposition Transcripts & crt/srv	Filing	05/03/2011-11:31	03/26/2015-11:31	
	Affidavit/Affidavit of Christine Petit	Filing	05/03/2011-11:05	05/03/2011-11:05	
	Order/Final Order approving class action	Order	05/03/2011-10:47	03/26/2015-10:47	
Barnes, Robert Bryan	Motion/Motion Filing Fee	Filing	05/03/2011-09:17	05/03/2011-09:17	
Osborn, James Geoffrey Jr.	Motion/Sever by defendants & crt/srv	Motion	05/02/2011-15:57	05/03/2011-15:57	
North Florida Framing Inc Etc	Motion/Motion Filing Fee-to bifurcate	Filing	05/02/2011-15:36	05/03/2011-15:36	
	Pre trial Brief/Bst Msnry & T S LP & Inc, Magna Wll & srv	Filing	05/02/2011-14:58	05/03/2011-14:58	
Professional Plastering & Stucco Inc Etc	Return to Plaintiffs Motion/In Limine & crt/srv	Filing	05/02/2011-14:57	05/03/2011-14:57	
Wagner, Barbara J.	Motion/Bifurcate trial by defendants & crt/srv	Motion	05/02/2011-10:00	05/03/2011-10:00	
North Florida Framing Inc Etc	Order/Order Filing Fee	Filing	04/29/2011-16:44	05/03/2011-16:44	
Aps Enterprises Unlimited Inc Etc	Pretial Brief & crt/srv	Filing	04/29/2011-16:16	05/03/2011-16:16	
Professional Plastering & Stucco Inc Etc	Notice/Filing Original Deposition Transcripts & crt/srv	Filing	04/29/2011-14:49	05/03/2011-14:49	
Nava Guzman Construction Inc Etc	Pre Trial Brief & crt/mail	Filing	04/29/2011-13:47	05/03/2011-13:47	
	Response/North Florida Framing & Marquez Construction, srv	Filing	04/29/2011-13:44	05/03/2011-13:44	
	Trial Brief/Nrth Florida Framing & Marquez Construction, srv	Filing	04/29/2011-13:41	05/03/2011-13:41	
Professional Plastering & Stucco Inc Etc	Return to APS Enterprises Unlimiteds Mot/Smmry Jdgmnt & srv	Filing	04/29/2011-13:38	05/03/2011-13:38	
	Letter/Atty C Mahon re Remove motion/compel from roster	Filing	04/28/2011-15:02	05/03/2011-15:02	
	Notice/Filing Original Depo Transcript by Plntiffs & crt/srv	Filing	04/27/2011-15:15	05/03/2011-15:15	
	Notice/Filing Original Depo Transcript by dfndnt & crt/srv	Filing	04/26/2011-10:49	05/03/2011-10:49	
	Memo/Spprt/Mot/Smmry Jdgmnt Best Masonry LP/INC, Magna & srv	Filing	04/25/2011-13:39	05/03/2011-13:39	
	Notice/Plaintiffs Filing Original Depo Transcripts, crt/mail	Filing	04/25/2011-09:42	05/03/2011-09:42	
Daigle, Jason Alan	Motion/Amend Pleadings (Amended Answers) by defendant & srv	Motion	04/22/2011-16:05	05/03/2011-16:05	
Professional Plastering & Stucco Inc Etc	Return to plaintiffs motion/summary judgment & crt/srv	Filing	04/22/2011-16:04	05/03/2011-16:04	
	Affidavit/Affidavit of Jim Rafferty	Filing	04/22/2011-16:02	05/03/2011-16:02	
Cobb, David Starr	Motion/Summary Judgment by defendant & crt/srv	Motion	04/22/2011-16:01	05/03/2011-16:01	
Kirchner, Jesse A.		Motion			

	Motion/In Limine by the plaintiffs & crt/srv			04/22/2011-15:59	05/03/2011-15:59	
Tesaniar, Mark F	Motion/Motion Filing Fee-motion in limine	Filing		04/22/2011-13:29	05/03/2011-13:29	
General Aluminum Company Of Texas Lp Etc	Motion/Motion Filing Fee	Filing		04/22/2011-11:16	05/03/2011-11:16	
Aps Enterprises Unlimited Inc Etc	Motion/Motion Filing Fee-motion to amend pleadings	Filing		04/22/2011-09:56	05/03/2011-09:56	
	Order/Preliminarily approving class action partial	Order		04/21/2011-11:10	05/03/2011-11:10	---
Barnes, Robert Bryan	Motion/Summary Judgment by defendant & crt/srv	Motion		04/20/2011-11:02	05/03/2011-11:02	---
Maybank, Roy Pearce	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011-09:41	05/03/2011-09:41	---
McCants, John Lucius	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011-09:41	05/03/2011-09:41	---
Travis, M. Brittain	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011-09:41	05/03/2011-09:41	---
Anderson, Jonathan J.	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011-09:41	05/03/2011-09:41	---
Jones, Michal Cooper	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011-09:41	05/03/2011-09:41	---
Scott, William A.	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011-09:41	05/03/2011-09:41	---
Waltz, Robert David	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011-09:41	05/03/2011-09:41	---
Mims, Kevin W.	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011-09:41	05/03/2011-09:41	---
Kirchner, Jesse A.	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011-09:41	05/03/2011-09:41	---
Lucey, Justin O'Toole	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011-09:41	05/03/2011-09:41	---
Jowers, M. Elizabeth	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011-09:41	05/03/2011-09:41	---
Smith, Bachman S. IV	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011-09:41	05/03/2011-09:41	---
Leath, W. Jefferson Jr.	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011-09:41	05/03/2011-09:41	---
Chakeris, John T.	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011-09:41	05/03/2011-09:41	---
Infinger, Marvin D.	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011-09:41	05/03/2011-09:41	---
Segui, Phillip Ward Jr.	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011-09:41	05/03/2011-09:41	---
Mahon, Christy Elizabeth	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011-09:41	05/03/2011-09:41	---
Bruorton, James Atkinson IV	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011-09:41	05/03/2011-09:41	---
Daigle, Jason Alan	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011-09:41	05/03/2011-09:41	---
Cobb, David Starr	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011-09:41	05/03/2011-09:41	---
Wagner, Barbara J.	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011-09:41	05/03/2011-09:41	---
Cannon, Kelley S.	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011-09:41	05/03/2011-09:41	---
Adams, Christopher M.	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011-09:41	05/03/2011-09:41	---
Cheek, Ellen S.	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011-09:41	05/03/2011-09:41	---
Rothschild, Amy B.	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011-09:41	05/03/2011-09:41	---
Stubbs, Sidney Markey	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011-09:41	05/03/2011-09:41	---
Hallo, Andrew Steven	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011-09:41	05/03/2011-09:41	---
Wilkes, Michael B.T.	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011-09:41	05/03/2011-09:41	---
O'Neal, John Blanton IV	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011-09:41	05/03/2011-09:41	---
Hollingsworth, Dunn Denson	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011-09:41	05/03/2011-09:41	---
Blackburn, Charles Grant	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011-09:41	05/03/2011-09:41	---
Osborn, James Geoffrey Jr.	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011-09:41	05/03/2011-09:41	---
Stoney, Randell C. Jr	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011-09:41	05/03/2011-09:41	---
Kendall, Everett Augustus II	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011-09:41	05/03/2011-09:41	---
Blackburn, Charles Grant	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011-09:40	05/03/2011-09:40	---
Kendall, Everett Augustus II	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011-09:40	05/03/2011-09:40	---
Stoney, Randell C. Jr	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011-09:40	05/03/2011-09:40	---
		Action				---

