

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY

Court of Common Pleas

Michael G. Nettles, Circuit Judge

Appellate Court Case No. 2015-002618

RECEIVED

DEC 02 2016

SC Court of Appeals

Patricia Doller.....Respondent,

v.

Lohr Plumbing, Inc.....Appellant.

**RECORD ON APPEAL
VOLUME I**

Stacey P. Canaday (S.C. Bar No. 68805)
Ralph E. Tupper (S.C. Bar No. 5647)
Tupper, Grimsley & Dean, P.A.
611 Bay Street
Post Office Box 2055
Beaufort, SC 29901-2055
Attorneys for Appellant Lohr Plumbing, Inc.

Brian P. Robinson (S.C. Bar No. 8814)
Bruner, Powell, Wall & Mullins, LLC
Post Office Box 61110
Columbia, SC 29260
Attorney for Respondent

A. Parker Barnes, Jr. (S.C. Bar No. 523)
A. Parker Barnes, Jr. P.A.
Post Office Box 1729
Beaufort, SC 29901
Attorney for Respondent

INDEX

ORDERS

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

PLEADINGS

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

TRANSCRIPTS

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

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

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

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

EXHIBITS

Plaintiff's Trial Exhibits

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

Defendant's Trial Exhibit

1.....	728

OTHER MATERIALS OR DOCUMENTS

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

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
PATRICIA DOLLER,)
Plaintiff)
vs.)
LOHR PLUMBING, INC.,)
Defendants.)

IN THE COURT OF COMMON PLEAS
Civil Action No. 2012-CP-07-⁴¹³⁹~~1439~~

RECEIVED
CLERK OF COURT
JAN 30 2016
42-9-CC-AC-1012

ORDER GRANTING NEW TRIAL ABSOLUTE ON LIABILITY AND DAMAGES

This matter is before the Court upon Plaintiff's Post-Trial Motions filed with the Clerk of Court on September 9, 2015, wherein she seeks relief from the jury verdict in favor of the Defendant rendered on September 3, 2015 and filed of record on September 3, 2015. More specifically, Plaintiff seeks judgment notwithstanding the verdict, a new trial under the Thirteenth Juror Doctrine, or a new trial absolute. The specific grounds for the Motion are set forth in Plaintiffs' Motion filed of record and arguments of her counsel. The Defendant's counsel has also ably stated and argued its position in opposition thereto. After carefully considering all matters of record, together with the applicable law, it is the opinion of this Court that a new trial is warranted under the Thirteenth Juror Doctrine.

Although the Court finds that JNOV may lie, this Court denies that motion and the motion for a new trial absolute because the motion for a new trial under the Thirteenth Juror Doctrine is granted.

The law is clear that a trial court, pursuant to the Thirteenth Juror Doctrine, may grant a new trial absolute when the evidence does not justify the verdict but cannot grant a new trial nisi or new trial absolute when the verdict is merely inadequate or unduly liberal. Neither can the Trial Court grant a new trial when the jury deliberations may appear suspicious, the quality or correctness of the jury verdict is questionable, or when there is concern with what the jury may have based its decision upon (*Scroggins v. McClellion*, 321 S.C. 264, 468 S.E.2d 12 (Ct. App. 1996); *Youmans v. S.C. Dept. of Transportation*, 380 S.C. 263, 670 S.E.2d 1 (Ct. App. 2009)). In other words, the trial court must only concern itself with whether the evidence justifies the verdict and cannot second guess the jury's actions or motives for its verdict.

It is also established law that the trial court is not required to set forth the specific reasons for its decision or explain them in any way and its Order granting or denying a new trial upon the facts will not be disturbed unless its decision is wholly unsupported by evidence or the conclusion reached is controlled by an error of law (*Trivelas v. S.C. Dept. of Transportation*, 357 S.C. 545, 593 S.E.2d 504 (Ct. App. 2005); *Folkens v. Hunt*, 300 S.C. 251, 254, 387 S.E.2d 265, 267

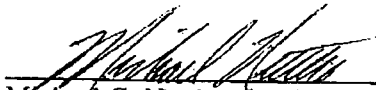
(1990)). This Court recognizes and appreciates this responsibility and that its discretion must be exercised with fairness and impartiality, *Worrell v. S.C. Power Co.*, 186 S.C. 306, 313-14, 195 S.E. 638, 641 (1938), and has carefully considered the evidence and the law in reaching its decision. In this case, the evidence does not justify the verdict.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED as follows:

1. Plaintiff's Motion for a New Trial Absolute on Liability and Damages is granted under the Thirteenth Juror Doctrine.
2. Plaintiff's other motions are denied.
3. The case shall be immediately restored to the active trial roster of the Court of Common Pleas for Beaufort County, South Carolina.

AND IT IS SO ORDERED.

11-22-, 2015



Michael G. Nettles, Presiding Judge
Court of Common Pleas, Beaufort County,

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
)
PATRICIA DOLLER,)
)
Plaintiff)
)
vs.)
)
LOHR PLUMBING, INC.,)
CATHY LYNN RITCHIE)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2012-CP-07-1439

AMENDED COMPLAINT
(JURY TRIAL DEMANDED)

RECEIVED
CLERK OF COURT
JUL 15 2012
3:40 PM

The Plaintiff, Patricia Doller ("Doller"), complaining of the defendants, Lohr Plumbing, Inc. ("Lohr") and Cathy Lynn Ritchie ("Ritchie"), alleges as follows.

FACTS

1. Doller is a citizen and resident of Beaufort County, South Carolina.
2. Lohr is a domestic corporation with its principal place of business in Beaufort County, South Carolina.
3. Ritchie was at all times relevant a citizen and resident of Beaufort County, South Carolina.
4. Venue is proper in Beaufort County, South Carolina.
5. Ritchie offered the property commonly known as 55 James F. Byrnes Street, Beaufort, SC 29907 for sale.
6. Doller had the house inspected.
7. The inspection revealed that the water system was constructed using polybutylene pipe.

8. Doller understood that polybutylene pipe is prone to spontaneous leaks, breaks, and generally dangerous for use in residential construction.
9. Doller offered to purchase the property, provided that all the polybutylene pipe was removed from the house.
10. Ritchie promised to remove the polybutylene pipe from the house.
11. Ritchie engaged Lohr to remove the polybutylene pipe from the house and replace that pipe with other acceptable plumbing equipment.
12. At some point, Ritchie and/or Lohr or both decided not to remove all the polybutylene pipe from the house.
13. Ritchie and/or Lohr or both, upon information and belief, reduced the scope of work for Lohr from removal of all the polybutylene pipe to removal of only some of that pipe.
14. Lohr did not remove all of the polybutylene pipe in the house.
15. Ritchie, by closing, represented to Doller that all of the polybutylene pipe had been completely removed from the house.
16. The sale was closed and a deed issued to Doller.
17. Doller moved into the house.
18. In early November 2011, James Doller walked across the bedroom floor and noticed a "squishy" sound.
19. After discovering the "squishy" sound, Doller began removing the wood flooring.
20. When she removed the wood flooring, she found saturated material and mold and immediately had difficulty breathing and a severe rash broke out on both hands and subsequently covered most of her body.

21. That she has since suffered from rashes, skin dying and peeling, breakouts, respiratory illnesses, neurotoxicity, exacerbation of existing psoriasis, and suppression of her immune system and was forced to seek unpleasant medical treatments.

22. The rashes, breakouts, respiratory illnesses, neurotoxicity, exacerbation of existing psoriasis, and suppression of her immune system caused her to permanently move out of the house and to seek emergency medical help, enter the hospital, engage the aid of physicians, and be forced to take medication to attempt to control the symptoms caused by exposure to the mold in the house.

23. The leak was caused by a copper fitting negligently installed by Lohr when Lohr was replacing the polybutylene pipe in the master bedroom wall.

FOR A FIRST CAUSE OF ACTION AGAINST RITCHIE
(Fraud in the Inducement)

24. Doller repeats and realleges the foregoing to the extent required by, but not in contradiction of, the following allegations.

25. Before Plaintiff closed on the house in question, Lohr produced a signed letter from Lohr that stated that all polybutylene pipe had been removed from the house.

26. Ritchie knew that the statements in that letter were false.

27. By closing on the house, Ritchie made representations to Doller that the house was free from polybutylene pipe.

28. By presenting the letter, Ritchie made representations to Doller that the house was free from polybutylene pipe.

29. The representations were false when they were made.

30. Ritchie knew the representations were false when they were made.

31. The representations were material to the contract.

32. Ritchie intended Doller to rely upon the false representations and purchase the house.

33. Doller relied upon the representations.

34. Doller had a right to rely upon the representations.

35. Doller did not know, and had no way of knowing, that the representations were false because the polybutylene pipe left in the house was hidden inside the walls.

36. Doller suffered extensive damages as a direct and proximate result of the false representations made by Ritchie.

37. Doller is entitled to the remedy of rescission of the sale of the property as a result of the fraud perpetrated on her by Ritchie.

FOR A FIRST CAUSE OF ACTION AGAINST LOHR
(Negligence)

38. Doller repeats and realleges the foregoing to the extent required by, but not in contradiction of, the following allegations.

39. Lohr failed to correctly solder a joint in the copper fitting it installed in the bedroom wall in Doller's house when it was removing and replacing that portion of the polybutylene pipe it did remove thereby causing a hidden, continuous water leak.

40. Lohr owed Doller a duty to perform its work in a good, workmanlike manner because Lohr knew that the house was under contract for sale and that foreseeable users would suffer damage if the pipe it installed leaked.

41. Lohr owed Doller a duty to perform its work in a good, workmanlike manner because Lohr held itself out to the public as an expert in plumbing.

42. Lohr owed Doller a duty to perform its work in a good, workmanlike manner because it knew that failure to do so would result in a water leak, which in turn would cause hidden mold and other damage to the house.

43. Lohr breached its duty by failing to install the copper fitting in such a manner that it did not leak.

44. Doller has suffered and continues to suffer damages in the form of personal injury and property damage and has lost the use of her house but had to continue making her mortgage payments as a direct and proximate result of Lohr's breach of its duty.

45. Doller is entitled to recover actual and punitive damages from Lohr for her personal injury and property damage to the house, including but not limited to pain and suffering, medical bills (both past and future), loss of enjoyment of life, and loss of employment in an amount to be determined by the trier of fact.

46. Doller is also entitled to actual and punitive damages for the damages to her house, contents and personal effects.

FOR A SECOND CAUSE OF ACTION AGAINST BOTH LOHR AND RICHIE
(Fraud)

47. Doller repeats and realleges the foregoing to the extent required by, but not in contradiction of, the following allegations.

48. Lohr signed the letter referred to in Paragraph 25 above knowing it had not removed all the polybutylene from the house.

49. Ritchie, by and through her agents, servants and employees acting in the scope of their employment, delivered the letter referred to in Paragraph 25 above knowing that not all the polybutylene had been removed from the house.

50. Lohr and Ritchie deliberately presented the letter to Doller with the intent of deceiving her.

51. The letter was a representation made by both Lohr and Ritchie.

52. The representations were false when they were made.

53. Ritchie or Lohr or both knew the representation was false when it was made.

54. The representation was material to the contract.

55. Ritchie or Lohr or both intended for Doller to rely upon the false representation.

56. Doller relied upon the representation.

57. Doller had a right to rely upon the representation.

58. Doller did not know, and had no way of knowing, that the representation was false because the polybutylene pipe left in the house was hidden inside the walls.

59. Doller suffered extensive damages as a direct and proximate result of the false representation made by Ritchie and Lohr.

60. Doller is entitled to recover her actual damages from both Ritchie or Lohr or both, and to recover punitive damages from both Ritchie or Lohr or both.

FOR A THIRD CAUSE OF ACTION AGAINST RITCHIE AND LOHR
(Negligent Misrepresentation)

61. Doller repeats and realleges the foregoing to the extent required by, but not in contradiction of, the following allegations.

62. Ritchie or Lohr or both made a false representation to Doller when they signed and presented the letter referred to in Paragraph 25.

63. Both Ritchie or Lohr or both had a pecuniary interest in making the statement, because Doller would not purchase the house without the statement and Ritchie would not pay Lohr without the statement.

64. Ritchie or Lohr or both owed a duty to speak the truth to Doller if they spoke at all.

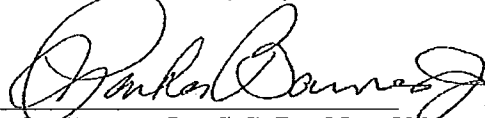
65. Both Ritchie or Lohr or both breached their duty to speak truthfully to Doller by failing to exercise due care.

66. Doller was justified in relying upon the false representation.

67. Doller suffered pecuniary loss as the proximate result of relying upon the false representation when she purchased the house in reliance thereon.

WHEREFORE, Doller prays for judgment in her favor, for rescission of the contract and sale of the house or, in the alternative, for compensation for the diminished value of the house and its contents and the real property suffered as a result of the fraud and for punitive damages in an amount to be determined by the trier of fact against Ritchie in the first cause of action against Ritchie, for actual and punitive damages for her personal injury and property damages in an amount also to be determined by the trier of fact against Lohr in the first cause of action against Lohr, for actual and punitive damages against Ritchie and Lohr in the second cause of action, and for actual and punitive damages against Ritchie and Lohr in the third cause of action, and for such other and further relief as this court finds just and fair.

A. PARKER BARNES, JR., P.A.



A. Parker Barnes, Jr. S.C. Bar No. 523
P.O. Drawer 1729
Beaufort, SC 29901
Telephone: (843)522-2600
Facsimile: (843)522-2610
apbarnes@parkerbarneslaw.com

-AND-

BRUNER, POWELL, WALL & MULLINS, LLC

51

Brian Robinson S.C. Bar No. 8814
P.O. Box 61110
Columbia, SC 29260
Telephone: (803)252-7693
Facsimile: (888)726-9049
brobinson@brunerpowell.com

Beaufort, South Carolina

September 10, 2014

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

PATRICIA DOLLER,
Plaintiff,

-versus-

LOHR PLUMBING, INC.,
REMAX ISLAND REALTY
and CATHY LYNN RITCHIE,
Defendants.

IN THE COURT OF COMMON PLEAS

FOURTEENTH JUDICIAL CIRCUIT

CASE NO.: 12 -CP-07 -4139

2014 SEP 23 PM 4:00
CLERK OF COURT

ANSWER OF LOHR PLUMBING, INC.
TO PLAINTIFF'S AMENDED
COMPLAINT
(JURY TRIAL DEMANDED)

TO: A. PARKER BARNES, JR., ESQ., ATTORNEY FOR THE PLAINTIFF:

COMES NOW the Defendant Lohr Plumbing, Inc., (hereinafter referred to as "Defendant Lohr") who, by and through its attorney, hereby answers the allegations of the Plaintiff's Complaint as follows:

FOR A FIRST DEFENSE

1. Any allegation contained in the Plaintiff's Amended Complaint not specifically admitted herein is to be denied.
2. Upon information and belief, the Defendant Lohr admits the allegations contained in paragraph 1 of the Plaintiff's Amended Complaint.
3. The Defendant Lohr admits the allegations contained in paragraph 2 of the Plaintiff's Amended Complaint.
4. Upon information and belief, the Defendant Lohr admits the allegations contained in paragraph 3 of the Plaintiff's Amended Complaint.
5. Upon information and belief, the Defendant Lohr admits the allegations contained in paragraph 4 of the Plaintiff's Amended Complaint.
6. Defendant Lohr lacks sufficient information with which to admit or deny the allegations contained in paragraph 5 of the Plaintiff's Amended Complaint, and therefore denies the same as they pertain to it, and demands strict proof thereof.
7. Defendant Lohr lacks sufficient information with which to admit or deny the allegations contained in paragraph 6 of the Plaintiff's Amended Complaint, and therefore denies the same as they pertain to it, specifically denies any allegations of negligence, gross negligence, willful, wanton or reckless conduct, or any other allegation of wrongdoing on its behalf, and demands strict proof thereof.

8. Defendant Lohr lacks sufficient information with which to admit or deny the allegations contained in paragraph 7 of the Plaintiff's Amended Complaint, and therefore denies the same as they pertain to it, specifically denies any allegations of negligence, gross negligence, willful, wanton or reckless conduct, or any other allegation of wrongdoing on its behalf, and demands strict proof thereof.
9. Defendant Lohr lacks sufficient information with which to admit or deny the allegations contained in paragraph 8 of the Plaintiff's Amended Complaint, and therefore denies the same as they pertain to it, specifically denies any allegations of negligence, gross negligence, willful, wanton or reckless conduct, or any other allegation of wrongdoing on its behalf, and demands strict proof thereof.
10. Defendant Lohr lacks sufficient information with which to admit or deny the allegations contained in paragraph 9 of the Plaintiff's Amended Complaint, and therefore denies the same as they pertain to it, specifically denies any allegations of negligence, gross negligence, willful, wanton or reckless conduct, or any other allegation of wrongdoing on its behalf, and demands strict proof thereof.
11. Defendant Lohr lacks sufficient information with which to admit or deny the allegations contained in paragraph 10 of the Plaintiff's Amended Complaint, and therefore denies the same as they pertain to it, specifically denies any allegations of negligence, gross negligence, willful, wanton or reckless conduct, or any other allegation of wrongdoing on its behalf, and demands strict proof thereof.
12. Defendant Lohr admits only so much of the allegations contained in paragraph 11 of the Plaintiff's Amended Complaint that can be construed to allege that it was engaged by Defendant Ritchie to remove and replace all pressurized polybutylene pipe within the home. Defendant Lohr denies the remaining allegations contained therein, specifically denies any allegations of negligence, gross negligence, willful, wanton or reckless conduct, or any other allegation of wrongdoing on its behalf, and demands strict proof thereof.
13. Defendant Lohr admits only as much of the allegations contained in paragraph 12 of the Plaintiff's Amended Complaint that can be construed to allege that it agreed to comply with the scope of work authorized by Defendant Ritchie. Defendant Lohr denies the remaining allegations contained therein, specifically denies any allegations of negligence, gross negligence, willful, wanton or reckless conduct, or any other allegation of wrongdoing on its behalf, and demands strict proof thereof.
14. Defendant Lohr admits only as much of the allegations contained in paragraph 13 of the Plaintiff's Amended Complaint that can be construed to allege that it agreed to perform the scope of work requested and directed by Defendant Ritchie. Defendant Lohr denies the remaining allegations contained therein, specifically denies any allegations of negligence, gross negligence, willful, wanton or reckless conduct, or any other allegation of wrongdoing on its behalf, and demands strict proof thereof.

15. Defendant Lohr admits only so much of the allegations contained in paragraph 14 of the Plaintiff's Amended Complaint that can be construed to allege that it performed the scope of work requested and directed by Defendant Ritchie. Defendant Lohr denies the remaining allegations contained therein to the extent they can be construed to assert any allegations of negligence, gross negligence, willful, wanton or reckless conduct, or any other allegation of wrongdoing on its behalf, and demands strict proof thereof.
16. Defendant Lohr lacks sufficient information with which to admit or deny the allegations contained in paragraph 15 of the Plaintiff's Amended Complaint, and therefore denies the same as they pertain to it, specifically denies any allegations of negligence, gross negligence, willful, wanton or reckless conduct, or any other allegation of wrongdoing on its behalf, and demands strict proof thereof.
17. Defendant Lohr lacks sufficient information with which to admit or deny the allegations contained in paragraph 16 of the Plaintiff's Amended Complaint, specifically denies any allegations of negligence, gross negligence, willful, wanton or reckless conduct, or any other allegation of wrongdoing on its behalf, and demands strict proof thereof.
18. Upon information and belief, Defendant Lohr admits the allegations contained in paragraph 17 of the Plaintiff's Amended Complaint.
19. Defendant Lohr lacks sufficient information with which to admit or deny the allegations contained in paragraph 18 of the Plaintiff's Complaint, and therefore denies the same as they pertain to it, specifically denies any allegations of negligence, gross negligence, willful, wanton or reckless conduct, or any other allegation of wrongdoing on its behalf, and demands strict proof thereof.
20. Defendant Lohr lacks sufficient information with which to admit or deny the allegations contained in paragraph 19 of the Plaintiff's Complaint, and therefore denies the same as they pertain to it, specifically denies any allegations of negligence, gross negligence, willful, wanton or reckless conduct, or any other allegation of wrongdoing on its behalf, and demands strict proof thereof.
21. Defendant Lohr lacks sufficient information with which to admit or deny the allegations contained in paragraph 20 of the Plaintiff's Complaint, and therefore denies the same as they pertain to it, specifically denies any allegations of negligence, gross negligence, willful, wanton or reckless conduct, or any other allegation of wrongdoing on its behalf, and demands strict proof thereof.
22. Defendant Lohr lacks sufficient information with which to admit or deny the allegations contained in paragraph 21 of the Plaintiff's Complaint, and therefore denies the same as they pertain to it, specifically denies any allegations of negligence, gross negligence, willful, wanton or reckless conduct, or any other allegation of wrongdoing on its behalf, and demands strict proof thereof.

23. Defendant Lohr lacks sufficient information with which to admit or deny the allegations contained in paragraph 22 of the Plaintiff's Complaint, and therefore denies the same as they pertain to it, specifically denies any allegations of negligence, gross negligence, willful, wanton or reckless conduct, or any other allegation of wrongdoing on its behalf, and demands strict proof thereof.
24. Defendant Lohr admits only so much of the allegations contained in paragraph 23 of the Plaintiff's Complaint that can be construed to allege that a copper fitting was inadvertently incorrectly installed by Defendant Lohr, causing a water leak and some resulting damage within the Plaintiff's bedroom. Defendant Lohr denies the remaining allegations contained in paragraph 23 of the Plaintiff's Complaint, specifically denies any allegations of negligence, gross negligence, willful, wanton or reckless conduct, or any other allegation of wrongdoing on its behalf, and demands strict proof thereof.

**FOR A DEFENSE TO THE FIRST CAUSE OF ACTION
AGAINST RITCHIE**

25. In response to paragraph 24 of the Plaintiff's Amended Complaint, the Defendant Lohr repeats each and every answer to the allegations contained in the Complaint as if set forth verbatim herein.
26. Upon information and belief, the allegations contained in paragraphs 25-37 of the Plaintiff's Complaint are directed to parties other than this Defendant, and therefore requires no response. However, to the extent a response can be construed to be required, Defendant Lohr denies each and every allegation contained therein as they pertain to it, specifically denies any allegations of negligence, gross negligence, willful, wanton or reckless conduct, or any other allegation of wrongdoing on its behalf, and demands strict proof thereof.

**FOR A DEFENSE TO THE FIRST CAUSE OF ACTION
AGAINST LOHR
(Negligence)**

27. In response to paragraph 38 of the Plaintiff's Amended Complaint, the Defendant Lohr repeats each and every answer to the allegations contained in the Complaint as if set forth verbatim herein.
28. Defendant Lohr admits only so much of the allegations contained in paragraph 39 of the Plaintiff's Amended Complaint that can be construed to allege that a copper joint fitting failed, causing a leak in bedroom wall of the Plaintiff's bedroom. Defendant Lohr denies the remaining allegations contained therein as they pertain to it, specifically denies any allegations of negligence, gross negligence, willful, wanton or reckless conduct, or any other allegation of wrongdoing on its behalf, and demands strict proof thereof.

29. Defendant Lohr denies the allegations contained in paragraph 40 of the Plaintiff's Amended Complaint as they pertain to it, specifically denies any allegations of negligence, gross negligence, willful, wanton or reckless conduct, or any other allegation of wrongdoing on its behalf, and demands strict proof thereof.
30. Defendant Lohr denies the allegations contained in paragraph 41 of the Plaintiff's Amended Complaint as they pertain to it, specifically denies any allegations of negligence, gross negligence, willful, wanton or reckless conduct, or any other allegation of wrongdoing on its behalf, and demands strict proof thereof.
31. Defendant Lohr denies the allegations contained in paragraph 42 of the Plaintiff's Amended Complaint as they pertain to it, specifically denies any allegations of negligence, gross negligence, willful, wanton or reckless conduct, or any other allegation of wrongdoing on its behalf, and demands strict proof thereof.
32. Defendant Lohr denies the allegations contained in paragraph 43 of the Plaintiff's Amended Complaint as they pertain to it, specifically denies any allegations of negligence, gross negligence, willful, wanton or reckless conduct, or any other allegation of wrongdoing on its behalf, and demands strict proof thereof.
33. Defendant Lohr denies the allegations contained in paragraph 44 of the Plaintiff's Amended Complaint as they pertain to it, specifically denies any allegations of negligence, gross negligence, willful, wanton or reckless conduct, or any other allegation of wrongdoing on its behalf, and demands strict proof thereof.
34. Defendant Lohr denies the allegations contained in paragraph 45 of the Plaintiff's Amended Complaint as they pertain to it, specifically denies any allegations of negligence, gross negligence, willful, wanton or reckless conduct, or any other allegation of wrongdoing on its behalf, and demands strict proof thereof.
35. Defendant Lohr denies the allegations contained in paragraph 46 of the Plaintiff's Amended Complaint as they pertain to it, specifically denies any allegations of negligence, gross negligence, willful, wanton or reckless conduct, or any other allegation of wrongdoing on its behalf, and demands strict proof thereof.

**FOR A DEFENSE TO THE SECOND CAUSE OF ACTION
AGAINST BOTH LOHR AND RITCHIE
(Fraud)**

36. In response to paragraph 47 of the Plaintiff's Amended Complaint, the Defendant Lohr repeats each and every answer to the allegations contained in the Complaint as if set forth verbatim herein.
37. Defendant Lohr admits only so much of the allegations contained in paragraph 48 of the Plaintiff's Amended Complaint that can be construed to allege that an employee of Defendant Lohr signed the letter in question. Defendant Lohr denies the remaining

allegations contained therein as they pertain to it, specifically denies any allegations of negligence, gross negligence, willful, wanton or reckless conduct, or any other allegation of wrongdoing on its behalf, and demands strict proof thereof.

38. Defendant Lohr lacks sufficient information with which to admit or deny the allegations contained in paragraph 49 as they pertain to it, and therefore denies the same as they pertain to it, specifically denies any allegations of negligence, gross negligence, willful, wanton or reckless conduct, or any other allegation of wrongdoing on its behalf, and demands strict proof thereof.
39. Defendant Lohr denies the allegations contained in paragraph 50 of the Plaintiff's Amended Complaint as they pertain to it, specifically denies any allegations of negligence, gross negligence, willful, wanton or reckless conduct, or any other allegation of wrongdoing on its behalf, and demands strict proof thereof.
40. Defendant Lohr denies the allegations contained in paragraph 51 of the Plaintiff's Amended Complaint as they pertain to it, specifically denies any allegations of negligence, gross negligence, willful, wanton or reckless conduct, or any other allegation of wrongdoing on its behalf, and demands strict proof thereof.
41. Defendant Lohr denies the allegations contained in paragraph 52 of the Plaintiff's Amended Complaint as they pertain to it, specifically denies any allegations of negligence, gross negligence, willful, wanton or reckless conduct, or any other allegation of wrongdoing on its behalf, and demands strict proof thereof.
42. Defendant Lohr denies the allegations contained in paragraph 53 of the Plaintiff's Amended Complaint as they pertain to it, specifically denies any allegations of negligence, gross negligence, willful, wanton or reckless conduct, or any other allegation of wrongdoing on its behalf, and demands strict proof thereof.
43. Defendant Lohr denies the allegations contained in paragraph 54 of the Plaintiff's Amended Complaint as they pertain to it, specifically denies any allegations of negligence, gross negligence, willful, wanton or reckless conduct, or any other allegation of wrongdoing on its behalf, and demands strict proof thereof.
44. Defendant Lohr denies the allegations contained in paragraph 55 of the Plaintiff's Amended Complaint as they pertain to it, specifically denies any allegations of negligence, gross negligence, willful, wanton or reckless conduct, or any other allegation of wrongdoing on its behalf, and demands strict proof thereof.
45. Defendant Lohr denies the allegations contained in paragraph 56 of the Plaintiff's Amended Complaint as they pertain to it, specifically denies any allegations of negligence, gross negligence, willful, wanton or reckless conduct, or any other allegation of wrongdoing on its behalf, and demands strict proof thereof.

46. Defendant Lohr denies the allegations contained in paragraph 57 of the Plaintiff's Amended Complaint as they pertain to it, specifically denies any allegations of negligence, gross negligence, willful, wanton or reckless conduct, or any other allegation of wrongdoing on its behalf, and demands strict proof thereof.
47. Defendant Lohr denies the allegations contained in paragraph 58 of the Plaintiff's Amended Complaint as they pertain to it, specifically denies any allegations of negligence, gross negligence, willful, wanton or reckless conduct, or any other allegation of wrongdoing on its behalf, and demands strict proof thereof.
48. Defendant Lohr denies the allegations contained in paragraph 59 of the Plaintiff's Amended Complaint as they pertain to it, specifically denies any allegations of negligence, gross negligence, willful, wanton or reckless conduct, or any other allegation of wrongdoing on its behalf, and demands strict proof thereof.
49. Defendant Lohr denies the allegations contained in paragraph 60 of the Plaintiff's Amended Complaint as they pertain to it, specifically denies any allegations of negligence, gross negligence, willful, wanton or reckless conduct, or any other allegation of wrongdoing on its behalf, and demands strict proof thereof.

**FOR A DEFENSE TO THE THIRD CAUSE OF ACTION
AGAINST BOTH RITCHIE AND LOHR**

50. In response to paragraph 61 of the Plaintiff's Amended Complaint, the Defendant Lohr repeats each and every answer to the allegations contained in the Complaint as if set forth verbatim herein.
51. Defendant Lohr denies the allegations contained in paragraph 62 of the Plaintiff's Amended Complaint as they pertain to it, specifically denies any allegations of negligence, gross negligence, willful, wanton or reckless conduct, or any other allegation of wrongdoing on its behalf, and demands strict proof thereof.
52. Defendant Lohr denies the allegations contained in paragraph 63 of the Plaintiff's Amended Complaint as they pertain to it, specifically denies any allegations of negligence, gross negligence, willful, wanton or reckless conduct, or any other allegation of wrongdoing on its behalf, and demands strict proof thereof.
53. Defendant Lohr denies the allegations contained in paragraph 64 of the Plaintiff's Amended Complaint as they pertain to it, specifically denies any allegations of negligence, gross negligence, willful, wanton or reckless conduct, or any other allegation of wrongdoing on its behalf, and demands strict proof thereof.
54. Defendant Lohr denies the allegations contained in paragraph 65 of the Plaintiff's Amended Complaint as they pertain to it, specifically denies any allegations of negligence, gross negligence, willful, wanton or reckless conduct, or any other allegation of wrongdoing on its behalf, and demands strict proof thereof.

55. Defendant Lohr denies the allegations contained in paragraph 66 of the Plaintiff's Amended Complaint as they pertain to it, specifically denies any allegations of negligence, gross negligence, willful, wanton or reckless conduct, or any other allegation of wrongdoing on its behalf, and demands strict proof thereof.
56. Defendant Lohr denies the allegations contained in paragraph 67 of the Plaintiff's Amended Complaint as they pertain to it, specifically denies any allegations of negligence, gross negligence, willful, wanton or reckless conduct, or any other allegation of wrongdoing on its behalf, and demands strict proof thereof.

**FOR A FIRST AFFIRMATIVE DEFENSE
TO ALL CAUSES OF ACTION
(Comparative Negligence)**

57. The Defendant Lohr repeats each and every answer to the allegations contained in the Complaint as if set forth verbatim herein.
58. The Defendant Lohr is informed and believes that the damages as alleged by the Plaintiffs, the existence of which have been denied, were due to and caused by the negligent, grossly negligent, careless, reckless, willful and wanton, negligent acts and conduct of the Plaintiff.
59. The Defendant Lohr is informed and believes that the Plaintiffs' acts, errors and omissions contributed to and combined with this Defendant's acts of negligence (the existence of any negligence on behalf of Defendant Lohr having been expressly denied), so as to result in the Plaintiffs' alleged damages.
60. The Defendant Lohr is informed and believes that in the event that the Plaintiffs' own acts of negligence exceed fifty percent (50%) of the total negligence attributable to all of the parties herein (the existence of any negligence on behalf of Defendant Lohr having been expressly denied), the Plaintiffs herein are barred from recovery. Additionally, any damages claimed against this defendant must be reduced by the amount of negligence attributable to the Plaintiffs.

**FOR A SECOND AFFIRMATIVE DEFENSE
TO ALL CAUSES OF ACTION
(Negligence of Another)**

61. The Defendant Lohr repeats each and every answer to the allegations contained in the Plaintiffs' Complaint as if set forth verbatim herein.
62. The Defendant Lohr is informed and believes that the damages alleged in the Plaintiffs' Complaint, if any, were directly and proximately caused by the negligent acts, errors and omissions of a third party other than this defendant and over whom this defendant has no control.

63. The Defendant Lohr is informed and believes that the Plaintiffs are therefore barred from recovery against this Defendant.

**FOR A THIRD AFFIRMATIVE DEFENSE
ALL CAUSES OF ACTION
(Superseding Negligence)**

64. The Defendant Lohr repeats each and every answer to the allegations contained in the Plaintiffs' Complaint as if set forth verbatim herein.
65. The Defendant Lohr is informed and believes that the claims alleged against it are barred, or severely limited, by the concurring, contributing, intervening, superseding or insulating fault and breach by persons or entities other than this defendant.
66. Any fault or negligence by the Defendant Lohr, the existence of such negligence having been denied, was passive and secondary in light of the primary and active fault or breach of others.
67. The Defendant Lohr is informed and believes that the Plaintiffs are therefore barred from recovery from this Defendant.

**FOR A FOURTH AFFIRMATIVE DEFENSE
TO ALL CAUSES OF ACTION
(Lack of Notice)**

68. The Defendant Lohr repeats each and every answer to the allegations contained in the Plaintiffs' Complaint as if set forth verbatim herein.
69. The Defendant Lohr is informed and believes that the Plaintiffs are barred from recovery because they failed to give proper notice to Defendant Lohr of any defective condition pursuant to 1976 South Carolina Code Annotated, Section 40-59-830, *et al*, the existence of which Defendant Lohr specifically denies.

**FOR A FIFTH AFFIRMATIVE DEFENSE
TO ALL CAUSES OF ACTION
(Failure to Give Notice of Breach of Warranty)**

70. The Defendant Lohr repeats each and every answer to the allegations contained in the Plaintiffs' Complaint as if set forth verbatim herein.
71. The Defendant Lohr is informed and believes that the Plaintiffs are barred from recovery because they failed to give proper notice to Defendant Lohr of any alleged breach of any applicable warranty, which breach of warranty or warranties is hereby specifically denied.

**FOR A SIXTH AFFIRMATIVE DEFENSE
TO ALL CAUSES OF ACTION
(Failure to Comply with SC Code Section 40-59-840)**

- 72. The Defendant Lohr repeats its answers to the allegations contained in the Plaintiffs' Complaint as if each and every response was set forth verbatim herein.
- 73. The Defendant Lohr is informed and believes that the Plaintiffs are barred from recovery because they failed to comply with the specifications set forth in SC Code Section 40-59-840.

**FOR A SEVENTH AFFIRMATIVE DEFENSE
TO ALL CAUSES OF ACTION
(Mitigation of Damages)**

- 74. The Defendant Lohr repeats each and every answer to the allegations contained in the Plaintiffs' Complaint as if set forth verbatim herein.
- 75. The Defendant Lohr is informed and believes that the Plaintiffs have breached their duty to mitigate their damages and accordingly, the damages claimed must be barred or reduced.

**FOR AN EIGHTH AFFIRMATIVE DEFENSE
TO ALL CAUSES OF ACTION
(Waiver and/or Estoppel)**

- 76. The Defendant Lohr repeats each and every answer to the allegations contained in the Plaintiffs' Complaint as if set forth verbatim herein.
- 77. The damages claimed in the Plaintiffs' Complaint are barred based on the doctrines of waiver and estoppel.

**FOR A NINTH AFFIRMATIVE DEFENSE
TO ALL CAUSES OF ACTION
(Statute of Limitation/Statute of Repose)**

- 78. The Defendant Lohr repeats each and every answer to the allegations contained in the Plaintiffs' Complaint as if set forth verbatim herein.
- 79. The Defendant Lohr is informed and believes that the Plaintiffs are barred from recovering from this Defendant based on any and all applicable statutes of limitations and/or repose.

**FOR A TENTH AFFIRMATIVE DEFENSE
TO ALL CAUSES OF ACTION
(Failure to State a Claim)**

- 80. The Defendant Lohr repeats each and every answer to the allegations contained in the Plaintiffs' Complaint as if set forth verbatim herein.
- 81. The allegations of the Plaintiffs' Complaint fail to state facts sufficient to constitute a cause of action against this Defendant and accordingly, the Plaintiffs' Complaint must be dismissed.

**FOR AN ELEVENTH AFFIRMATIVE DEFENSE
TO ALL CAUSES OF ACTION
(Laches)**

- 82. The Defendant Lohr repeats each and every answer to the allegations contained in the Plaintiffs' Complaint as if set forth verbatim herein.
- 83. The Defendant Lohr is informed and believes that the Plaintiffs are barred from recovery by the doctrine of laches.

**FOR A TWELFTH AFFIRMATIVE DEFENSE
TO ALL CAUSES OF ACTION
(Economic Loss Rule)**

- 84. The Defendant Lohr repeats each and every answer to the allegations contained in the Plaintiffs' Complaint as if set forth verbatim herein.
- 85. The Plaintiffs' claims for damages against this Defendant are barred by the economic loss rule.

**FOR A THIRTEENTH AFFIRMATIVE DEFENSE
TO ALL CAUSES OF ACTION
(Exclusion/Modification/Limitation of Remedies)**

- 86. The Defendant Lohr repeats each and every answer to the allegations contained in the Plaintiffs' Complaint as if set forth verbatim herein.
- 87. The Defendant Lohr is informed and believes that available remedies have been properly and effectively excluded, modified and/or limited by this Defendant.

**FOR A FOURTEENTH AFFIRMATIVE DEFENSE
TO ALL CAUSES OF ACTION
(Disclaimer of Remedies)**

- 88. The Defendant Lohr repeats each and every answer to the allegations contained in the Plaintiffs' Complaint as if set forth verbatim herein.
- 89. The Defendant Lohr is informed and believes that available remedies have been properly and effectively disclaimed by this Defendant.

**FOR A FIFTEENTH AFFIRMATIVE DEFENSE
TO ALL CAUSES OF ACTION
(Exclusion/Modification/Limitation of Warranty)**

- 90. The Defendant Lohr repeats each and every answer to the allegations contained in the Plaintiffs' Complaint as if set forth verbatim herein.
- 91. The Defendant Lohr is informed and believes that any and/or all applicable warranties have been properly and effectively excluded, modified and/or limited by this Defendant.

**FOR A SIXTEENTH AFFIRMATIVE DEFENSE
TO ALL CAUSES OF ACTION
(Disclaimer of Warranty)**

- 92. The Defendant Lohr repeats each and every answer to the allegations contained in the Plaintiffs' Complaint as if set forth verbatim herein.
- 93. The Defendant Lohr is informed and believes that any and/or all applicable warranties have been properly and effectively disclaimed by this Defendant.

**FOR A SEVENTEENTH AFFIRMATIVE DEFENSE
TO ALL CAUSES OF ACTION
(Expiration of Warranty)**

- 94. The Defendant Lohr repeats each and every answer to the allegations contained in the Plaintiffs' Complaint as if set forth verbatim herein.
- 95. Any warranty allegedly provided by the Defendant Lohr has expired.

**FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE
TO ALL CAUSES OF ACTION
(Failure to Comply with Statutory Conditions Precedent)**

- 96. The Defendant Lohr repeats each and every answer to the allegations contained in the Plaintiffs' Complaint as if set forth verbatim herein.
- 97. The Defendant Lohr is informed and believes that the Plaintiffs have failed to properly comply with statutory conditions precedent to the assertion of those claims set forth in the Plaintiffs' Complaint, which failure is a bar to all claims against this Defendant.

**FOR A NINETEENTH AFFIRMATIVE DEFENSE
TO ALL CAUSES OF ACTION
(Statute of Frauds)**

- 98. The Defendant Lohr repeats each and every answer to the allegations contained in the Plaintiffs' Complaint as if set forth verbatim herein.
- 99. The Plaintiffs' claim for damages against this Defendant are barred by the Statute of Frauds.

**FOR A TWENTIETH AFFIRMATIVE DEFENSE
TO ALL CAUSES OF ACTION
(Right to Cure)**

- 100. The Defendant Lohr repeats its answers to the allegations contained in the Plaintiffs' Complaint as if each and every response was set forth verbatim herein.
- 101. The Defendant Lohr is informed and believes that any claim advanced as a warranty claim for which the claimant failed to give this Defendant timely and reasonable notice, as required by law, is barred.

**FOR A TWENTY-FIRST AFFIRMATIVE DEFENSE
TO ALL CAUSES OF ACTION
(Unconstitutionality of Punitive Damages)**

- 102. The Defendant Lohr repeats each and every answer to the allegations contained in the Plaintiffs' Complaint as if set forth verbatim herein.
- 103. The Plaintiffs' claim for punitive damages, and any award thereof, violates the due process clause of the Fifth and Fourteenth Amendments to the United States Constitution and the due process clause of Article I, Section 3 of the South Carolina Constitution and accordingly, should be barred.

**FOR A TWENTY-SECOND AFFIRMATIVE DEFENSE
TO ALL CAUSES OF ACTION
(Spoliation of Evidence)**

- 104. The Defendant Lohr repeats each and every answer to the allegations contained in the Plaintiffs' Complaint as if set forth verbatim herein.
- 105. The Defendant Lohr is informed and believes that the Plaintiffs' claims for damages are barred based upon the spoliation of evidence.

**FOR A TWENTY-THIRD AFFIRMATIVE DEFENSE
TO ALL CAUSES OF ACTION
(Reservation and Non-Waiver of Contribution/Indemnity Claim)**

- 106. The Defendant Lohr repeats each and every answer to the allegations contained in the Plaintiffs' Complaint as if set forth verbatim herein.
- 107. The Defendant Lohr reserves the right and does not waive it's right to raise a claim for indemnity and/or contribution as to any co-defendant pursuant to S.C. Code Ann. §15-38-10, *et seq.*

**FOR A TWENTY-FOURTH AFFIRMATIVE DEFENSE
TO ALL CAUSES OF ACTION
(Reservation and Non-Waiver)**

- 108. The Defendant Lohr repeats each and every answer to the allegations contained in the Plaintiffs' Complaint as if set forth verbatim herein.
- 109. The Defendant Lohr reserves the right and does not waive any additional or further defenses as may be revealed by additional information that may be acquired during the course of discovery or otherwise in this action.

WHEREFORE, having answered the allegations contained in the Plaintiff's Amended Complaint, Defendant Lohr prays this Honorable Court inquire into the matters contained herein, issuing its Order dismissing the Plaintiff's Amended Complaint, including the Plaintiff's prayer.

(Signature page to follow)

TUPPER, GRIMSLEY & DEAN, P.A.

By: _____

Stacey P. Canaday
Attorney for Defendant Lohr Plumbing, Inc.
611 Bay Street
Post Office Box 2055
Beaufort, South Carolina 29901-2055
(843) 524-1116

Beaufort, South Carolina
Dated: September 23, 2014

Certificate of Service

I hereby certify that I have mailed a copy of the
above and foregoing to counsel of record in said
proceeding to his office address with sufficient
postage affixed hereto, this 23 day of
September, 2014.

Nate Head

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
PATRICIA DOLLER,)
Plaintiff)
vs.)
LOHR PLUMBING, INC.,)
Defendant.)

IN THE COURT OF COMMON PLEAS
Civil Action No. 2012-CP-07-1439

**PLAINTIFF'S
POST TRIAL MOTION: JNOV, 13TH JUROR,
NEW TRIAL ABSOLUTE**

TO: STACEY CANADAY, ESQUIRE, ATTORNEYS FOR THE DEFENDANT:

You will please take notice that the plaintiff will seek judgment notwithstanding the verdict, or a new trial under the 13th juror doctrine, or a new trial absolute based upon the motions below at such time and in such place as the trial Court sets, all in accordance with the trial Court's instructions.

JNOV

A motion for a judgment notwithstanding the verdict (JNOV) is merely a renewal of the directed verdict motion. *Wright v. Craft*, 372 S.C. 1, 20, 640 S.E.2d 486, 496 (Ct.App.2006). The trial court must deny a motion for a directed verdict or JNOV if the evidence yields more than one reasonable inference or its inference is in doubt. *Strange v. S.C. Dep't of Highways & Pub. Transp.*, 314 S.C. 427, 429-30, 445 S.E.2d 439, 440 (1994). A trial court should grant JNOV when the evidence is insufficient to support the verdict. *Jinks v. Richland County*, 355 S.C. 341, 345, 585 S.E.2d 281, 283 (2003). Moreover, "[a] motion for JNOV may be granted only if no reasonable jury could have reached the [challenged] verdict." *Gastineau v. Murphy*, 331 S.C. 565, 568, 503 S.E.2d 712, 713 (1998). In deciding such motions, "neither the trial court nor the appellate court has the authority to decide credibility issues or to resolve conflicts in the

testimony or the evidence.” *Welch v. Epstein*, 342 S.C. 279, 300, 536 S.E.2d 408, 419

(Ct.App.2000). *Jamison v. Hilton*, S.C. 133, 775 S.E.2d 58 (Ct.App. 2015).

Negligence:

The plaintiff, Patricia Doller, moves for judgment notwithstanding the verdict because on the negligence cause of action, the defendant, represented by Mr. Dorn, testified that Lohr was an expert in plumbing work, which means Lohr had a duty to perform its work in a workmanlike manner (*Hill v. Polar Pantries*, 219 S.C. 263, 64 S.E.2d 885 (1951); *Johnson v. Painter*, 307 S.E.2d 860 (S.C., 1983)., or in other words there existed a duty to install the plumbing so it did not leak, that Lohr Plumbing, Inc. breached that duty because the plumbing leaked and conceded that the leak was the fault of Lohr Plumbing, and that there were damages stemming from that breach because Lohr had to fix the wall and floor. Ms. Doller asserted damages for loss of use, medical bills, and lost wages. Her loss of use damages were not challenged.

Somehow, the Jury found no negligence. Because the plaintiff established all the elements of negligence, the jury verdict must be reversed and damages awarded.

Negligent Misrepresentation:

Lohr Plumbing, Inc., through Mr. Dorn, conceded that the letter Lohr sent to the closing attorney asserted that all the polybutylene pipe was removed from the house, conceded that all the polybutylene pipe was not removed from the house (thereby necessarily asserting that the letter was a false representation), stated that Lohr sent that letter and sends many such letters in the normal course of its work, conceded that Lohr owed a duty of care to do its work correctly (see above) and is also under a duty of care to speak the truth if it speaks at all, and it follows that Lohr breached the duty of care by failing to exercise due care. Ms. Doller testified that she relied upon the letter when she closed on the house, and indeed, specifically testified that she

would not have closed at all if she knew there was any polybutylene pipe in the house. Ms. Doller testified that she has lost the use of the house as a direct and proximate result of having moved into the house which had a leak in it, and that she has suffered pecuniary damages from loss of use, medical bills, and potential cleanup costs. Her loss of use damages were not challenged. Somehow, the Jury found no negligent misrepresentation. Because the plaintiff established all the elements of negligent misrepresentation the jury verdict must be reversed and damages awarded.

JUDGMENT UNDER THE 13TH JUROR DOCTRINE

[U]nder the thirteenth juror doctrine, the trial court may grant a new trial if it finds the verdict is unsupported by the evidence. *Folkens v. Hunt*, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (1990). "This ruling has also been termed granting a new trial upon the facts." *Id.* Basically, the court, "as the thirteenth juror[,] 'hangs' the jury." *Id.* "Neither [the court] nor the jury is required to give reasons for this outcome. Similarly, because the result of the 'thirteenth juror' vote by the [court] is a new trial rather than an adjustment to the verdict, no purpose would be served by requiring the trial [court] to make factual findings." *Id.* When acting as the thirteenth juror, the trial court "possess[es] the veto power to the Nth degree" and is presumed to recognize and appreciate this responsibility and exercise its discretion with fairness and impartiality. *Worrell v. S.C. Power Co.*, 186 S.C. 306, 313-14, 195 S.E. 638, 641 (1938). "A trial [court's] order granting or denying a new trial upon the facts will not be disturbed unless [its] decision is wholly unsupported by the evidence, or the conclusion reached was controlled by an error of law." *Vinson v. Hartley*, 324 S.C. 389, 403, 477 S.E.2d 715, 722 (Ct.App.1996).

The elements of negligence and negligent misrepresentation are discussed above under JNOV, and are incorporated into this motion by reference.

In this case, the jury verdict is unsupported by the evidence because the unchallenged evidence established all the elements of negligence and all the elements of negligent misrepresentation. Somehow, the jury just completely missed the mark, especially since the defendant has conceded liability at the trial. The defendant challenged only the medical bills from Beaufort Memorial Hospital and the cost of remediation. The defendant did not challenge the loss of use damages.

MOTION FOR A NEW TRIAL ABSOLUTE

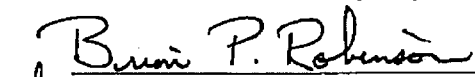
A trial court must grant a new trial absolute if the amount of the verdict is grossly inadequate or excessive and clearly indicates the figure reached was the result of prejudice, passion, caprice, or some other improper motive. *O'Neal v. Bowles*, 314 S.C. 525, 527, 431 S.E.2d 555, 556 (1993). However, the jury's determination of damages is entitled to substantial deference. *Vinson v. Hartley*, 324 S.C. 389, 404, 477 S.E.2d 715, 723 (Ct.App.1996). The trial court must explain the reasons for granting or denying new trial motions based on inadequacy or excessiveness of the verdict. *Cf. Pelican Bldg. Ctrs. of Horry-Georgetown, Inc. v. Dutton*, 311 S.C. 56, 61, 427 S.E.2d 673, 676 (1993) (stating compelling reasons must be given to justify invading the jury's province). "The decision to grant a new trial absolute ... rests in the sound discretion of the trial court and ordinarily will not be disturbed on appeal." *Becker v. Wal-Mart Stores, Inc.*, 339 S.C. 629, 635, 529 S.E.2d 758, 761 (Ct.App.2000). A trial court abuses its discretion if its conclusions are controlled by an error of law or if its findings are wholly unsupported by the evidence. *Id.* The elements of negligence and negligent misrepresentation are discussed above under JNOV, and are incorporated into this motion by reference.

The finding of no negligence and no negligent misrepresentation is grossly inadequate given the evidence adduced at trial. The defendant conceded the elements of both negligence

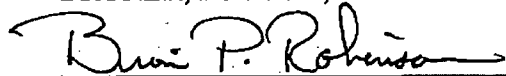
and negligent misrepresentation, although it disputed the amount of the damages. A dispute over the amount of damages is not sufficient to allow the jury to render a defense verdict, because there is no evidence to support a complete defense verdict.

RESPECTFULLY SUBMITTED,

A. PARKER BARNES, JR., P.A.


for A. Parker Barnes, Jr.
P.O. Drawer 1729
Beaufort, SC 29901
Telephone: (843)522-2600
Facsimile: (843)522-2610
apbarnes@parkerbarneslaw.com

BRUNER, POWELL, WALL & MULLINS, LLC


Brian Robinson
P.O. Box 61110
Columbia, SC 29260
Telephone: (803)252-7693
Facsimile: (888)726-9049
brobinson@brunerpowell.com

Columbia, South Carolina

September 4, 2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO.: 12 -CP-07 -4139
	)	
PATRICIA DOLLER,	)	
Plaintiff,	)	
	)	
-versus-	)	DEFENDANT LOHR PLUMBING INC.'S
	)	MEMORANDUM IN OPPOSITION TO
LOHR PLUMBING, INC.,	)	PLAINTIFF'S POST TRIAL MOTION
REMAX ISLAND REALTY	)	FOR JNOV, 13 TH JUROR, NEW TRIAL
and CATHY LYNN RITCHIE,	)	ABSOLUTE
Defendants.	)	

FACTS

This is a hybrid personal injury and construction defect claim arising out of a water leak in the Plaintiff's residence, located at 55 James F. Byrnes Street in Beaufort, SC. The Plaintiff purchased the subject property from Defendant Ritchie on or about November 10, 2010. A home inspection performed prior to the purchase indicated the presence of polybutylene piping, which was required by the Plaintiff's homeowners insurance company to be removed before it would issue a policy to the Plaintiff. Defendant Ritchie retained Defendant Lohr Plumbing, Inc. (hereinafter referred to as "Lohr") to remove and replace most of the polybutylene piping within the home. Lohr in fact removed all of the pressurized pipes within the home, with the only polybutylene pipe remaining being that at the shower head.

Approximately one year later, the Plaintiff discovered a leak beneath the wood floor between the master bedroom and master bathroom, and contacted Lohr. Upon investigation, Lohr determined that the leak occurred at a joint between a new pex pipe and old valve; no leak occurred within any polybutylene piping. Lohr capped the line, turned off the water to prevent further leaking, and immediately began the process of obtaining estimates for repairs to the wall

and floor. However, the Plaintiff ultimately refused to permit entry to her home by any person or entity on behalf of Lohr, and therefore Lohr was not able to make any repairs. Further, the Plaintiff moved out of her home and, to date, has taken no steps to mitigate the damages to her home.

In addition to alleged physical damages to the master bedroom, the Plaintiff has also claimed personal injuries. A trial of this matter occurred September 1-3, 2015. A jury returned a verdict in favor of Defendant Lohr on a general verdict form, which was not objected to by the Plaintiff. Thereafter, Plaintiff filed her motion for JNOV, 13th Juror, and New Trial Absolute.

ARGUMENT

The Plaintiff's motion for new trial—under any theory—should be denied. “Courts must sustain verdicts when a logical reason for reconciling them can be found.” *Vinson v. Jackson*, 317 S.C. 166, 452 S.E.2d 16 (Ct. App. 1994), citing *Rhodes v. Winn-Dixie Greenville, Inc.*, 249 S.C. 526, 155 S.E.2d 308 (1967), further citations omitted; see also *Lorick & Lowrance v. Julius H. Walker & Co.*, 153 S.C. 309; 150 S.E. 789 (1929). Here, there is ample evidence and reason to sustain the defense verdict rendered in this case.

A. The Plaintiff did not Object to the Verdict Form

In this case, the Plaintiff asserted causes of action for negligence and negligent misrepresentation. In order for the Plaintiff to recover for negligence, she must prove by a preponderance of the evidence that a duty existed, that the Defendant breached the duty, that she suffered damages, and that the breach was a proximate cause of her damages. Similarly, for the cause of action of negligent misrepresentation, the Plaintiff must prove 1) a false representation to the plaintiff; 2) the defendant had a pecuniary interest in making the statement; 3) the

defendant owed a duty of care to see that he communicated truthful information to the plaintiff; 4) the defendant breached that duty by failing to exercise due care; 5) the plaintiff justifiably relied on the representation; and 6) the plaintiff suffered pecuniary loss as the proximate result of his reliance upon the representation. *Quail Hill, LLC v. County of Richland*, 387 S.C. 223, 692 S.E.2d 499 (2010), citing *West v. Gladney*, 341 S.C. 127, 134, 533 S.E.2d 334, 337 (Ct.App. 2000).

The verdict form presented to the jury in this case read, in pertinent part, as follows:

"I. Negligence

- (1) Did the Plaintiff prove by a preponderance of the evidence that defendant, Lohr Plumbing, Inc., was negligent and the negligence was one of the proximate causes of the alleged injury?

II. Negligent Misrepresentation

- (1) Did the Plaintiff prove by a preponderance of the evidence that the defendant, Lohr Plumbing, Inc., uttered a negligent misrepresentation and that the negligent misrepresentation was one of the proximate causes of the injury?"

The Plaintiff did not object to this form, and the jury unanimously answered each inquiry above in the negative. The Plaintiff now assert she was entitled to a directed verdict upon what appears to be a negligence per se/*res ipsa* theory (though negligence per se, violation of statute, or any other theory tending to suggest a duty on behalf of Lohr to the Plaintiff were not plead, argued nor charged to the jury). Very clearly, the jury could have rendered its verdict based upon a finding of lack of proximate cause between any alleged breach of duty and any of the Plaintiff's alleged damage. The record is certainly replete with expert testimony on behalf of Lohr

regarding the lack of causation of any of Plaintiff's damages/injuries. Likewise, at no time did Lohr admit to being negligent and causing damage to the Plaintiff. "Where a case is submitted to the jury on two or more issues and a general verdict is returned, the verdict will be upheld if it is supported by at least one issue." *Dropkin v. Beachwalk Villas Condo Ass'n*, 373 S.C. 360, 644 S.E.2d 808 (Ct. App. 2007), citing *Anderson v. West*, 270 S.C. 184, 188, 241 S.E.2d 551, 553 (1978). Here, there was no confusion in the jury's verdict (such as finding in favor of the Plaintiff but awarding no damages); rather, the jury very clearly entered a verdict in favor of Lohr. For this reason, the Plaintiff's motion for new trial should be denied.

B. Evidence Existed to Suggest Plaintiff Failed to Mitigate Her Damages

As further support of the jury's verdict, evidence was presented to indicate the Plaintiff failed to mitigate her damages. The Plaintiff testified, rather adamantly, that she refused to permit Lohr to enter her home to perform repairs, and further waited years to obtain her own estimate, doing so only after her deposition in this case was taken in 2014. In reaching its conclusion, the jury could certainly have determined that the Plaintiff failed to act as an ordinary prudent person in failing to permit entry and repair by Lohr, and/or for failing to repair any damages herself. The jury likewise could have determined—based upon the ample expert testimony—that Plaintiff's alleged personal injuries were not actually injuries but rather a pre-existing condition, and not related in any way to any act on behalf of Lohr. For this reason, the Plaintiff's motion for new trial should be denied.

C. Witness Credibility and Findings of Fact are the Jury's Province

"Judging the credibility of the testimony of witnesses is a function of the jury, not the court, as is the weight to be given to such testimony." *Brown v. Stewart*, 348 S.C. 33, 557 S.E.2d 676

(Ct. App. 2001), citing *Doe v. Asbury*, 281 S.C. 191, 194, 314 S.E.2d 849, 850 (Ct. App. 1984). "When considering directed verdict and JNOV motions, neither the trial court nor the appellate court has authority to decide credibility issues or to resolve conflicts in the testimony or evidence." *Welch v. Epstein*, 342 S.C. 279, 536 S.E.2d 408 (Ct. App. 2000), citing *Creech v. South Carolina Wildlife and Marine Resources Dep't*, 328 S.C. 24, 491 S.E.2d 571 (1997). "A motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict." *Welch*, citing *Crossley v. State Farm Mut. Auto. Ins. Co.*, 307 S.C. 354, 415 S.E.2d 393 (1992). In ruling on a motion for directed verdict or JNOV, a trial court must view the evidence and all reasonable inferences in the light most favorable to the non-moving party. *Welch*, citing *Steinke v. South Carolina Dep't of Labor, Licensing and Regulation*, 336 S.C. 373, 520 S.E.2d 142 (1999), further citations omitted. "The trial court must deny the motions when the evidence yields more than one inference or its inference is in doubt." *Welch*, citing *Steinke*, *supra*.

Here, though the Plaintiff contends that evidence was presented to meet each element of each of her causes of action, Lohr maintains such is simply not the case. As indicated above, the Plaintiff appears to be requesting the Court to employ a negligence per se/*res ipsa* standard (that is, since the Plaintiff claims she was damaged, and Lohr performed work in the home, Lohr therefore must be responsible for the claimed damages) and award her a new trial. However, ample evidence exists to support the jury's verdict against the Plaintiff. Evidence regarding the lack of damage, both personal and to the property, was presented by Lohr, as well as evidence regarding Plaintiff's failure to mitigate. Further, the Plaintiff introduced no evidence relating to Lohr's alleged negligence, only that a leak occurred within a plumbing apparatus and that Lohr must therefore be responsible. As discussed above, there were no charges given to the jury

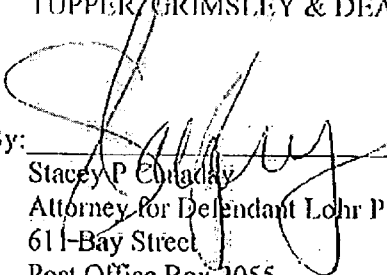
regarding negligence per se (nor were any requested or suggested) or any other theory of negligence beyond simple negligence. Thus, since by the original denial of the Plaintiff's directed verdict motion there was presumably a question of fact for the jury to decide, the jury obviously considered all of the evidence, determined that no proximate cause and/or damages existed, and returned a verdict in favor of Lohr. As the case law indicates, it is not the role of the tribunal to pass upon the credibility of the witnesses or to resolve conflicts in the evidence. Here, since evidence exists to support the verdict, the same should be sustained. For this reason, the Plaintiff's motion for new trial should be denied.

CONCLUSION

The overriding policy of our courts is to maintain jury verdicts if they can reasonably be sustained. In considering motions for directed verdict and/or JNOV, all evidences and inferences drawn therefrom must be resolved in favor of the non-moving party. Here, Lohr has presented ample evidence to support the jury verdict. As stated, the trial court cannot consider witness credibility or the weight to be afforded witnesses; that aspect remains the province of the jury and should not be disturbed absent a lack of support for the jury's findings. Again, Lohr has provided support for the jury's verdict. For these reasons, and any others that may be presented at oral argument, the Plaintiff's motion for new trial must be denied.

(Signature page to follow)

TUPPER GRIMSLEY & DEAN, P.A.

By: 

Stacey P. Chisley
Attorney for Defendant Lohr Plumbing, Inc.
611-Bay Street
Post Office Box 2055
29901-2055
(843) 524-1116

Dated: November 17, 2015

Certificate of Service

I hereby certify that I have mailed a copy of the
above and foregoing to counsel of record in said
proceeding to his office address with sufficient
postage affixed hereto, this 17th day of
November, 2015.


Nate Head

2015 NOV 17 PM 4:09
JERRI ANN ROSENEAU
CLERK OF COURT
BEAUFORT COUNTY, S.C.

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

APPEARANCE PAGE

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

APPEARANCES

LOHR PLUMBING, INC.'s ATTORNEYS:

Stacey Canaday, Esquire
Ralph E. Tupper, Esquire
611 Bay Street
Post Office Box 2055
Beaufort, South Carolina 29901-2055
(843) 524-1116

PATRICIA DOLLER'S ATTORNEY:

A. Parker Barnes, Jr., Esquire
PO Drawer 1729
Beaufort, SC 29901-1729

and

Brian Pratt Robinson, Esquire
Po Box 61110
Columbia, SC 29260

APPEARANCE PAGE

1

INDEX

2 Opening Comment by The Court.....Page 4

3 Opening statement by Mr. Robinson.....Page 11

4 Opening statement by Ms. Canaday.....Page 18

5 Videotape of Dr. Lieberman played.....Page 22

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

INDEX

1 PROCEEDINGS

2 THE COURT: Anything from the Plaintiff before we
3 proceed?

4 MR. BARNES: No, Your Honor.

5 THE COURT: Anything from Defense?

6 MR. TUPPER: No, Your Honor.

7 MR. ROBINSON: I do have, Your Honor, a copy of
8 our exhibits for the Court, if you'd like it.

9 THE COURT: Very good. Thank you.

10 I was looking at the Defense table saying
11 Plaintiff. The jury is normally over there, so I am
12 messed up.

13 Are we ready for the jury?

14 MS. CANADAY: Do you have a copy of all of that
15 for us?

16 MR. ROBINSON: I do.

17 THE COURT: I understand all the jurors are not
18 here. We will be waiting for a moment.

19 (Pause.)

20 THE BAILIFF: The jury is entering the courtroom,
21 Your Honor.

22 (Jury enters the Courtroom at

23 9:34 a.m.)

24 THE COURT: Good morning, everybody.

25 Mr. Foreman, ladies and gentlemen of the jury,

OPENING COMMENTS BY THE COURT

1 thank y'all for being here, and being here on time.
2 We're about to begin the trial of Patricia Doller,
3 Plaintiff, versus Lohr Plumbing Inc., Defendant. Civil
4 action 2012-CP-07-4137.

5 I want to talk to you a little bit about what to
6 expect, sort of give you a preview of how this
7 proceeding is going to progress.

8 First of all, we're going to have opening
9 statements. Plaintiff's counsel is going to have an
10 opportunity to stand up before you, talk a little bit
11 about this case, tell you what he intends to prove.
12 He's going to talk maybe perhaps a little bit about the
13 law and what his position is.

14 After that the Defendant is going to have an
15 opportunity to make an opening statement. They will
16 set forth any defenses that they might have and what
17 they intend to prove.

18 After that, we will begin the taking of evidence
19 in this case. And, once again, the Plaintiff goes
20 first. And most of the evidence that's presented is
21 going to be in the form of witnesses who take the
22 witness stand. They're sworn to tell the truth. The
23 lawyers are going to have an opportunity to ask them
24 questions, and cross-examine them. And their evidence
25 can take a number of different forms: The oral

OPENING COMMENTS BY THE COURT

1 testimony that they give; documents that can be
2 introduced; photographs; models; stipulations where the
3 parties agree to a certain fact; and depositions.
4 We'll talk about that at a later date, and at a later
5 time in the trial.

6 Mr. Foreman, during the breaks in this trial I'm
7 going to ask that you enforce the rule, there'll be
8 absolutely no discussion about this case.

9 Mr. Foreman, ladies and gentlemen of the jury, you
10 and I have very distinct roles in this case. You're
11 the ones who are going to listen to the evidence that
12 comes from this witness stand and determine what the
13 truth is.

14 Every case tried in the state of South Carolina,
15 United States of America, there is a dispute about what
16 the facts are, what the truth is. There's a very rare
17 occasion where the parties agree about the facts, but
18 disagree as to the inference to be drawn from the
19 facts. Both cases, you're going to be called upon to
20 resolve that dispute. It's going to be imperative that
21 you pay very close attention as the evidence comes
22 before you.

23 My job is different than that. I'm required to
24 preside over the trial itself, and I determine what
25 evidence you get to hear. This is a proceeding that's

OPENING COMMENTS BY THE COURT

1 governed by Rules of Civil Procedure and the Rules of
2 Evidence. And I make that determination as to what
3 evidence you get to hear.

4 Quite often, or in every trial, lawyers will stand
5 up and say I have an objection, or I'd like to take up
6 a matter of law outside the presence of the jury. I
7 want to tell you from the beginning what that's about
8 because sometimes it appears that we're trying to keep
9 things from you. But really, what that's about is,
10 they're calling upon me in my role as the trier of fact
11 to determine what evidence you get to hear. Those
12 things take place outside of your presence because,
13 quite often, it requires comments on the facts when I'm
14 ruling on those matters of law. Of course the law
15 simply does not allow me to have an opinion or express
16 an opinion about the facts in the case because that's
17 your sole and exclusive role.

18 At the conclusion of the case, if there's a
19 particular point of law that you have an interest in,
20 and if I can remember what we were talking about at the
21 conclusion of the case, I'll be happy to share that
22 with you. But it would be inappropriate to do that
23 until the conclusion of the case, after I've charged
24 the law and after you've rendered a verdict.

25 Ladies and gentlemen of the jury, did I mention

OPENING COMMENTS BY THE COURT

1 you're the sole and exclusive triers of the fact, and
2 necessarily that means that you're going to have to
3 listen to the evidence and determine the credibility of
4 witnesses, the believability of witnesses. We do that
5 in everyday lives, and one thing that the law does not
6 do is it does not say that you're required to leave
7 your common sense at home.

8 Now, everyday lives, we quite often listen to what
9 people have to say and determine whether or not they're
10 telling the truth. And your role as a juror requires
11 that you do that very thing.