Osborn, James Geoffrey Jr.	Roster/Notice of Motions Roster Publication Sent		04/20/2011- 09:40	05/03/2011- 09:40	
Hollingsworth, Dunn Denson	Roster/Notice of Motions Roster Publication Sent	Action	04/20/2011- 09:40	05/03/2011- 09:40	---
O'Neal, John Blanton IV	Roster/Notice of Motions Roster Publication Sent	Action	04/20/2011- 09:40	05/03/2011- 09:40	---
Wilkes, Michael B.T.	Roster/Notice of Motions Roster Publication Sent	Action	04/20/2011- 09:40	05/03/2011- 09:40	---
Holio, Andrew Steven	Roster/Notice of Motions Roster Publication Sent	Action	04/20/2011- 09:40	05/03/2011- 09:40	---
Rothschild, Amy B.	Roster/Notice of Motions Roster Publication Sent	Action	04/20/2011- 09:40	05/03/2011- 09:40	---
Cheek, Ellen S.	Roster/Notice of Motions Roster Publication Sent	Action	04/20/2011- 09:40	05/03/2011- 09:40	---
Adams, Christopher M.	Roster/Notice of Motions Roster Publication Sent	Action	04/20/2011- 09:40	05/03/2011- 09:40	---
Cannon, Kelley S.	Roster/Notice of Motions Roster Publication Sent	Action	04/20/2011- 09:40	05/03/2011- 09:40	---
Wagner, Barbara J.	Roster/Notice of Motions Roster Publication Sent	Action	04/20/2011- 09:40	05/03/2011- 09:40	---
Cobb, David Starr	Roster/Notice of Motions Roster Publication Sent	Action	04/20/2011- 09:40	05/03/2011- 09:40	---
Stubbs, Sidney Markey	Roster/Notice of Motions Roster Publication Sent	Action	04/20/2011- 09:40	05/03/2011- 09:40	---
Daigle, Jason Alan	Roster/Notice of Motions Roster Publication Sent	Action	04/20/2011- 09:40	05/03/2011- 09:40	---
Bruorton, James Atkinson IV	Roster/Notice of Motions Roster Publication Sent	Action	04/20/2011- 09:40	05/03/2011- 09:40	---
Mahon, Christy Elizabeth	Roster/Notice of Motions Roster Publication Sent	Action	04/20/2011- 09:40	05/03/2011- 09:40	---
Segul, Phillip Ward Jr.	Roster/Notice of Motions Roster Publication Sent	Action	04/20/2011- 09:40	05/03/2011- 09:40	---
Infinger, Marvin D.	Roster/Notice of Motions Roster Publication Sent	Action	04/20/2011- 09:40	05/03/2011- 09:40	---
Chakeris, John T.	Roster/Notice of Motions Roster Publication Sent	Action	04/20/2011- 09:40	05/03/2011- 09:40	---
Smith, Bachman S. IV	Roster/Notice of Motions Roster Publication Sent	Action	04/20/2011- 09:40	05/03/2011- 09:40	---
Kirchner, Jesse A.	Roster/Notice of Motions Roster Publication Sent	Action	04/20/2011- 09:40	05/03/2011- 09:40	---
Leath, W. Jefferson Jr.	Roster/Notice of Motions Roster Publication Sent	Action	04/20/2011- 09:40	05/03/2011- 09:40	---
Jowers, M. Elizabeth	Roster/Notice of Motions Roster Publication Sent	Action	04/20/2011- 09:40	05/03/2011- 09:40	---
Lucey, Justin O'Toole	Roster/Notice of Motions Roster Publication Sent	Action	04/20/2011- 09:40	05/03/2011- 09:40	---
Mims, Kevin W.	Roster/Notice of Motions Roster Publication Sent	Action	04/20/2011- 09:40	05/03/2011- 09:40	---
Waltz, Robert David	Roster/Notice of Motions Roster Publication Sent	Action	04/20/2011- 09:40	05/03/2011- 09:40	---
Scott, William A.	Roster/Notice of Motions Roster Publication Sent	Action	04/20/2011- 09:40	05/03/2011- 09:40	---
Jones, Michal Cooper	Roster/Notice of Motions Roster Publication Sent	Action	04/20/2011- 09:40	05/03/2011- 09:40	---
Anderson, Jonathan J.	Roster/Notice of Motions Roster Publication Sent	Action	04/20/2011- 09:40	05/03/2011- 09:40	---
Travis, M. Brittain	Roster/Notice of Motions Roster Publication Sent	Action	04/20/2011- 09:40	05/03/2011- 09:40	---
McCants, John Lucius	Roster/Notice of Motions Roster Publication Sent	Action	04/20/2011- 09:40	05/03/2011- 09:40	---
Maybank, Roy Pearce	Roster/Notice of Motions Roster Publication Sent	Action	04/20/2011- 09:40	05/03/2011- 09:40	---
Maybank, Roy Pearce	Roster/Notice of Motions Roster Publication Sent	Action	04/20/2011- 09:39	05/03/2011- 09:39	---
McCants, John Lucius	Roster/Notice of Motions Roster Publication Sent	Action	04/20/2011- 09:39	05/03/2011- 09:39	---
Anderson, Jonathan J.	Roster/Notice of Motions Roster Publication Sent	Action	04/20/2011- 09:39	05/03/2011- 09:39	---
Travis, M. Brittain	Roster/Notice of Motions Roster Publication Sent	Action	04/20/2011- 09:39	05/03/2011- 09:39	---
Scott, William A.	Roster/Notice of Motions Roster Publication Sent	Action	04/20/2011- 09:39	05/03/2011- 09:39	---
Jones, Michal Cooper	Roster/Notice of Motions Roster Publication Sent	Action	04/20/2011- 09:39	05/03/2011- 09:39	---
Waltz, Robert David	Roster/Notice of Motions Roster Publication Sent	Action	04/20/2011- 09:39	05/03/2011- 09:39	---
Lucey, Justin O'Toole	Roster/Notice of Motions Roster Publication Sent	Action	04/20/2011- 09:39	05/03/2011- 09:39	---
O'Neal, John Blanton IV	Roster/Notice of Motions Roster Publication Sent	Action	04/20/2011- 09:39	05/03/2011- 09:39	---
Jowers, M. Elizabeth	Roster/Notice of Motions Roster Publication Sent	Action	04/20/2011- 09:39	05/03/2011- 09:39	---
Kirchner, Jesse A.	Roster/Notice of Motions Roster Publication Sent	Action	04/20/2011- 09:39	05/03/2011- 09:39	---
Leath, W. Jefferson Jr.	Roster/Notice of Motions Roster Publication Sent	Action	04/20/2011- 09:39	05/03/2011- 09:39	---
Smith, Bachman S. IV		Action			---

	Roster/Notice of Motions Roster Publication Sent			04/20/2011- 09:39	05/03/2011- 09:39	
Infinger, Marvin D.	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011- 09:39	05/03/2011- 09:39	---
Chakeris, John T.	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011- 09:39	05/03/2011- 09:39	---
Segui, Phillip Ward Jr.	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011- 09:39	05/03/2011- 09:39	---
Mahon, Christy Elizabeth	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011- 09:39	05/03/2011- 09:39	---
Daigle, Jason Alan	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011- 09:39	05/03/2011- 09:39	---
Mims, Kevin W.	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011- 09:39	05/03/2011- 09:39	---
Stubbs, Sidney Markey	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011- 09:39	05/03/2011- 09:39	---
Cobb, David Starr	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011- 09:39	05/03/2011- 09:39	---
Wagner, Barbara J.	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011- 09:39	05/03/2011- 09:39	---
Cannon, Kelley S.	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011- 09:39	05/03/2011- 09:39	---
Bruerton, James Atkinson IV	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011- 09:39	05/03/2011- 09:39	---
Adams, Christopher M.	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011- 09:39	05/03/2011- 09:39	---
Cheek, Ellen S.	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011- 09:39	05/03/2011- 09:39	---
Rothschild, Amy B.	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011- 09:39	05/03/2011- 09:39	---
Wilkes, Michael B.T.	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011- 09:39	05/03/2011- 09:39	---
Hallo, Andrew Steven	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011- 09:39	05/03/2011- 09:39	---
Hollingsworth, Dunn Denson	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011- 09:39	05/03/2011- 09:39	---
Osborn, James Geoffrey Jr.	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011- 09:39	05/03/2011- 09:39	---
Stoney, Randall C. Jr	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011- 09:39	05/03/2011- 09:39	---
Kendall, Everett Augustus II	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011- 09:39	05/03/2011- 09:39	---
Blackburn, Charles Grant	Roster/Notice of Motions Roster Publication Sent	Action		04/20/2011- 09:39	05/03/2011- 09:39	---
Best Masonry & Tool Supply L P As Successor Etc	Motion/Motion Filing Fee- motion for summary judgment	Filing		04/20/2011- 08:44	05/03/2011- 08:44	
Aps Enterprises Unlimited Inc Etc	Motion/Motion Filing Fee- summary judgment	Filing		04/15/2011- 15:46	05/03/2011- 15:46	
Aps Enterprises Unlimited Inc Etc	Motion/Summary Judgment & cert/serv	Motion		04/15/2011- 12:12	05/03/2011- 12:12	---
	Order/Dismissal w/out prej of APS Enterprises cr/claim	Order		04/11/2011- 12:59	05/03/2011- 12:59	---
Tesenlar, Mark F	Motion/Motion Filing Fee- preliminary approval	Filing		04/07/2011- 16:19	05/03/2011- 16:19	
Tesenlar, Mark F	Motion/Preliminary approval/prti settlement by Plntffs & srv	Motion		04/07/2011- 11:31	05/03/2011- 11:31	---
H2I Consulting Engineers Etc	Order/Order Filing Fee-order of dismissal	Filing		04/06/2011- 16:39	05/03/2011- 16:39	
	Settlement agreement/H2I Consulting & APS Enterprises & srv	Filing		04/06/2011- 12:02	05/03/2011- 12:02	---
Tesenlar, Mark F	Order/granting Plntffs' mot to Quash Subpoena	Order		03/30/2011- 10:50	05/03/2011- 10:50	---
	Order/Denying Defnt General Aluminum Co mot for sum judg	Order		03/30/2011- 10:30	05/03/2011- 10:30	---
Tesenlar, Mark F	Order/Granting Protective Order to Limit Examination (2)	Order		03/30/2011- 10:13	05/03/2011- 10:13	---
Tesenlar, Mark F	Order/Allowing Plntffs Leave to Amend Cmplnt	Order		03/17/2011- 16:41	05/03/2011- 16:41	---
	Order/Order of Commission	Order		03/11/2011- 08:17	05/03/2011- 08:17	---
National Fire & Marine Insurance Company	Motion/rqust f/ spec or gen verdict form & Intrgrtrs & srv	Motion		03/10/2011- 16:52	05/03/2011- 16:52	---
McCants, John Lucius	Motion/Motion Filing Fee- request for a special verdict form	Filing		03/09/2011- 10:46	05/03/2011- 10:46	
Professional Plastering & Stucco Inc Etc	Motion/Motion to Compel & Cert/Serv	Motion		03/02/2011- 14:14	04/28/2011- 14:14	---
Professional Plastering & Stucco Inc Etc	Motion/Motion Filing Fee	Filing		03/02/2011- 14:09	05/03/2011- 14:09	---
Tesenlar, Mark F	Order/Order of Commission	Order		03/02/2011- 08:43	05/03/2011- 08:43	---
	FORM4 IN RE:MSORD 20110214 9940 MAILED FIRST CLASS	Order		02/17/2011- 00:00	05/03/2011- 00:00	

FORM4 IN RE:MSORD 20110214 9950 MAILED FIRST CLASS	Order		02/17/2011- 00:00	05/03/2011- 00:00	
MASTERS ORDER GRANTING CONTINUANCE OF HEARING	Order		02/14/2011- 00:00	05/03/2011- 00:00	---
MASTERS ORDER CASE CONTINUED	Order		02/14/2011- 00:00	05/03/2011- 00:00	---
FORM4 IN RE:ORDER 20110125 9990 MAILED FIRST CLASS	Order		01/29/2011- 00:00	05/03/2011- 00:00	
ORDER OF COMMISSION (6)	Order		01/25/2011- 00:00	05/03/2011- 00:00	---
NOT/MOT FOR SUM JUDGE AS TO PROFESSIONAL PLASTERING;LEATH, W	Filing		01/21/2011- 00:00	05/03/2011- 00:00	---
3RD PARTY DEFNT C&N STUCCO & PLASTERING INC'S;SCOTT, W	Filing		01/19/2011- 00:00	05/03/2011- 00:00	---
PLNTF MEMO IN OPPOSITION TO DEFNT MOTION FOR	Filing		01/19/2011- 00:00	05/03/2011- 00:00	---
AFFIDAVIT OF ROBERT SHELLBERG	Filing		01/19/2011- 00:00	05/03/2011- 00:00	---
C&N STUCCO & PLASTERING INC'S AMENDED ANSWER TO	Filing		01/18/2011- 00:00	05/03/2011- 00:00	---
AFFIDAVIT OF SERVICE	Filing		01/14/2011- 00:00	05/03/2011- 00:00	---
AFFIDAVIT OF MYLES I GLICK, AIA	Filing		01/13/2011- 00:00	05/03/2011- 00:00	---
MEMO IN OPPOSITION TO PLTFFS MOTION TO LIMIT	Filing		01/04/2011- 00:00	05/03/2011- 00:00	---
MEMO IN OPPOSITION TO PLTFFS MOTION TO QUASH	Filing		01/04/2011- 00:00	05/03/2011- 00:00	---
REPLY BRIEF OF H2L CONSULTING ENGINEERS IN SUPPORT	Filing		01/04/2011- 00:00	05/03/2011- 00:00	---
FORM4 IN RE:ORDER 20101220 9990 MAILED FIRST CLASS	Order		01/01/2011- 00:00	05/03/2011- 00:00	
NOT/MOT FOR SUMMARY JUDGMENT ON BEHALF OF DEFNT;COBB, D (30)	Motion		12/23/2010- 00:00	05/03/2011- 00:00	---
NOT/MOT FOR SUMMARY JUDGMENT ON BEHALF OF DEFNT;COBB, D (30)	Motion		12/23/2010- 00:00	05/03/2011- 00:00	---
FORM4 IN RE:ORDIS 20101214 9990 MAILED FIRST CLASS	Order		12/22/2010- 00:00	05/03/2011- 00:00	
CONSENT ORDER FOR SUBSTITUTION OF COUNSEL	Order		12/20/2010- 00:00	05/03/2011- 00:00	---
MEMO IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT	Filing		12/17/2010- 00:00	05/03/2011- 00:00	---
AFFIDAVIT OF ROBERT SISNROY	Filing		12/16/2010- 00:00	05/03/2011- 00:00	---
MEMO OF H2L CONSULTING ENGINEERING IN SUPPORT OF	Filing		12/14/2010- 00:00	05/03/2011- 00:00	---
ORDER OF DISMISSAL AS TO CERTIAN DEFNTS WITH	Order		12/14/2010- 00:00	05/03/2011- 00:00	---
ANSWER OF 3RD PARTY DEFNT C&N STUCCO & PLASTERING;SCOTT, W	Filing		12/03/2010- 00:00	05/03/2011- 00:00	---
FORM4 IN RE:ORDER 20101122 9990 MAILED FIRST CLASS	Order		12/01/2010- 00:00	05/03/2011- 00:00	
FORM4 IN RE:ORDER 20101119 9990 MAILED FIRST CLASS	Order		11/30/2010- 00:00	05/03/2011- 00:00	
ORDER-CASE ASSIGNED TO JUDGE KRISTI LEA	Order		11/22/2010- 00:00	05/03/2011- 00:00	---
FORM4 IN RE:ORDIS 20101110 9990 MAILED FIRST CLASS	Order		11/20/2010- 00:00	05/03/2011- 00:00	
CONSENT ORDER OF DISMISSAL WITH PREJ AS TO CLAIMS	Order		11/19/2010- 00:00	05/03/2011- 00:00	---
FORM4 IN RE:ORDER 20101109 9990 MAILED FIRST CLASS	Order		11/18/2010- 00:00	05/03/2011- 00:00	
STIPULATION OF DISMISSAL AS TO TWELVE OAKS AT	Filing		11/15/2010- 00:00	05/03/2011- 00:00	---
CONSNET ORDER OF DISMISSAL WITH PREJ ONLY AS TO	Order		11/10/2010- 00:00	05/03/2011- 00:00	---
WITHDRAWAL OF OPPOSITION OF DEFNT H2L CONSULTING	Filing		11/10/2010- 00:00	05/03/2011- 00:00	---
FINAL ORDER APPROVING CLASS ACTION PARTIAL	Order		11/09/2010- 00:00	05/03/2011- 00:00	---
	Filing				---