12 Ask yourself when a witness takes the witness
13 stand, what opportunity they had to observe the things
14 in which they've testified to. Ask whether or not what
15 they say is corroborated by other evidence, whether
16 it's incompetent.

17 I'll tell you from the outset that you can believe
18 all of what a witness says, none of what a witness
19 says, or a portion thereof.

20 Also, equally as important, ask yourself whether
21 or not the witness has an interest or bias in what
22 they're saying. In addition to that, in evaluating the
23 credibility of witnesses, it's important for you to
24 listen to what they say. But sometimes it's just as
25 important to listen to the way they say it.

OPENING COMMENTS BY THE COURT

1 Any of you who had teenage children, like myself,
2 sometimes it's important to not just listen to what
3 they say, but the manner in which they say it, their
4 demeanor. The law allows you to do that.

5 As far as the presentation of evidence, the
6 Plaintiff goes first, then the Defense is going to have
7 an opportunity to present evidence in support of their
8 defenses. And then in some instances the Plaintiff
9 will have an opportunity to reply, if they elect to do
10 so.

11 And then we will hear closing arguments. Closing
12 arguments are very similar in form to opening
13 statements; however, they're truly argumentative in
14 nature because at that point in time, all the evidence
15 will have been presented and they can point to the
16 evidence that supports their relative theory of the
17 case.

18 At the conclusion of the closing arguments, I'll
19 charge you the law. This is a case about the principle
20 of law known as negligence. It's a civil cause of
21 action.

22 Many of you maybe have served on a criminal jury,
23 where in order for the State to prove someone guilty of
24 a crime they're required to prove it beyond a
25 reasonable doubt. The standard of proof in this case

OPENING COMMENTS BY THE COURT

1 is about the preponderance of the evidence. Imagine
2 with me, if you will, the scales of justice. When the
3 trial begins the scales are even. And in a civil case,
4 if the Plaintiff tips the scales ever so slightly in
5 their favor, then they prevail. Because after all, in
6 this proceeding, we're talking about money. In a
7 criminal case, where you're talking about someone's
8 civil liberties and possible incarceration and
9 imposition of fines, they're required to meet the
10 highest burden of proof, and I envision that as locking
11 up the scales.

12 And in this case, preponderance of the evidence
13 is more likely than not. We'll talk about that in
14 greater detail at the conclusion of the case.

15 Ladies and gentlemen of the jury, you are
16 participating in a time tested system. You've taken a
17 very solemn oath that you will listen to the evidence,
18 determine what the truth is, and apply it to the law,
19 and I'm convinced that you will do that.

20 This is an important case to the Plaintiff, it's
21 an important case to the Defendant, it's an important
22 case to you because you take a solemn oath to listen to
23 the evidence, apply it to the law, and do what's right.

24 Given the nature of this case and the length of
25 it, I'm going to order and direct that you not take

OPENING COMMENTS BY THE COURT

1 notes. That's going to require that you pay very close
2 attention. I want to admonish you from the very
3 beginning that this is an important case, and you're
4 called upon to determine what the truth is.

5 If I say, for instance, if I were to make an error
6 with regard to the law, if I were to let some evidence
7 in that shouldn't go in, or if I charge the law in an
8 inappropriate way, those errors are easily corrected.
9 But one thing you need to understand is if there's an
10 error in the findings of fact, quite often they can
11 never be corrected. So that's why it's important you
12 pay very close attention during this trial and fulfill
13 your solemn oath to serve as a juror and do what's
14 right, and do what's fair.

15 Plaintiff, you're recognized.

16 OPENING STATEMENT BY MR. ROBINSON

17 MR. ROBINSON: Ladies and gentlemen, if it please
18 the Court.

19 Ladies and gentlemen, my name is Brian Robinson.
20 I represent Patricia Doller sitting -- she's sitting
21 right here at the table with me. On the other side of
22 her is Parker Barnes. Parker's a local attorney. As
23 you probably heard yesterday, I'm from Columbia.

24 We're here to find out what happened to Ms. Doller
25 and what we're going to do about it. You're going to

OPENING STATEMENT BY MR. ROBINSON

1 see some photographs. They're going to make you want
2 to wince. What happened to her was, she's got
3 psoriasis. That's a skin outbreak that comes up on
4 your skin. Some people, it's really bad, some people
5 it's not quite so bad. She doesn't have a real bad
6 case of it.

7 She bought a house here in Beaufort in 2010, and
8 she moved into that house. But before she moved into
9 that house, she had the seller remove all the
10 polybutylene pipe out of that house, because insurance
11 companies won't insure a house with polybutylene pipe.

12 The seller hired Lohr Plumbing to do that. Lohr
13 Plumbing came in, they took all the polybutylene pipe
14 out, so they said, and they connected some new pipes in
15 to take its place.

16 One of those connections was bad, and it leaked.
17 Not a big leak, a little leak, in the wall. Ms. Doller
18 weighs 95 pounds. That wall was between the master
19 bathroom and the master bedroom. And that little tiny
20 leak came down the pipe and very slowly filled up under
21 the floor, and mold grew.

22 Ms. Doller was separated from her husband, and in
23 November of 2011, her husband came and her daughter
24 came to visit. And her husband walked through the
25 bedroom, and he said, This floor is kind of squishy

OPENING STATEMENT BY MR. ROBINSON

1 down here. We need to find out what's going on. So he
2 and a friend pulled up the threshold. That's the piece
3 of wood that goes between the master bedroom and the
4 master bathroom.

5 When they pulled that up, they found water and
6 mold. So Ms. Dollar called the real estate agent,
7 said, "Hey, who did the plumbing?" And the agent said,
8 "Lohr Plumbing did."

9 So she called Lohr Plumbing. They came out, cut a
10 hole in the sheetrock and found the leak. Said,
11 "Here's the leak, we're going to fix it. And they
12 fixed the leak. But they had to do something about
13 this mold and water.

14 So Ms. Doller says, "What can we do to help?" And
15 Lohr Plumbing says, "You can pull up the floor." So
16 Ms. Doller and her friends start pulling up the floor.
17 She picks up a load of flooring, which is -- you'll see
18 photographs of it, it's black with mold. She takes it
19 out to the garage, throws it down, gets another load,
20 throws it down, comes back, and her hands are flaming
21 red. And her friend says, "We got to stop."

22 Within two days, she's down at Dr. Cusumano's
23 office with her body covered with this outbreak of some
24 sort of allergic reaction to the mold.

25 It gets worse, and it gets worse. And finally she

OPENING STATEMENT BY MR. ROBINSON

1 gets to where she can hardly walk because her feet are
2 swollen up, and had scales and stuff on them. You'll
3 see the pictures.

4 And so her friend says, "Look, I've got three
5 bedrooms in my house, you need to move out of your
6 house, this house is killing you. Move into one of the
7 bedrooms in my house." Takes him a while, he finally
8 convinces her to do it. And so she moves into the
9 bedroom in his house.

10 Things get worse and then they start to get
11 better. And finally, they go away.

12 In the meantime, she gets bronchitis, because what
13 this allergic reaction does is it causes psoriasis to
14 flare up and it also causes her to get bronchitis. So
15 she goes back to Dr. Cusumano in January of 2012.

16 And to treat the bronchitis, they give her an
17 antibiotic. And you're going to hear Dr. Cusumano talk
18 about the miraculous effect this antibiotic had, but
19 you're going to see photographs that will tell you it
20 wasn't quite as miraculous as he thinks it was.

21 What it did was, it cleared up the bronchitis, but
22 her outbreak lasted until sometime in late February.
23 You'll see photographs in -- or late January. You'll
24 see photographs in late January. Finally went back to
25 see him, Dr. Cusumano, in late February, and she was

OPENING STATEMENT BY MR. ROBINSON

1 about 99 percent cleared up.

2 So, it took from December 4th all the way through
3 the end of January and part of February before just the
4 skin rash cleared up.

5 She had some other problems. She had some what's
6 called neural cognitive problems. That means she's
7 having trouble thinking and remembering stuff. And
8 you'll hear about that in the video deposition we're
9 going to show you. In fact, that's the first thing
10 we're going to show you.

11 Now, we had a little cat fight about that. The
12 Judge has ruled on some evidence he doesn't like,
13 doesn't think we ought to bring in, so I'm going to --
14 when we show you this video, I'm going to mute the
15 sound in certain spots, and that's because the Defense
16 didn't want you to hear that, and the Judge rightly
17 ruled you're not supposed to. So we're going to take
18 that out by muting it.

19 Okay. But that's all we're going to take out of
20 there. You'll see -- you'll see in here,
21 Dr. Lieberman, as he talks about what he did, what he
22 saw, and what he thought was wrong with Ms. Doller.
23 Okay.

24 You're also going to hear from Dr. Chiodo.
25 Dr. Chiodo was a doctor from Detroit. You're going to

OPENING STATEMENT BY MR. ROBINSON

1 find out about Dr. Chiodo's medical degrees and his
2 other degrees, and why he is uniquely qualified to talk
3 about the cause of what Ms. Doller suffered. He's also
4 a qualified indoor air hygienist. And he's going to
5 talk about what needs to be done to clean the house up.
6 Because the house hasn't been cleaned yet.

7 And the reason the house hadn't been cleaned yet,
8 you're going to find out, is because it costs a lot of
9 money. We're going to bring in Mike Gibson, who's an
10 expert in cleaning up houses, and he's going to go
11 through his -- not going to go line by line -- he's
12 going to go through his estimate of what it's going to
13 cost to clean the house up. He's going to tell you
14 what he thinks it ought to cost.

15 You're going to hear from James Doller,
16 Ms. Doller's husband -- or ex-husband. He's going to
17 talk about taking her to the doctor. And you're going
18 to hear from Richard Guffey, he's the guy who was
19 pulling up the floor. He's going to talk to you about
20 exactly what happened and the timing of when that
21 outbreak happened.

22 At the end of the day, we're going to ask you to
23 compensate Ms. Doller for the money that she spent
24 paying her mortgage since she moved out of her house,
25 because she doesn't have the use of her house. It's

OPENING STATEMENT BY MR. ROBINSON

1 called loss of use.

2 We're going to ask you to pay her money to fix the
3 house, because she sure can't move back in until that
4 mold's gone. And she can't sell it until the mold's
5 gone. She can't do anything with it until the mold's
6 gone. So we think she's entitled to get paid to fix
7 the house.

8 And we're going to ask you to take a look at that
9 awful rash that she suffered and see if you think she
10 ought to get compensated for that.

11 We don't think Lohr did anything on purpose. They
12 didn't run in there and make that leak so they could
13 see what happened. They just did a bad job, and it
14 failed. And that's called negligence. They owed her a
15 duty, they didn't perform the duty, and she suffered
16 damages as a result. That's what this case is about.

17 Now, there's one other thing, a point I raised
18 earlier. They didn't get all of the polybutylene pipe
19 out of the house. There are two runs of polybutylene
20 pipes that go up to a shower -- or two showers. She
21 says she wouldn't have moved into this house if she had
22 known there was any polybutylene in it.

23 So we're going to ask you to think about whether
24 they were negligent in making the representation,
25 because they wrote a letter and said, "We got all the

OPENING STATEMENT BY MR. ROBINSON

1 polybutylene pipe out of the house."

2 That was wrong, and they know it was wrong. We
3 think that was negligent misrepresentation. She relied
4 on it. She suffered damages from it, we're going to
5 ask you to think about that.

6 The testimony you're going to hear is not going to
7 be real long, but it's not going to be real short
8 either. So I'll just ask you to do your best to pay
9 attention, think about what you see, determine what you
10 think. And at the end of this trial I'm going to ask
11 you to render a verdict that you think is just.

12 Thank you very much.

13 THE COURT: Thank you. Ms. Canaday, you're
14 recognized.

15 OPENING STATEMENT BY MS. CANADAY

16 MS. CANADAY: May it please the Court.

17 Good morning, ladies and gentlemen of the jury,
18 Mr. Foreperson. We appreciate you being here today,
19 and it's nice to be with y'all again today. But
20 recognizing that, I'm sure y'all would rather be other
21 places, and we appreciate that. We're going to be
22 mindful of your time, how we spend it with you.

23 That being said, let me tell you a little bit
24 about Lohr Plumbing and Brett Doran and Shauna Doran,
25 who I have sitting at the table with me.

OPENING STATEMENT BY MS. CANADAY

1 Ned Tupper is my partner, and he is going to be
2 trying this case with me today, too.

3 But Lohr Plumbing is a family-owned business.
4 They've been in the Lowcountry for 20-plus years. And
5 Brett has been working with his father, who started the
6 company, Reggie Lohr, for a very long time. And now,
7 Shauna and Brett own this company, and they've nurtured
8 it, grown this business as if it's their third child.
9 They're committed to this community. They're important
10 to this community. Their customers are very important
11 to them. Their reputation is important to them. This
12 lawsuit is as important to them as it is to the
13 Plaintiff.

14 Now, what is this really about, this lawsuit?
15 Well, you've already heard that there's essentially
16 6 feet of polybutylene piping left in that home. Now,
17 you're also going to hear testimony from the Plaintiff
18 herself that none of the damages she's claiming have
19 any relationship to that poly piping. So don't be
20 confused on that fact. No damage to the house, no
21 damage to the person associated with that pipe. We're
22 going to suggest to you that the appropriate measure
23 with regard to any poly piping in that home is the cost
24 to remove it, and that's it.

25 Mr. Robinson's told you about a host of witnesses

OPENING STATEMENT BY MS. CANADAY

1 you're going to hear from who are going to tell you
2 about her injuries and about the damages to the home.
3 But be mindful that these are paid experts. Her own
4 treating physician is going to tell you that the
5 injuries that she's claiming are not caused by what she
6 thinks it's caused by, and can't be caused by what she
7 thinks that it's caused by. I urge you to listen to
8 her treating physician, to the expert allergist that
9 we're going to call, and they'll explain to you the
10 science behind that. So please pay close attention to
11 that testimony.

12 With regard to the damage to the home, you just
13 heard Mr. Robinson tell you that Mrs. Doller
14 voluntarily moved out of the house -- and let me -- let
15 me tell you, too, that -- back up a little bit.

16 November 30th is when she called Lohr Plumbing,
17 when they noticed the leak. Lohr Plumbing came out,
18 capped the line immediately, and said, "Mrs. Dollar,
19 you need to get somebody to come get the water out of
20 your home. In the meantime, we're going to go ahead and
21 start getting some estimates to get the damage
22 repaired. But get that water out of your home first."

23 Within ten days Lohr Plumbing was no longer
24 allowed to come in the house. There were no phone
25 calls returned, no messages returned from Ms. Doller to

OPENING STATEMENT BY MS. CANADAY

1 Lohr. But in the meantime, you're going to hear her
2 tell you did she call somebody to come get the water
3 out? No. She moved out of the house. She's been out
4 of the house since 2011 at no direction other than a
5 neighbor saying, You should get out of the house. No
6 efforts made to correct the damage or any issues within
7 that home. None at all. So I urge you to consider
8 that information that you hear from Mrs. Doller
9 herself.

10 What she also didn't tell you, Mr. Robinson didn't
11 tell you, is with regard to the psoriasis rash, that
12 psoriasis rash, she had been experiencing that for
13 months, before the leak was even discovered. Before
14 the leak was discovered, this rash had been ongoing.

15 And while they'd like for you to believe that as
16 soon as she left the home, she started getting better.
17 That, in fact, is not the case. And that will be borne
18 out in the medical testimony. It is what it is. It
19 can't be refuted.

20 Please consider everything that you hear from the
21 witnesses. Please consider why they're testifying.
22 And I feel certain that once you hear everything and
23 you understand the purpose of the testimony you'll
24 return a verdict in favor of Lohr Plumbing.

25 Thank you very much.

OPENING STATEMENT BY MS. CANADAY

1 THE COURT: Thank you, Ms. Canaday.

2 Mr. Robinson, you are recognized. You may call
3 your first witness.

4 MR. ROBINSON: Thank you, Your Honor. We call
5 Dr. Lieberman by video deposition.

6 THE COURT: Very good.

7 Mr. Foreman, ladies and gentlemen of the jury, I'm
8 going to talk to you about what a deposition is. Any
9 time a lawsuit is filed, the lawyers are allowed to
10 engage in what's known as discovery, where they can
11 require that witnesses that know things about the case
12 show up at one of the lawyer's offices. They'll have a
13 court reporter there, very similar to what we have here
14 in the courtroom. They're allowed to ask them in
15 deposition, ask them questions in a procedure that's
16 known as the taking of deposition.

17 They will transcribe every question that's asked
18 and every answer that's given, and you can use those
19 depositions either in the form of a video or a
20 transcript for various purposes. The rules allow them
21 to play that in court, in part or in its entirety. And
22 you're to give it the same weight as if it were here
23 live.

24 There's other purposes of depositions. For
25 instance, if a witness takes the witness stand and they

VIDEOTAPE OF DR. LIEBERMAN'S DEPOSITION PLAYED

1 say something different here in court than what they
2 said in the deposition, then the lawyers can use that
3 to impeach their testimony, to show that they said
4 something different in the -- in another date and time.
5 But this is a deposition that was taken outside of this
6 courtroom. But the rules allow you to consider that as
7 evidence, just as if it was offered here live. Pay
8 very close attention.

9 Mr. Robinson.

10 MR. ROBINSON: Thank you, Your Honor.

11 THE COURT: How long is this?

12 MR. ROBINSON: Just less than an hour and a half.

13 (Whereupon, the videotaped
14 deposition of Dr. Lieberman is
15 played for the jury.)

16 THE COURT: Mr. Foreman, ladies and gentlemen,
17 Dr. Lieberman is certified in the area of pediatric
18 medicine and is allowed to render opinions in that
19 area. Normally, ordinarily witnesses cannot offer
20 opinions in a trial. There's an exception to that when
21 an individual is qualified as an expert. If, because
22 of their education and experience I, as the trier of
23 the law, determine that he is indeed an expert, he's
24 allowed to not only testify to what he heard, saw, and
25 felt but he's able to render opinions in his field of

VIDEOTAPE OF DR. LIEBERMAN'S DEPOSITION PLAYED

1 expertise. He's allowed to render -- I've previously
2 ruled that he's an expert in the area of pediatric
3 medicine and is going to be able to render opinions in
4 the medical field in that regard. He is an expert in
5 that area. He's not board certified in environmental
6 medicine, there is no such thing. And however he's
7 able to render his opinions with regard to the medical
8 field. You are recognized.

9 MR. ROBINSON: Thank you, Your Honor.

10 * * *

11 (The playing of the video deposition is
12 continued.)

13 * * *

14 MR. TUPPER: Your Honor.

15 THE COURT: Yes? If we could pause it.

16 (Video paused.)

17 (Off-the-record discussion held.)

18 THE COURT: Mr. Foreman, ladies and gentlemen of
19 the jury, as I mentioned to you, depositions quite
20 often are taken for a number of different reasons, one
21 of them which is you can just talk to witnesses and
22 find out what they have got to say. They are discovery
23 depositions. This deposition was taken solely for the
24 purpose of playing at trial and there were certain
25 objections that were made during this video deposition,

VIDEOTAPE OF DR. LIEBERMAN'S DEPOSITION PLAYED

1 and those objections to the video deposition were heard
2 yesterday. There was insufficient time to edit things
3 that were said in there that were objectionable, but I
4 want y'all to understand this: And it's probably going
5 to be absolutely impossible for us to edit, or for him
6 to mute every particular spot in there, but this is
7 what you need to pay attention to and accept this as
8 your charge.

9 He is qualified in the area of pediatric medicine.
10 He is a doctor. He's going to be allowed to testify in
11 the medical field because he is a doctor. He practices
12 in the field known as environmental medicine, which is
13 sort of just a categorization that he's given. The
14 American Medical Association has not recognized, nor is
15 there a board certification in environmental medicine.
16 He can practice in this area. Because he is a doctor
17 he can render opinions in that area. But he's not
18 board certified in environmental medicine, because
19 there is no such thing. But he's allowed to render
20 opinions in that regard.

21 To the extent that he claims that he is a
22 specialist in environmental medicine, disregard that.
23 He is a doctor and he's allowed to render his opinions
24 in that regard. He is not an environmental medicine
25 doctor, there is no such thing.

VIDEOTAPE OF DR. LIEBERMAN'S DEPOSITION PLAYED

1 THE COURT: Anything from the Defendants?

2 ATTORNEY3: No, Your Honor.

3 THE COURT: We will stand at ease until 1:30.

4 (Whereupon, a lunch recess was taken.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

VIDEOTAPE OF DR. LIEBERMAN'S DEPOSITION PLAYED

1

2 CERTIFICATE

3

4 STATE OF SOUTH CAROLINA:

5 COUNTY OF BEAUFORT:

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

8

DATED this 18th day of June, 2016.

9

10

11

Mona L. Manley /s/

12

MONA L. MANLEY

13

Official South Carolina Court Reporter

Circuit Reporter for the 14th Circuit

14

(850) 893-6662

mmanley@scccourts.org

15

16

17

18

19

20

21

22

23

24

25

APPEARANCE PAGE

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

APPEARANCES

LOHR PLUMBING, INC.'s ATTORNEYS:

Stacey Canaday, Esquire
Ralph E. Tupper, Esquire
611 Bay Street
Post Office Box 2055
Beaufort, South Carolina 29901-2055
(843) 524-1116

PATRICIA DOLLER'S ATTORNEY:

A. Parker Barnes, Jr., Esquire
PO Drawer 1729
Beaufort, SC 29901-1729

and

Brian Pratt Robinson, Esquire
Po Box 61110
Columbia, SC 29260

APPEARANCE PAGE

1 INDEX

2 WITNESS: PAGE:

3 ERNEST PAUL CHIODO

4	Direct Examination By Mr. Robinson	41
	Voir Dire Examination By Mr. Tupper	58
5	Direct Examination Contd By Mr. Robinson	73
	Cross Examination By Mr. Tupper	83
6	Redirect Examination By Mr. Robinson	95

7 MICHAEL M. GIBSON

8	Direct Examination By Mr. Robinson	98
	Cross Examination By Mr. Tupper	116
9	Redirect Examination By Mr. Robinson	126

10 JAMES DOLLER

11	Direct Examination By Mr. Robinson	129
	Cross Examination By Ms. Canaday	134

12

13 RICHARD FOREST GUFFEY

14	Direct Examination By Mr. Robinson	138
	Cross Examination By Ms. Canaday	167
15	Redirect Examination By Mr. Robinson	173

16 PLAINTIFF'S EXHIBITS: Marked: Received:

17	13 GC license	100	100
	14 RC license	101	101
18	15 RE license	101	101
	3A-3H photos	144	144
19	2 photo	146	146
	4A-4F photos	149	149
20	5A-5E photos	153	153
	6A-6B photos	156	156
21	7A-7O photos	158	158
	9A-9I photos	161	161
22	10A-10H photos	163	163

23

24

25

INDEX

1 PROCEEDINGS

2 THE COURT: Anything from the Plaintiff before
3 we bring the jury back?

4 MR. ROBINSON: No, Your Honor.

5 THE COURT: Anything from the Defense?

6 MR. TUPPER: Your Honor, there may be. If the
7 next witness is -- strike that -- a gentleman from
8 Detroit, there may be some questions that we want
9 to raise now in view of your decision that the May
10 report is not admissible.

11 THE COURT: Okay. Well, he's not -- he's not
12 planning on referring to the May report, is he?

13 MR. ROBINSON: He will probably refer to the
14 protocol for cleaning up the houses in the May
15 report, yes.

16 THE COURT: Okay.

17 MR. TUPPER: That's a major issue, Your Honor.
18 Because even Rule 703 doesn't cover -- that's a
19 fact that needs to be established in their case,
20 and can't be established through an expert
21 referring to the May report.

22 My reading of those cases say that an expert
23 can rely upon things -- let's say,
24 Dr. Oliver Woods, an economist, he can rely upon
25 interest rates or stuff that he can get, the

COLLOQUY

1 expert can get, but not a fact that has to be
2 established by the Plaintiff in the case.

3 THE COURT: What do you have to say about
4 that?

5 MR. ROBINSON: I'll say, Your Honor --

6 THE COURT: Well, first of all, why isn't the
7 author of the May report here?

8 MR. ROBINSON: Because he lives in Boston. I
9 didn't want to pay for him to come down here,
10 that's why. And I have an expert, who's a
11 certified industrial hygienist, who is competent to
12 opine as to whether or not that protocol is proper
13 or not. That's why I didn't bring him down.

14 If we could have -- you know, if I brought
15 everybody that could possibly be here, we'd be
16 here for three weeks. We just -- trial strategy
17 and judicial --

18 THE COURT: Protocol is really not a fact.
19 What it is is a method by which you clean something
20 up, I assume; is that correct?

21 MR. ROBINSON: That's correct, yeah.

22 THE COURT: Well, why does that uniquely
23 belong to the author of the May report?

24 MR. ROBINSON: I don't think it does. That's
25 my point.

COLLOQUY

1 THE COURT: Okay. I don't think that we need
2 to make reference to it being in the May report,
3 but if it is indeed a generic protocol, I think
4 that you can ask him what the protocol is. If he
5 knows that to be the case, I don't -- I don't view
6 that being a problem.

7 MR. ROBINSON: I wasn't going to have him
8 refer to the, quote, May report.

9 THE COURT: Why?

10 MR. ROBINSON: I was going to ask him, have
11 you seen a protocol, yes, I have. Would you tell
12 us about it, what it is, and stuff like that.

13 THE COURT: Well, why don't you just ask him
14 what the appropriate protocol is.

15 MR. ROBINSON: I can do that, too.

16 THE COURT: I think that would eliminate the
17 problem, if he indeed knows what the protocol is.

18 MR. ROBINSON: Where this is headed, is that I
19 have here Mr. Gibson who's going to report on what
20 it's going to take to remediate this house.

21 THE COURT: Right.

22 MR. ROBINSON: He relied on the May protocol,
23 which is going to be the same protocol Dr. Chiodo
24 tells us about. But the May protocol is dated
25 February of 2012; i.e., contemporaneous with this

COLLOQUY

1 mess.

2 As we heard yesterday, their argument was, we
3 can't trust the report of the costs because it's
4 not contemporaneous with the mess.

5 Well, that's an argument they can make to the
6 jury, but --

7 THE COURT: That certainly is -- tell me what
8 the protocol is.

9 MR. ROBINSON: The protocol is, cut off the
10 first 2 feet of sheetrock in the bedroom, pull it
11 off the wall, 8 feet down the road. Check to make
12 sure that you got all the mold exposed. Clean the
13 mold off the studs. Wash the studs down or sand
14 them down. Pull up the floor, clean the concrete
15 on the bottom. Do some work in the master bathroom
16 where the leak also generated some problems. Take
17 the shower out, do some other things.

18 Clean all of the personal property in the
19 building, wipe the walls down, clean the floors
20 up, clean the walls and the ceilings, and that
21 should take care of the problem. There may be
22 some duct cleaning to be done, and that's it.
23 That's the protocol. Get the stuff out of the
24 house.

25 THE COURT: Okay. Well, that's not

COLLOQUY

1 necessarily a fact, that's just a procedure, isn't
2 it?

3 MR. TUPPER: No, Your Honor. Exactly stated,
4 what he just said were facts. This gentleman has
5 never seen the house, I don't think. He
6 certainly -- the May report discusses what's wrong
7 with the house. My understanding of a protocol is
8 what is it going to take to fix what's wrong.

9 Well, the only information he has on what's
10 wrong is from the May report. And as far as the
11 fact that the reason the May report people are not
12 here is because it's expensive to fly to Boston, I
13 don't think that's a legitimate -- maybe a
14 strategy on their part, but I think they have to
15 live and die by their strategy.

16 And to bootstrap. I mean, it's a classic 703
17 case of getting hearsay evidence in the back door.

18 But the word "protocol," I didn't frankly
19 even know what the word protocol meant until I
20 started to look at this. But if it does mean
21 here's the problem and here's how you fix it, I
22 don't see how he could establish that or have that
23 information without relying on the May report.

24 THE COURT: Has your expert ever seen the
25 house?

COLLOQUY

1 MR. ROBINSON: No.

2 Well, let me rephrase that. Dr. Chiodo has
3 not seen the house. Mr. Gibson has been through
4 the house.

5 This is -- Dr. Chiodo is going to testify,
6 Your Honor, that this is the sort of thing that
7 the industrial hygienists rely on all the time.
8 I'm having trouble with the wording of the rule
9 and the argument that's being made here.

10 If an expert witness relies on certain type
11 of information across the board, which is what
12 industrial hygienists do, then that stuff is what
13 they rely on. They don't go at it necessarily to
14 make their own investigation, they let some
15 professional guy go do that, and then they rely on
16 it.

17 It's like -- it's like if you have a home
18 inspector to check on your roof, the home
19 inspector says the roof is 17 years old and it's
20 about to fail, or it's failing in spots, okay, so
21 I'm going to hire a roofing guy to come fix my
22 roof, how much is it going to cost me to take the
23 roof off and put a new roof on? It's the same
24 sort of thing. He's relying on facts some expert
25 told you --

COLLOQUY

1 THE COURT: He's saying that in order to get
2 that in you'd have to get the roof inspector in
3 here to say it's 17 years old and needs replacing.

4 MR. ROBINSON: Suppose we have an orthopedic
5 surgeon and he's got an x-ray. He didn't take the
6 x-ray, somebody else took the x-ray, he didn't
7 interpret the x-ray, somebody else did that, but
8 he's entitled to rely on it to testify about what
9 he was going to do and why. And I think this is
10 the same thing.

11 MR. TUPPER: Your Honor, that's totally
12 different. If it was a medical record I wouldn't
13 have any argument whatsoever. That's what doctors
14 do. This is not what we're talking about here.

15 We're talking about an expert who is an
16 expert, no question, but I don't think his
17 testimony is admissible. He's never seen the
18 house, and it has to be relied upon, the May
19 report.

20 And to allow him to rely upon the May report
21 allows him to clearly establish facts that they
22 can't establish otherwise unless the May report
23 people were here.

24 I would expect -- I don't know, I've never
25 talked to the gentlemen -- that he's never talked

COLLOQUY

1 to the people, the May report people, he doesn't
2 know the May report people. I don't know the
3 answer to that. But I don't think the question
4 even goes that far. I think, again, 703 says
5 specifically -- allows in expert bases of opinion
6 or inferences if of a type reasonably relied upon.

7 And, again, the case that I saw that
8 specifically -- what was that case, it was again,
9 Dr. Oliver Wood, they let Oliver Wood's testimony
10 in because it was things that an economist would
11 know. Sort of like Rule 703, in the real old
12 days, we had to do a hypothetical question in
13 order for an expert to testify. And it was a long
14 laborious thing to do, but they got rid of that.

15 But it still doesn't -- by Rule 703, but it
16 still doesn't allow them to establish facts that
17 they need to establish on their side of the case.

18 THE COURT: On one of the things that -- and
19 I'm going to use -- we're going to go forward with
20 it, and I'm going to require that you do a
21 contemporaneous objection. But it appears to me as
22 if the foundation needs to be laid as to whether or
23 not it's something that's ordinarily relied upon in
24 the industry.

25 We're ready for the jury.

COLLOQUY

1 MR. TUPPER: Judge, would those questions
2 where I made the objections be outside the presence
3 of the jury, or the jury here?

4 THE COURT: I think the rule requires you can
5 contemporaneously object to it.

6 MR. TUPPER: Thank you.

7 THE COURT: And when they do, if the spirit
8 moves you, you need to say I object, and we'll take
9 up the matter outside of the presence of the jury.

10 MR. TUPPER: Okay. Outside. All right.
11 Thank you.

12 THE BAILIFF: The jury's entering the
13 Courtroom, Your Honor.

14 (The jury enters at 1:45 p.m.)

15 THE COURT: Mr. Foreman and ladies and
16 gentlemen of the jury, thank you for being here,
17 and being here on time. We had one legal matter we
18 had to take care of outside of your presence.
19 Thank you for your patience.

20 Everyone looks well fed and well rested,
21 ready to hear testimony. So let's pay very close
22 attention and proceed forward with a very serious
23 matter.

24 Yes, sir, Mr. Robinson, you're recognized.

25 MR. ROBINSON: Thank you, Your Honor. We'd

Ernest Paul Chiodo - Direct Examination by Mr. Robinson

COLLOQUY

1 like to call Dr. Ernest Chiodo.

2 Thereupon,

3 ERNEST PAUL CHIODO

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

6 THE COURT: Dr. Chiodo, have a seat in the
7 witness chair. I'm going to ask that you pull up
8 real close to that microphone.

9 THE WITNESS: Yes, Your Honor.

10 THE COURT: Speak loudly, clearly, and slowly
11 in order that we may hear everything that you have
12 to say. And let's start with your full name.
13 Let's spell that last one.

14 THE WITNESS: Yes, Your Honor. Ernest, Dr.
15 Ernest Paul Chiodo, C-H-I-O-D-O.

16 THE COURT: Very good.

17 DIRECT EXAMINATION

18 BY MR. ROBINSON:

19 Q Dr. Chiodo, are you a medical doctor?

20 A Yes, sir.

21 Q When did you -- when did you get your medical
22 degree?

23 A 1983.

24 Q And where did you get your medical degree?

25 A Wayne State University School of Medicine in

TESTIMONY OF ERNEST PAUL CHIDO

1 Detroit.

2 Q All right. Did you get any other degrees
3 from Wayne State University?

4 A Yes. I have a law school degree from Wayne
5 State University Law School. Also a Master in Science
6 and Biomedical Engineering, also from Wayne State. And
7 then also a Master of Science in Occupational and
8 Environmental Health Sciences, with specialization in
9 industrial toxicology from Wayne State University.

10 Q What is a Master of Science and Biomedical
11 Engineering?

12 A Well, biomedical engineering is the
13 engineering discipline that applies engineering
14 principles to biologic systems, including humans. So
15 biomedical engineering can range from anything from
16 designing CAT scanners or ultrasound machines to doing
17 what I mainly do with biomedical engineering, is
18 vehicular impact biomechanics. Wayne State University
19 is the leading center in the world for figuring out
20 what happens to people in car crashes, because it's
21 Detroit.