DEFNT KMAC'S ANSWER TO 4TH AMENDED COMPLNT & WALTZ, R		11/08/2010-00:00	05/03/2011-00:00	
MOTION FOR ORDER OF DISMISSAL W/ PREJUDICE OF ALL	Motion	11/05/2010-00:00	11/05/2010-00:00	
MOTION FOR DISMISS W/PREJUDICE OF ALL CLAIMS; JOWERS, M (15)	Motion	11/02/2010-00:00	11/02/2010-00:00	
MOTION HEARING	Filing	11/01/2010-09:30	05/03/2011-09:30	
AFFIDAVIT OF CHRISTINE PETIT	Filing	10/29/2010-00:00	05/03/2011-00:00	
NOT/MOT TO LIMIT EXAMINATION & CERT/SERV; LEATH, W (30 MIN)	Motion	10/22/2010-00:00	10/22/2010-00:00	
DEFNT H2L CONSULTING ENGINEERS OPPOSITION	Filing	10/22/2010-00:00	05/03/2011-00:00	
FORM4 IN RE: OREF 20101014 9990 MAILED FIRST CLASS	Order	10/22/2010-00:00	05/03/2011-00:00	
NOT/MOT TO AMEND COMPLAINT & CERT/SERV; CHAKERIS, J	Filing	10/19/2010-00:00	05/03/2011-00:00	
FORM4 IN RE: ORDER 20101005 9980 MAILED FIRST CLASS	Order	10/15/2010-00:00	05/03/2011-00:00	
Order/Referred to Master	Order	10/14/2010-00:00	05/03/2011-00:00	
ORDER OF REFERENCE W/ FINALITY	Order	10/14/2010-00:00	05/03/2011-00:00	
FORM4 IN RE: ORDER 20101001 9980 MAILED FIRST CLASS	Order	10/09/2010-00:00	05/03/2011-00:00	
ORDER OF COMMISSION-DEPOSITION OF SKYETEE	Order	10/05/2010-00:00	05/03/2011-00:00	
AFFIDAVIT OF PUBLICATION	Filing	10/05/2010-00:00	05/03/2011-00:00	
ORDER OF COMMISSION (7)	Order	10/01/2010-00:00	05/03/2011-00:00	
FORM4 IN RE: OREF 20100923 9980 MAILED FIRST CLASS	Order	10/01/2010-00:00	05/03/2011-00:00	
NOT/MOT TO LIMIT EXAMINATION & CERT/SERV	Motion	09/27/2010-00:00	09/27/2010-00:00	
DEFNT H2L CONSULTING ENGINEERS' MOT FOR ORDER	Motion	09/24/2010-00:00	09/24/2010-00:00	
AFFIDAVIT OF SERVICE	Filing	09/24/2010-00:00	05/03/2011-00:00	
AFFIDAVIT OF DEFAULT	Filing	09/23/2010-00:00	05/03/2011-00:00	
ENTRY OF DEFAULT	Order	09/23/2010-00:00	05/03/2011-00:00	
AFFIDAVIT OF PUBLICATION	Filing	09/20/2010-00:00	05/03/2011-00:00	
AFFIDAVIT OF SERVICE	Filing	09/20/2010-00:00	05/03/2011-00:00	
FORM4 IN RE: COMP 20100910 9990 MAILED FIRST CLASS	Order	09/16/2010-00:00	05/03/2011-00:00	
FORM4 IN RE: ORDER 20100909 9970 MAILED FIRST CLASS	Order	09/15/2010-00:00	05/03/2011-00:00	
3RD PARTY DEFNT NAVA GUZMAN CONSTRUCTION INC'S; TRAVIS, M	Filing	09/14/2010-00:00	05/03/2011-00:00	
COMPLEX CASE DESIGNATION ORDER TO JUDGE YOUNG	Filing	09/10/2010-00:00	05/03/2011-00:00	
NOT/MOT TO DISMISS THE PLNTFFS' 4TH AMENDED; O'NEAL, J (20)	Filing	09/09/2010-00:00	05/03/2011-00:00	
ORDER PRELIMINARILY APPROVING CLASS ACTION PARTIAL	Order	09/09/2010-00:00	05/03/2011-00:00	
ANSWER OF DEFNT DEVELOPMENT COMPLIANCE & O'NEAL, J	Filing	09/09/2010-00:00	05/03/2011-00:00	
ACCEPTANCE OF SERVICE	Filing	08/30/2010-00:00	05/03/2011-00:00	
ACCEPTANCE OF SERVICE	Filing	08/30/2010-00:00	05/03/2011-00:00	
ANSWER OF DEFNT NEO CORP TO PLNTFFS' 4TH AMENDED; ADAMS, C	Filing	08/25/2010-00:00	05/03/2011-00:00	
FORM4 IN RE: ORDER 20100817 9980 MAILED FIRST CLASS	Order	08/24/2010-00:00	05/03/2011-00:00	
AFFIDAVIT OF SERVICE & SHERIFFS RETURN OF SERVICE	Filing	08/24/2010-00:00	05/03/2011-00:00	

NOT/MOT FOR PRELIMINARY APPROVAL OF A PARTIAL	Motion	08/18/2010-00:00	08/18/2010-00:00	
FORM4 IN RE:ORPUB 20100812 9960 MAILED FIRST CLASS	Order	08/18/2010-00:00	05/03/2011-00:00	
FORM4 IN RE:ORPUB 20100812 9980 MAILED FIRST CLASS	Order	08/18/2010-00:00	05/03/2011-00:00	
FORM4 IN RE:ORPUB 20100811 9980 MAILED FIRST CLASS	Order	08/17/2010-00:00	05/03/2011-00:00	
ORDER DENYING DEFNT JOHNSON COMPANIES INC'S MOTION	Order	08/17/2010-00:00	05/03/2011-00:00	
ORDER FOR SERVICE BY PUBLICATION FOR MIQUEL	Order	08/12/2010-00:00	05/03/2011-00:00	
ORDER FOR SERVICE BY PUBLICATION FOR VILLAGOMEZ	Order	08/12/2010-00:00	05/03/2011-00:00	
AFFIDAVIT IN SUPPORT OF ORDER FOR SERVICE BY	Filing	08/12/2010-00:00	05/03/2011-00:00	
AFFIDAVIT IN SUPPORT OF ORDER FOR SERVICE BY	Filing	08/12/2010-00:00	05/03/2011-00:00	
AFFIDAVIT IN SUPPORT OF ORDER FOR SERVICE BY	Filing	08/11/2010-00:00	05/03/2011-00:00	
ORDER FOR SERVICE BY PUBLICATION FOR C&N STUCCO	Order	08/11/2010-00:00	05/03/2011-00:00	
FORM4 IN RE:ORDER 20100730 9990 MAILED FIRST CLASS	Order	08/06/2010-00:00	05/03/2011-00:00	
SUMMONS & NORTH FLORIDA FRAMING INC'S 3RD PARTY	Filing	08/05/2010-00:00	05/03/2011-00:00	
PLNTFFS' MOTION TO COMPEL AGAINST DEFNT;SEGUI, P (15)	Motion	08/02/2010-00:00	08/02/2010-00:00	
NOTICE OF APPEARANCE OF ATTY J ANDERSON ON BEHALF	Filing	08/02/2010-00:00	05/03/2011-00:00	
ORDER-CASE REMOVED FROM JUDGE BAXLEY & THE	Order	07/30/2010-00:00	05/03/2011-00:00	
LETTER FR/ ATTY S STUBBS IN RE: PARTY HAS SETTLED	Filing	07/27/2010-00:00	05/03/2011-00:00	
DEFNT JOHNSON COMPANIES INC D/B/A JOHNSON ROOFING	Filing	07/23/2010-00:00	05/03/2011-00:00	
NOT/MOT FOR SUM JUDG & CERT/SERV;STUBBS, S	Filing	07/19/2010-00:00	05/03/2011-00:00	
PLNTFFS' NOT/MOT TO QUASH SUBPOENA & CERT/SERV	Filing	07/16/2010-00:00	05/03/2011-00:00	
DEFNT H2L CONSULTING ENGINEERS' MOT FOR SUM JUDG;WILKES, M	Filing	07/16/2010-00:00	05/03/2011-00:00	
NOT/MOT FOR SUMMARY JUDGMENT ON BEHALF OF DEFNT;JONES, M	Filing	07/12/2010-00:00	05/03/2011-00:00	
AFFIDAVIT OF SERVICE UPON NEO CORPORATION	Filing	07/09/2010-00:00	05/03/2011-00:00	
NOT/MOT TO COMPEL COMPLETE RESPONSES TO SUMMIT'S	Motion	07/06/2010-00:00	07/06/2010-00:00	
TWELVE OAKS FENWICK PROPERTY OWNERS ASSOC INC'S;HALIO, A	Filing	07/02/2010-00:00	05/03/2011-00:00	
DEFNT A M JACOBS INC'S AMENDED ANSWER TO PLNTFFS';MIMS, K	Filing	06/21/2010-00:00	05/03/2011-00:00	
AFFIDAVIT OF SERVICE UPON NEO CORP & KMAC OF THE	Filing	06/21/2010-00:00	05/03/2011-00:00	
DEFNT A M JACOBS INC'S ANSWER TO SUMMIT;MIMS, K	Filing	06/18/2010-00:00	05/03/2011-00:00	
ANSWER OF DEFNT H2L CONSULTING ENGINEERS TO APS;WILKES, M	Filing	06/17/2010-00:00	05/03/2011-00:00	
FORM4 IN RE:ORPRO 20100608 9990 MAILED FIRST CLASS	Order	06/16/2010-00:00	05/03/2011-00:00	
DEFNT JOHNSON COMPANIES INC D/B/A JOHNSON;BLACKBURN, C	Filing	06/14/2010-00:00	05/03/2011-00:00	
STIPULATION AMONG SUMMIT CONTRACTORS GROUP INC,	Filing	06/14/2010-00:00	05/03/2011-00:00	
NOT/MOT TO LIMIT EXAMINATION & CERT/SERV;SEGUI, P (45 MIN)	Filing	06/10/2010-00:00	05/03/2011-00:00	
ORDER OF PROTECTION	Order	06/08/2010-00:00	05/03/2011-00:00	
	Order	06/05/2010-00:00	05/03/2011-00:00	

FORM4 IN RE:ORDER 20100526 9990 MAILED FIRST CLASS					
DEFNT PROFESSIONAL PLASTERING & STUCCO INC'S;MAHON, C	Filing		05/28/2010- 00:00	05/03/2011- 00:00	---
DEFNT PROFESSIONAL PLASTERING & STUCCO INC'S;MAHON, C	Filing		05/27/2010- 00:00	05/03/2011- 00:00	---
DEFNT PROFESSIONAL PLASTERING & STUCCO INC;MAHON, C	Filing		05/27/2010- 00:00	05/03/2011- 00:00	---
DEFNT PROFESSIONAL PLASTERING & STUCCO INC'S;MAHON, C	Filing		05/27/2010- 00:00	05/03/2011- 00:00	---
CONSENT ORDER OF UNIT OWNERS TO PRODUCE VISUAL	Order		05/26/2010- 00:00	05/03/2011- 00:00	---
DEFMTS SUMMIT CONTRACTORS GROUP INC & SUMMIT;SMITH, JAMES	Filing		05/25/2010- 00:00	05/03/2011- 00:00	---
ANSWER OF APS ENTERPRISES UNLIMITED INC TO;DAIGLE, J	Filing		05/20/2010- 00:00	05/03/2011- 00:00	---
ANSWER OF APS ENTERPRISES UNLIMITED INC;DAIGLE, J	Filing		05/20/2010- 00:00	05/03/2011- 00:00	---
ANSWER OF APS ENTERPRISES UNLIMITED INC TO;DAIGLE, J	Filing		05/20/2010- 00:00	05/03/2011- 00:00	---
ANSWER OF DEFNT A.M. JACOBS INC TO PLNTFFS' 4TH;HIMS, K	Filing		05/18/2010- 00:00	05/03/2011- 00:00	---
SUMMONS TO C&N STUCCO AND PLASTERING INC	Filing		05/17/2010- 00:00	05/03/2011- 00:00	---
ANSWER OF DEFNT APS ENTERPRISES UNLIMITED INC TO;DAIGLE, J	Filing		05/17/2010- 00:00	05/03/2011- 00:00	---
FUGELBERG KOCH ARCHITECTS INC'S VOLUNTARY	Filing		05/14/2010- 00:00	05/03/2011- 00:00	---
ANSWER OF DEFNT JOHNSON COMPANIES INC D/B/A;BLACKBURN, C	Filing		05/13/2010- 00:00	05/03/2011- 00:00	---
NOT/MOT TO COMPEL RESPONSES TO SUMMIT'S;SMITH, J (10)	Motion		05/11/2010- 00:00	05/11/2010- 00:00	---
ANSWER OF DEFNT PROFESSIONAL PLASTERING AND STUCCO;MAHON, C	Filing		05/05/2010- 00:00	05/03/2011- 00:00	---
ANSWER OF DEFNT PROFESSIONAL PLASTERING AND STUCCO;MAHON, C	Filing		05/04/2010- 00:00	05/03/2011- 00:00	---
PLNTFFS' NOT/MOT TO COMPEL MEDIATION;KIRCHNER, J (15)	Motion		05/03/2010- 00:00	05/03/2010- 00:00	---
ANSWER OF DEFNT SUMMIT CONTRACTORS GROUP INC TO;SMITH, J	Filing		05/03/2010- 00:00	05/03/2011- 00:00	---
MOTION TO DISMISS AS TO FEDERAL INSURANCE CO'S	Motion		04/30/2010- 00:00	04/30/2010- 00:00	---
MOTION TO AMEND PLEADINGS & CERT/SERV;WAGNER, B (30 MIN)	Motion		04/29/2010- 00:00	04/29/2010- 00:00	---
MOTION TO AMEND CASE MANAGEMENT ORDER & CERT/SERV	Filing		04/29/2010- 00:00	05/03/2011- 00:00	---
ANSWER OF PROFESSIONAL PLASTERING & STUCCO INC TO;MAHON, C	Filing		04/29/2010- 00:00	05/03/2011- 00:00	---
ANSWER OF DEFNT LOS CAMPOS INC TO FEDERAL INS CO'S	Filing		04/26/2010- 00:00	05/03/2011- 00:00	---
REPLY OF DEFNT ALL-SOUTH VINYL PRODUCTS INC TO	Filing		04/26/2010- 00:00	05/03/2011- 00:00	---
REPLY OF DEFNT J.R. HOBBS COMPANY-ATLANTA LLC &	Filing		04/26/2010- 00:00	05/03/2011- 00:00	---
SUMMONS ON CROSS-CLAIM	Filing		04/22/2010- 00:00	05/03/2011- 00:00	---
PROFESSIONAL PLASTERING & STUCCO INC SUMMONS	Filing		04/22/2010- 00:00	05/03/2011- 00:00	---
ANSWER OF DEFNT FEDERAL INSURANCE COMPANY TO 4TH;BRUORTON, J	Filing		04/22/2010- 00:00	05/03/2011- 00:00	---
AFFIDAVIT OF NON-SERVICE	Filing		04/22/2010- 00:00	05/03/2011- 00:00	---
LOS CAMPOS INC'S ANSWER TO SUMMIT'S CR/CLAIMS	Filing		04/22/2010- 00:00	05/03/2011- 00:00	---
	Filing		04/20/2010- 00:00	05/03/2011- 00:00	---

ANSWER OF DEFNTS SUMMIT CONTRACTORS INC & SUMMIT;SMITH, J					
REPLY TO CROSS-CLAIMS OF SUMMIT CONTRACTORS GROUP	Filing		04/19/2010-00:00	05/03/2011-00:00	---
ANSWER & CR/CLAIMS OF CERTAIN DEFNTS TO PLNTFFS';OSBORN, J	Filing		04/16/2010-00:00	05/03/2011-00:00	---
AFFIDAVIT OF SERVICE & PROOF OF SERVICE	Filing		04/13/2010-00:00	05/03/2011-00:00	---
ANSWER OF DEFNT H2L CONSULTING ENGINEERS TO;WILKES, M	Filing		04/12/2010-00:00	05/03/2011-00:00	---
AFFIDAVIT OF NON-SERVICE	Filing		04/12/2010-00:00	05/03/2011-00:00	---
AFFIDAVIT OF SERVICE	Filing		04/09/2010-00:00	05/03/2011-00:00	---
AFFIDAVIT OF NON-SERVICE	Filing		04/08/2010-00:00	05/03/2011-00:00	---
ANSWER OF DEFNT PROFESSIONAL PLASTERING AND STUCCO;MAHON, C	Filing		04/01/2010-00:00	05/03/2011-00:00	---
FORM4 IN RE:ORDER 20100322 9980 MAILED FIRST CLASS	Order		04/01/2010-00:00	05/03/2011-00:00	---
FORM4 IN RE:ORDER 20100322 9990 MAILED FIRST CLASS	Order		04/01/2010-00:00	05/03/2011-00:00	---
ANSWER OF DEFNT SCOTT FERGUSON TO PLNTFFS' 3RD;ADAMS, C	Filing		03/31/2010-00:00	05/03/2011-00:00	---
SUPPLEMENTAL ANSWER OF DEFNT FUGLEBERG KOCH;JOWERS, M	Filing		03/31/2010-00:00	05/03/2011-00:00	---
SUMMONS AS TO 3RD PARTY COMPLAINT & CERT/SERV	Filing		03/31/2010-00:00	05/03/2011-00:00	---
ANSWER OF DEFNT FUGLEBERG KOCH ARCHITECT INC TO;JOWERS, M	Filing		03/30/2010-00:00	05/03/2011-00:00	---
ANSWER OF DEFNT ALL-SOUTH VINYL PRODUCTS INC TO;JONES, M	Filing		03/29/2010-00:00	05/03/2011-00:00	---
ANSWER OF DEFNT LOS CAMPOS INC TO THE 4TH AMENDED	Filing		03/29/2010-00:00	05/03/2011-00:00	---
ANSWER OF DEFNT GENERAL ALUMINUM COMPANY TO 4TH;COBB, D	Filing		03/24/2010-00:00	05/03/2011-00:00	---
AFFIDAVIT OF SERVICE (2) & PROOF OF SERVICE	Filing		03/24/2010-00:00	05/03/2011-00:00	---
FORM4 IN RE:ORPRO 20100312 9970 MAILED FIRST CLASS	Order		03/23/2010-00:00	05/03/2011-00:00	---
ANSWER OF DEFNT NORTH FLORIDA FRAMING INC TO;STONE, R	Filing		03/23/2010-00:00	05/03/2011-00:00	---
ANSWER OF DEFNT MARQUEZ CONSTRUCTION INC TO;STONE, R	Filing		03/23/2010-00:00	05/03/2011-00:00	---
ANSWER OF DEFNT BEST MASONRY & TOOL SUPPLY L.P AS;OSBORN, J	Filing		03/23/2010-00:00	05/03/2011-00:00	---
ANSWER OF DEFNT PROFESSIONAL PLASTERING AND STUCCO;MAHON, C	Filing		03/22/2010-00:00	05/03/2011-00:00	---
MOTION TO DISMISS FEDERAL INSURANCE COMPANY'S;MAHON, C	Motion		03/22/2010-00:00	05/03/2011-00:00	---
ORDER FOR ADMISSION PRO HAC VICE	Order		03/22/2010-00:00	05/03/2011-00:00	---
ORDER FOR ADMISSION PRO HAC VICE	Order		03/22/2010-00:00	05/03/2011-00:00	---
VERIFIED APPLICATION FOR ADMISSION PRO HAC VICE	Filing		03/18/2010-00:00	05/03/2011-00:00	---
VERIFIED APPLICATION FOR ADMISSION PRO HAC VICE	Filing		03/18/2010-00:00	05/03/2011-00:00	---
FORM4 IN RE:ORPRO 20100310 9990 MAILED FIRST CLASS	Order		03/16/2010-00:00	05/03/2011-00:00	---
FORM4 IN RE:ORPRO 20100310 9990 MAILED FIRST CLASS	Order		03/16/2010-00:00	05/03/2011-00:00	---
ANSWER OF DEFNT JOHNSON COMPANIES INC D/B/A;BLACKBURN, C	Filing		03/15/2010-00:00	05/03/2011-00:00	---
4TH AMENDED SUMMONS & 4TH AMENDED COMPLAINT	Filing		03/15/2010-00:00	05/03/2011-00:00	---
LETTER FROM SUPREME CRT-CERTIFY THAT THE	Filing		03/12/2010-00:00	05/03/2011-00:00	---