22 Q What is a Master of Science in Occupational
23 and Environmental Health Sciences?

24 A That's -- that is the discipline that looks
25 at exposures. Say you wanted to become an industrial

TESTIMONY OF ERNEST PAUL CHIODO

1 hygienist, you would go -- which is an engineering, a
2 public health discipline that figures out how much of a
3 chemical is in a particular place, or wants to figure
4 out whether or not a structure is contaminated with
5 mold. That's where you would get that type of degree.

6 Q What is a specialization in industrial
7 toxicology?

8 A Well, that, there's two tracks you could do
9 at Wayne State at that time, where you go and get a
10 Master of Science in Occupational Environmental Health
11 Sciences, with specialization in industrial hygienist.
12 I didn't do that because I was always -- already a
13 certified industrial hygienist, and had been the
14 president of the Michigan Industrial Hygienist Society
15 before I did that degree.

16 The other track is that you could focus in on
17 industrial toxicology, which is what I did.

18 Q What's toxicology?

19 A Toxicology is the discipline that determines
20 what poisons do to people. People, animals, the study
21 of poisons.

22 Q Do you have any degrees in public health?

23 A Yes, I do.

24 Q What are those?

25 A I have Master of Public Health from Harvard

TESTIMONY OF ERNEST PAUL CHIDO

1 University in Boston.

2 Q And why did you get a Masters degree in
3 public health?

4 A Well, because I had an interest in going into
5 the specialties that require a Master of Public Health.
6 Most medical specialties don't require an additional
7 degree beyond a medical degree, but there's three
8 medical specialties that do, and I was interested in
9 getting board certified in two of those. So as a
10 result, I needed a Master of Public Health.

11 Q And what two are those?

12 A I ended up getting board certified in
13 occupational medicine. Also, board certified in public
14 health and general preventive medicine. The other
15 specialty that's required is aerospace medicine. Those
16 are the NASA doctors or the higher-end military flight
17 surgeons.

18 Q And what is the difference between just a
19 regular MD and a Master in Public Health?

20 A Well, most doctors are trained to diagnose a
21 disease and treat it, but they're not trained to figure
22 out if some occupational or environmental exposure
23 caused the disease. There's really only three medical
24 specialties that are specifically trained to do that,
25 and do it in the normal course of the practice.

TESTIMONY OF ERNEST PAUL CHIODO

1 Q And what are those three?

2 A Well, the first one is aerospace medicine.
3 Those are, again, the NASA doctors, or the higher level
4 military flight surgeons, because they have to figure
5 out if there's something about the design of a
6 high-flying aircraft or spacecraft that is causing
7 somebody to get sick. So if that's the case, Boeing or
8 North American Rockwell has to redesign the aircraft or
9 spacecraft. It's going to cost hundreds of millions or
10 billions of dollars. So you want a doctor to actually
11 know what he's doing when he makes that decision.

12 What happens is, since you're not trained as
13 a physician to determine whether or not the environment
14 of the aircraft is causing somebody to get sick, you
15 don't get that type of training in medical school, you
16 have to get that training in public health school,
17 where you take courses like epidemiology,
18 biostatistics, toxicology, and you learn a little bit
19 about industrial hygiene, environmental health. So
20 that's why an aerospace medicine doctor has to have a
21 Master of Public Health in order to sit for the boards.

22 Q Now, you're not an aerospace doctor?

23 A No, I'm not an aerospace medicine doctor.

24 Q What other specialty -- you said there were
25 three -- what's the other two?

TESTIMONY OF ERNEST PAUL CHIODO

1 A Well, the other two are --

2 Q And when you talk about them, tell us what
3 they do.

4 A Okay. Occupational medicine. Occupational
5 medicine is the type of specialty that, say, the
6 medical director of a major industrial corporation,
7 you'd expect them to have.

8 Like, for example, the medical director of
9 Ford motor car company, you'd expect him to be board
10 certified in occupational medicine. In fact, I know he
11 is because he's one of my buddies from medical school.

12 And why does an occupational medicine doctor
13 have to determine -- have a Master of Public Health,
14 and the reason being is say you have somebody that
15 comes into the medical office at a large plant and they
16 have a rash over their body. Well, a lot of doctors
17 are trained to say, oh, you have a rash, and here's
18 your treatment. You take some steroid creams or maybe
19 you take steroid pills. A lot of doctors are trained
20 to recognize the rash and treat it.

21 However, is this rash due to the new chemical
22 being used on line five in the plant? Because if
23 that's the case, this person might be the tip of the
24 iceberg of an epidemic of skin rash in the plant. So
25 that's why the occupational medicine doctor has to

TESTIMONY OF ERNEST PAUL CHIODO

1 determine causation of the disease, in order to prevent
2 disease from happening in other people.

3 Q All right. What's the third one?

4 A And by the way, I am board certified in
5 occupational medicine.

6 Q Okay.

7 A The -- by the way, occupational medicine is
8 typically referred to as occupational and environmental
9 medicine, but the actual board certification
10 certificate says occupational medicine.

11 Q All right.

12 A The third one is public health in general,
13 preventative medicine. Those are the CDC hot zone
14 doctors or the medical directors of a major city or
15 state health department.

16 If you have ever seen the movie, Contagion,
17 or the movie, Outbreak, with Dustin Hoffman, those
18 doctors, they're dealing with the epidemics. Those are
19 the public health and general preventative medicine
20 doctors. Some of them might be infectious disease
21 doctors also, but mainly public health in general
22 preventive medicine, because they have to recognize the
23 cause of the disease.

24 For example, say somebody has diarrhea. Do
25 they have diarrhea because they have flu or did they

TESTIMONY OF ERNEST PAUL CHIDO

1 get diarrhea from eating in a dirty restaurant? So,
2 again, that's why public health in general, preventive
3 medicine, has to have a Master of Public Health to
4 start off causation due to occupational or
5 environmental exposure. And I am board certified in
6 public health and general preventive medicine.

7 Q And have you done anything in public health
8 in the past?

9 A Yes. I used to be the medical director of
10 the City of Detroit. I used to be the chief physician
11 in charge of all medical and public health services for
12 over a million people living and working in the city of
13 Detroit at the time that I was the medical director.
14 That was a position of substantial public
15 responsibility, the type of position where I had the
16 direct phone number to the U.S. White House when I was
17 in that position.

18 Q Do you practice medicine today?

19 A Yes, I do.

20 Q What kind of medicine do you practice?

21 A I do have an ongoing, small, general internal
22 medicine practice, because I'm also board certified in
23 internal medicine, out of my Detroit area office. But
24 I also practice occupational and environmental
25 medicine, where I see people and try to figure out

TESTIMONY OF ERNEST PAUL CHIODO

1 what's causing their problem. Is it due to the --
2 their chemical exposure at work, or is it due to mold
3 exposure in their home or building that they work? So
4 that's an ongoing portion of my professional practice.

5 Q Where are you licensed to practice medicine?

6 A I'm licensed to practice medicine in three
7 states. First off, Michigan, my home state. I'm --
8 that's still my domicile. Also, licensed to practice
9 Michigan -- in -- I'm part -- medicine in Illinois. I
10 have a home and office in downtown Chicago. Also,
11 licensed to practice medicine in Florida. I have a
12 home and office in Florida. In fact, a clinical
13 practice that's focused on toxicology and mold issues
14 in Florida. And then I also have a medical license in
15 the State of New York.

16 Q Have you been certified by any other
17 organization in any other field?

18 A Yes. I am also a certified industrial
19 hygienist.

20 Q What does that mean?

21 A Certified industrial hygienist, that is to
22 engineering and public health that quantifies and
23 controls various occupational and environmental
24 hazards.

25 For example, if you've ever read the

TESTIMONY OF ERNEST PAUL CHIODO

1 newspaper, it says so many parts per million of
2 chemicals found in the air somewhere. Who makes that
3 determination is a certified industrial hygienist.

4 Also, if you -- a number of different states
5 say that who is supposed to determine whether or not a
6 structure is contaminated with mold, a home or
7 building, is supposed to be a certified industrial
8 hygienist.

9 It's an engineering of public health
10 discipline. There's about 6,600 certified industrial
11 hygienists in the world, only about five to ten of them
12 are physicians.

13 Q Have you held any positions -- leadership in
14 any society?

15 A Yes. I used to be the president of the
16 Michigan Industrial Hygiene Society, which was the
17 first industrial hygiene organization in the country.
18 Because industrial hygiene and occupational medicine
19 really got their start in the Detroit area because of
20 the auto plants.

21 Q Have you taught at any medical schools?

22 A Yes. I served on the faculty of Wayne State
23 University School of Medicine as an assistant clinical
24 professor of internal medicine, family medicine, and
25 public health for about 20 years.

TESTIMONY OF ERNEST PAUL CHIODO

1 Q In your medical practice, have you treated
2 persons who have been exposed to environmental molds?

3 That is, molds in the office or in the home.

4 A Yes, many times.

5 Q How many approximately?

6 A So many I can't recall.

7 Q Have you testified about indoor air quality
8 in any cases?

9 A Yes.

10 Q And how many has that been?

11 A I really can't recall. I believe I was an
12 expert and testified in a case here in Beaufort County.
13 I didn't have to come down, I did the video deposition.
14 I think when there was an issue about the high school
15 here in Beaufort with mold contamination many years
16 back.

17 Q Have you testified as a medical expert in
18 many jurisdictions?

19 A Many.

20 Q How many?

21 A I don't know. I've been an expert many times
22 in Michigan, many times in Illinois, Missouri, New
23 York, Florida, Louisiana, California. I just -- New
24 Jersey. I've been an expert in a number of issues that
25 call upon my medical expertise combined with my other

TESTIMONY OF ERNEST PAUL CHIODO

1 technical expertise. That's why I do a lot of this
2 forensic work.

3 Q Have you done any studies overseas?

4 A Yes. I -- well, I have -- by the way, I have
5 been an expert in a toxicology case in Hong Kong, but I
6 don't know if that's what you mean by studies.

7 Q Not exactly.

8 A But I -- in the course of completing the
9 requirements for a degree, a Master of Science in
10 Evidence-Based Health Care, that is evidence-based
11 medicine from the University of Oxford in England. You
12 know, the medieval University of Oxford. That was not
13 online, I had a -- last year, I had a flight back and
14 forth to take coursework. Now, I'm working on my
15 dissertation.

16 Q All right.

17 MR. ROBINSON: Your Honor, at this time I'd
18 like to move to admit Dr. Chiodo both as a medical
19 expert and as an industrial hygienist.

20 THE COURT: Any query with regard to his
21 qualifications?

22 MR. TUPPER: None, Your Honor. We stipulate
23 he's an expert.

24 THE COURT: Mr. Foreman, ladies and gentlemen
25 of the jury, like I've mentioned, if the Court

TESTIMONY OF ERNEST PAUL CHIODO

1 qualifies someone as an expert, they are allowed to
2 testify in that field of expertise as to what they
3 heard, saw, or felt and their opinions in that
4 area.

5 Just by virtue of the fact that a witness is
6 an expert doesn't mean that you have to believe
7 their testimony. You are to give it the weight
8 you think it deserves.

9 Yes, sir.

10 MR. ROBINSON: Thank you, Your Honor.

11 BY MR. ROBINSON:

12 Q Dr. Chiodo, where in the world do we find
13 mold?

14 A Well, there's mold virtually everywhere,
15 because mold is there to break down organic material.
16 If we didn't have mold in this world we would be buried
17 underneath a mile of dead leaves. So you need mold to
18 break down the dead animals, the dead leaves and what
19 have you. There's mold virtually everywhere, but
20 there's not mold contamination everywhere.

21 Q And what's the difference?

22 A Well, the difference really is a technical
23 definition. And that's why you have to be really a
24 certified industrial hygienist to make this type of
25 assessment.

TESTIMONY OF ERNEST PAUL CHIODO

1 If you have a circumstance where you have
2 higher concentrations or different types of
3 concentrations indoors of mold as opposed to outdoors,
4 that is one indication of mold contamination.

5 Also the presence of visible mold growing on
6 the wall is an indication of mold contamination.

7 Q What are mold spores?

8 A Mold spores are like the seeds that come off
9 the molds. The molds want to spread, they spread to
10 get into the air. They're very light, they can spread
11 all over the place. That's why if you open up a loaf
12 of bread, you open up the loaf of bread fresh from the
13 store and you seal it right back up, and then, I don't
14 know, you go back to it four or five days later,
15 there's a good chance there's mold growing on it.
16 Because mold spores get into the air and they get into
17 even the sandwiches that you -- the bread container
18 when you open it up in that short time.

19 Q Can you see mold spores?

20 A No -- typically not. You can't -- I mean,
21 like I'm sure there's mold spores in the air right now,
22 here. I have no reason to suspect there's mold
23 contamination of this building, but I'm sure there's
24 mold spores in the air here.

25 Q If there's an infestation of harmful mold in

TESTIMONY OF ERNEST PAUL CHIODO

1 a building, a mold contamination, if you will, what are
2 the considerations you would give to having mold
3 spores?

4 MR. TUPPER: Objection.

5 THE COURT: You have an objection?

6 MR. TUPPER: Yes, sir.

7 THE COURT: Okay. Very good.

8 (Off-the-record discussion
9 held.)

10 BY MR. ROBINSON:

11 Q Doctor, if there's a mold infestation in a
12 building, what would you expect regarding spores?

13 A Well, you would expect to find higher
14 concentrations of whatever molds are contaminating the
15 structure. It would include some, if not all of the
16 molds that are contaminating the structure.

17 Higher concentrations on air testing indoors,
18 you'd run a pump, collect the air. You'd get --
19 certain molds grow on higher concentrations indoors as
20 opposed to when you ran the pump outdoors.

21 Q And I guess my question was, would you expect
22 to see spores in that air from the contaminating mold?

23 A You could. You could expect to see spores.

24 Sometimes, again, you'll need to do the air
25 testing because you can see the -- see the mold

TESTIMONY OF ERNEST PAUL CHIODO

1 actually growing on the surface.

2 Q If there are mold, contaminating mold spores
3 in the air, could they travel throughout the building?

4 A Yes.

5 Q How do they do that?

6 A They're just very light. They're very light,
7 they spread with just little air currents moving them
8 from heating sources, what have you. If you walk on a
9 carpet, it causes them to aerosolize, get up in the air
10 -- because they're very small. They're very small and
11 light.

12 Q Are there certain types of molds that grow in
13 buildings that pose a threat to human health?

14 A Well, all molds can cause allergic disease.
15 Certain disease, like sinusitis, respiratory problems,
16 asthma, something called hypersensitivity pneumonitis,
17 which is a scarring of the lungs. That can happen due
18 to allergic reactions in the lungs from the mold. They
19 can cause rhinitis, inflammation of the nose. Skin
20 rash can happen due to mold. And all molds can cause
21 that.

22 However, there's other molds that are
23 referred to as toxigenic. They can make toxins, mold
24 microtoxins that can cause adverse health effects.

25 Q Have you reviewed any reports, don't tell me

TESTIMONY OF ERNEST PAUL CHIODO

1 what reports they were, have you reviewed any reports
2 with respect to the property at 55 James F. Byrnes Road
3 in Beaufort, South Carolina?

4 A I have.

5 Q Okay. Is that the type of report that an
6 industrial hygienist would normally rely upon?

7 A Well, it's a type of report that I would rely
8 upon in the normal course of my practice. You know, if
9 I saw somebody coming to me as a patient, I would rely
10 upon it to try to sort out whether or not they are sick
11 due -- their problems are due to mold in a building or
12 not.

13 So, yes, I would rely upon it, it's the type
14 of report I would rely upon as a certified industrial
15 hygienist, but also as a physician giving my specialty.

16 Q Is that the type of report that a certified
17 industrial hygienist basically would rely on?

18 A Yes.

19 MR. ROBINSON: All right. Your Honor, I'd
20 like to approach the Bench.

21 THE COURT: All right.

22 (Off-the-record discussion
23 held.)

24 THE COURT: Mr. Foreman, ladies and gentlemen
25 of the jury, we are going to take up a matter of

Ernest Paul Chiodo - Voir Dire Examination by Mr. Tupper

1 law outside of your presence. We're going to ask
2 you to retire to the jury room. Do not discuss the
3 case.

4 (Jury exits the courtroom at
5 2:10 p.m.)

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

7 THE COURT: Yes, sir.

8 VOIR DIRE EXAMINATION

9 BY MR. TUPPER:

10 Q Good afternoon, Doctor. I'm Ned Tupper, one
11 of the lawyers for the Defendants in this case. I have
12 some questions for you with respect to your -- the
13 records that you reviewed your findings.

14 A Yes, sir.

15 Q Just to make it quick, I'll go through -- do
16 you have a copy of your report?

17 A Yes, I do, sir.

18 Q All right. So the first step in our various
19 medical records and photographs and so forth, correct?

20 A That is correct.

21 Q Then we have No. 8 as a test from Rover Labs,
22 dated March 26, 2012. And then that and No. 10 are
23 sort of part of what we call the May Indoor Air
24 Investigation Report; isn't that correct?

25 A Well, I don't know what you call it, but it

TESTIMONY OF ERNEST PAUL CHIODO

1 sounds like, again, there was a certified industrial
2 hygienist that went, did testing, sent samples off to a
3 laboratory that would do the actual laboratory work.

4 Q Your report says, the report from May indoor
5 air investigations dated February 13, 2012, you relied
6 upon that, correct?

7 A Yes. That is something that I did rely upon.

8 Q Now, could you have come to your opinion
9 without that information, that factual information?

10 A Yeah, I believe I --

11 MR. ROBINSON: Objection, Your Honor.

12 THE COURT: I'll allow him to ask the
13 question.

14 MR. ROBINSON: Which opinion? My question is
15 which opinion?

16 THE COURT: Do what?

17 MR. ROBINSON: He's got a medical opinion,
18 he's got an industrial opinion. I want to know
19 which opinion he's asking.

20 THE COURT: I'll allow you to rephrase the
21 question now.

22 BY MR. TUPPER:

23 Q Could you have made an opinion, rendered
24 either opinion, whether it be medical, industrial,
25 whatever it may be, if you had not reviewed the test

TESTIMONY OF ERNEST PAUL CHIODO

1 report from Rover Labs dated March 26, 2012, and the
2 report from May air investigations dated February 13,
3 2012?

4 A Yes, I could have.

5 Q And what would your opinion have been?

6 A No. 11, the photographs showing the
7 discoloration of mold as well as microscopic images
8 found on testing of the home. Well, say -- say I
9 didn't have the microscopic images, because those arose
10 from the testing. But with the history of the
11 circumstance, with the photographs of visible mold, I
12 could have formulated my opinion, yes, I could have.

13 Q And the photographs, I believe, of the mold
14 are part of the May report; is that not the case?

15 A Well, I don't -- I don't recall.

16 Q I have it right here.

17 MR. TUPPER: May I approach the witness,
18 Your Honor?

19 THE COURT: Yes.

20 BY MR. TUPPER:

21 Q Doctor, I'm going to hand you what I purport
22 to be the May report that we're talking about. And if
23 you'd look towards the back of that report, you'll see
24 all of these little spores and so forth.

25 A Let me get back here -- so, yes.

TESTIMONY OF ERNEST PAUL CHIODO

1 Q I'll give you a chance to see it.

2 A Yes, I see the photograph.

3 Q Is that what you're referring to when you say
4 the photographs?

5 A These are the photographs. Now, as to who
6 took to the photographs, whether it was Mr. May or
7 somebody else that says that they accurately represent
8 what they depict, I don't know. But if this is the
9 photographs, regardless of who took them, that actually
10 depicts what the condition of the home is, then I could
11 render my opinion based with the addition of those
12 photographs.

13 Q But would it -- you're a lawyer, what if you
14 didn't have that testimony? What if there was no
15 testimony by an expert saying that those pictures were
16 taken at a particular time, could you then render an
17 opinion?

18 A If Ms. Doller tells me that this is what it
19 looks like in the house, then I could render my
20 opinion. And I would do that in the course -- course
21 of the normal context of my practice outside of
22 litigation.

23 Could say, for example, individuals come in,
24 they'll see me, they haven't had an industrial
25 hygienist go to the home, but they will relate their

TESTIMONY OF ERNEST PAUL CHIODO

1 history, just like Ms. Doller has in her medical
2 records, and bring in photographs that they took. They
3 said, This is what it looks like. I don't need an
4 expert to take the photographs. I believe those
5 pictures of the spores and so forth are not pictures --
6 they're not.

7 Q Not of the spores.

8 A Were not presented to you by --

9 Q Oh, I'm sorry.

10 A -- Ms. Doller, correct?

11 Q Yes. I apologize. I spoke over you, sir. I
12 apologize.

13 They're, in fact, part of the May report,
14 correct?

15 A Well, the pictures of the spores, that I
16 wouldn't have unless an expert had taken it and sent it
17 off to a laboratory. But the pictures that show the
18 condition of the structure, the areas of visible mold,
19 that is -- those are the type of pictures that are
20 frequently brought to me by individuals that they take
21 themselves. I wouldn't need those pictures to have
22 been taken by a certified industrial hygienist for me
23 to rely upon those to formulate my opinion.

24 Q But that's where you got the pictures in this
25 case, correct?

TESTIMONY OF ERNEST PAUL CHIODO

1 A Well, I'm not going to differ with your
2 assertion, it's just saying that this is -- this is
3 what it looks like, then I -- and there's somebody that
4 can say this is what it looks like. I would -- and
5 typically, that is the patient that's coming in to see
6 me. I -- I would utilize that and formulate my opinion
7 even outside the context of litigation.

8 Q I understand that, but to get -- I think you
9 answered my question. But the only pictures that you
10 have reviewed are part of that report, the May report,
11 correct?

12 A I'm not differing with your assertion, sir.

13 Q Does that mean yes?

14 A Well, again, I don't have -- it's been some
15 time since I've looked at that report. But if that's
16 the case, I will say yes, I won't differ with your
17 assertion.

18 Q Okay. And you've never been inside the
19 house?

20 A That is correct.

21 Q Never driven past the house?

22 A That's correct.

23 Q Could you have made -- I believe I asked you
24 that question -- this question, but I'm going to re-ask
25 you now that we've gone over what's in the May report.

TESTIMONY OF ERNEST PAUL CHIODO

1 Could you have opined regarding the type of the mold or
2 the condition of the house, or the impact of the
3 particular mold on the Plaintiff without the May
4 report?

5 A I think I still could have. I think I still
6 could have, based upon the history, describing what
7 happened, the fact scenario, the water intrusion. I
8 believe I still could have, yes.

9 Q Isn't it true that out of all the things that
10 you've given me here, one through 12, the only place
11 that information is available is in the May report,
12 what you just referred to me about?

13 A Well, again, as -- I won't differ with your
14 assertion, sir. It's been some time since I've gone
15 through the medical records. I don't have any of the
16 stuff memorized. If, in fact, I have a rendition of
17 what occurred, what was provided to me as to the
18 occurrence, I believe I still could render the opinion
19 that I provided even without the May report.

20 However, we do have the photographs and
21 the -- just exclude the photographs of the mold spores.
22 But just the photographs of the actual inside of the
23 home that any person could take. Ms. Doller could have
24 taken those. And if, in fact, she asserts that that's
25 what it looked like, you know, I -- I'm very

TESTIMONY OF ERNEST PAUL CHIDO

1 comfortable with providing my opinion.

2 Q But you don't have that outside the May
3 report?

4 Has she given you any photographs?

5 A Again, the photographs I have are solely the
6 photographs in this report.

7 Q And basically you need the facts in the May
8 report to establish your opinion; isn't that correct?

9 A Again, I had to go back and parse through
10 what I reviewed at the time. What's in the medical
11 record, what was reiterated in the medical record to
12 say whether or not I could render my opinion with --
13 totally absent the May report as to the factual
14 circumstance.

15 Now, as I'm sitting here, I would say I doubt
16 that the sole -- I doubt that the medical records do
17 not reflect the circumstance. I believe, but I don't
18 have a present recollection recall to say that with
19 absolute assertion.

20 Q So you're speculating on that, correct?

21 A I'm not speculating, it's just a -- this is a
22 question you're asking me now, and I haven't, you know,
23 I haven't looked at these medical records for some
24 time, and I don't have them memorized. I don't have
25 that type of memory.

TESTIMONY OF ERNEST PAUL CHIODO

1 So it's not speculation, it's just based upon
2 professional experience. This type of history is
3 related in the medical records, when somebody's
4 concerned about the mold exposure. I think I have
5 enough basis, but if I'm incorrect I can't counter that
6 because I don't have the records memorized. And you're
7 asking me this question sort of de novo is kind of
8 catching me cold.

9 Q Not de novo, this is the day in court; isn't
10 that right?

11 A Well, it's not a day in court, it's -- what
12 it is, is do I have enough basis to formulate my
13 opinion if the May report is not included? And I
14 believe that I do, based upon my knowledge of the
15 information and facts.

16 Now, you're telling me that the only source
17 of -- you know, you're telling me, I'm not going to
18 differ with it, and you're an officer of the court,
19 you're telling me that the only place these facts are
20 reiterated is in the May report and these facts don't
21 show up in the medical records that I also reviewed.
22 Well, I don't know what to tell you.

23 If that's -- if you're telling me that these
24 facts don't show up anywhere in any of the medical
25 records, the only place any of these facts show up is

TESTIMONY OF ERNEST PAUL CHIODO

1 in the May report, well, then I would have to say --
2 and I didn't get the information some other way,
3 correspondence with the attorneys relating what
4 Ms. Dollar had said is sort of experience, what have
5 you, that's -- this is the only source of that
6 information, then -- then I could say I would have no
7 fact basis other than this report, if this is the only
8 source.

9 It just seems incredible to me that this is
10 the only source based upon my experience in dealing
11 with these types of these issues, because when somebody
12 goes to see their doctors they will mention in their
13 medical records, very typically, the onset of the
14 problem, the relationship that they attribute the
15 problem to, the mold exposure. So I'm incredulous with
16 the assertion that this is the only place the
17 information, factual information that underlies my
18 opinion, appears. And that -- because usually it ends
19 up in the medical records also.

20 Q Doctor, you're opening up a brand new area to
21 me now, is the medical records, which are stated in
22 your report to be records that you reviewed.

23 A Okay. Yes, sir.

24 Q See there? Now, you don't have those medical
25 reports with you today?

TESTIMONY OF ERNEST PAUL CHIDO

1 A No, sir, I do not have those. I traveled all
2 the way down from Detroit and going back to Chicago. I
3 didn't lug them along. I presumed you do have them.

4 Q You got Internet and PDF in Chicago?

5 A Sir, I just -- sir, I didn't bring them with
6 me. I mean, if you have them, I presume you have them,
7 you probably have them here somewhere and whatever, I
8 don't have them with me. No, I do not.

9 Q Okay. So you can't tell me if any of the
10 medical records have the information that you're
11 supposing in that dissertation you just gave me that
12 you have. In other words, you don't know if the
13 medical records from the Beaufort Memorial Hospital,
14 the EMS, Dr. Lieberman, Hilton Head Dermatology, Lady's
15 Island Internal Medicine or the Medical University
16 contain any of information of the that you're here to
17 opine on today?

18 A I don't have this stuff memorized. I don't
19 pretend to have it memorized. This is an issue that's
20 new to me, whether or not I -- you know, I would have
21 to sit down and go through the May report to determine
22 whether or not the information was also stated in the
23 medical records. This is just an issue brand new to
24 me, but, you know, you've been pouring through the
25 medical records, you've been preparing for this case.

TESTIMONY OF ERNEST PAUL CHIODO

1 THE COURT: I think I understand what the
2 issue is here. What's your position?

3 MR. TUPPER: Our position is that his
4 testimony -- there's no -- there's no -- lack of
5 foundation. There's no foundation for the
6 testimony.

7 THE COURT: What do you think about the fact
8 that the rule allows an expert to rely on tests
9 that they typically rely on?

10 MR. TUPPER: Going to 703?

11 THE COURT: Right.

12 MR. TUPPER: Okay. I could ask some
13 questions, I can tell you my opinion on that is --

14 THE COURT: That's what I'm asking.

15 MR. TUPPER: My opinion on that, sir, is -- I
16 think I may have said, maybe I was discussing it
17 with Stacy -- that is information and I think the
18 case, and the -- what's the name of that case --
19 Rite Aid case talked about Dr. Oliver Wood was
20 testifying, the economist that we all know, and the
21 Court said that he could -- they didn't have to
22 have independent information regarding the cost of
23 health care and this other information that he
24 could gather himself -- inflation rates, you know,
25 things like that, that they use in their

TESTIMONY OF ERNEST PAUL CHIODO

1 profession. But this is fact-specific, Your Honor.

2 THE COURT: All right. What does the
3 Plaintiff have to say?

4 MR. ROBINSON: Couple things, Your Honor.
5 Number one, that case did not speak to the issue
6 here. That case spoke to whether or not he could
7 rely on stuff that's generally available to the
8 public, and stuff that they would be able to find
9 on their own.

10 But the point was that they can rely on
11 information from other experts in the field, and
12 that's what he said in his testimony in front of
13 the jury, that they do. So it appears to me that
14 what we want to do, or what Dr. Chiodo wants to do
15 is rely on stuff he always relies on as a doctor,
16 and that he always relies on as an industrial
17 hygienist.

18 MR. TUPPER: Your Honor, again, that case was
19 referring to medical testimony and things
20 associated with medical testimony. It's not the
21 same as we're talking about here.

22 What they're trying to do is use this witness
23 to establish fundamental facts that just
24 simply are -- number one, they're not in evidence.
25 But I understand, to get around that you could

TESTIMONY OF ERNEST PAUL CHIODO

1 say, well, they don't have to be in evidence at
2 this point because of 703, but it doesn't fit the
3 rule of 703 either. Simply not admissible. And
4 to come here today, with all due respect to the
5 doctor, and say I don't have the medical records
6 here because I didn't want to lug them down from
7 Chicago, and not be prepared to be cross-examined
8 and answer questions along those lines, to me it's
9 just further evidence that this witness, although
10 he is an expert, his testimony should not be
11 admissible today because they have not laid a
12 foundation.

13 THE COURT: Yes, sir. Mr. Robinson.

14 MR. ROBINSON: The more I look at 703 facts or
15 data in the particular case upon which an expert
16 bases an opinion or inference, maybe those
17 perceived by or known to the expert at or before
18 the hearing. If of a type reasonably -- talking
19 about facts -- if of a type reasonably relied upon
20 by an expert in a particular field in forming
21 opinions or inferences upon the subject, the facts
22 or data need not be admissible in evidence.

23 THE COURT: All right. I understand what your
24 position is. And I think you established on the
25 record that to some extent he's relying on this.

TESTIMONY OF ERNEST PAUL CHIODO

1 One interpretation of 703 says that it
2 doesn't have to be in evidence. I'm going to
3 allow it in, and you're protected on the record.
4 You've been able to preserve the record, you've
5 proffered the testimony. I'm going to allow it in
6 and protect it on the record.

7 MR. TUPPER: Thank you, Your Honor.

8 THE COURT: Okay. We're ready for the jury.

9 MR. TUPPER: Your Honor, my objection is in
10 the record at this point. I'd like to re-make my
11 objection for the record, if you will allow me to
12 do so.

13 THE COURT: Of course, I'm not going to advise
14 you on appellate practice.

15 MR. TUPPER: I understand.

16 THE COURT: You understand what you've done
17 and you do however you feel is necessary.

18 MR. TUPPER: I know exactly.

19 THE COURT: It appears to me that you did
20 object and we've put it all on the record, it
21 appears to me. If you feel like doing more, go
22 ahead.

23 MR. TUPPER: Thank you.

24 THE BAILIFF: Jury is entering the courtroom,
25 Your Honor.

Ernest Paul Chiodo - Direct Examination continued by Mr. Robinson

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

2 MR. ROBINSON: Thank you, Your Honor.

3 DIRECT EXAMINATION CONTINUED

4 BY MR. ROBINSON:

5 Q Dr. Chiodo, have you formed an opinion to a
6 reasonable degree of scientific certainty regarding
7 whether or not the house at 55 James F. Byrnes Road
8 needs to be cleaned up?

9 A Yes, sir.

10 Q And would that be cleaned up from mold
11 contamination?

12 A Yes, sir.

13 Q And why? Why would it have to be cleaned up?

14 A Well, because --

15 Q Well, wait a minute. First, what's your
16 opinion?

17 A Well, my opinion is that it needs to be
18 cleaned up. The term that we use is remediated. It
19 has to be remediated for mold.

20 Q And what does "remediated" mean?

21 A What that means is that -- and the reason why
22 we say remediated, it's more than just what people
23 think about cleaning up. Like, if I found some mold on
24 some drywall, you can't just come along with some
25 bleach and just clean it off. You have to cut out the

TESTIMONY OF ERNEST PAUL CHIODO

1 drywall. You have to cut it out to a certain height to
2 get past where the moisture had grown, or the mold had
3 grown. You may have to cut it two, 3 feet up, cut up
4 all the drywall. Come along, clean up all the studs.
5 You may have to sand down all the studs to get the mold
6 that might have grown into the studs off.

7 You have to tear up the flooring, if the
8 flooring is contaminated with mold. You may have to
9 clean out the heating and ventilation system, because
10 that may be contaminated with mold. You may have to
11 clean the walls. You may have to HEPA -- take a HEPA
12 vac and vacuum, a vacuum with a HEPA filter on it and
13 clean off the furniture. It's an extensive process.
14 So it's more than just cleaning up a mess, it's
15 something where -- it's more akin to a surgeon cutting
16 a cancer out of a body.

17 Q Have you reviewed the protocol for cleaning
18 up the Doller house?

19 A I have.

20 Q And tell the jury what the protocol requires
21 in this case.

22 A What is required in this case is that all the
23 drywall in the home be --

24 MR. TUPPER: Objection. Could we approach?

25 (Off-the-record discussion)

TESTIMONY OF ERNEST PAUL CHIODO

1 held.)