LETTER FROM SUPREME CRT-CERTIFY THAT THE OFFICE	Filing	03/12/2010-00:00	05/03/2011-00:00	---
ORDER OF PROTECTION & CERT/SERV	Order	03/12/2010-00:00	05/03/2011-00:00	---
ANSWER OF DEFNT ALL-SOUTH VINYL PRODUCTS TO;CANNON, K	Filing	03/11/2010-00:00	05/03/2011-00:00	---
ANSWER OF DEFNT CHRIS COBBS TO PLNTFFS' COMPLAINT;ADAMS, C	Filing	03/10/2010-00:00	05/03/2011-00:00	---
ORDER OF PROTECTION	Order	03/10/2010-00:00	05/03/2011-00:00	---
LOS CAMPOS INC'S ANSWER TO FEDERAL INS CO'S	Filing	03/04/2010-00:00	05/03/2011-00:00	---
MOTION TO DISMISS FEDERAL INSURANCE COMPANY'S;STUBBS, S (15)	Filing	03/01/2010-00:00	05/03/2011-00:00	---
3RD PARTY AMENDED SUMMONS & 3RD PARTY AMENDED	Filing	03/01/2010-00:00	05/03/2011-00:00	---
REPLY OF DEFNT NORTH FLORIDA FRAMING INC TO	Filing	02/25/2010-00:00	05/03/2011-00:00	---
REPLY OF DEFNT MARQUEZ CONSTRUCTION INC TO	Filing	02/25/2010-00:00	05/03/2011-00:00	---
STIPULATION OF DISMISSAL W/OUT PREJ AS TO J T	Filing	02/22/2010-00:00	05/03/2011-00:00	---
ANSWER OF DEFNT PROFESSIONAL PLASTERING & STUCCO;MAHON, C	Filing	02/22/2010-00:00	05/03/2011-00:00	---
SUMMONS AS TO 3RD PARTY COMPLAINT & CERT/SERV	Filing	02/19/2010-00:00	05/03/2011-00:00	---
ANSWER AND CROSS-CLAIMS OF DEFNT FEDERAL INSURANCE	Filing	02/19/2010-00:00	05/03/2011-00:00	---
AMENDED ANSWER OF DEFNT PROFESSIONAL PLASTERING;MAHON, C	Filing	02/19/2010-00:00	05/03/2011-00:00	---
ANSWER OF DEFNTS SUMMIT CONTRACTORS INC & SUMMIT;SMITH, J	Filing	02/12/2010-00:00	05/03/2011-00:00	---
ANSWER OF DEFNTS BEST MASONRY & TOOL SUPPLY LP AS;OSBORN, J	Filing	02/08/2010-00:00	05/03/2011-00:00	---
ANSWER OF DEFNT PROFESSIONAL PLASTERING AND STUCCO;MAHON, C	Filing	02/05/2010-00:00	05/03/2011-00:00	---
ANSWER OF DEFNT PROFESSIONAL PLASTERING AND STUCCO;MAHON, C	Filing	02/05/2010-00:00	05/03/2011-00:00	---
ANSWER OF DEFNT H2L CONSULTING ENGINEERS TO;CHEEK, E	Filing	02/04/2010-00:00	05/03/2011-00:00	---
AFFIDAVIT OF SERVICE	Filing	02/04/2010-00:00	05/03/2011-00:00	---
ANSWER OF DEFNT GENERAL ALUMINUM COMPANY TO 3RD;COBB, D	Filing	02/02/2010-00:00	05/03/2011-00:00	---
ANSWER OF DEFNT FUGLEBERG KOCH ARCHITECTS INC TO;JOWERS, M	Filing	01/28/2010-00:00	05/03/2011-00:00	---
NOT/MOT & MEMO IN SUPPORT OF DISMISSING PLNTFFS'	Motion	01/28/2010-00:00	05/03/2011-00:00	---
ANSWER OF DEFNT PROFESSIONAL PLASTERING & STUCCO;MAHON, C	Filing	01/21/2010-00:00	05/03/2011-00:00	---
ANSWER OF LOS CAMPOS INC TO 3RD AMENDED CMLPT	Filing	01/20/2010-00:00	05/03/2011-00:00	---
AFFIDAVIT OF SERVICE	Filing	01/19/2010-00:00	05/03/2011-00:00	---
AMENDED ANSWER OF DEFNT J.R. HOBBS COMPANY ATLANTA;STUBBS, S	Filing	01/19/2010-00:00	05/03/2011-00:00	---
ANSWER OF DEFNT JOHNSON COMPANIES INC D/B/A;BLACKBURN, C	Filing	01/15/2010-00:00	05/03/2011-00:00	---
ANSWER OF DEFNT J.R HOBBS COMPANY-ATLANTA LLC TO;STUBBS, S	Filing	01/11/2010-00:00	05/03/2011-00:00	---
CERTIFICATE OF SERVICE	Filing	01/11/2010-00:00	05/03/2011-00:00	---
MOTION TO DISMISS & CERT/MAIL;HALIO, A (15)	Motion	01/11/2010-00:00	05/03/2011-00:00	---
ANSWER OF DEFNT NORTH FLORIDA FRAMING INC TO;WAGNER, B	Filing	01/08/2010-00:00	05/03/2011-00:00	---
ANSWER OF DEFNT MARQUEZ CONSTRUCTION INC TO;WAGNER, B	Filing	01/08/2010-00:00	05/03/2011-00:00	---

AMENDED ANSWER OF DEFNT MARQUEZ CONSTRUCTION INC;WAGNER, B	Filing	01/07/2010-00:00	05/03/2011-00:00	---
3RD AMENDED SUMMONS & 3RD AMENDED COMPLAINT	Filing	01/07/2010-00:00	05/03/2011-00:00	---
ANSWER OF DEFNT LOS CAMPOS INC TO SUMMIT'S CROSS-	Filing	01/06/2010-00:00	05/03/2011-00:00	---
FORM4 IN RE:OMWTD 20091221 9990 MAILED FIRST CLASS	Order	12/30/2009-00:00	05/03/2011-00:00	---
ANSWER OF LOS CAMPO INC & CERT/SERV;HOLLINGSWORTH, D	Filing	12/21/2009-00:00	05/03/2011-00:00	---
ORDER FOR MULTI WEEK TRIAL DOCKET & CASE	Order	12/21/2009-00:00	05/03/2011-00:00	---
AFFIDAVIT OF SERVICE	Filing	12/14/2009-00:00	05/03/2011-00:00	---
FORM4 IN RE:ORPRO 20091120 9990 MAILED FIRST CLASS	Order	11/25/2009-00:00	05/03/2011-00:00	---
ANSWER & CROSS-CLAIMS OF DEFNT BEST MASONRY & TOOL;OSBORN, J	Filing	11/23/2009-00:00	05/03/2011-00:00	---
ORDER OF PROTECTION	Order	11/20/2009-00:00	05/03/2011-00:00	---
AFFIDAVIT OF PROCESS SERVER	Filing	10/27/2009-00:00	05/03/2011-00:00	---
NOT/MOT TO AMEND COMPLAINT & CERT/SERV;SEGUI, P	Motion	10/16/2009-00:00	05/03/2011-00:00	---
AFFIDAVIT OF SERVICE	Filing	10/08/2009-00:00	05/03/2011-00:00	---
DEFNT JOHNSON COMPANIES INC D/B/A JOHNSON;BLACKBURN, C	Filing	10/05/2009-00:00	05/03/2011-00:00	---
REPLY OF DEFNT MARQUEZ CONSTRUCTION INC TO PLNTFFS	Filing	09/24/2009-00:00	05/03/2011-00:00	---
REPLY OF DEFNT MARQUEZ CONSTRUCTION INC TO	Filing	09/24/2009-00:00	05/03/2011-00:00	---
ANSWER OF DEFNT JOHNSON COMPANIES D/B/A JOHNSON;BLACKBURN, C	Filing	09/21/2009-00:00	05/03/2011-00:00	---
ANSWER OF DEFNT GENERAL ALUMINUM TO 2ND AMENDED;COBB, D	Filing	08/31/2009-00:00	05/03/2011-00:00	---
ANSWER OF DEFNT GENERAL ALUMINUM COMPANY TO SUMMIT;COBB, D	Filing	08/31/2009-00:00	05/03/2011-00:00	---
AFFIDAVIT OF SERVICE	Filing	08/25/2009-00:00	05/03/2011-00:00	---
ANSWER OF DEFNT NORTH FLORIDA FRAMING INC TO;STONE, R	Filing	08/17/2009-00:00	05/03/2011-00:00	---
REPLY OF DEFNT NORTH FLORIDA FRAMING INC TO	Filing	08/17/2009-00:00	05/03/2011-00:00	---
AMENDED ANSWER OF DEFNT J.R HOBBS COMPANY-ATLANTA;STUBBS, S	Filing	08/17/2009-00:00	05/03/2011-00:00	---
NOTICE OF APPEARANCE OF ATTY A ROTHSCHILD FOR	Filing	08/06/2009-00:00	05/03/2011-00:00	---
REPLY & CROSS-CLAIM OF J R HOBBS COMPANY-ATLANTA	Filing	08/03/2009-00:00	05/03/2011-00:00	---
ANSWER OF DEFNT SUMMIT CONTRACTORS GROUP INC TO;SMITH, J	Filing	08/03/2009-00:00	05/03/2011-00:00	---
ANSWER OF J R HOBBS COMPANY - ATLANTA LLC TO 2ND;STUBBS, S	Filing	07/24/2009-00:00	05/03/2011-00:00	---
AFFIDAVIT OF SERVICE	Filing	07/20/2009-00:00	05/03/2011-00:00	---
FORM4 IN RE:ORDER 20090714 9950 MAILED FIRST CLASS	Order	07/17/2009-00:00	05/03/2011-00:00	---
FORM4 IN RE:ORDER 20090714 9960 MAILED FIRST CLASS	Order	07/17/2009-00:00	05/03/2011-00:00	---
LETTER FR/ ATTY L ELMORE TO ATTY LEATH IN RE: 30	Filing	07/16/2009-00:00	05/03/2011-00:00	---
FORM4 IN RE:ORDER 20090709 9980 MAILED FIRST CLASS	Order	07/15/2009-00:00	05/03/2011-00:00	---
AFFIDAVIT OF SERVICE	Filing	07/14/2009-00:00	05/03/2011-00:00	---
ANSWER OF DEFNT SUMMIT CONTRACTORS GROUP INC TO;SMITH, J	Filing	07/14/2009-00:00	05/03/2011-00:00	---
	Order			---

CONSENT ORDER TO WITHDRAW ATTYS MARVIN D INFINGER,		07/14/2009-00:00	05/03/2011-00:00	
ORDER-CASE IS TRANSFERRED TO THE MULTI-WEEK ROSTER	Order	07/14/2009-00:00	05/03/2011-00:00	---
AFFIDAVIT OF SERVICE	Filing	07/10/2009-00:00	05/03/2011-00:00	---
AFFIDAVIT OF SERVICE	Filing	07/09/2009-00:00	05/03/2011-00:00	---
CONSENT ORDER FOR SUBSTITUTION OF PARTY DEFNT	Order	07/09/2009-00:00	05/03/2011-00:00	---
ANSWER OF DEFNT H2L CONSULTING ENGINEERS TO;CHEEK, E	Filing	07/01/2009-00:00	05/03/2011-00:00	---
ANSWER OF DEFNT FUGLEBERG KOCH ARCHITECTS INC TO;JOWERS, M	Filing	06/29/2009-00:00	05/03/2011-00:00	---
AFFIDAVIT OF SERVICE (5)	Filing	06/26/2009-00:00	05/03/2011-00:00	---
AFFIDAVIT OF SERVICE	Filing	06/24/2009-00:00	05/03/2011-00:00	---
AFFIDAVIT OF SERVICE (2)	Filing	06/19/2009-00:00	05/03/2011-00:00	---
ANSWER OF DEFNT TWELVE OAK AT FENWICK PLANTATION;HALIO, A	Filing	06/12/2009-00:00	05/03/2011-00:00	---
FORM4 IN RE:ORDER 20090602 9990 MAILED FIRST CLASS	Order	06/10/2009-00:00	05/03/2011-00:00	
2ND AMENDED SUMMONS & 2ND AMENDED COMPLAINT	Filing	06/09/2009-00:00	05/03/2011-00:00	---
CONSENT ORDER ALLOWING PLTFF LEAVE TO AMEND CMPLT	Order	06/02/2009-00:00	05/03/2011-00:00	---
MOTION HEARING	Filing	04/28/2009-10:00	05/03/2011-10:00	
FORM4 IN RE:ORDSC 20090415 9990 MAILED FIRST CLASS	Order	04/23/2009-00:00	05/03/2011-00:00	
AFFIDAVIT OF MYLES I GLICK AIA	Filing	04/20/2009-00:00	05/03/2011-00:00	---
SCHEDULING ORDER	Order	04/15/2009-00:00	05/03/2011-00:00	---
FORM4 IN RE:ORDER 20090403 9990 MAILED FIRST CLASS	Order	04/09/2009-00:00	05/03/2011-00:00	
ORDER OF PROTECTION	Order	04/03/2009-00:00	05/03/2011-00:00	---
ANSWER OF DEFNT TWELVE OAKS AT FENWICK PLANTATION;HALIO, A	Filing	02/26/2009-00:00	05/03/2011-00:00	---
FORM4 IN RE:ORDER 20090205 9980 MAILED FIRST CLASS	Order	02/12/2009-00:00	05/03/2011-00:00	
ORDER VACATING ORDER OF DEFAULT AS TO	Order	02/05/2009-00:00	05/03/2011-00:00	---
EXCLUSION REQUEST FORM (2)	Filing	01/21/2009-00:00	05/03/2011-00:00	---
AFFIDAVIT OF JOHN T CHAKERIS	Filing	01/21/2009-00:00	05/03/2011-00:00	---
LETTER FR/ ATTY LEATH IN RE: LIFTING STAY	Filing	01/15/2009-00:00	05/03/2011-00:00	---
LETTER FR/ ATTY L APPELATE IN RE: DEFNTS FENWICK	Filing	01/14/2009-00:00	05/03/2011-00:00	---
ANSWER OF PROFESSIONAL PLASTERING & STUCCO INC;KENDALL, E	Filing	01/04/2009-00:00	05/03/2011-00:00	---
NOT/MOT TO SET ASIDE ENTRY OF DEFAULT & ORDER OF	Motion	12/30/2008-00:00	12/30/2008-00:00	---
AFFIDAVIT OF STEPHEN H PECK & CERT/SERV	Filing	12/30/2008-00:00	05/03/2011-00:00	---
FORM4 IN RE:ORDEF 20081210 9990 MAILED FIRST CLASS	Order	12/17/2008-00:00	05/03/2011-00:00	
ORDER OF DEFAULT AS TO TWELVE OAKS AT FENWICK	Order	12/10/2008-00:00	05/03/2011-00:00	---
AFFIDAVIT OF DEFAULT	Filing	12/08/2008-00:00	05/03/2011-00:00	---
ANSWER OF DEFNT H2L CONSULTING ENGINEERS TO;WILKES, M	Filing	12/03/2008-00:00	05/03/2011-00:00	---
NOTICE OF CLASS ACTION	Filing	12/02/2008-00:00	05/03/2011-00:00	---
	Filing			---