2 BY MR. ROBINSON:

3 Q Doctor, would you tell the jury what the
4 protocol is for cleaning up Patricia Doller's house?

5 A What we have to do is cut the drywall out of
6 the home to a certain level, say, 2 feet above the
7 flooring. Cut all that drywall out and remove it.

8 By the way, when that's being done, the
9 people that are doing this, this is more than just
10 hiring some handymen. They really have to be trained
11 professionals, where they will go in with Tyvek suits
12 on, respirators, because you can get sick from doing
13 this removal work. So that makes it more expensive.

14 Q Now, let me you ask this question before you
15 go too much further. Where are you cutting out the
16 drywall?

17 A Well, you're cutting out the drywall really
18 throughout the house where there was -- in the places
19 where there was moisture, water intrusions into the
20 drywall, get in the drywall wet where mold grow.

21 My understanding that that was a -- that was
22 a substantial portion of the home. That's my
23 understanding.

24 Q All right. Go ahead.

25 A And then -- then you have to go and where the

TESTIMONY OF ERNEST PAUL CHIODO

1 studs are, if the studs are heavily contaminated with
2 mold, you may have to tear the studs out. That may
3 mean more construction, or you may be able to just sand
4 the studs down to get the mold off. But the mold,
5 they're like plants. They grow, they have roots that
6 grow into the wood, so -- and into the drywall. That's
7 why you have to get it all out, because if you don't,
8 it's still sitting there, you can have allergic
9 problems due to the mold.

10 Then you also have to remove the flooring.
11 If the flooring's contaminated with mold, you have to
12 remove that. You have to fix any leaks, water leaks
13 that are causing the water problems that are causing
14 the mold. You may have to go in and clean the heating
15 and ventilation system, particularly in the case of
16 Ms. Doller, because she's very allergic to this mold.
17 And also, use a HEPA filter and vacuum and clean off
18 all the furniture that's in the home.

19 And you have to -- you have to basically get
20 this stuff out of the house, clean it up and then --
21 and then clean up the home, remediate the home, and
22 then once the furniture has been cleaned, bring it back
23 into the home. You can't just segregate it. It's --
24 because the mold spores are going to go all over the
25 place. Again, this is the type of thing where the

TESTIMONY OF ERNEST PAUL CHIODO

1 remediation people have to wear Tyvek suits and
2 respirators due -- so -- you can get sick from just
3 doing the work if you're not properly protected.

4 Q Would you look at No. Exhibit 22.

5 A Did you say 22, sir?

6 Q I'm sorry, 21.

7 MS. CANADAY: Objection, Your Honor. I
8 haven't seen any exhibits. I have no idea to what
9 he's referring.

10 THE COURT: Why don't you show it to them.

11 MR. ROBINSON: Just hand it to her.

12 MS. CANADAY: I have never seen this
13 photograph before.

14 MR. TUPPER: We object to it.

15 (Off-the-record discussion held.)

16 BY MR. ROBINSON:

17 Q Doctor, tell the jury what a Tyvek suit is.

18 A Well, if you've ever seen a house where
19 they're building a new house and they put up a vapor
20 barrier, that's -- that white material, that's Tyvek.
21 And, see, Tyvek is a white, sort of gown that goes over
22 the entire body. It's like -- it's almost like a
23 jumpsuit, like a military jumpsuit.

24 But it's this white lightweight material that
25 is a barrier for toxins or any contaminants, and it has

TESTIMONY OF ERNEST PAUL CHIODO

1 a hood that goes over it, and then you wear, in
2 addition, a respirator with that.

3 You have boots that go over it. There's
4 boots typically in the bottom of the Tyvek suit so that
5 basically it's like a -- it's like a bunny suit or a
6 jumpsuit with a hood. But it's there to protect the
7 personnel doing the remediation from exposure to the
8 mold.

9 Q Okay. So you were talking about removing the
10 sheetrock in the contaminated area, in the area where
11 the mold was growing. What about the walls in the rest
12 of the house? And also besides the walls, discuss the
13 ceiling and the floor.

14 A Yeah. Again, in the case of Ms. Doller,
15 she's very allergic to the mold. So what you would
16 have to do is you would have to go along there and
17 clean up. If it's a situation where there was no mold
18 growth in an area, but it's just another part of the
19 house, you'd have to go along and clean up the walls.
20 You'd have to take some type of rag, moist rag, and
21 clean the walls off, clean off the ceiling. You'd
22 basically have to deeply clean the house.

23 Q And is there a type of chemical that you
24 would use to do that cleaning with?

25 A I -- I don't think -- I think that you

TESTIMONY OF ERNEST PAUL CHIODO

1 probably could use many type of household cleaners,
2 Murphy Oil might be sufficient.

3 Q Would it be sufficient just to remove the
4 visible mold from the house?

5 A No. If there's mold contamination into the
6 drywall, you have to cut it out. So if you have mold
7 growing on drywall, if you have mold growing on the
8 flooring material, you have to take that out, you have
9 to tear it out.

10 Q If you just tear out the area that's got
11 visible mold on it, don't do any more cleaning on
12 walls, ceilings, floors, personal property, you know,
13 sofas and chairs, stuff like that, is that going to be
14 sufficient?

15 A No.

16 Q Why not?

17 A Well, because you -- Ms. Doller is very, very
18 allergic to this mold. She had a very serious reaction
19 to the mold, and if she goes back into the home and it
20 is still -- you have residual contamination from -- not
21 only the contamination was there, but also
22 contamination is going to be created by aerosolizing
23 the mold that you're cutting out. She could have a
24 very serious reaction.

25 This last reaction that she had was very

TESTIMONY OF ERNEST PAUL CHIODO

1 serious skin reaction. The next reaction, she could go
2 into -- she could have what's called anaphylactic
3 shock. In other words, she goes into shock, or she
4 could go into respiratory distress. She could -- she
5 could die if it was not properly done.

6 Q Have you formed an opinion to a reasonable
7 degree of medical certainty from a medical point of
8 view, whether Ms. Doller should move back into the
9 house before it's remediated?

10 A I do have such an opinion.

11 Q And what is that opinion?

12 A She should not. It should be properly
13 remediated before she moves back into the home.

14 Q Have you formed an opinion to a medical
15 degree of -- reasonable degree of medical certainty as
16 to whether she should have moved out of the house?

17 A Yes, I have formed an opinion.

18 Q What is that?

19 A Yes, she should have moved out of the house,
20 as she did. That was proper.

21 Q Have you reviewed Ms. Doller's medical
22 records?

23 A Yes, sir.

24 Q Have you reviewed the photographs of
25 Ms. Doller's condition in late 2011, early 2012?

TESTIMONY OF ERNEST PAUL CHIODO

1 A Yes.

2 Q Have you formed an opinion to a reasonable
3 degree of medical certainty regarding what caused
4 Ms. Doller's condition in 2011?

5 A I did.

6 Q And what is that opinion, sir?

7 A The cause of her condition was exposure to
8 mold. It's an allergic reaction that happened due to
9 her mold exposure. The basis, my analysis, I can speak
10 to, if you wish.

11 Q Yes, I do wish. Tell the jury why you
12 reached that conclusion.

13 A Okay. There's really a three-step analysis
14 in this process. What was the exposure. This is a
15 mold -- in my opinion, this was a mold contaminated
16 property.

17 Secondly, can mold, from a general
18 standpoint, can mold cause skin rash? Well, it does.
19 It can, it's known to cause skin rash. It's known to
20 cause other problems, but you can get skin rash.

21 Now, Ms. Dollar had other skin issues
22 beforehand. She had psoriasis, but this serious skin
23 rash happened within minutes of handling moldy wood and
24 it was dramatic. It was a dramatic flare of her skin
25 rash.

TESTIMONY OF ERNEST PAUL CHIDO

1 The temporal time sequence with handling the
2 moldy wood, moldy flooring that she was removing from
3 the home, and her development of the skin rash point to
4 the mold as being the only cause. No other
5 circumstance would cause that close a temporal time
6 sequence. You wouldn't have a sudden flare of
7 psoriasis. That doesn't just happen. And even if you
8 did have a sudden flare of psoriasis, you wouldn't
9 expect it to happen within minutes of handling the
10 moldy wood.

11 So that allows me to formulate an opinion to
12 a reasonable degree of medical certainty -- more likely
13 than that, in this case, I think even more significant,
14 more likely than not, that the cause of her skin rash,
15 very serious skin rash, was the mold.

16 Q Have you formed an opinion as to whether or
17 not that skin rash, that allergic reaction, could have
18 triggered a psoriasis flare?

19 A Yes. And exposure to mold can cause a
20 psoriasis flare also.

21 MR. ROBINSON: I don't think I have any
22 further questions at this time.

23 THE COURT: Cross examination.

24 MR. TUPPER: Thank Your Honor. May it please
25 the Court.

Ernest Paul Chiodo - Cross Examination by Mr. Tupper

1

2 BY MR. TUPPER:

3 Q Hello, Doctor.

4 A Hello, sir.

5 Q Doctor, you have reviewed various medical
6 records --

7 A Yes, sir.

8 Q -- in this case? And can you tell me where
9 in the medical records specifically it refers to her
10 having a psoriasis flare?

11 A Again, I don't have the records in front of
12 me. I wrote the report, my report on May the 3rd,
13 2014. I don't have the records memorized. I'm a
14 pretty well educated guy, but I don't have that type of
15 memory. So I don't have -- I don't have it memorized,
16 but it's my understanding of the fact scenario that she
17 had the flare, the serious flare. It wasn't a
18 psoriasis flare, she had this skin rash that happened
19 within -- within minutes of the exposure to the moldy
20 wood.

21 Q And, well, do you have with you today the
22 medical records from EMS, Beaufort County EMS?

23 A I didn't bring any of the records down. I
24 presumed you would have them here. I came down from
25 Detroit and I'm going to go tonight, hopefully, back to

TESTIMONY OF ERNEST PAUL CHIDO

1 Chicago. So I did not carry the stuff down with me.

2 Q Okay. What size are they? Are they heavy?

3 You say you didn't carry them with you; was it bulky
4 material? Why didn't you bring them with you if you
5 were here today to testify regarding medical records?

6 A Because I normally don't, because you have
7 the records -- you would have the records here. You
8 probably have the records somewhere in front of your
9 boxes. So why would I carry them down?

10 Q Because you're the one giving the opinion,
11 not me.

12 A No. I have my opinion, but I'm not required
13 to lug a bunch of records down from Detroit or Chicago,
14 I'm not aware that that's the case, and I'm familiar
15 with what's required. This is not required, what
16 you're demanding me -- demanding of me.

17 Q If I sound demanding, I'm not trying to sound
18 demanding, I'm just trying to determine the basis of
19 your testimony, sir.

20 A Well, the medical records.

21 Q Pardon me?

22 A I enumerate the medical records in my report.

23 Q I understand that, but your report's not in
24 evidence and the jury can't see your report.

25 So let me ask you a couple of questions about

TESTIMONY OF ERNEST PAUL CHIODO

1 the house. You said in your direct testimony that
2 a substantial portion of the house was --
3 infiltrated was the word you used with mold,
4 correct?

5 A Yeah. I mean, my understanding is that it's
6 a small, relatively small house. The leak happened in
7 the area of her bathroom attached to her bedroom and
8 that is a substantial portion of the house.

9 How big the house is, square footage, I don't
10 recall right now. But my understanding is it's a
11 relatively small house, and a substantial portion of
12 that house is the bedroom and the bathroom, where the
13 leakage occurred.

14 Q And when is the last time you saw the house?

15 A I've never seen the house.

16 Q Okay. Have you ever seen Ms. Doller as a
17 patient?

18 A I've never seen her as a patient, no. I've
19 seen her records, I've seen the information. But, no,
20 I'm here as a forensic expert.

21 Q So you haven't examined Ms. Doller, you
22 haven't examined the house?

23 A I've examined the photographs, I've examined
24 her mold -- medical records. I believe I've seen
25 enough to formulate my opinion.

TESTIMONY OF ERNEST PAUL CHIODO

1 Q Now, using your expertise in the various
2 areas that you have, if somebody had came to you and
3 said, hey, I've got this leak, I've got mold in my
4 house, what would be the first thing that you'd tell
5 them to do -- let me ask it differently.

6 Wouldn't you tell them to dry the house out?

7 A No, not -- no, no. Again, if you have mold
8 contamination of the structure, just drying the house
9 out is not going to solve the problem.

10 Q No, no. I said what would be the first thing
11 that you'd do?

12 A The first thing is I'd have to appraise the
13 circumstance. So I don't know, you got to be more
14 specific with the question.

15 Q Supposedly there was water on the floor, and
16 there was a black substance that appeared to be mold.

17 A Water on the floor from what? How long? I
18 mean, you have to be more specific with the question.

19 Q Say it was there for six months.

20 A Again, if it's something similar to this home
21 where there's, you know, there's mold growth on walls
22 and there's mold growth on the flooring, I would say --
23 I would say that "substantial" is a large area. I'd
24 say get out of the house. That's the first thing I'd
25 say is get out of the house. Then have some

TESTIMONY OF ERNEST PAUL CHIODO

1 remediators go in, and they would go in with Tyvek
2 suits and respirators and -- and first off, stop the
3 leakage, the water intrusion that's causing the
4 problem, and then properly remediate the house, which
5 is -- which is like cutting the cancer out of a body.

6 Q I get that.

7 Isn't it true that if you leave water and
8 mold in a house that it's going to continue to
9 grow?

10 A No, not necessarily.

11 Q It stops?

12 A Yeah. Again, if you have the water
13 intrusion, and you are -- the water intrusions are not
14 intruding to other areas, that mold growth in that area
15 would be maybe limited to that particular area. It
16 may -- now, you still have the issue of mold spores,
17 but you -- but mold spores that could cause allergic
18 disease just -- you can have an allergic reaction just
19 to the spores, but the growth requires moisture.

20 So you may have the mold growth limited to
21 the area where the moisture intrusion's happen.

22 Q I want you to specifically refer to what you
23 know about this particular house, not just in general.

24 A Well --

25 Q Wouldn't you call ServPro and say, Dry my

TESTIMONY OF ERNEST PAUL CHIODO

1 house out first?

2 A No, not -- no, I wouldn't necessarily, no.

3 Q Would it be wise just to let it sit for two
4 and a half years?

5 A It depends upon the circumstance. It really
6 does. It depends upon whether that's somebody that --
7 who caused the water intrusion? Are they coming along,
8 and saying, oh, we caused the water intrusion, we have
9 this, it's an expensive clean-up, we'll take care of
10 it, we'll do this right away. Or do you have to fight
11 with them to get them to take care of the mess?

12 I mean, there's a lot of different
13 circumstances that could affect the timing of what is a
14 very expensive process. It's just not just going out
15 there and doing some house cleaning, it's like cutting
16 a cancer out of a body. So that is an expensive
17 process. People may not have the resources to do that.

18 Q Doctor, you've been called as an expert in
19 this case today, correct?

20 A Uh-huh. (Indicating affirmatively.)

21 Q Do you know the circumstances regarding any
22 attempted remediation at the time of the intrusion?

23 A Again, that's -- I -- as I understand you at
24 this moment, I don't really have a present recollection
25 of what was referred to as to the time sequence, as far

TESTIMONY OF ERNEST PAUL CHIODO

1 as why remediation was or was not done. I don't -- I
2 don't know that as I'm sitting here at this moment.

3 Q Do you know if the Defendant said, I'll be
4 over there to make estimates as soon as possible?

5 A Estimates of what?

6 Q The damage and repair.

7 A I don't know that that was done. I don't
8 know that that wasn't done. I don't know that it was
9 properly done. Maybe they were going to go in and make
10 estimates and say, okay, we'll fix the leak. Well, how
11 about the rest of the problem? I don't know.

12 I -- so I don't know one way or the other
13 about how responsive Defendant was in this matter.

14 Q And you don't really know the extent of the
15 mold damage in the house, do you?

16 A I know that it is a situation where a
17 substantial portion of the drywall has to be torn out
18 of the house. That, I do understand and that there was
19 a significant portion of the flooring in the house that
20 had to be removed. That part of the problem that
21 started this is because Ms. Doller was trying to remove
22 moldy flooring and had the allergic reaction.

23 Q Your testimony, you just testified that a
24 substantial portion of the sheetrock had to be cut out,
25 again, right?

TESTIMONY OF ERNEST PAUL CHIODO

1 A Yeah. I -- I don't know the -- I don't know
2 the length or extent of it. I do know that based upon
3 my review of information in this matter, that I can go
4 back and refer to, if you want me to go back and refer
5 to it, I could.

6 Q Go ahead.

7 A Well --

8 MR. TUPPER: Your Honor, he can't refer to
9 looking at the document that he's referring to.

10 THE COURT: Say that again now?

11 MR. TUPPER: He can't refer to it based on the
12 document that he's referring to.

13 MR. ROBINSON: Judge, I think he just opened
14 the door.

15 THE COURT: Do you want him to answer the
16 question?

17 MR. TUPPER: One minute, please, Your Honor.

18 Let me re-ask the question.

19 BY MR. TUPPER:

20 Q If I told you that Mr. Lohr suggested he was
21 going to remove the drywall 3 feet off the floor from
22 the left side of the exterior wall, next to the closet
23 around the door leading to the kitchen, including the
24 basic shoe mold, then does that appear to you to be a
25 demolition or taking the drywall out of a substantial

TESTIMONY OF ERNEST PAUL CHIODO

1 portion of the house?

2 A Well, if -- again, it's the size of the
3 house. I have a record -- I mean, you're asking me to
4 refer to information, and you're asking me not to refer
5 to a record that I have that would answer the question.

6 Q No. I'm asking you to -- you just testified
7 that a substantial portion of the sheetrock in the
8 house had to be cut out and replaced, correct?

9 A Yeah, I think it was a small house. That's a
10 substantial portion. I mean, if we're arguing about
11 semantics, you know, I say that's -- that's based upon
12 my understanding, it's a small house, that there's got
13 to got to be a fair amount of work in that house. If
14 you're talking about removing sheetrock, cutting it up
15 3 feet, removing flooring in that area, that that's a
16 substantial -- that's renovation that's involving a
17 substantial portion of the house. That's as much as I
18 can really tell you about, sir. If we're going to
19 argue about terms like "substantial", that's -- I don't
20 know what else to tell you.

21 Q How often do you testify in cases like this,
22 sir?

23 A I do a lot of forensic work because of my
24 background. That's a large portion of what I do. Like
25 a forensic pathologist spends a hundred percent of

TESTIMONY OF ERNEST PAUL CHIODO

1 their time doing forensic work, because they have a
2 specialized background. Why? You don't want a country
3 doctor figuring out if somebody was murdered. I
4 have -- I have eight degrees. You know, Mr. Robinson
5 didn't get into all of them.

6 So I -- I have the type of background that
7 gets called upon in these forensic issues and I --
8 that's a big portion of what I do.

9 Q Okay. Now, answer my question directly. How
10 often do you, through a year, let's say, do you testify
11 either in deposition or in court?

12 A I would say -- I have to keep a list of
13 testimony for Federal court that goes back the past
14 four years. And the last time that somebody counted
15 that up for me, there was about a hundred to 110
16 testimonies. So divide that by four. That would give
17 you the -- so what are you talking about, maybe 25, 30,
18 or --

19 Q And how many of these type cases, where you
20 don't testify, do you have in your office or files as
21 we --

22 A I don't know. I do a lot of -- I do a lot of
23 forensic work. This is most of what I do because I
24 have that type of specialized background.

25 I'm not -- I'm not pretending to be a country

TESTIMONY OF ERNEST PAUL CHIODO

1 doctor. I do some country doctoring still, too, but
2 really I have the type of background that's utilized as
3 a forensic expert, like a forensic pathologist. I
4 mean, that's -- that's my background.

5 Q I'm not suggesting that you're a country
6 doctor, not that there's anything wrong with that.

7 A There is nothing wrong with that.

8 Q All right. I assume you don't charge country
9 doctor rates. What is your rate per hour in these type
10 cases?

11 A My rate per hour is what the -- pretty much
12 the average of forensic expert -- medical experts make.
13 \$500 an hour for non testimony time, \$1,000 an hour for
14 testimony time. Or many times they do things on a flat
15 fee basis. Like in this case, I did things on a flat
16 fee basis.

17 Q So what is your fee in this particular case?

18 A \$30,000 for all the initial work,
19 preparation, review of records. \$20,000 to come down,
20 because I had gummed up all day yesterday, I'm here
21 today, there's a good chance, depending upon how long
22 you cross-examine me, I'm not going to be back in
23 Chicago like I'm supposed to be tomorrow morning. So
24 it -- it gums up two or three days to come down for
25 this. Maybe even more time, I never know.

1 Q Well, I'll talk faster now.

2 I didn't quite -- did you say 3,000 initial

3 or 30,000?

4 A No, 30,000. That's -- that's my fee for this

5 because I have multiple areas of expertise.

6 Q And then 30,000 -- so your total bill, after

7 your testimony, assuming I get you out of here quickly,

8 for this case, is \$50,000?

9 A Yes. That's what forensic experts make

10 because, you know, that -- you have, one, you have to

11 have expertise beyond being a country doctor. Two,

12 it's just not fun getting cross-examined. Most doctors

13 don't want to do this type of work.

14 Q You're a lawyer, too, aren't you?

15 A I am a lawyer, too. I'm a law school

16 professor, in fact.

17 Q Do you charge transportation, too? Cost to

18 get down here and so forth?

19 A No, no, no. That's covered under the fee.

20 MR. TUPPER: In lieu of that, I'll get out of

21 here. Thank you.

22 THE WITNESS: Thank you, sir. Pleasure.

23 THE COURT: Redirect.

24 MR. ROBINSON: Thank you, Your Honor.

25 REDIRECT EXAMINATION

Ernest Paul Chiodo - Redirect Examination by Mr. Robinson

1 BY MR. ROBINSON:

2 Q Dr. Chiodo, what does forensic work mean?

3 A Forensic refers to the Latin, forensis, where
4 you would be in the Basilica in the Roman courtroom.

5 And so that refers to the Roman courtroom, the Forex
6 (phonetic). And so anything where you're doing expert
7 witness type of work -- like CSI, CSI doctors, that's
8 forensic medicine. It's utilizing one's medical and
9 scientific expertise to do analyses to come to the
10 truth and be able to explain that truth in a legal
11 setting, like today.

12 Q Mr. Tupper asked you questions about how many
13 times you've testified. Let me ask you this question,
14 do you always testify for the Plaintiffs?

15 A No.

16 Q The Plaintiffs are the people who agree to
17 want the jury to give them money, right?

18 A That's correct.

19 Q How often do you testify -- what's your split
20 between Plaintiff and Defendants?

21 A Most of the time, I'm Defense expert.

22 Q Most of the time.

23 A Most of the time.

24 Q Why are you a Plaintiffs? Why do you --

25 A Well, because I call it as I see it.

TESTIMONY OF ERNEST PAUL CHIODO

1 Sometimes Plaintiffs come to me, and I say, hey, sorry,
2 I can't help you out. Sometimes Defense comes to me,
3 sorry, I can't help you out.

4 The way, just the flow of business and the
5 cases that I've been able to look at where I say, yes,
6 Plaintiff is right or Defense is right. Most of the
7 time I'm saying Defense is right.

8 However, in this case, I say, Plaintiff is
9 right. I think it's an egregious circumstance. So I'm
10 a Plaintiff expert in this case.

11 Q Would water and Clorox be sufficient to
12 remediate the bedroom?

13 MR. TUPPER: Object, Your Honor. That
14 wasn't -- that's not responsive to my
15 cross-examination.

16 MR. ROBINSON: Well, I think it is, Your
17 Honor. I only get to have him once.

18 THE COURT: Sustained. I think you asked
19 about the degree of remediation. I'm going to
20 allow that.

21 MR. ROBINSON: Thank you, Your Honor.

22 BY MR. ROBINSON:

23 Q Would water and Clorox be sufficient to
24 remediate the bedroom?

25 A Water and Clorox would not. By the way, what

TESTIMONY OF ERNEST PAUL CHIODO

1 I would say if I was a Defense expert, I probably would
2 have been paid more in this case as a -- in Defense
3 cases I'm usually paid more than I am paid in this
4 particular circumstance.

5 MR. TUPPER: Your Honor, that's really not
6 responsive to any question.

7 THE COURT: I'll sustain the objection, as
8 nonresponsive, and strike that from the record.

9 You may ask your next question.

10 BY MR. ROBINSON:

11 Q Is there medical literature that supports the
12 diagnosis of mold-induced allergic reactions in people?

13 A Yes, sir.

14 Q Is there any medical disagreement on that?

15 A No. It's very -- it's very well generally
16 accepted that mold can cause allergic disease, and it
17 doesn't depend upon what species of mold. So it's very
18 well accepted.

19 Q Did you see anything in the records that you
20 reviewed that said that Ms. Doller let that water sit
21 there for two and a half years?

22 A No, I mean, I don't recall that.

23 MR. ROBINSON: All right. Well, I don't think
24 I have any further questions for you.

25 THE COURT: You may step down.

Michael M. Gibson - Direct Examination by Mr. Robinson

1 Any objection to this witness being excused?

2 MR. TUPPER: No, sir.

3 THE COURT: You're free to leave.

4 WITNESS: Thank you, Your Honor, for allowing
5 me to appear in your Court.

6 THE COURT: You may call your next witness.

7 MR. ROBINSON: Thank you, Your Honor. At this
8 time, we'd like to call Michael Gibson.

9 THE COURT: Mr. Gibson, please come forward.

10 Thereupon,

11 MICHAEL M. GIBSON

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

14 THE COURT: Have a seat. When you're in this
15 chair, I'm going to ask that you pull real close to
16 that microphone, speak loudly, clearly, and slowly
17 in order that we can hear everything that you have
18 to say. And let's start with your full name,
19 please, sir.

20 THE WITNESS: Michael M. Gibson.

21 DIRECT EXAMINATION

22 BY MR. ROBINSON:

23 Q Mr. Gibson, what do you do for a living?

24 A I'm a general contractor.

25 Q And how long have you been doing that?

TESTIMONY OF MICHAEL M. GIBSON

1 A A little over eight years.

2 Q What did you do before that?

3 A I was in a claims organization for a major
4 carrier. I was a claims manager.

5 Q What's a carrier?

6 A Nationwide Insurance.

7 Q An insurance company.

8 A I'm sorry?

9 Q I was trying to define the term "carrier."

10 A Nationwide Insurance.

11 Q Okay. You said you had a general contractors
12 license?

13 A Yes, sir.

14 Q Would you look in that book there and thumb
15 over to Exhibit No. 13, please.

16 MS. CANADAY: Your Honor, I don't know what --
17 I have not been provided with any exhibits that he
18 intends to show.

19 Was it 13 or 17?

20 MR. ROBINSON: We're looking at 17.

21 THE COURT: Which exhibit?

22 THE REPORTER: He said 13.

23 MR. ROBINSON: I'm apparently too stupid to
24 call the right one.

25 How about 17 -- no, I don't want 17.

TESTIMONY OF MICHAEL M. GIBSON

1 THE COURT: I think it is 13.

2 MR. ROBINSON: I want 13.

3 BY MR. ROBINSON:

4 Q Can you identify that document?

5 A It's a commercial contractor's license,
6 Palmetto Design and Renovation Contractors.

7 Q And when was that first issued?

8 A Let's see. On February 3rd, 2011.

9 Q All right. And do you have any other
10 contractor type licenses?

11 A Residential contractor's license.

12 Q Would you look at --

13 MR. ROBINSON: Move to admit Exhibit 13, Your
14 Honor.

15 MR. TUPPER: No objection, Your Honor.

16 THE COURT: It's into evidence. Plaintiff's
17 Exhibit 13 is into evidence without objection.

18 *(Whereupon, Plaintiff's Exhibit No(s). 13*
19 *marked for identification and received in*
20 *evidence.)*

21 BY MR. ROBINSON:

22 Q Would you look at Exhibit No. 14, please.
23 Can you identify that document?

24 A Yes, sir. A residential builder's license,
25 Michael M. Gibson.

TESTIMONY OF MICHAEL M. GIBSON

1 Q And when was that issued?

2 A October 9th, 2009.

3 MR. ROBINSON: And move to admit Exhibit 14,
4 Your Honor.

5 MR. TUPPER: No objection, Your Honor.

6 THE COURT: Plaintiff's Exhibit 14 is into
7 evidence without objection from the Defense.

8 *(Whereupon, Plaintiff's Exhibit No(s). 14*
9 *marked for identification and received in*
10 *evidence.)*

11 *(Whereupon, Plaintiff's Exhibit No(s). 15*
12 *marked for identification and received in*
13 *evidence.)*

14 BY MR. ROBINSON:

15 Q Do you have any other licenses?

16 A I have adjustor's licenses.

17 Q Would you turn to Exhibit 15, please. Would
18 you explain -- or excuse me, do you recognize that
19 document?

20 A Yes, sir. This is a real estate license. I
21 was once licensed as a real estate salesperson. I no
22 longer carry that license.

23 Q You no longer carry that license. Okay. You
24 said you were licensed as what?

25 A As an insurance adjustor.

TESTIMONY OF MICHAEL M. GIBSON

1 Q Okay. Is that still current?

2 A Yes, sir.

3 Q I don't have a copy of that with me.

4 When did you first get that license?

5 A Oh, almost 35, 40 years ago.

6 MR. TUPPER: May I approach, Your Honor?

7 THE COURT: Yes.

8 (Off-the-record discussion

9 held.)

10 BY MR. ROBINSON:

11 Q You work for Palmetto Design and Renovation

12 Contractors; is that what you said?

13 A Yes, sir.

14 Q What do they do?

15 A We're a full service general contracting
16 firm. There's not anything we don't do in the world of
17 losses. We do new construction also, but generally our
18 work involves losses.

19 Q All right. Stop right there.

20 A Okay.

21 MR. ROBINSON: If we may approach, Judge?

22 THE COURT: Yes.

23 (Off-the-record discussion

24 held.)

25 THE COURT: Mr. Foreman, ladies and gentlemen

TESTIMONY OF MICHAEL M. GIBSON

1 of the jury, it's about time for y'all to take a
2 break anyway. We're going to ask that you retire
3 to the jury room so we can take up some matters of
4 law. Do not discuss the case.

5 (The jury exits the courtroom.)

6 THE BAILIFF: Jury is clear, Your Honor.

7 THE COURT: You know, in some states they
8 allow the jury to hear the fact that there's the
9 existence of insurance. In South Carolina, we
10 don't do that. We haven't mentioned anything about
11 there being any insurance involved in this case.
12 We don't even like to hear the word "insurance."
13 So I'm going to order, instruct, and demand that
14 you not say the word, insurance claim, insurance
15 losses or anything like that.

16 You can testify as to what damages were
17 involved in this case, what your estimates are,
18 but let's not refer to --

19 THE WITNESS: Can I use the word "loss"?

20 THE COURT: Yes. But let's not do anything
21 with regard to insurance, claims adjustors,
22 insurance companies.

23 THE WITNESS: Well, he asked me about my
24 licenses.

25 THE COURT: I understand. I'm not -- I'm

TESTIMONY OF MICHAEL M. GIBSON

1 talking about this point forward, we're not going
2 to say anything about insurance, adjustors,
3 insurance loss, coverage, methods by which you
4 come -- you know, if it deals with insurance
5 companies, methods by which you estimate things
6 like that. We're not going to refer to those, as
7 far as insurance tables or anything such as that.

8 Anything further?

9 MR. TUPPER: Yes, Your Honor. While the jury
10 is out, my understanding is a lot of his testimony
11 is based, again, on this May report.

12 MR. ROBINSON: Based on the protocol, Judge.

13 THE COURT: I've ruled on that a hundred times
14 now, and you're protected on the record. He's
15 going to be allowed to refer to the protocol within
16 that May report. Not to the conclusions, not to
17 the tests performed, not to the result, but to the
18 protocol as the basis of his testimony.

19 I might be wrong, and all you have to do is
20 you get on 95 and head north, and then you head
21 left on 26.

22 MR. TUPPER: I know the way. Been there.
23 Maybe Saturday. Okay.

24 THE COURT: All right. That's exactly what
25 we're going to do.

TESTIMONY OF MICHAEL M. GIBSON

1 MR. ROBINSON: Now, normally, Your Honor, I
2 can't counsel my client while he's on the stand.

3 THE COURT: Right.

4 MR. ROBINSON: With respect to the estimating
5 system that he used, I'd like to talk to him about
6 how to avoid use of the term "insurance," when he
7 talks about that. I'll do that right here standing
8 here.

9 THE COURT: All right. What are you
10 suggesting? Now --

11 MR. ROBINSON: Excuse me? I'm sorry, I didn't
12 hear you.

13 THE COURT: What are you suggesting?

14 MR. ROBINSON: Only going to suggest to him
15 that he not go into the origins of his estimating
16 program, but rather just talk about the estimate
17 itself.

18 THE COURT: I think that's most appropriate.
19 Let's do it that way.

20 MR. ROBINSON: Okay.

21 THE COURT: All right. Let's take about a
22 five-minute recess and let everyone refresh
23 themselves.

24 (Whereupon, a recess was taken.)

25 BY MR. ROBINSON:

TESTIMONY OF MICHAEL M. GIBSON

1 Q Mr. Gibson, does a design contractor do mold
2 remediations?

3 A Yes.

4 Q Approximately, how many mold remediations
5 have you done?

6 A Hundreds.

7 Q How long have you been doing them?

8 A Since we started the business.

9 Q Who does the estimates for those mold
10 remediations, that is to say, who figures out what the
11 cost is going to be?

12 A I do many of them.

13 MR. ROBINSON: I would like to offer him as an
14 expert in mold remediation work.

15 THE COURT: Any query with regard to his
16 qualifications?

17 MR. TUPPER: No, Your Honor.

18 THE COURT: He is indeed qualified to render
19 an opinion in the field of mold remediation.

20 MR. ROBINSON: Thank you, Your Honor.

21 BY MR. ROBINSON:

22 Q Mr. Gibson, when you get ready to do mold
23 remediation, is there a protocol that you follow?

24 A Generally, yes.

25 Q Do you prepare that protocol, or is that

TESTIMONY OF MICHAEL M. GIBSON

1 prepared by someone else?

2 A Someone else.

3 Q Have you seen a protocol for the house at 55
4 James Byrnes Road in Beaufort?

5 A Yes, sir, I have.

6 Q Have you gone to the house?

7 A Yes, sir.

8 Q How many times?

9 A Three times.

10 Q Yet you prepared an estimate to what it's
11 going to cost to remediate that house?

12 A Yes, I did.

13 Q Do you know when the protocol that you are --
14 is your estimate based on the protocol that you saw?

15 A Yes.

16 Q Do you remember when that protocol was
17 drafted?

18 A Not exactly, 2012. Not exactly.

19 Q Let me direct your attention to Exhibit 16.
20 I don't want to know anything except for what is the
21 date on that.

22 A Yes, sir, 16-2012.

23 Q Okay. Thank you. Is that the protocol that
24 you followed to find out what it was going to take to
25 fix the house?

TESTIMONY OF MICHAEL M. GIBSON

1 A It is what I followed to come up with the
2 scope of work to fix the house.

3 Q Would you look at Exhibit 17, please?

4 A Yes, sir.

5 Q Is that your estimate?

6 A Yes, sir.

7 Q Okay. Would you tell the jury generally if
8 you will, what was the estimate to fix the house, that
9 includes mold remediation?

10 A \$87,942.00

11 Q Would you look at the second page, Page 2
12 down in the right-hand corner. And about -- about even
13 with that center hole punch, it says the pricing of
14 this -- this estimate includes -- sorry, read what it
15 says.

16 A Remaining demolition of the water damaged
17 components. Two, remediation by the written protocol.
18 And three, restitution needed to restore the structure
19 to a pre-loss condition.

20 Q Okay. Now I want you to go through this with
21 me and tell the jury what you are going to do in each
22 of the rooms.

23 A The path of this particular project is a
24 complex one in that it involves everything including
25 contents. When you have a loss like this, the first

TESTIMONY OF MICHAEL M. GIBSON

1 thing you have to do is handle the contents. The
2 contents are part of the protocol in this loss.
3 There's going to be salvageable and non-salvageable
4 contents.

5 Generally what we do on the front end of
6 these things to get staged, there's a lot you have to
7 do before you stage to do the mold remediation. The
8 contents is the first thing to handle, they have to be
9 out of the way. In this case some things are going to
10 be put in a non-salvageable stack, other things are
11 going to be moved and staged for a remediation to clean
12 the contents. So that's the first thing we do.

13 After that comes the demolition of
14 non-salvageables, but before you do that, you have to
15 bring in all your equipment. You know, these mold
16 remediations are not just mold remediation about the
17 owner and the effects of it on her, but our workers
18 have to be protected as well. So we have to set up
19 containments in various areas, and our folks have to
20 wear the PPE and the protective coverings and face
21 masks and all this. And then we have to put the
22 equipment in to start bringing the humidity in the
23 house down, if necessary, and control the humidity
24 because HVAC is cut off. It does not run when you're
25 doing one of these.

TESTIMONY OF MICHAEL M. GIBSON

1 We put air scrubbers in. The air scrubbers
2 are large pieces of equipment. There would be several
3 of them in this particular loss. The air scrubbers
4 would actually be ducted to the exterior, so that we
5 are taking the bad air out of the house and exhausting
6 it to the exterior.

7 Q Now, let me stop you there for just a second.

8 When you were in the house, was the air
9 conditioning running?

10 A I don't recall.

11 Q Okay. Well, was it real hot while -- what
12 time of year were you in there?

13 A I was in in September of 2014.

14 Q Okay. All right. Go ahead.

15 A Well, the --

16 Q You were at air scrubbers.

17 A The air scrubbers are hooked up, all the
18 equipment is running. If someone asks me what does one
19 of these look like, I always use the movie, ET. If you
20 remember ET, when found, ET and the little kid was in
21 there sick and they were dying, and you got all the
22 equipment set up in there, and the plastic up and where
23 people were in PPE, that's what one of these looks
24 like. And so all of that is set up, and then we're
25 doing the demo of the non-salvageables, which in this

TESTIMONY OF MICHAEL M. GIBSON

1 case is things like drywall, trim, floor covering,
2 ceramic tile, taking out bathroom fixtures. All of
3 this has to be taken out so that we can get ready to
4 clean and remediate.

5 But all that's done under the remediation
6 equipment protocol while that's in there running.
7 After then after that, it's a big, giant clean-up.

8 And it's like the doctor who was testifying
9 before described, except that it's even more intense
10 than he described. If you were to watch people clean
11 up a surgical room in a hospital after a major surgery,
12 that's the kind of cleaning this is. Because the end
13 results -- the end result comes from additional
14 testing, testing for mold, which includes air sampling
15 and swab samples. And for us to pass that test there
16 can't be any findings of mold, especially the
17 Stachybotrys. Stachybotrys was found in this house.

18 MS. CANADAY: Objection, Your Honor.

19 THE COURT: Sustained. That last statement
20 was stricken from the record with regard to the
21 findings of a particular mold. Disregard that.

22 BY MR. ROBINSON:

23 Q Go ahead.

24 A The intense cleaning of the house, hopefully,
25 and we've never not passed one, results in a clearance

TESTIMONY OF MICHAEL M. GIBSON

1 by a third party or an industrial hygienist. So there
2 is air sampling going on and swab samples being taken
3 at the end of one of these while the house is
4 maintained in these same containments and with the
5 equipment running.

6 Unfortunately, when you do one of these
7 projects, as intense as the cleaning is, the cleaning
8 is going to damage some things. First of all, you got
9 the non-salvalgeables, which have been tore out because
10 of the water damage and the mold. But then things like
11 paint on the walls has been affected.

12 The things we use to clean walls and to
13 sanitize the home are generally green chemicals.
14 Sometimes, TSP is added to it. But it's an intense
15 cleaning. And, you know, the paints these days don't
16 hold up to intense cleanings. So the estimate I wrote
17 includes putting the house back together, and that also
18 means to refinish the surfaces, the painting, the
19 painted surfaces.

20 Q And then what happens to the furniture that
21 got cleaned?

22 A Well, some of the furniture is going to be
23 non-salvageables. That has to be determined at the
24 site as we're going through that. My estimate includes
25 time to take -- to take time to separate the

TESTIMONY OF MICHAEL M. GIBSON

1 salvageables from the non-salvageables. I do not have
2 a number on what non-salvageable contents would be, but
3 typically it might be upholstered things that won't
4 clean up because of the mold contamination. Textiles
5 have to be taken out of the house, they can be cleaned
6 up. There are companies who do that, they specialize
7 in it.

8 So generally, textiles, this house had a lot
9 of textiles -- window treatments, closets full of
10 clothes, this sort of thing -- all of that we would bag
11 up, tag it, and we would take it to a facility for
12 cleaning, and then they would sanitize it and hold it
13 there until the house is ready, then we'd bring it
14 back.

15 Q So you put it all back in the house?

16 A Yes, sir.

17 Q Okay. Now, turn to Page 41 -- 40 of your
18 estimate. And tell the jury what it's going to cost to
19 clean this house up.

20 A It's \$87,942.88.

21 Q And that \$87,000, that includes -- or almost
22 \$88,000, that includes -- doesn't include any buying of
23 anything that's going to get thrown away, right?

24 A That's correct.

25 Q Okay. But it does include putting new

TESTIMONY OF MICHAEL M. GIBSON

1 sheetrock on?

2 A Yes, sir.

3 Q New flooring?

4 A Yes, sir.

5 Q New tile?

6 A Yes, sir.

7 Q New bathtub -- excuse me, shower insert?

8 A It reinstalls all of that. We were going to
9 salvage those items, some of those items.

10 Q Then it includes repainting?

11 A Yes, sir.

12 Q Includes -- does it include wiping down the
13 walls?

14 A Yes, sir.

15 Q Does it include wiping down the ceilings?

16 A Yes, sir.

17 Q Does it include cleaning the floors?

18 A Yes, sir.

19 Q How long is that going to -- all this going
20 to take?

21 A Well, the initial work and the remediation is
22 a couple weeks period of time, aside from handling the
23 contents. Contents can take several days. But then
24 the restoration, after the remediation's over and
25 you're cleared and you're ready to restore, that's 30

TESTIMONY OF MICHAEL M. GIBSON

1 to 60 days.

2 Q Did you go through each individual room in
3 this house?

4 A Yes, sir.

5 Q And did you make an estimate for each
6 individual room in this house?

7 A Yes, sir.

8 Q And that included the bedroom and the master
9 bathroom?

10 A Yes, sir.

11 Q And each of the other bedrooms?

12 A Yes.

13 Q And the living room?

14 A That's correct.

15 Q And the dining room?

16 A Correct.

17 Q And the kitchen?

18 A Correct.

19 Q And the closets?

20 A Correct.

21 Q Every single room?

22 A Every single room.

23 Q Okay. And that was basically, 89- --

24 \$88,000?

25 A Correct.

Michael M.Gibson - Cross Examination by Mr. Tupper

1 Q All right, sir.

2 MR. ROBINSON: I don't think I have any
3 further questions. Thank you.

4 THE COURT: Cross examination.

5 CROSS EXAMINATION

6 BY MR. TUPPER:

7 Q Hello, Mr. Gibson.

8 Mr. Gibson, when did Ms. Doller contact you
9 regarding giving her this estimate --

10 A September 2014.

11 Q And did you speak directly with her?

12 A No, sir.

13 Q Who did you speak with?

14 A With her attorney.

15 Q Which one?

16 A Both of them.

17 Q Okay. And you work out of Irmo, South
18 Carolina, correct?

19 A My office is there.

20 Q When was the last time you did work in
21 Beaufort?

22 A Recently. We cover a large part of the
23 state, we do work all over.

24 Q So have you done work since the date of your
25 deposition in Beaufort?

TESTIMONY OF MICHAEL M. GIBSON

1 A Can't recall.

2 MR. TUPPER: Excuse me for a minute,

3 Your Honor.

4 BY MR. TUPPER:

5 Q Your deposition was November 4th, 2014, just
6 for your edification. Okay?

7 A Okay.

8 Q Now, to refresh your memory, have you done
9 any work -- you said you did it recently in Beaufort --
10 have you done work recently, meaning between
11 November 4th, 2014 and today that we almost -- last
12 year?

13 A I don't recall.

14 Q You don't recall?

15 A No, sir. I have a large operation. I have
16 project managers in different areas of the state. We
17 may have things going on that I'm not aware of.

18 Q So you don't really know if you did something
19 here recently, correct?

20 A I don't know. That's correct.

21 Q You just told me initially that you did think
22 here recently is not the case, correct?

23 A I didn't mean to say that I did something
24 here recently.

25 Q Okay. Now, your estimate expands the

TESTIMONY OF MICHAEL M. GIBSON

1 protocol that you're referring to, correct?

2 A How so?

3 Q I'll re-ask the question.

4 Isn't it true that some of the estimates that
5 you made, for example, the HVAC included a brand
6 new HVAC?

7 A It includes new ductwork.

8 Q Okay. And isn't it true that your report
9 says that because of the passage of time you would have
10 to put in new ductwork?

11 A The report said that it recommended cleaning
12 ductwork and in some cases, the -- any flex duct would
13 have to be replaced.

14 Q So with respect to the -- I see -- R&R
15 repair, ductwork system, it says, "The condition has
16 been in effect for so long, we recommend replacement in
17 lieu of an attempt to clean the ductwork."

18 Correct?

19 A That's my note in my estimate.

20 Q But --

21 A But in the protocol I read, it referred to
22 the ductwork. It said it needed to be cleaned and in
23 some cases probably replaced.

24 Q Let me ask you, didn't -- isn't it a fact
25 that this house, the condition of this house, worsened

1 over the passage of time?

2 A I have no idea.

3 Q All right. Attic insulation, isn't it true
4 your report says, "Due to the time element of the
5 conditions in this loss, it is recommended that all
6 attic insulation be changed out."

7 A That is my recommendation, yes.

8 Q Why did you make that recommendation?

9 A Because I have to have a clearance at the end
10 of these. We can't fail. And I have found it typical,
11 in the typical mold remediations we do, in one this
12 severe, it's a idea to change out the attic insulation.

13 Q Okay. Why -- I get that part.

14 A There's ducts in the ceiling of this house.
15 It's on the slab, all the ductwork is in the ceiling.
16 Over -- you know, ductwork can fail and have leaks in
17 it over time. There is contaminant in the ducts, and
18 so it's a good idea to change out the insulation.

19 Q I understand that. But what is the phrase,
20 "Due to the time element of the conditions in this
21 loss," mean?

22 A I was there in 2014.

23 Q Correct.

24 A The house has been contaminated for a long
25 time. I don't know that it worsened from the original

TESTIMONY OF MICHAEL M. GIBSON

1 condition, because once you have a mold explosion like
2 this in an area of a house, and the tests concludes
3 there's mold in there and there's Stachyboctrys in
4 there and --

5 MR. TUPPER: Your Honor --

6 THE WITNESS: Okay.

7 MR. TUPPER: I'd ask that that be stricken,
8 about the Stachyboctrys, whatever we talked about
9 it, the type of mold in the house.

10 THE COURT: In that, I sustained the
11 objection. With regard to any particular reference
12 to a particular mold, that's inadmissible, and I'm
13 going to strike that from the record. Disregard
14 any reference to a particular mold.

15 THE WITNESS: At the very onset of her
16 discovery of the loss, the mold is there. I don't
17 know how long it had been there, don't know how
18 long the loss event occurred, how long the leak was
19 occurring. But it gets into the ducts. This is my
20 experience over all the years I've been handling --
21 handling mold. It gets in the ducts and then it
22 can spread throughout all the areas of the house.

23 BY MR. TUPPER:

24 Q Well, wouldn't the fact that two and a half
25 years elapsed just --

TESTIMONY OF MICHAEL M. GIBSON

1 A I was there the last time, January 2015.

2 Q Okay. Wouldn't the fact that two, two and a
3 half, three years had elapsed since the discovery of
4 this, just reasonably, could you say the condition got
5 worse?

6 A No. And I'll tell you why. It's the same
7 repair. Once you get it, once you have the mold event,
8 once you have the water event and then the mold as a
9 result, the damages are done. There's no more to do.

10 Q Would you have recommended that the water
11 immediately be extracted from the house, via ServPro or
12 some company like that?

13 A Not immediately.

14 Q When?

15 A After asbestos testing is done.

16 Q Okay.

17 A This house meets the age for asbestos
18 testing.

19 Q All right. So assuming the asbestos, how
20 long does it take to do the asbestos test?

21 A Usually three or four days to get those
22 numbers back.

23 Q So three or four days after, you got a
24 clearance. And had you been called in from the
25 beginning, three or four days after the asbestos

TESTIMONY OF MICHAEL M. GIBSON

1 testing, assuming it came back negative, you -- you
2 would recommend that the house be dried out?

3 A Not necessarily.

4 Q Why not?

5 A If I see this particular mold event, I'm
6 going to immediately recommend a hygienist come in.

7 Q Okay. What's a hygienist going to do?

8 A I don't know.

9 Q Isn't there sometime that somebody in your
10 profession would say dry the place out?

11 A Well, when you say "dry it out," you're
12 talking about it back to original pre-loss conditions.

13 Q No, I'm not. I'm talking about getting rid
14 of the water that's sitting there that was in the house
15 when she vacated the house in December of --

16 A We would put dehumidifiers in to start a
17 drying process, and that's all we would do. I can't
18 bring in my equipment and have it get contaminated.

19 Q Would you tear the carpet up?

20 A Don't know that either. I'd have a hygienist
21 come in. We can't -- we don't know if the house is
22 cross-contaminated yet. You're talking hypothetical
23 here.

24 Q Of course I am, so are you.

25 A So in a hypothethetical question, I'm going

TESTIMONY OF MICHAEL M. GIBSON

1 to give you a hypothetical answer. What we would do is
2 assess the situation, bring in a hygienist. We would
3 not want to do anything that might cause a possible
4 cross-contamination. We don't know if the house is
5 cross-contaminated yet.

6 Q When you went into the house, did you wear
7 one of those HAZMAT uniforms?

8 A I wore a mask.

9 Q And you took a Claritin because you were
10 allergic to things, correct?

11 A Yes, I did, yeah.

12 Q So you didn't have one of these outfits on
13 that looked like space walkers.

14 A No, I did not, but I was not in the house
15 that long. I was in and out, did my work, and was
16 gone.

17 Q Anybody else in there with you have a HAZMAT
18 uniform on?

19 A Nobody else was with me.

20 Q Pardon me?

21 A No one else was with me.

22 Q How many times did you go in there?

23 A I was in the house three times.

24 Q How much time did you spend in the house?

25 A The first time, hour to an hour and a half,

TESTIMONY OF MICHAEL M. GIBSON

1 but intermittently while I was there. In and out.

2 Q How about during this whole project?

3 A Listen, I'm highly sensitive to mold, and
4 I'll tell you why. These break-outs on my arm right
5 here -- right here -- this is sensitivity to mold.
6 I've been in four mold losses in the last two weeks.

7 Q I got the same ones.

8 A Well, then you're -- you've got a mold
9 problem.

10 Q Thank you, Doctor.

11 That's my question sir, though, is did you in
12 fact spend three or four hours in the house?

13 A Intermittently.

14 Q Okay. And you never wore the HAZMAT?

15 A Not the TYVEK suit, no.

16 Q Anybody else in there with you?

17 A No.

18 Q Did the lawyer, Mr. Barnes, go in the house
19 with you?

20 A No.

21 Q Just you by yourself?

22 A Correct.

23 Q And it's your testimony that it would have
24 taken 80 hours to complete this job; is that what I
25 heard you say?

TESTIMONY OF MICHAEL M. GIBSON

1 A No.

2 Q I'm sorry. How many hours would the whole
3 job have taken?

4 A A couple weeks.

5 Q That you're charging \$90,000 for?

6 A Well, this is restoration also. We're
7 talking months of work from start to finish.

8 Q Paint -- painting the entire inside of the
9 house?

10 A From start to finish, yeah.

11 Q So, in effect, you're going to -- not just
12 the area of the contamination, but now the entire house
13 you're going to paint, you're going to scrub down all
14 the various things that you refer to, correct?

15 A Correct.

16 Q Okay. How much did you -- you haven't done
17 this work, correct?

18 A Only the asbestos testing.

19 Q How much did you charge for your report and
20 for your testimony here today?

21 A I can't recall, something like 3-, 400 bucks,
22 maybe.

23 Q Totally?

24 A Yeah. I haven't charged for this, yet.

25 Q Are you going to charge?

Michael M. Gibson - Redirect Examination by Mr. Robinson

1 A Absolutely.

2 Q How much are you going to charge?

3 A Probably 75 bucks an hour.

4 Q And how many hours have you spent on this
5 case?

6 A Today, whatever time I've got here today.

7 MR. TUPPER: That's all I have. Thank you.

8 THE COURT: Any redirect?

9 MR. ROBINSON: Yes, sir. Just a few.

10 REDIRECT EXAMINATION

11 BY MR. ROBINSON:

12 Q Mr. Gibson, did I hear you say that the
13 original protocol requires to clean some ducting?

14 A It calls for cleaning the ducts or
15 replacement of flex duct.

16 Q Now, what's flex duct?

17 A It's what they use most of the time now. It
18 used to be hard duct, which was metal covered with
19 insulation. And now, flex duct is a material that
20 looks like aluminum foil on the outside. It's got wire
21 and insulating material inside of it, but sandwiched
22 between the interior of the duct and exterior of the
23 duct, and it's flexible. It's exactly what -- how it's
24 described. It can run and curve and do angles and
25 everything, yeah.

TESTIMONY OF MICHAEL M. GIBSON

1 Q Can you clean that duct?

2 A It's difficult to clean it. There are
3 companies around who will clean ducts, but you can't
4 reach all of it with the equipment they use.

5 Q So with the flex duct, what do you have to
6 do?

7 A In my experience, in a mold condition like
8 this, we tear it out.

9 Q Now, there's other ducts in the house that's
10 not flex duct; is that true?

11 A That's correct.

12 Q And what do you do about that?

13 A We generally clean that. That's the unit
14 itself and the plumbings that come off of it, and we
15 clean that.

16 Q And are you cleaning that in this case?

17 A We would have a vendor who specializes in it
18 come in and do it.

19 Q So what duct are you replacing?

20 A The flex duct.

21 Q And how much is -- do you have in your
22 estimate? Can you look that up and tell me what --

23 A Well, to do it all, it's about \$4,500.

24 Q And that's to clean it?

25 A No, that's to replace the flex duct.

TESTIMONY OF MICHAEL M. GIBSON

1 Q That's to replace the flex duct.

2 A Yes, sir.

3 Q What would it cost to clean the flex duct,
4 assuming you could clean it?

5 A We would get bids on that. But my experience
6 on a house this size, anywhere from 1400 to \$1,800.

7 Q Okay. Water removal, when you were in the
8 house, was there any water in there?

9 A No, sir.

10 Q Somebody removed the water, or it evaporated?

11 A I assume so.

12 Q But it didn't set there for two and a half
13 years, apparently?

14 A No, sir.

15 Q You said if you were going to do it, you'd
16 put a dehumidifier in; did I understand that right?

17 A Are you speaking to an emergency like
18 response?

19 Q Yes.

20 A We would go ahead and put dehumidifiers in,
21 yes.

22 MR. ROBINSON: Okay. That's all that I have.

23 Thank you.

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

25 Any objections to this witness being excused?

James Doller - Direct Examination by Mr. Robinson

1 MR. TUPPER: I have just a few more questions,
2 Your Honor.

3 THE COURT: That isn't the way it works. The
4 rules of evidence require direct, cross, and
5 redirect. You have an obligation to object to
6 anything new that he brings up. There's no such
7 thing as recross.

8 You may step down.

9 All right. You may call your next witness.

10 MR. ROBINSON: Thank you, Your Honor. I'd
11 like to call -- I'd like to call James Doller.

12 THE COURT: Yes, sir. Please come forward.

13 Thereupon,

14 JAMES DOLLER

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

17 THE COURT: Come forward and have a seat in
18 the witness chair. Pull up real close to that
19 microphone, speak loudly, clearly, and slowly so
20 that we can hear everything that you have to say.
21 And let's start with your full name.

22 WITNESS: James Doller.

23 THE COURT: Spell that last one for me.

24 THE WITNESS: Doller, D-O-L-L-E-R.

25 THE COURT: Okay. Very good.

TESTIMONY OF JAMES DOLLER

1 DIRECT EXAMINATION

2 BY MR. ROBINSON:

3 Q Mr. Doller, what is your relationship with
4 Patricia Doller?

5 A My wife.

6 Q Okay. At one point in time, y'all divorced?

7 A Yes.

8 Q But you're remarried?

9 A Yes.

10 Q Okay. Where do you live?

11 A At 8 Pickens Street, Beaufort, South
12 Carolina.

13 Q Does anybody else live there?

14 A Yes, Richard. Richard and Pat.

15 Q Okay. Who's Richard?

16 A Richard Guffey.

17 Q Okay. Where did you live in November of
18 2011?

19 A Fairfield, Ohio.

20 Q And did you come back to South Carolina in
21 late November or early December?

22 A Yes. Came down for -- my daughter and I were
23 going to come down for Thanksgiving. I came down, she
24 had clinicals and couldn't come down, so I -- she flew
25 down the 28th of November and I picked her up at the

TESTIMONY OF JAMES DOLLER

1 Charleston airport.

2 Q Okay. And did something happen to your wife,
3 Ms. Doller, at that point in time?

4 A Yes. She -- her -- had a terrible rash. Her
5 feet were swelling up. And that's when, the 28th, I
6 happened to walk in the master bedroom, and that's when
7 I felt the water under the floor. Then like the 6th of
8 December I had to take her to the doctor, Dr. Cusumano,
9 and then --

10 Q Let's back up a minute.

11 You walked in the bedroom and what happened?

12 A Well, I was walking on the floor, and I
13 thought, there's water under this floor. I could feel
14 it.

15 Q Now, describe the floor, if you would, to the
16 jury.

17 A Like a laminate hardwood floor, and she only
18 weighed about 95 pounds, so she couldn't feel it. But
19 I could tell right away there was water under the
20 floor.

21 Q So what did you do?

22 A I called Richard. Richard and I pulled the
23 threshold up, going from the master bath into the
24 master bedroom, and it was water and black mold
25 everywhere.

TESTIMONY OF JAMES DOLLER

1 Q And so what did you do about that, or did you
2 do anything about that?

3 A Yes. The next day --

4 Q No, did you do anything about that?

5 A Not at that time, no.

6 Q Okay. All right. Now, let's talk about
7 early December. What happened in early December?

8 A Mr. -- we got ahold of Lohr -- first, the
9 real estate agent that handled the sale of the house to
10 tell us the name of the plumbing company that
11 supposedly was taking out the polybutylene piping. We
12 got -- called Mr. Lohr, Lohr's Plumbing, he came out.
13 Said there's a leak somewhere. And finally cut a hole
14 in the drywall in the master bedroom and discovered the
15 leak.

16 Q All right. And then later on, did something
17 happen that caused you to take Ms. Doller to the
18 doctor?

19 A Yes.

20 MS. CANADAY: Object to the leading nature,
21 Your Honor.

22 THE COURT: I don't think that's leading.

23 Overruled.

24 BY MR. ROBINSON:

25 Q Go ahead. Did something happen that caused

TESTIMONY OF JAMES DOLLER

1 you to take her to the doctor?

2 A Yes. She developed a terrible skin rash, her
3 feet were swelling up, her hands. Took her to
4 Dr. Cusumano, and then I took her to Dr. Bundy down on
5 Hilton Head.

6 Q When you took her to Dr. Cusumano, did you
7 tell him what the circumstances were that caused her to
8 come there?

9 A Yes.

10 Q What did you tell him?

11 A I told him, I said, we discovered mold in the
12 house, and I think that's what caused it.

13 Q Now, were you there when she -- when she did
14 whatever she did that caused this problem?

15 A Carried the boards out?

16 Q Yeah.

17 A No. No, I was not.

18 Q Did you tell Dr. Cusumano about that?

19 A Yes, sir. Yes.

20 Q Okay. And what did he -- oh, you can't
21 answer that question.

22 Okay. Dr. Cusumano, was he able to do
23 something that cured the problem?

24 A No. He recommend we went to see Dr. Bundy.

25 Q Okay. Did you have any further interaction

James Doller - Cross Examination by Ms. Canaday

1 with Ms. Doller going to the doctor after that taking
2 her to --

3 A Yes. I had to go back up to Ohio, and
4 several weeks later, on a Sunday morning, she called
5 me. I drove back down that day and I had to take her
6 to Beaufort Memorial emergency room that evening.

7 Q Okay. And did you tell the doctors what the
8 problem was then?

9 A Yes. It was really bad then. I mean, her
10 feet was swollen and she could hardly walk. I had to
11 get a wheelchair for her.

12 MR. ROBINSON: All right. I don't have any
13 further questions.

14 THE COURT: Cross examination.

15 CROSS EXAMINATION

16 BY MS. CANADAY:

17 Q Mr. Doller, when did you move to 8 Pickens
18 Street?

19 A First of May this year.

20 Q And you had previously been in Kentucky; is
21 that right?

22 A Kentucky and Ohio.

23 Q Okay. And are you here on a permanent basis
24 now?

25 A Yes.

TESTIMONY OF JAMES DOLLER

1 Q And where did you file your taxes?

2 A What do you mean where did I file my taxes?

3 I'm going to file them here and four months in Ohio.

4 Q So you will file here and in Kentucky; is
5 that right?

6 A Ohio.

7 Q Ohio and South Carolina?

8 A Yes.

9 Q Okay. And you said that you and Ms. Doller
10 have been divorced at one point in time?

11 A Yes.

12 Q When did that happen?

13 A Six, seven years ago -- six years ago.

14 Q Okay. And when did y'all get remarried?

15 A About four, five years ago.

16 Q Okay. Now, you mentioned noticing the floor
17 on November 28th; is that right?

18 A Yes.

19 Q Is it possible you have that date wrong?

20 A No.

21 Q How do you know?

22 A Because my daughter was -- and I were going
23 to both come down for Thanksgiving. She could not come
24 down because of clinicals. She came down the 28th, I
25 picked her up at the Charleston airport, and that's

TESTIMONY OF JAMES DOLLER

1 when I discovered the water.

2 Q Okay. And what day was the 28th, do you
3 know? What day of the week?

4 A I don't know.

5 Q So it wasn't November 30th?

6 A I don't what -- what do you mean, what's
7 November 30th?

8 Q I'm asking, are you sure it wasn't November
9 30th?

10 A No. It was November 28th.

11 Q Did y'all, or you, did you call Lohr Plumbing
12 the same day?

13 A No, ma'am.

14 Q Did somebody call Lohr Plumbing the same day?

15 A First, Pat called Bonnie Krstolic, the real
16 estate agent that sold the house.

17 Q Uh-huh.

18 A Because we didn't know that Lohr Plumbing was
19 the ones that forgot the --

20 Q Did somebody call Lohr Plumbing the same day?

21 A Possibly. I mean, I -- I don't remember.

22 Q Okay. So it could have been the 28th, it
23 could have been the 30th, you don't remember?

24 A I know -- not when Lohr Plumbing got called.

25 I know the 28th is when I discovered the water.

TESTIMONY OF JAMES DOLLER

1 Q Did Lohr Plumbing come out the same day that
2 you -- that somebody called; do you know?

3 A I believe they did.

4 Q Okay. All right. And you referenced a trip
5 to the ER. When do you think that was?

6 A Sometime in December.

7 Q Sometime in December. And you mentioned
8 something with the rash and her feet being swollen, et
9 cetera?

10 A Yes.

11 Q And you're certain you have the dates right?

12 A I'm pretty sure, yes.

13 Q Okay.

14 MS. CANADAY: That's all I have for this
15 witness. Thank you.

16 THE COURT: Any redirect?

17 MR. ROBINSON: Nothing, Your Honor.

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

19 Mr. Robinson, you may call your next witness.

20 MR. ROBINSON: Thank you. We call

21 Richard Guffey, Your Honor.

22 THE COURT: All right. Mr. Guffey, please
23 come forward. If you could, place your left hand
24 on the Bible and raise your right hand while the
25 clerk administers the oath.

1 Thereupon,

2 RICHARD FOREST GUFFEY

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

4 was examined and testified as follows:

5 THE COURT: Ask, if you could, to have a seat
6 in the witness chair. Pull up real close to that
7 microphone. Speak loud and clearly and slowly in
8 order we can hear everything you have to say. And
9 let's start with your full name.

10 WITNESS: My name is Richard Forest Guffey,
11 G-U-F-F-E-Y.

12 THE COURT: Mr. Robinson.

13 MR. ROBINSON: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY MR. ROBINSON:

16 Q Mr. Guffey, where do you live?

17 A Eight Pickens Street, Beaufort, South
18 Carolina.

19 Q Do you know -- I'm sorry -- do you know
20 Ms. Doller?

21 A Yes, I do.

22 Q How do you know Ms. Doller?

23 A She's a very good friend of mine.

24 Q How long have you known her?

25 A About ten to 12 years.

TESTIMONY OF RICHARD FOREST GUFFEY

1 Q Did you know Ms. Doller in 2011?

2 A I did.

3 Q Do you know anything about poison oak?

4 A Yes, sir.

5 Q Do you know if she was -- if she had poison
6 oak?

7 A She had some kind of a skin irritation that
8 could have been caused by poison ivy or poison oak,
9 yes.

10 Q But you're not a doctor, you don't know?

11 A No, sir, I'm not a doctor.

12 Q Okay. Did you -- did you take any
13 photographs of Ms. Doller in October when she had this
14 skin rash, whatever it was, in September?

15 Let me direct your attention to Exhibit 20 --
16 let me direct your attention --

17 A I think I took pictures of some spots, but I
18 don't remember where --

19 Q Let me -- stop. Don't -- we can't talk at
20 the same time. The court reporter is going to shoot
21 us. She can't take it down if we're both talking at
22 the same time.

23 A Sorry.

24 Q Would you look at Exhibit 23, that's the last
25 exhibit in this book.

TESTIMONY OF RICHARD FOREST GUFFEY

1 A Exhibit 23. Is that Page 23?

2 Q Did you take that photograph?

3 A Are we talking about Page 23?

4 Q No, sir. Let me show you how that works.

5 A Oh, oh. I see, there's like little tabs?

6 Q Yeah. Just take that tab and flip it all the

7 way -- take 23 and flip it all the way.

8 A Ahhh, there we go.

9 Q There you go.

10 Did you take that photograph?

11 A Yes, sir. That looks like my handy work.

12 Q And do you recall when that photograph was

13 taken?

14 A That one I believe I took in October.

15 Q All right, sir. Did you take other

16 photographs of Ms. Doller?

17 A Hundreds.

18 Q Okay. Let's look in Exhibit No. -- well,

19 first of all, did you take any photographs of the

20 house?

21 A Oh, yes, sir.

22 Q Look at Exhibit No. 3 with me, please.

23 A Exhibit 3?

24 Q Yes.

25 A Hold on. Got it.

TESTIMONY OF RICHARD FOREST GUFFEY

1 Q Do you recognize those photographs?

2 A Yes, sir. That's the photographs I took, I
3 believe on the 5th of December, about two days after we
4 quit trying to pull those boards up.

5 Q All right, sir. And would you look at each
6 of those and make sure that they're all photographs
7 that represent what you found and what you saw at the
8 house?

9 MR. TUPPER: Your Honor, can we approach for a
10 second?

11 THE COURT: Yes.

12 (Off-the-record discussion

13 held.)

14 MR. ROBINSON: Before we get to Exhibit No. 3

15 --

16 MS. CANADAY: Your Honor, I object to the --
17 him publishing this to the jury. This, today, is
18 the first day I've seen this photograph.