ANSWER OF DEFNT SUMMIT CONTRACTORS GROUP TO:SMITH, J			11/26/2008-00:00	05/03/2011-00:00	
MOTION TO DISMISS BY DEFNT FUGLEBERG KOCH;JOWERS, M (15)	Motion		11/24/2008-00:00	11/24/2008-00:00	
ANSWER OF DEFNT FUGLEBERG KOCH ARCHITECTS TO:JOWERS, M	Filing		11/24/2008-00:00	05/03/2011-00:00	
AFFIDAVIT OF SERVICE	Filing		11/12/2008-00:00	05/03/2011-00:00	
ANSWER OF DEFNT FENWICK PLANTATION TARRAGON TO:SMITH, B	Filing		11/10/2008-00:00	05/03/2011-00:00	
MOTION HEARING	Filing		11/04/2008-16:00	05/03/2011-16:00	
LETTER FR/ ATTY WILKES TO ATTY LEATH	Filing		11/03/2008-00:00	05/03/2011-00:00	
AFFIDAVIT OF SERVICE (2)	Filing		10/31/2008-00:00	05/03/2011-00:00	
NOT/MOT TO ALTER & AMEND THE ORDER OF;INFINGER, M (30 MIN)	Motion		10/30/2008-00:00	10/30/2008-00:00	
FORM4 IN RE:ORDER 20081023 9980 MAILED FIRST CLASS	Order		10/29/2008-00:00	05/03/2011-00:00	
FORM4 IN RE:ORDER 20081020 9980 MAILED FIRST CLASS	Order		10/28/2008-00:00	05/03/2011-00:00	
FORM4 IN RE:ORDER 20081020 9990 MAILED FIRST CLASS	Order		10/28/2008-00:00	05/03/2011-00:00	
NOTICE OF APPEAL, APPEALING ORDER FR/ 10/23/08	Filing		10/27/2008-00:00	05/03/2011-00:00	
NOT/MOT FOR TEMPORARY INJUNCTION & CERT/SERV	Motion		10/23/2008-00:00	10/23/2008-00:00	
ORDER DENYING MOTION FOR TEMPORARY INJUNCTION	Order		10/23/2008-00:00	05/03/2011-00:00	
AFFIDAVIT OF JAMES R HELMAN	Filing		10/23/2008-00:00	05/03/2011-00:00	
AFFIDAVIT OF ROBERT G SISNROY P.E	Filing		10/22/2008-00:00	05/03/2011-00:00	
AMENDED SUMMONS & AMENDED COMPLAINT	Filing		10/22/2008-00:00	05/03/2011-00:00	
ORDER CERTIFYING CLASS	Order		10/20/2008-00:00	05/03/2011-00:00	
ORDER OF CONSOLIDATION & AMENDMENT-CASE 08-1758	Order		10/20/2008-00:00	05/03/2011-00:00	
AFFIDAVIT OF SCOTT FERGERSON & ROBERT J BURRIDGE	Filing		09/08/2008-00:00	05/03/2011-00:00	
PLNTFFS' MEMO IN OPPOSITION TO DEFNTS' MOTION TO	Filing		09/04/2008-00:00	05/03/2011-00:00	
MEMO IN SUPPORT OF MOTION TO DISMISS & CRT/SRV	Filing		08/25/2008-00:00	05/03/2011-00:00	
MEMO IN SUPPORT OF MOTION FOR CLASS CERTIFICATION	Filing		08/22/2008-00:00	05/03/2011-00:00	
AFFIDAVIT OF MARK TESENIAR	Filing		08/22/2008-00:00	05/03/2011-00:00	
AFFIDAVIT OF ROBERT SISNROY	Filing		08/21/2008-00:00	05/03/2011-00:00	
AFFIDAVIT OF JERRY WATSON	Filing		08/21/2008-00:00	05/03/2011-00:00	
MOTION TO CERTIFY A CLASS & APPROVE PLTFFS AS;SEGUI, P (45)	Motion		08/15/2008-00:00	08/15/2008-00:00	
AFFIDAVIT OF NAN TESENIAR	Filing		08/15/2008-00:00	05/03/2011-00:00	
AFFIDAVIT OF MARK TESENIAR	Filing		08/15/2008-00:00	05/03/2011-00:00	
FORM4 IN RE:ORDER 20080512 9990 MAILED FIRST CLASS	Order		05/15/2008-00:00	05/03/2011-00:00	
SCHEDULING ORDER	Order		05/12/2008-00:00	05/03/2011-00:00	
FORM4 IN RE:ORDER 20080410 9990 MAILED FIRST CLASS	Order		04/12/2008-00:00	05/03/2011-00:00	
ORDER OF SUBSTITUTION OF COUNSEL-MARVIN INFINGER	Order		04/10/2008-00:00	05/03/2011-00:00	
PROOF OF SERVICE	Filing		04/07/2008-00:00	05/03/2011-00:00	
NOT/MOT TO DISMISS OR ALTERNATIVELY STAY;TIBBALS, J (30)	Motion		03/10/2008-00:00	03/10/2008-00:00	

	AFFIDAVIT OF SERVICE (3)	Filing	01/29/2008-00:00	05/03/2011-00:00	
	RECEIPT #08-189	Filing	01/04/2008-00:00	05/03/2011-00:00	
	SUMMONS & COMPLAINT	Filing	01/04/2008-00:00	05/03/2011-00:00	
Tesenlar, Mark F	Civil Converted Cost	Filing	01/04/2008-00:00	05/03/2011-00:00	

CMSWeb 6.1 © 2013 South Carolina Judicial Department • All rights reserved

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas for the Ninth Circuit

Kristi Lea Harrington, Circuit Court Judge

CASE NO. 2008-CP-10-0049

Appellate Case No. 2016-000185

Mark F. Teseniar and Nan M. Teseniar, on behalf of themselves and others similarly situated,
and Twelve Oaks at Fenwick Property Owners Association, Inc. (from December 16, 2008 to
present), Respondents,

v.

Fenwick Plantation Tarragon, LLC, a South Carolina Limited Liability Company, f/k/a Fenwick
Tarragon Apartments, LLC, A South Carolina Limited Liability Company, Charleston Tarragon
Manager, LLC, a Delaware Limited Liability Company, Tarragon Development Corporation, a
Nevada Corporation, Summit Contractor WSW Group, Inc., Summit Contractors, Inc.,
Fugleberg Koch Architects, Inc., Development, Compliance & Inspections, Inc., H2L Consulting
Engineers, Twelve Oaks T Fenwick Property Owners Association, Inc., (from August 6, 2006 to
December 15, 2008), Professional Plastering & Stucco, Inc., Johnson Companies, Inc., d/b/a
Johnson Roofing, Inc., Los Compos, Inc., North Florida Framing, Inc., Best Masonry & Tool
Supply, Inc., as successor in interest to Manga Wall Inc., All South Vinyl Products, Inc.,
Marquez Construction, Inc., J.T. Walker Industries, Inc., J.T. Industries d/b/a General Aluminum
Corporation and General Aluminum Company of Texas, LP, J.R. Hobbs Co.-Atlanta, LLC f/k/a
JRH Merger Co., LLC, Jamie Helman, individually, Scott Ferguson, individually, and Chris
Cobbs, individually, and Federal Insurance Company, Maria Arias, Miquel Roales, APS
Enterprises, Unlimited, Inc., HR Electric, A.M. Jacobs, Inc., Mickey Mason, d/b/a Mason
Contractors KMAC of the Carolinas, Inc., NEO Corporation and Vava Guzman Construction
Company, Inc., Defendants,

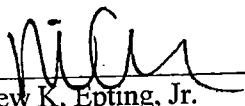
And Mt. Hawley Insurance Company is the Appellant/Proposed Intervenor.

CERTIFICATE OF COUNSEL PURSUANT TO RULE 210(g) SCRAP

The undersigned certifies that the Record on Appeal contains all material proposed to be

included by any of the parties and not any other material.

ANDREW K. EPTING, JR., LLC

By 
Andrew K. Epting, Jr.
Michelle N. Endemann
46A State Street, Charleston, SC 29401

Attorneys for Appellant/Intervenor

Dated this 6 day of January, 2017
Charleston, South Carolina

RECEIVED

JAN 10 2017

SC Court of Appeals