19 THE COURT: Okay. Have an opportunity to look
20 at it. Take a look at it.

21 MS. CANADAY: And also on relevance grounds.

22 THE COURT: It's certainly relevant. Take a
23 look at it.

24 Do you have one to look at it?

25 MS. CANADAY: Yes, I do. I looked at it.

TESTIMONY OF RICHARD FOREST GUFFEY

1 THE COURT: Is he looking or are you looking?

2 I can't see.

3 MS. CANADAY: I looked at the October and I
4 was objecting to the relevance of the photograph.

5 THE COURT: Okay. And your objection is
6 overruled.

7 You may proceed.

8 MR. ROBINSON: May I publish this photograph
9 to the jury, Your Honor?

10 THE COURT: Well, you need to introduce it
11 into evidence before you publish it.

12 MR. ROBINSON: All right. Move to introduce
13 Exhibit No. 23 into evidence, Your Honor.

14 THE COURT: And you're saying you object to
15 relevance?

16 MS. CANADAY: Yes, sir.

17 THE COURT: It's overruled. It's into
18 evidence over objection.

19 BY MR. ROBINSON:

20 Q Whose hand is that, sir?

21 A That's Pat's.

22 Q And is that how her hand looked in October?

23 A Yes, but she had a small thing -- I'd
24 recognize that.

25 Q All right, sir. Now, you've looked at

TESTIMONY OF RICHARD FOREST GUFFEY

1 Exhibit 3 and identified that.

2 MR. ROBINSON: We have to move Exhibit No. 3
3 into evidence, Your Honor. It is Exhibit 3-A
4 through 3-H.

5 THE COURT: Any objection from 3-A through
6 3-H?

7 MS. CANADAY: Not at this time.

8 THE COURT: Okay.

9 MR. ROBINSON: Well, we'd like to call --

10 THE COURT: Now is the time to object.

11 MS. CANADAY: Well, actually, I would like for
12 him to tell me the dates these photographs were
13 taken.

14 MR. ROBINSON: I think he mentioned the date,
15 but that's okay.

16 Just wait, Mr. Guffey.

17 BY MR. ROBINSON:

18 Q Let me refresh your memory with those
19 documents. Take a look at that.

20 Does that refresh your memory as to when you
21 took those photographs?

22 A Yes, November 5th. That's what I said.

23 MR. ROBINSON: Okay. November 5th, 2011.

24 MS. CANADAY: Exhibit 3?

25 MR. ROBINSON: Yes.

TESTIMONY OF RICHARD FOREST GUFFEY

1 MS. CANADAY: The photographs in Exhibit 3.
2 were taken in November of 2011?

3 THE WITNESS: I mean, December. December 5th.
4 Excuse me.

5 MS. CANADAY: December 5th.

6 WITNESS: Yes.

7 MR. ROBINSON: We'll get the month right.

8 Move to admit Exhibit 3 into evidence.

9 THE COURT: Any objection?

10 MS. CANADAY: No objection, Your Honor.

11 THE COURT: All right. Exhibit 3, and
12 that's three --

13 MR. ROBINSON: A through 3-H, I think I said
14 H -- H.

15 THE COURT: A through H are into evidence.

16 *(Whereupon, Plaintiff's Exhibit No(s). 3A-3H*
17 *marked for identification and received in*
18 *evidence.)*

19 MR. ROBINSON: All right. And I'd like to
20 publish some of these, but not all of them to the
21 jury.

22 THE COURT: Okay.

23 BY MR. ROBINSON:

24 Q Mr. Guffey, tell the jury what we're looking
25 at here.

TESTIMONY OF RICHARD FOREST GUFFEY

1 A That's the -- that doorway goes into the
2 master bathroom and that is the area, that wall -- see
3 where my flashlight is, where the red -- the red
4 flashlight is, just above that is where the plumber cut
5 the hole out of the wall where the leak supposedly
6 started. And we were starting to try to pull the floor
7 up so that it would help expedite the repair work.

8 Q You mentioned -- you mentioned a hole in the
9 wall?

10 A Yes, sir.

11 Q Would you look at Exhibit 2, please.

12 A Exhibit 2.

13 Q Do you recognize that photograph?

14 A Oh, yes sir.

15 Q What is that?

16 A That is a picture of the hole in the wall.

17 Q Do you know when you took that photograph?

18 A I believe that was on -- I believe that was
19 on the 5th also.

20 Q That'd be December 5th?

21 A Yes, sir.

22 Q Okay.

23 MR. ROBINSON: Move to admit Exhibit 2, Your
24 Honor.

25 THE COURT: Any objection from Defense?

TESTIMONY OF RICHARD FOREST GUFFEY

1 MS. CANADAY: Other than how he knows it was
2 on the 5th. There's no identifying marks. I'm just
3 curious about it.

4 THE COURT: Well, you can cross-examine him
5 with regard to when it was, but he just says it's
6 December 5th.

7 And it's into evidence over objection.

8 *(Whereupon, Plaintiff's Exhibit No(s). 2*
9 *marked for identification and received in*
10 *evidence.)*

11 MR. ROBINSON: May I publish that exhibit?

12 THE COURT: You may.

13 BY MR. ROBINSON:

14 Q Would you tell us what we're looking at here?

15 A That is some kind of a fixture that goes
16 through the wall and into the shower into the master
17 bedroom, or master bath, and those are the different
18 pipes that go up the wall.

19 Q Is that where the leak was?

20 A That's what I was informed of, yes, sir.

21 Q Okay. So back on Exhibit 3-A.

22 A Back on 3-A. Hold on -- okay.

23 Q You were telling the jury what they were
24 looking at, and you mentioned that hole in the wall and
25 you got off track. Let's go back where we were.

TESTIMONY OF RICHARD FOREST GUFFEY

1 A Okay.

2 Q So you described, I think, the threshold and
3 then you were talking about the wall with the
4 flashlight, and then what else have we got here?

5 A The only other things are my tools that I
6 left where we stopped work.

7 Q What's in the lower right-hand corner?

8 A The dark brown?

9 Q Yes.

10 A That's part of the original flooring. We
11 didn't pull that part up.

12 Q And what your -- what's that white stuff?

13 A Oh, if you're referring to the stained area,
14 that's the flooring underneath the wooden flooring.

15 Q Does that -- do you know what that is,
16 concrete, something?

17 A It's some kind of sub strain of some sort, if
18 I remember correctly.

19 Q All right. Good enough.

20 Was there standing water in this threshold
21 area on the 5th of December when you took this
22 picture?

23 A It was damp. It wasn't like it was when we
24 pulled it up on -- I think that was the 24th -- or
25 28th.

TESTIMONY OF RICHARD FOREST GUFFEY

1 Q Let me ask you to tell the jury what this
2 photograph is. That is Exhibit 3-G.

3 A Oh, that's the wood that we actually did take
4 out that Pat threw out in the garage.

5 Q So that's the wood she was handling?

6 A Yes, sir.

7 Q Tell me what 3-H is.

8 A That's a different angle of the same wood.

9 Q Do you know what that black stuff is?

10 MS. CANADAY: Objection to form. Objection,
11 Your Honor. There's no foundation for this witness
12 to know what it is.

13 MR. ROBINSON: I just asked him if he knew
14 what it was.

15 THE COURT: I'll allow him to answer.

16 BY MR. ROBINSON:

17 Q Do you know what the black stuff is?

18 A That's mold, I believe.

19 Q Did you take some photographs of Ms. Doller?

20 A Yes, sir.

21 Q Would you look at Exhibit No. 4, please.
22 That is 4-A through F.

23 A Yes, sir.

24 Q Do you recognize those photographs?

25 A Yes, sir. It's the same ones I took on the

TESTIMONY OF RICHARD FOREST GUFFEY

1 same day I photographed the bedroom. That was November
2 5th.

3 Q Was it November or December?

4 A I mean, December 5th. Excuse me.

5 Q That's all right.

6 A The 5th.

7 MR. ROBINSON: Move to admit those documents,
8 those photographs.

9 Let me have those photographs, please.
10 They're much better quality than what I have in my
11 book.

12 THE COURT: Any objection with regard to these
13 photographs?

14 MS. CANADAY: No objection, Your Honor.

15 THE COURT: All right. Those are known as
16 Plaintiff's Exhibits -- what again?

17 MR. ROBINSON: 4-A through 4-F.

18 THE COURT: 4-A through 4-F in evidence
19 without objection.

20 *(Whereupon, Plaintiff's Exhibit No(s). 4A-4F*
21 *marked for identification and received in*
22 *evidence.)*

23 MR. ROBINSON: I'd like to publish these to
24 the jury, Your Honor.

25 THE COURT: You may.

TESTIMONY OF RICHARD FOREST GUFFEY

1 BY MR. ROBINSON:

2 Q Tell the jury what we're are looking at here.

3 A That is Pat's hands highly inflamed. And at
4 this point, this is about two, three days after we
5 started ripping up the floor. Her fingers are starting
6 to -- her joints are starting to swell. When she
7 picked up the boards, it was just bright red. Looked
8 like a chemical burn. That is like three days later.

9 Q Let's back up -- let's back up a little bit.
10 You're pulling up the boards?

11 A Yes, sir.

12 Q And what's Pat doing?

13 A Basically telling me that I'm making a
14 horrible mess, and so she walked in, picked up the
15 boards, and carried them into the garage so that they
16 could be disposed of.

17 Q And how many times did she do that?

18 A Approximately about three times.

19 Q And did she then come and see you?

20 A Well, she was starting to go for the fourth
21 one, and I noticed her hands and asked her what was
22 wrong with her hands, because they didn't look normal
23 at all.

24 Q What did they look like?

25 A They looked to me like they had a bad

TESTIMONY OF RICHARD FOREST GUFFEY

1 chemical burn on them. Almost like acid. I've never
2 seen hands turn bright red like that so quickly. We're
3 talking five, ten minutes.

4 Q Okay. And then a couple days later, you
5 decided that you should get some photographs?

6 A That's when I took these photographs.

7 Q Okay. Let me show you 4-B. The color is not
8 real good, but what are we looking at here?

9 A That's the top of her hand. You can't see
10 the -- I don't know what you would call it, the damage
11 to the hand. But you can clearly see where all of her
12 knuckles are starting to swell. They almost looked
13 deformed. She didn't have hands like that.

14 Q Let me show you 4-E. What's that a picture
15 of?

16 A That's a picture of her feet.

17 Q And let me show you 4-F.

18 A And that's a picture of the soles of her
19 feet. And the main reason I took that is because I
20 told her that I would take care of the rest of the
21 boards and stuff, and to not dink with that area. And
22 I'll guarantee, she walked back in there barefooted,
23 and that's the result.

24 Q All right. Let me put these back in the
25 book.

TESTIMONY OF RICHARD FOREST GUFFEY

1 All right. I'd like to look at Exhibit 5,
2 please.

3 A Exhibit 5.

4 Q What's that a picture of?

5 A That's a picture of Pat's right knee.

6 Q And look all through Exhibit 5. What do we
7 have pictures there of?

8 A Those are all pictures of her hands. At this
9 point, this is like --

10 Q Stop.

11 A Oh, I'm sorry.

12 Q Do you remember when you took these pictures?

13 A It was approximately -- I think it was like
14 December 15th, 16th, someplace in there, a couple weeks
15 later.

16 Q Okay. A couple weeks later.

17 MR. ROBINSON: Move to admit Exhibit No. 5,
18 Your Honor.

19 THE COURT: Any objection from Defense?

20 MS. CANADAY: No objection.

21 THE COURT: It's into evidence, Plaintiff's
22 Exhibit No. 5.

23 MR. ROBINSON: I'd like to publish some of
24 these to the jury also, Your Honor.

25 THE COURT: You may.

TESTIMONY OF RICHARD FOREST GUFFEY

1 MR. ROBINSON: And this is 5-A through 5-E.

2 *(Whereupon, Plaintiff's Exhibit No(s). 5A-5E*

3 *marked for identification and received in*

4 *evidence.)*

5 BY MR. ROBINSON:

6 Q What are we looking at there?

7 A That's the same right hand, but by this time
8 she could hardly use it. Her fingers were all swollen
9 and stuff. And if you'll notice, you see the band
10 aides on like the thumb area and everything? The skin
11 had started splitting. I mean, literally cracking all
12 the way through.

13 Q Now, before I go any further with these
14 hands, let me ask you a question. Where was she living
15 in mid November -- excuse me, mid December?

16 A When these things were being taken, she was
17 still at her house.

18 Q Did you move her somewhere?

19 A A couple days later, I tried -- I finally
20 talked her into getting out of that house and coming to
21 my house, because I have plenty of room. Tons.

22 Q Okay. Why did you get her out -- what was
23 your thinking when you told her to get out of the
24 house?

25 A Her condition was not getting better with

TESTIMONY OF RICHARD FOREST GUFFEY

1 anything I saw anybody giving her. It was getting
2 steadily worse. I mean, it was going downhill rapidly.
3 And this is not what I would call a skin irritation.
4 This is vicious, and the only thing I could think of,
5 there's got to be something in that house that's
6 affecting it. So let's get out of the house.

7 Q Did she move out of the house?

8 A After I finally convinced her, to set her up
9 with a room, her own private bedroom at my house.

10 Q Well, what's this a picture of?

11 A That's the palm -- oh, that's where you can
12 see the band aides. That's the palm of her hand. And
13 all the skin is just -- I don't know, it looks like
14 leprosy to me. I don't know what else you'd call it.
15 It's not -- that's not a normal skin irritation.
16 That's not what I would call a rash. It's not a rash,
17 it's vicious.

18 Q What about this photograph, what's that a
19 picture of?

20 A That's her other hand.

21 Q I see that that's got a band aid on it.

22 A All it -- anyplace that she had a movable
23 joint, it seemed like it -- by this time, I don't think
24 she could physically close that hand all that well. If
25 I remember correctly, she couldn't even open a door

TESTIMONY OF RICHARD FOREST GUFFEY

1 knob. But she could move this opposable thumb, and
2 every time she did the skin would crack. So she put
3 band aides on it to keep from further damage. I don't
4 know what else you'd call it.

5 Q Would look at Exhibit No. 6, please. What's
6 that a picture of?

7 A Oh, that's a picture of Pat's scalp, where
8 all her hair was falling out. And she had like a red
9 thing that was starting to spread all over her, just
10 like on her hands.

11 Q All right. Stop. I just want to know what
12 it's a picture of.

13 A It's a picture of her head.

14 Q Do you know when you took this?

15 A The same day.

16 Q All right. And where was she when you took
17 this?

18 A She was still at her house, if I remember
19 correctly.

20 MR. ROBINSON: Move to admit Exhibit No. 6-A
21 and B, Your Honor.

22 THE COURT: Any objection from Defense?

23 MS. CANADAY: No objection, Your Honor.

24 THE COURT: Plaintiffs Exhibit A and B --

25 MR. ROBINSON: 6-A and B.

TESTIMONY OF RICHARD FOREST GUFFEY

1 THE COURT: 6-A and B are into evidence
2 without objection.

3 *(Whereupon, Plaintiff's Exhibit No(s). 6A-6B*
4 *marked for identification and received in*
5 *evidence.)*

6 MR. ROBINSON: Thank you, Your Honor. May I
7 publish these?

8 THE COURT: You may.

9 BY MR. ROBINSON:

10 Q All right, sir. This is a picture of who?

11 A That's Pat's head. That's her -- you could
12 see where her hairline is starting to recede and all
13 the hair is like falling out of it.

14 Q It's a little hard with the way the light is
15 cycling back and forth. Is there some marks on her
16 head?

17 A Yeah. Right there -- right where that bright
18 spot is, you can see the -- where it's not a bright
19 blue spot, the light's off. You see that real dark
20 red? That's raw skin.

21 Q All right.

22 A There's no hair underneath that. I mean,
23 over it. It's just falling out in hunks.

24 Q Look at Exhibit 7, please. Do you recognize
25 those photographs?

TESTIMONY OF RICHARD FOREST GUFFEY

1 A Yes, sir. I took those photographs also.

2 Q Would you know what day you took those
3 photographs?

4 A I'm pretty sure it was about November 30th.

5 Q Are you talking about December or November?

6 A I mean, December 30th. It was about --

7 Q Okay. Let me refresh your recollection.

8 Take a look at those documents, see if that helps.

9 A Oh, it was the 29th. I was pretty close.

10 Q What's that date right there, where it says
11 date taken?

12 A 12/30.

13 Q Okay. December 30th?

14 A 12/30 of 2011.

15 Q All right. Thank you.

16 And is that the same for all those
17 photographs, they were all taken on the same day?

18 A Let me just double check.

19 Yes, sir. They all used the same towel in
20 the same photograph.

21 Q And is this also photographs of Ms. Doller?

22 A Yes, sir.

23 MR. ROBINSON: Move to admit Exhibit No. 7,

24 Your Honor.

25 THE COURT: Any objection?

TESTIMONY OF RICHARD FOREST GUFFEY

1 MS. CANADAY: No.

2 THE COURT: Plaintiff's Exhibit 7 into
3 evidence without objection.

4 MR. ROBINSON: It is 7-A through 7-O.

5 THE COURT: 7-A through 7-O into evidence.

6 *(Whereupon, Plaintiff's Exhibit No(s). 7A-7O*
7 *marked for identification and received in*
8 *evidence.)*

9 MR. ROBINSON: All right. And I'd like to
10 publish a few of these to the jury, Judge, if
11 that's all right.

12 THE COURT: Yeah.

13 BY MR. ROBINSON:

14 Q Who are we looking at here, Mr. Guffey?

15 A That's the back of Pat's leg, her left leg.

16 Q Who are we looking at here?

17 A That's her back, at the spine.

18 Q Who are we looking at here?

19 A And that's her hands. In this you can -- all
20 of these you can see that -- middle of December, she
21 couldn't make a fist. I mean, things were bad.

22 Q Wait a minute. Stop. When were these taken?

23 A This is the end of December.

24 Q Okay. Go ahead.

25 A Okay. In the middle of December, before I

TESTIMONY OF RICHARD FOREST GUFFEY

1 got -- I finally talked her into moving out of that
2 house, she couldn't make a fist. I mean, her hands
3 were splitting and everything else.

4 At this point, it looked like it's been about
5 two -- I believe it was about two weeks, two weeks
6 later, now we're making progress. She's not a hundred
7 percent, but she's standing, which is better than she
8 was doing then. And she's actually gotten to the point
9 by now that I didn't have to jam the doors open so she
10 wouldn't be trapped in the bathroom or the bedroom or
11 something, and nobody be able to get to her because you
12 can't hear her on the other side of the house.

13 Q Was she having difficulty with her feet?

14 A She wasn't walking real well, no, not at all.
15 But by now she's standing up. I mean, we're not going
16 to go out exactly and jog around the block on those,
17 but she's standing.

18 Q Were they worse than this earlier?

19 A I don't think she could have used them. They
20 were not only painful, but they were a lot more
21 swollen.

22 See, that's swollen. But she can stand.
23 Before, you tried to get her up, two steps, that's it.
24 It was --

25 Q How did you transport her?

TESTIMONY OF RICHARD FOREST GUFFEY

1 A I have a wheelchair that belonged -- that I
2 used with my wife that had passed away about seven
3 years ago, ten years ago. And I used that primarily.
4 Other times, you just pick her up and put her where she
5 has to be.

6 Q All right. What's this a photograph of?

7 A That's the front of her feet.

8 Q You looked at a leg a minute ago, is that the
9 other leg?

10 A Yes, sir.

11 Q What are we looking at here?

12 A That's the palms of her hands. That -- they
13 are still -- they're still in pretty bad shape, but at
14 this point I'm starting to feel like, you know, we
15 might be going in the right direction. It's -- you
16 know, time will tell. They're swollen, not in real
17 great shape, but by this time she can open a doorknob
18 and she can at least hold the spoon to eat, feed
19 herself.

20 Q Did she have difficulty feeding herself prior
21 to this?

22 A She couldn't hold a spoon. So basically it
23 was a lot of hand feeding or you made soup with straws
24 or a lot of that -- that chocolate milkshake stuff that
25 has all the vitamins and stuff that a lot of seniors

TESTIMONY OF RICHARD FOREST GUFFEY

1 take. I forgot the name of it.

2 Q Okay. Would you look at Exhibit 9, please.

3 And if you remember -- first of all, tell me what nine
4 is?

5 A Wait a minute. I got to find nine. That's
6 eight -- oh, nine. Okay.

7 Q Do you remember when you took those
8 photographs?

9 A I believe all of these I took January, around
10 January.

11 Q Does that refresh your memory?

12 A 1/12/2012, January 12th.

13 Q All right. And were all those taken on the
14 same day?

15 A Yes, sir.

16 MR. ROBINSON: Move Exhibit No 9-A through 9-I
17 into evidence, Judge.

18 THE COURT: 9-A through 9-I into evidence.
19 She has no objection, they're into evidence.

20 MR. ROBINSON: Thank you.

21 *(Whereupon, Plaintiff's Exhibit No(s). 9A-9I*
22 *marked for identification and received in*
23 *evidence.)*

24 MR. ROBINSON: Thank you, Your Honor. I'd
25 like to publish these also.

TESTIMONY OF RICHARD FOREST GUFFEY

1 BY MR. ROBINSON:

2 Q What are we looking at here?

3 A That's a picture of Pat's hands,
4 approximately -- what was it, about another couple
5 weeks later.

6 Q How about this one?

7 A That's a picture of her palms, and by now
8 most of the -- most of the major scaling stuff, it's
9 gone away, and you can see her fingers starting to
10 return back to normal.

11 Q I apologize for -- and that's not going to
12 show up.

13 What's that a photograph of?

14 A That's a picture of the bottom of her feet.
15 Prior to that, she didn't have a bottom of her foot.
16 She looked like an elephant. There, she actually had a
17 heel and a -- you could see the heel and -- what do you
18 call that, the front pad and toes. Prior to that, it
19 just looked like a solid piece.

20 Q We looked at her back a minute ago. Is that
21 the same back?

22 A That's Pat's back.

23 Q This is January the 12th, is she cleared up
24 yet?

25 A She's on the -- she's on the mend, but she's

TESTIMONY OF RICHARD FOREST GUFFEY

1 not a hundred percent clear, no.

2 Q Would you look at Exhibit 10, please.

3 A That one's a bad shot. Well -- yeah.

4 Q Do you recognize ten -- first of all, can you
5 identify those?

6 A Those are all pictures I took of Pat, same
7 location.

8 Q And do you know when those were taken?

9 A I believe they were the end of January, first
10 part of February, someplace in there.

11 Q Let me see if this refreshes your memory.

12 A 1/27/2012. End of January.

13 Q These are all pictures of Ms. Doller?

14 A Yes, sir.

15 MR. ROBINSON: Move to admit Exhibit No. 10,
16 Your Honor, Exhibit 10-A through 10-H.

17 THE COURT: Any objection?

18 MS. CANADAY: No.

19 THE COURT: 10-A through 10-H are into
20 evidence without objection from Defense.

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

22 *10A-10H marked for identification and received in*
23 *evidence.)*

24 BY MR. ROBINSON:

25 Q What are we looking at here?

TESTIMONY OF RICHARD FOREST GUFFEY

1 A That's a picture of Pat's left leg. By now,
2 it's finally come back to normal size. If you
3 remember, it was swollen. It's getting closer to what
4 is normal.

5 Still a little irritating looking, but it's
6 getting close -- it's getting better is all I can tell
7 you.

8 Q What are we looking at here?

9 A That's a picture of her feet. Up until that
10 time, she didn't have them, but now she's got feet
11 again.

12 And that's a picture of her hands. See, it's
13 still a little raw, but she's got hands again.

14 Q And that's the palms. What's this a picture
15 of?

16 A That's the back of her hands.

17 Q All right. You took all of these photographs
18 yourself?

19 A Yes, sir.

20 Q Did you ever go back in the house?

21 A I was required to several times.

22 Q And why were you required to go back in the
23 house?

24 A Well, after she finally vacated on, you know,
25 my insistence, we still had to run -- somebody had to

TESTIMONY OF RICHARD FOREST GUFFEY

1 back and empty dehumidifiers and have to check on the
2 house, make sure it's not going to fall apart.

3 One time, I went back, opened up the garage
4 door, and there was water all over the garage because
5 the hot water tank had blown out. So we had to replace
6 the hot water tank, you know. Well, I had to replace
7 it, there was no "we," but it was the imperial we, you
8 know.

9 Q I'm interested in these dehumidifiers. Tell
10 me about these dehumidifiers, when were they put in the
11 house?

12 A Well, she had -- she had one that she ran a
13 lot because she was real particular about any kind of
14 mustiness occurring in the air. But once we started
15 pulling the boards up and everything, then I brought
16 over one of mine because you got to get rid of
17 moisture. And the only way I know to do it is
18 dehumidifiers. I don't have a giant sucky thing, you
19 know, something that could do it.

20 Q Did you notice when the free water was gone?

21 Do you know what I mean, when you say "free
22 water?"

23 A That's the water that was underneath the
24 boards.

25 Q Yeah. How long did it take to dry that up?

TESTIMONY OF RICHARD FOREST GUFFEY

1 A Oh, make it totally dry? Oh, probably --
2 let's see, we pulled that on around the 5th, so it was
3 a little damp where we first started pulling up the
4 boards. But some of the water was starting to come up,
5 and it was probably dried out by, oh, I'd say the 12th,
6 10th or 12th, something like that.

7 Q A week or two?

8 A It was about a week later. It didn't seem
9 like it was that -- you know, it didn't have that water
10 because he had already shut off the leak.

11 Q Okay.

12 A It -- you know, it wasn't being rebuilt.
13 They had no source. And with the dehumidifiers, they
14 suck out a couple of gallons every, you know, about
15 two, three days, each one of them.

16 Q Where were these dehumidifiers?

17 A They were in the bedroom.

18 Q In the bedroom?

19 A Well, one was kind of like in the -- a little
20 bit inside the door in the bathroom, kind of working
21 that way, and the other one was over on the other side
22 against the wall.

23 Q Okay.

24 MR. ROBINSON: I don't think I have any
25 further questions at this time.

Richard Forest Guffey - Cross Examination by Ms. Canaday

1 THE COURT: Cross examination.

2 MS. CANADAY: Thank you, Judge.

3 CROSS EXAMINATION

4 BY MS. CANADAY:

5 Q Good afternoon, Mr. Guffey. Can you tell me
6 why you took any photographs that have been published
7 today?

8 A Well, the first -- the first one that I took
9 on her hand, that was because she had an accident,
10 something that wanged her thumb. And I was out taking
11 photographs of -- we used to go to the beach a lot. So
12 I took my camera with me. We'd go for walks, I'd take
13 my camera with me, taking shots. And when she wanged
14 her finger, I just happened to take a shot of it.

15 But when I took shots on December the 5th,
16 that was about two days, two, three days after we
17 pulled those boards up. And frankly, it's because they
18 scared me. I -- I saw her hands and feet, and I ran
19 back and got my camera and came back to her house and
20 said, "Let's take a photograph of this because this
21 could be acid. We don't know what the heck this is."

22 At that point, no one explained to us about
23 mold, you know.

24 Q So they were taken for a lawsuit?

25 A No. They were taken in case the doctors

TESTIMONY OF RICHARD FOREST GUFFEY

1 needed it, at the time.

2 Q And as far as her moving into the house,
3 you're sure about that date, the 22nd? Or could it
4 have been sooner than that? Was it the 17th, the 15th?

5 A It was the day after I brought her back from
6 the Medical University. And I believe we went there
7 around the 16th, so it would have been around the 17th.

8 Q Okay. If you were there on the 14th, would
9 it have been the 15th?

10 A No, because we hadn't gone to the Medical
11 University then, I don't believe.

12 Q Okay. Well, if the records show the date was
13 the 14th, would it have been the 14th or the 15th that
14 she would have moved in with you?

15 A It would have been after the trip from the
16 Medical University, because it took me the entire ride
17 back to try and convince her of it. And the next day,
18 she finally said okay. I said, "Well, grab a couple
19 things, you don't need anything else, I got it." Okay.

20 Q And when y'all were pulling at the boards,
21 you didn't have any kind of reaction, right?

22 A I wasn't handling them with my bare hands
23 either. Because I'm pulling up boards, I don't know
24 about anybody else, I'm scared of splinters and nails
25 and things, so I use gloves a lot. And then --

TESTIMONY OF RICHARD FOREST GUFFEY

1 Q So you didn't have any kind of respiratory
2 reaction?

3 A We were only there about 10, 15 minutes.
4 No --

5 Q Okay. But you're back and forth at that
6 house, right?

7 A I've been at the house several times, but I
8 didn't live there, no.

9 Q No, but you've been inside that room, right?
10 Because we're talking about one room, right?

11 A Oh, yeah. Everybody had to go in there if
12 you were going to use that bathroom.

13 Q All right. So everybody's been in and out of
14 that room multiple times?

15 A I wouldn't call multiple, it's not like it
16 was a parade. I mean, you know --

17 Q People have been in and out of that room once
18 the leak occurred; is that right?

19 A Not knowing when the leak occurred, yes, I
20 would say --

21 Q When the leak was found?

22 A When the leak was found, I don't believe
23 there were that many people going in and out, because I
24 wasn't there when they found -- when he found the leak.

25 Q Okay. But you've been in, and out of that

TESTIMONY OF RICHARD FOREST GUFFEY

1 room since the leak has been found; is that right?

2 A No.

3 Q You've never been back into the bedroom since
4 that one time?

5 A Up until when we pulled the boards, no, I
6 was -- I wasn't there.

7 Q Let me clarify my question.

8 A Okay. I'm missing just --

9 Q Since these boards have been pulled up, since
10 the leak was found, have you been back in that bedroom?

11 A Once we pulled the boards up, did I go back
12 into the bedroom?

13 Q Yes.

14 A No, because I was at work.

15 Q You've not been back there one time since you
16 pulled up the boards?

17 A No.

18 Q I thought you just told us that you had to
19 change out dehumidifiers?

20 A Yeah. That wasn't when I took those
21 photographs on the 5th.

22 Q That wasn't my question.

23 A Okay. I missed --

24 Q I'm just asking whether you had been in and
25 out of that bedroom before. That's my question.

TESTIMONY OF RICHARD FOREST GUFFEY

1 A No, no, no. You asked if I had been in and
2 out since I took the photographs, since I pulled up the
3 boards.

4 Q We'll move on. I think I've got an answer
5 that I need.

6 A No, I hadn't, or I missed the question.

7 Q And the boards were pulled up on December
8 2nd; is that right, to the best of your recollection?

9 A Yes, I believe so.

10 Q And did she go to the doctor that day?

11 A No, because her hands just turned bright red.
12 The first thing she did, I believe, was went in and
13 tried to wash them off. Said, I don't know what's on
14 them, but we're stopping right here. We're not going
15 any further, because I didn't know if it was acid.

16 Q So nobody went to the doctor that day?

17 A Well, I didn't go with her, if she went.

18 Q You don't know if she did go to the doctor?

19 A No, sir -- no, ma'am, I don't.

20 Q Okay. And the photograph that you -- that
21 we've been shown today, those were taken at your house?

22 A Partially. Some of them were at her house.

23 Q Okay. Do you know which ones were at her
24 house?

25 A The ones -- other than the ones that are of

TESTIMONY OF RICHARD FOREST GUFFEY

1 the bedroom specifically. The ones that were done on
2 the 5th, and the ones that were done just prior to her
3 coming over to our -- to my house and stuff, that was
4 the ones with her scalp and her hands up by the --
5 that's her blinds, if you remember seeing them.

6 Q Okay. So those would have been in later
7 December, about the 23rd. Why were y'all back in the
8 house?

9 A No, no, no. That wasn't later December, that
10 was early December.

11 Q Okay. How many rooms are in the house?

12 A Which house?

13 Q Mrs. Doller's house, at 55 James Byrnes.

14 A Okay. There's a master bath and a, I guess
15 you call it, a guest bath, a little office area, a
16 guest bedroom, master bedroom, one large living area
17 and a small kitchen.

18 Q Okay. Foyer, hallway, three bedrooms, one of
19 which is used as an office?

20 A There's no hallway -- well, there's about a
21 2-foot hallway, I guess.

22 Q Little hallway, little foyer area, living
23 room, kitchen, laundry room, bedroom, master bathroom?

24 A Oh, yeah, and a garage. And a garage.

25 Q And a garage. Okay. And this leak occurred

Richard Forest Guffey - Redirect Examination by Mr. Robinson

1 in the --

2 A Master bedroom.

3 Q Master bedroom and bathroom, which is on the
4 right-hand side of the house?

5 A It's the one on the side of the house by the
6 garage.

7 Q Right. Right-hand side of the house, not on
8 the left-hand side of the house?

9 A Right.

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

11 THE COURT: Any redirect?

12 MR. ROBINSON: Yes, Your Honor. Thank you.

13 REDIRECT EXAMINATION

14 BY MR. ROBINSON:

15 Q Mr. Guffey, you were asked if you went back
16 into the room. Let me ask you this question.

17 Those photographs we saw of the room had some
18 tools lying there.

19 A Oh, yes, sir.

20 Q Did you recover those tools?

21 A I'm not exactly what you'd call the quickest
22 person to pick up after myself. I did pick those up
23 finally around January or February, when I realized I
24 didn't have them and I needed them for another job.

25 Q And you testified earlier that there were

TESTIMONY OF RICHARD FOREST GUFFEY

1 dehumidifiers in that room, and then did you go dump
2 those?

3 A Oh, yes, sir. It's -- I don't know how else
4 to do it.

5 Q How often did you go dump those?

6 A About, I would say about every two, three
7 days. It takes that long. What -- it -- when you
8 first start firing up, you almost have to do it like
9 every day, but then once they start just filling up
10 normal atmosphere and dampness, it goes like two or
11 three days. And if you ever get a house down to the
12 point to where you want the humidity you have, a lot of
13 times you only have to do it once a week. So it
14 varies, depending upon at what point in time you were
15 talking about.

16 It started out every couple days, then went
17 to like couple times a week, then it went to like once
18 a week, and then finally it went to where we just used
19 one dehumidifier and I brought my other one home.

20 Q All right. Is the dehumidifier still working
21 in that house?

22 A It's in the other side of the house now.

23 Q It's still there?

24 A It's still -- yes, sir. I believe it's still
25 there unless somebody took it, but I didn't.

TESTIMONY OF RICHARD FOREST GUFFEY

1 Q Do you know when the last time you dumped it
2 was?

3 A Dumped that?

4 Q Uh-huh. (Indicating affirmatively.)

5 A It's been a while.

6 Q Okay.

7 MR. ROBINSON: No further questions.

8 THE COURT: You may step down.

9 Mr. Foreman, ladies and gentlemen of the
10 jury, y'all have worked hard today. It's 5:00 on
11 the dot, just about. We're going to recess for
12 the evening. Do not discuss the case amongst
13 yourselves or with anyone else. Please return at
14 9:30, 9:30 sharp. No independent investigation,
15 no social media, no independent investigation.
16 We'll see you back at 9:30, 9:30 sharp.

17 Everyone remain seated as the jury exits the
18 courtroom.

19 (Jury exits the courtroom at
20 5:00 p.m.)

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

22 THE COURT: Anything from the Plaintiff before
23 we recess this evening?

24 MR. ROBINSON: Not today, Your Honor.

25 THE COURT: Anything from Defense?

TESTIMONY OF RICHARD FOREST GUFFEY

1 MR. TUPPER: No, Your Honor.

2 THE COURT: All right. We'll be back at 9:30,

3 9:30 sharp.

4 (The proceedings recessed for
5 the day.)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

TESTIMONY OF RICHARD FOREST GUFFEY

1

2 CERTIFICATE

3

4 STATE OF SOUTH CAROLINA:

5 COUNTY OF BEAUFORT:

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

8

DATED this 18th day of June, 2016.

9

10

11

Mona L. Manley /s/

12

MONA L. MANLEY

13

Official South Carolina Court Reporter

14

Circuit Reporter for the 14th Circuit

15

(850) 893-6662

16

mmanley@scccourts.org

17

18

19

20

21

22

23

24

25

26

27

28

TITLE PAGE

In the Court of Common Pleas for the
State of South Carolina, County of Beaufort

Case No.: 2012-CP-07-04139

Patricia Doller,

Plaintiff(s),

vs.

Transcript of Record

Lohr Plumbing, Inc,

Defendant(s).

VOLUME 3

September 2, 2015

Beaufort, South Carolina

BEFORE:

The Honorable Michael G. Nettles

APPEARANCE PAGE

APPEARANCES

LOHR PLUMBING, INC.'s ATTORNEYS:

Stacey Canaday, Esquire
Ralph E. Tupper, Esquire
611 Bay Street
Post Office Box 2055
Beaufort, South Carolina 29901-2055
(843) 524-1116

PATRICIA DOLLER'S ATTORNEY:

A. Parker Barnes, Jr., Esquire
PO Drawer 1729
Beaufort, SC 29901-1729

and

Brian Pratt Robinson, Esquire
Po Box 61110
Columbia, SC 29260

APPEARANCE PAGE

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

INDEX

WITNESS:

PAGE:

BRETT DORAN

Direct Examination By Mr. Robinson	181
Cross Examination By Ms. Canaday	206
Redirect Examination By Mr. Robinson	209

PATRICIA DOLLER

Direct Examination By Mr. Robinson	212
Cross Examination By Ms. Canaday	253

EXHIBITS: Marked: Received:

Plaintiff's Exhibits:

18 proposal	185	185
1 Fletcher letter	189	189
19 estimate	202	202
8A-8R furnishing photos	237	237
11 disclosure	249	249
12 damage calculation	252	252

Brett Doran - Direct Examination by Mr. Robinson

INDEX

1 PROCEEDINGS

2 Thereupon,

3 BRETT DORAN

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

6 THE COURT: Please come forward, sir, and
7 watch your step. Have a seat in the witness
8 chair. Pull it real close to that microphone.
9 Speak loudly, clearly, and slowly so that we can
10 all hear everything that you you have to say. And
11 let's start with your full name.

12 THE WITNESS: Brett Doran.

13 DIRECT EXAMINATION

14 BY MR. ROBINSON:

15 Q Are you the principal?

16 A The owner.

17 Q The owner, okay. Are you a master plumber?

18 A Yes.

19 Q You know a lot more about plumbing than the
20 average person does; is that correct?

21 A Yes.

22 Q When it comes to plumbing, you are an expert;
23 is that right?

24 A I guess to -- that I would call myself an
25 expert, 27 years.

INDEX

1 Q You want Lohr Plumbing to be thought of as an
2 expert in the plumbing business in the community, don't
3 you?

4 A Oh, absolutely.

5 Q In the plumbing world, when you put in the
6 water pipes, they are not supposed to leak; are they?

7 A They are not supposed to.

8 Q That is because bad things can happen when a
9 water pipe leaks; is that right?

10 A Yes.

11 Q For instance, can it rot the wood underneath
12 the pipe or cause mold to grow?

13 A If there's a leak, you try to catch it and
14 fix it early.

15 Q In fact, the standard in the plumbing
16 industry is, when you put pipes in, they are not
17 supposed to leak; wouldn't you say that is true?

18 A Correct.

19 Q Now, let's talk about this case. You were
20 hired by Ms. Richie to replace the polybutylene pipe in
21 the house currently owned by Ms. Doller; is that right?

22 A Yes.

23 Q And you gave Ms. Richie a proposal; is that
24 correct?

25 A Correct.

INDEX

1 Q Okay. Let me ask you to look at Exhibit
2 No. 18.
3 A The tab on the side, I guess?
4 Q Yes, sir. There's tabs along the side. If
5 you could just look at No. 18.
6 A Right. That's our contract.
7 Q And that's the contract you signed with
8 Ms. Richie?
9 A Correct.
10 Q Is that right?
11 A Uh-huh. (Indicating affirmatively.)
12 Q And this contract is to take all of the
13 polybutylene out of the house; is that right?
14 A Minus the shower fixtures.
15 Q Does it say that in this contract?
16 A I don't believe so. It was a verbal between
17 her and I.
18 Q This contract says you're going to take all
19 the polybutylene out, doesn't it?
20 A Most contracts have three line items -- it's
21 the re-pipe; the second line item would be shower
22 valves; and then the third line item would be drywall
23 repair.
24 Q This contract --
25 A Had two items.

INDEX

1 Q Doesn't say anything at all about any -- any
2 polybutylene staying in the house, does it?

3 A She chose to leave the valves.

4 Q Would you answer my question, please?

5 A This contract shows a re-pipe.

6 Q Thank you. And that means all the
7 polybutylene was going to come out under this contract
8 as it's written; is that correct?

9 A It means the pressurized water line.

10 Q Do you ever use a -- do you ever use a water
11 spigot, a water hose?

12 A Uh-huh. (Indicating affirmatively.)

13 Q And it has a nozzle on the end of it?

14 A Correct.

15 Q Okay. And it shoots out, right?

16 A Uh-huh. (Indicating affirmatively.)

17 Q It's under pressure when it does that, isn't
18 it?

19 A No, it's flowing through it.

20 Q If there's no pressure --

21 A It's only pressure if you stop --

22 Q The water just falls straight down, don't it,
23 because there's nothing pushing it.

24 A If you were to cap it, it would be
25 pressurized. If you were to leave an open hose, it

INDEX

1 would be flowing.

2 Q You ever stepped on a water hose that had
3 water flowing through it?

4 A Right, yeah.

5 Q And you ever stepped on a water hose that was
6 empty?

7 A Uh-huh. (Indicating affirmatively.)

8 Q There's a difference, isn't there?

9 A Correct.

10 Q Ms. Richie accepted this proposal, didn't
11 she?

12 A Yes.

13 Q All right.

14 MR. ROBINSON: I'd like to move Exhibit
15 No. 18 into evidence, Your Honor.

16 THE COURT: Any objection?

17 MS. CANADAY: No objection, Your Honor.

18 THE COURT: Exhibit No. 18, Plaintiff Exhibit
19 No. 18, is into evidence without objection.

20 *(Whereupon, Plaintiff's Exhibit No(s). 18*
21 *marked for identification and received in*
22 *evidence.)*

23 BY MR. ROBINSON:

24 Q You supervised the removal of the
25 polybutylene pipe; is that right?

INDEX

1 A Yes.

2 Q And you supervised the installation of the
3 replacement pipe in the house; is that right?

4 A Yes.

5 Q Okay. And if I understand it right, the
6 house is built on a slab?

7 A Right.

8 Q And the polybutylene pipe is under the slab,
9 and came up into the house?

10 A Right.

11 Q And so to replace it you had to go to the
12 attic and come down through the walls; is that right?

13 A Right. We started from -- started at the
14 main and bring it in. Yeah, the pipes were run through
15 the attic.

16 Q In fact, you had to cut it off somewhere
17 along there for the polybutylene and put it in open to
18 the new pipe.

19 A Correct.

20 Q All right. How many polybutylene
21 replacements has Lohr Plumbing done?

22 A Hundreds.

23 Q Hundreds. Okay. Do you know why they
24 replaced the polybutylene pipe?

25 A It fails. We fix it all the time. It's a

INDEX

1 constant -- we do repairs two or three times a week
2 on -- on that type of pipe.

3 Q And did you understand that the polybutylene
4 pipe had to be out of the house before Ms. Doller would
5 buy it?

6 A It -- I don't know why. I mean, we get calls
7 all the time and I just go do the estimate and --

8 Q So you get calls all the time to replace
9 polybutylene pipe in houses that are about to be sold?

10 A Yes. A lot of real estate.

11 Q And is it your standard practice to write a
12 letter to the closing attorney and say we've got all
13 polybutylene pipe out of the house?

14 A No, it's not.

15 Q It's not?

16 A No.

17 Q Do you do that on occasion?

18 A Yeah, if they ask for it, I mean. So the
19 letter was written by our office manager.

20 Q Haven't gotten to the letter yet. My
21 question is, Do you do that as a matter of course?

22 A Just to please the customer, I mean, we need
23 this for a closing, so we try to please them.

24 Q Okay. Would you turn to Exhibit No. 1,
25 please? Do you recognize that document?

INDEX

1 A Yeah. That was by Gypsy Fletcher, the office
2 manager.

3 Q And who is Gypsy Fletcher -- she's the office
4 manager in your office?

5 A Yes.

6 Q Okay. And did you tell her to write this
7 letter?

8 A I don't recall whether I did or not. But I'm
9 sure, you know, I don't know, Allison at the law firm
10 there -- was who asked for it, to whom it may concern.
11 Somebody called and --

12 Q Well, let me tell you that that's the closing
13 attorney.

14 A Okay. Somebody asked for it for closing on
15 the house.

16 Q And so Ms. Fletcher wrote the letter.

17 A And so we provided it.

18 Q All right. This letter is not signed; is
19 that right?

20 A That one's not.

21 Q But the letter that was sent was signed,
22 wasn't it?

23 A I think so. I think Gypsy had signed it
24 above her name.

25 Q This is the copy from your office, isn't it?

INDEX

1 A I don't know. It looks like it, yeah.

2 Q Okay.

3 MR. ROBINSON: Move to admit Exhibit No. 1
4 into evidence, Your Honor.

5 THE COURT: Any objection?

6 MS. CANADAY: No objection.

7 THE COURT: Exhibit 1 is into evidence,
8 Plaintiff's Exhibit No. 1.

9 *(Whereupon, Plaintiff's Exhibit No(s). 1*
10 *marked for identification and received in*
11 *evidence.)*

12 MR. ROBINSON: I'd like to publish that to
13 the jury, if I may, Your Honor.

14 THE COURT: You may.

15 (PPlaintiff's Exhibit No. 1
16 published to jury.)

17 BY MR. ROBINSON:

18 Q I don't know if you can read that or not.

19 Would you read -- Mr. Doran, would you read that
20 letter, please, out loud?

21 A To whom it may concern. On October 28th, the
22 existing polybutylene at the above referenced address
23 has been removed and replaced with new pex piping
24 throughout the residence, and new meter valve box,
25 stops, supplies, and instructions were installed where

INDEX

1 necessary.

2 Q Okay. It doesn't say anything about leaving
3 any polybutylene pipe in that building, does it?

4 A Well, it's also a new meter valve box. I
5 wouldn't have written it that way. It's an office
6 manager being an office manager, not a plumber.

7 Q Okay. My -- my question was: It doesn't say
8 anything about leaving polybutylene pipe in the house
9 in that letter, does it?

10 A No. That was a verbal deal with Ms. Richie.

11 Q Okay. You intended -- it was your intent
12 when you wrote this letter, when the company wrote this
13 letter, to get the house closed, wasn't it?

14 A To help them out, yeah, whatever they needed
15 for closing. Not any other reason.

16 Q You didn't tell anybody verbally the letter
17 wasn't correct, did you?

18 A Probably not until I was served.

19 Q Okay. And Lohr completed its work sometime
20 November the 5th of 2010?

21 A I think it was the middle of October.

22 Q Okay. The letter got written later?

23 A Yeah.

24 Q All right. Did Ms. Doller call you about a
25 year later and explain about a leak?

INDEX

1 A November 30th.

2 Q Okay. And you went to the house and met with
3 her?

4 A A couple days later, I went. November 30th
5 my technician, actually the technician who re-piped the
6 house, was in the area and he was called. And so he
7 hand-wrote a ticket in the truck and went to her house
8 and stopped the water. Just cut the hole and stopped
9 the leak.

10 Q Cut the hole and stopped the leak. Okay.

11 And would you go to Exhibit No. 2?

12 A Uh-huh. (Indicating affirmatively.)

13 Q Is that where the leak was?

14 A Yes. The cold -- the blue side.

15 Q And blue side of the left, where the blue
16 pipe is coming in?

17 A The blue pipe on the left is the new pex
18 piping to the old valve that Ms. Richie didn't want to
19 replace.

20 Q Okay.

21 A So we replaced the cold, and the hot is red
22 to the actual valve.

23 Q Oh, and what's that gray pipe going up?

24 A The original poly that we would change if the
25 valve was changed.

INDEX

1 Q That's the polybutylene pipe?

2 A The non-pressurized polybutylene pipe.

3 Q Okay. Was that a fast-flowing leak?

4 A No, it was a drip.

5 Q A drip. Did you personally see that leak, or

6 did your employee tell you about it?

7 A No. He -- he went there and cut the hole and

8 capped that pipe. And then I went there on the second,

9 a couple days later, saw it was already, you know,

10 fixed. So I saw the hole, just like the picture.

11 Q Was it a slow drip?

12 A Well, like I said, he fixed it.

13 Q What did he tell you?

14 A He told me that it was a drip.

15 Q Okay. When you went to see the house a

16 couple days later, was the floor wet?

17 A Not that I could tell.

18 Q Not that you could tell?

19 A No.

20 Q Okay. Was the threshold up between the

21 master bathroom and the master bedroom?

22 A There was one little piece of wood near the

23 tile, where the wood floor met the tile floor going in

24 the bathroom.

25 Q Okay. And that was a little piece of wood

INDEX

1 between the two rooms; is that right?

2 A Right.

3 Q And that's called a --

4 A By the door.

5 Q And that's called a threshold. I'm sorry.

6 There wasn't any water standing in that, was

7 there?

8 A No.

9 Q Did you -- did you talk to Ms. Doller about

10 fixing that floor?

11 A Yes, I recommended --

12 Q What -- what did you tell her?

13 A Well, I recommend that any -- any kind of

14 water damage -- any time you go into somebody's house

15 and there's any kind of water damage, whether we did

16 it, we didn't do it, whatever, new customer, you walk

17 in, you immediately tell them to call a water

18 restoration company, like Service Master or ServPro.

19 And the homeowner usually takes that advice and calls

20 them immediately.

21 And what they usually do, what I've seen, is

22 they cut the drywall 4 feet across, they take the whole

23 drywall off, they take the baseboard off, and they go

24 to the insulation in the exterior wall. They'll remove

25 the flooring 10 feet past where the water stopped.

INDEX

1 They remove everything that's wet. And they get fans
2 and dehumidifiers, and that starts the process.

3 So Carl probably said it the day he was
4 there, and then I said it again on the 2nd.

5 Q You didn't see any water, though, when you
6 were there, right?

7 A But you could tell there was water under the
8 floor from the leak in the wall. I didn't see it
9 because I didn't pull the floor up.

10 Q Okay. Did you have a discussion with
11 Ms. Doller about how to speed up the -- well, let me
12 ask this question.

13 Was -- did you tell Ms. Doller that Lohr was
14 going to fix this mess?

15 A I told her it was our leak and I wanted to
16 take care of it.

17 Q Okay.

18 A So the first step is for her to take my
19 advice and call Service Master. I never called for a
20 homeowner.

21 Q Did you intend for her to pay Service Master?

22 A No. I wanted to get it fixed. I would have
23 paid for it.

24 Q Did you tell her that?

25 A Yes.

INDEX

1 Q Okay. Did she ask if there was anything she
2 could do to speed up the work?

3 A I don't recall. She may have, I mean, but
4 I -- call Service Master, they'll speed up the work.

5 Q Did you ask -- did she ask you about pulling
6 up the floor?

7 A I told her the floor would probably
8 eventually come up, most likely, because the water is
9 underneath it.

10 Q Did she ask you -- do you recall that she
11 asked you to -- if they could speed the work up by
12 starting to pull the floor up?

13 A "They," meaning the Dollers?

14 Q The Dollers, yeah.

15 A I'd never recommend a homeowner to do
16 anything like that.

17 Q All right. So your testimony is they didn't
18 ask you that?

19 A They may have asked me, but if I did, I'd say
20 that's up to you. I would call Service Master.

21 Q All right. So, now, she may have asked you
22 that, and if she did, you told her it was up to her; is
23 that right?

24 A That's her house, so she can do it or she can
25 let a professional do it.

INDEX

1 Q All right. Would you look at Exhibit No. 3.

2 And specifically, look at the second photograph.

3 That's Exhibit 3-B.

4 Do you know what we're looking at in that
5 photograph?

6 A Looks like the threshold from where the wood
7 floor came up, where the -- meets the tile in the
8 bathroom.

9 Q Okay. Is that what it looks -- now --

10 A No, I didn't see that.

11 Q Was the wood floor still there when you were
12 there?

13 A Yeah. There was one little piece where you
14 could tell water was between the wood and that marble
15 strip.

16 Q And is that this area right here?

17 A Yeah. The first day when -- when I met her
18 on the 2nd.

19 Q Okay. Could you see mold on the wood?

20 A I don't know if there was mold or not.

21 Q Would you look at the last photograph in that
22 exhibit?

23 A Uh-huh. (Indicating affirmatively.)

24 Q You see this black stuff on the wood here?

25 A Uh-huh. (Indicating affirmatively.)

INDEX

1 Q It looks like it's on both sides. Did you
2 see that when you were in the bathroom?

3 A No.

4 Q You didn't see any black stuff when you were
5 in the bathroom?

6 A Well, it was a little dark around the one
7 piece of wood on the threshold, but it wasn't like
8 that.

9 Q Okay. All right. Did you take any steps to
10 fix this problem?

11 A Yeah. I kept telling her we need to get
12 Service Master to dry it out, and she allowed to leave
13 a key for me and -- so that I could get a couple
14 different people to come in and start putting numbers
15 together as far as wood floor, drywall, you know, that
16 sort of thing.

17 Q And did people come in and do that?

18 A I met two different people there on two
19 different occasions.

20 Q Would you turn to Exhibit No. 19? Did you
21 get a proposal from anybody to do the repair work in
22 this house?

23 A Yes, I had two proposals.

24 Q And did you think the proposal was going to
25 solve the entire problem?

INDEX

1 A No. I was hoping Service Master would get in
2 there before me, that I would walk in on the 7th, when
3 we met the second time, and with the proposal on the
4 7th, that I would see fans, dehumidifiers, things being
5 dried out. And I could see if my proposal would fix it
6 or if somebody else was going to fix it.

7 Q Did you hire an indoor air quality hygienist
8 to tell you what needed to be done?

9 A That's what Service Master does.

10 Q You just told me that you got some proposals
11 to fix this mess.

12 A Yeah. I was going to walk in on the 7th, and
13 hopefully she took my advice on the Service Master
14 issue, and if there was anything other than in my
15 proposal, Service Master would let her know as well.
16 They're a professional water restoration company.

17 Q Well, let me see if I understand what you're
18 telling me. You told her to go hire Service Master.

19 A I can't --

20 Q And Service Master -- and Service Master was
21 going to give her a proposal on what needed to be done
22 to fix her house?

23 A They also do, besides just the restoration,
24 they do sewage restoration, burn, fire damage, and then
25 they also do contracting. So any type of work needed

INDEX

1 to be done in the house, they can come in and dry it
2 out, get the fans, dehumidifiers, and then take off
3 like a contractor would and do all necessary repairs.

4 Q So you wanted her to hire Service Master to
5 fix the damages caused by her leak; is that right?

6 A I could barely get in the house, and I was
7 only able to talk with her for one week.

8 Q Mr. Doran, I asked you a question, and I
9 would just like to have an answer.

10 A What's the question?

11 Q The question is, you wanted Ms. Doller to
12 hire Service Master to fix the damage that your leak
13 caused; is that correct?

14 A Not necessarily. Hire, call -- are you
15 talking about pay?

16 Q Yeah. I'm talking about taking care of the
17 mess.

18 A Call, let them in her house. It's her house.
19 She allowed me to come in, that was it.

20 Q So if Service Master was going to fix this,
21 why were you getting proposals?

22 A To try to tell her where -- where it was
23 heading, what type of price she was looking at, get
24 Service Master involved as well.

25 Q Did you tell Ms. Doller that you were going

INDEX

1 to hire Service Master to fix her house?

2 A I don't know if I did or not. I told her I
3 wanted to take care of it. We left a leak.

4 Q Did you hire anybody to write a protocol to
5 fix this thing?

6 A Write a protocol?

7 Q Yes, sir.

8 A I have this estimate; is that what you mean,
9 protocol?

10 Q No, sir. You were here yesterday, weren't
11 you?

12 A Uh-huh. (Indicating affirmatively.)

13 Q And you heard testimony about the fact that
14 you need a protocol in order to figure out how to --
15 what you're supposed to do to remediate a mold problem.
16 Did you hear that testimony?

17 MS. CANADAY: Objection. Objection, Your
18 Honor.

19 THE COURT: For?

20 MS. CANADAY: Objection. I think a lack of
21 foundation here --

22 THE COURT: Please, he's not going to ask --
23 he's not actually pitting the witness, he's just
24 asking if he heard the testimony. He can answer
25 that.

INDEX

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

2 THE WITNESS: So the protocol would be, like

3 I said, remove the drywall, remove the wet wood.

4 BY MR. ROBINSON:

5 Q My question was, did you hire anybody to
6 write a protocol?

7 A To write a protocol?

8 Q Yes, sir.

9 A I would consider my estimate a protocol.

10 Q Okay. Your estimate.

11 A The estimate that we have here from
12 Mike Brock.

13 Q Okay. So Mr. Mike Brock gave you an
14 estimate. It's Exhibit No. 19; is that right?

15 A Uh-huh. (Indicating affirmatively.)

16 MR. ROBINSON: All right. Move to admit
17 Exhibit No. 19 into evidence, Your Honor.

18 MS. CANADAY: I have no objection.

19 THE COURT: Is it tendered into evidence?

20 MR. ROBINSON: Yes, Your Honor.

21 THE COURT: And it's denominated what?

22 MR. ROBINSON: Exhibit No. 19.

23 THE COURT: Exhibit No. 19 is into evidence
24 without objection from Defense.

25 *(Whereupon, Plaintiff's Exhibit No(s). 19*

1 *marked for identification and received in*
 2 *evidence.)*

3 BY MR. ROBINSON:

4 Q Is this your proposal you got from Mr. Brock,
 5 you said?

6 A Yes.

7 Q All right. And it says, No. 1, remove all
 8 the furniture from the bedroom and reset when the work
 9 is done, right?

10 A Uh-huh. (Indicating affirmatively.)

11 Q Where's he going to take the furniture?

12 A I don't know if it can go in the garage or in
 13 the living room or -- there wasn't much in the bedroom.

14 Q You don't know. There wasn't much in the
 15 bedroom?

16 A No, just a couple of dressers and a bed.

17 Q Okay. The next thing says, Remove the
 18 drywall 3 feet off the floor, from the left side of the
 19 exterior wall next to the closet, around to the doorway
 20 leading to the kitchen. Take out the shoe mold and the
 21 base, remove insulation as per removal of drywall,
 22 right?

23 A Uh-huh. (Indicating affirmatively.)

24 Q Does he tell you what he's going to do with
 25 that stuff?

INDEX

1 A With the drywall?

2 Q Yes, sir.

3 A No. Generally they have a dumpster or a

4 trailer, and you haul it off.

5 Q Drag it through the house and haul it off?

6 A Not drag it, we would carry it.

7 Q Carry it through the house and haul it off.

8 A Right.

9 Q Okay. Then this says, Spray Mold Away with

10 mold prohibitor in areas that was water damaged on wood

11 studs.

12 A That's just a preliminary thing, yeah.

13 Q So he's got to spray some Mold Away on there.

14 He's not going to clean anything off, right?

15 A Well, you don't know until, you know, Service

16 Master does the drywall --

17 Q Well, Service Master --

18 A -- or we take the drywall off.

19 Q You told me this was your plan. Service

20 master is not here. I don't see anything from Service

21 Master, do you?

22 A Well, and it also says estimate, I believe.

23 Q Yeah.

24 A An estimate is exactly that. I mean, once

25 you open a wall, you may find more stuff, you may find

INDEX

1 less stuff that needs addressing, I mean.

2 Q Mr. Doran, is this your plan?

3 A No, it was his plan.

4 Q Okay. So now it's his plan, not your plan?

5 A It's -- yeah. It's a starting point of where

6 to begin to fix the problem.

7 Q Did you give this to Ms. Doller?

8 A No.

9 Q Okay. Next it says, Furnish and install

10 drywall, base, and shoe mold, finish drywall, ready for

11 paint, right?

12 A Uh-huh. (Indicating affirmatively.)

13 Q How about the insulation in the wall, they

14 going to take that out?

15 A Yeah. If it's damaged, absolutely.

16 Q Prime the drywall, paint two coats, paint the

17 shoe base. Remove the flooring and the underlay mat

18 and the shoe mold. Clean the concrete base floor and

19 spray mold prohibitor, Mold Away, right?

20 A Correct.

21 Q And then -- lightening storm -- furnish and

22 install, snap lock flooring, including shoe mold in the

23 doorway to the kitchen, align to exterior wall on the

24 closet side, including the cabinet.

25 That's your plan, right?

INDEX

1 A Correct.

2 Q Okay. You're not going to HEPA vacuum

3 anything, right?

4 A I don't know until the walls and floor are

5 up.

6 Q Do you know what they were going to do?

7 A Who's "they"?

8 Q Your contractor.

9 A Something pretty similar to the estimate, and

10 once it's opened, we would make another judgment call.

11 Q Did you -- did you hire -- write a letter to

12 anybody telling what you intended to do -- write a

13 letter to Ms. Doller, say this is what we intend to do?

14 A No. I was talking to her almost everyday,

15 her and her husband.

16 Q Did you write a letter to anybody stating

17 that you wanted to remediate the house?

18 A I was talking to Mrs. Doller and Mr. Doller

19 everyday, trying to get this fixed for them.

20 Q I assume that's a no?

21 A There was no letters.

22 Q Okay. Your contract wanted to charge \$4,143

23 for that work; is that right?

24 A Yes.

25 Q You acknowledged the leak was your

1 responsibility?

2 A Yes.

3 Q You acknowledged clean up of the damage
4 caused by the leak was your responsibility?

5 A Yes.

6 MR. ROBINSON: I don't think I have any
7 further questions.

8 THE COURT: Cross examination.

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

11 CROSS EXAMINATION

12 BY MS. CANADAY:

13 Q Mr. Doran, you didn't have any interest at
14 all in the closing of this home, did you?

15 A No.

16 Q You didn't have a contract with
17 Mrs. Doller --

18 MR. ROBINSON: Your Honor, object to leading
19 questions.

20 THE COURT: This is cross examination, she
21 can lead.

22 BY MS. CANADAY:

23 Q You didn't have a contract with Mrs. Doller?

24 A I didn't know Ms. Doller.

25 Q Right. And you had already gotten paid by

INDEX

1 Ms. Richie?

2 A Mrs. Richie, yeah.

3 Q So you had no interest in whether the home --
4 the sale between Ms. Richie and Ms. Doller closed,
5 correct?

6 A Correct.

7 Q Okay. And you talked about having fans and
8 dehumidifiers, et cetera, in Mrs. Doller's residence.
9 Would those be industrial grade type of dehumidifiers
10 and fans?

11 A Definitely.

12 Q Okay. It wouldn't be a unit like you might
13 have in your home for your child or for yourself to
14 have moist air to breath; is that right?

15 A No. When they come in, they have
16 dehumidifiers with drains on them that run out the
17 door, so they constantly empty themselves, big
18 industrial fans. They had four or five of them in a
19 room. You know, immediately. And they usually respond
20 within 24 hours.

21 Q Okay. And you, your company, was called on
22 November 30th; is that correct?

23 A November 30th.

24 Q And came out the same day?

25 A Yes.

INDEX

1 Q And you've also obtained -- you obtained two
2 estimates; is that right?

3 A Correct.

4 Q But you were just shown the one. I'll show
5 you the second one.

6 Now, Mr. Robinson was asking you why you
7 didn't give them to Ms. Doller. Why didn't you give
8 them to Ms. Doller?

9 A Well, if she was going to pay for it, I would
10 give her the estimates, you know. Otherwise, I'm
11 telling her this is what it's costing me to get this
12 fixed.

13 Q Right. You didn't ask her to pay for
14 anything, did you?

15 A No.

16 Q And you weren't going to ask her to pay for
17 anything, were you?

18 A No. I just wanted to get Service Master in
19 there.

20 Q And isn't it true that at some point you
21 weren't allowed to come back in the house; is that
22 right?

23 A On the 7th, we -- I met her at the house, and
24 from that point on, she wouldn't return any phone
25 calls. So within seven days, she completely stopped

1 talking to me, Mr. Doller stopped talking to me, they
2 would not call, return any phone calls. So I couldn't
3 do anything.

4 Q Right. Couldn't just go back in her house on
5 your own; isn't that right?

6 A No.

7 Q Okay. And you called repeatedly, correct?

8 A Correct.

9 Q And you wanted to get this fixed for them;
10 isn't that right?

11 A Yes.

12 MS. CANADAY: Okay. I think that's all I
13 have for you. Thank you.

14 THE COURT: Any redirect?

15 MR. ROBINSON: Yes, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. ROBINSON:

18 Q You were talking to Ms. Canaday about the
19 fans and the dehumidifiers that your favorite
20 contractor was going to put in there.

21 How long does it take to dry out the floor?

22 A How long does it take to dry out the floor?

23 Q Yes, sir.

24 A I don't know. When we walk into them all the
25 time, and -- you know, one of those companies is there,

INDEX

1 and the drywall's cut and floors are taken up, and the
2 water is gone and they're drying it out with
3 dehumidifiers and fans.

4 Q Were you last in the house on the 7th; is
5 that what you said?

6 A Yeah. The 7th was the last day I met her,
7 and we were going over everything again. What I had
8 come together to -- you know, the estimate. And still
9 wondering why Service Master isn't involved and why
10 they took the floor out.

11 Q Is that the 7th of December?

12 A Yes.

13 Q Okay. And did you go in the bedroom?

14 A Yes.

15 Q Did you see the floor up in the bedroom at
16 that point in time?

17 A Yes.

18 Q Okay. And was it dry under there?

19 A I don't recall. I mean, you had that white
20 membrane. I'm sure it was still wet because they
21 didn't take enough up. I mean --

22 Q You're sure it was still wet?

23 A I would have thought they would have taken
24 it -- I was going to do the whole room.

25 Q Yeah.

INDEX

1 A They did like 5, 6 feet in the corner.

2 Q Yeah, we seen the photographs.

3 A Yeah. I wouldn't have stopped there, I would
4 have kept going.

5 Q Okay. Well, what you could see was dry,
6 wasn't it?

7 A I don't recall if it was wet or dry.

8 MR. ROBINSON: All right. No further
9 questions, Your Honor.

10 THE COURT: You may step down. Thank you,
11 sir.

12 Mr. Robinson, you may call your next witness.

13 MR. ROBINSON: Thank you, Your Honor. We
14 call Ms. Doller.

15 THE COURT: Ms. Doller, please come forward.

16 Place your left hand on the Bible and raise your
17 right hand as the clerk administers the oath.

18 Thereupon,

19 PATRICIA DOLLER

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

22 THE COURT: Mrs. Doller, come forward, watch
23 your step, have a seat in the witness chair. Pull
24 it real close to that microphone. Speak loudly,
25 clearly, and slowly in order we can hear

Patricia Doller - Direct Examination by Mr. Robinson

1 everything that you you have to say. And let's
2 start with your full name.

3 THE WITNESS: My name is Patricia Kay Doller.

4 THE COURT: Very good.

5 DIRECT EXAMINATION

6 BY MR. ROBINSON:

7 Q Ms. Doller, where were you born?

8 A In Cincinnati, Ohio.

9 Q Where did you grow up?

10 A In Cincinnati, Ohio.

11 Q Where have you lived?

12 A I lived in Cincinnati, Ohio; Ross, Ohio;

13 Beaufort County; then moved back to Fort Thomas,

14 Kentucky, and then I returned to Beaufort.

15 Q Why did you return to Beaufort?

16 A Because I love it here.

17 Q When you returned to Beaufort, do you know
18 what year that was?

19 A Six years ago, so it's 2009.

20 Q Okay. And did you subsequently purchase some
21 property?

22 A Yes, I did.

23 Q And where is that property?

24 A 55 James F. Byrnes. It's in Royal Pines.

25 Q And is that probably a house?

TESTIMONY OF PATRICIA DOLLER

1 A Yes, it is.

2 Q Before you purchased the house, did you have
3 it inspected?

4 A Yes, I did.

5 Q And did the inspection reveal something that
6 needed to be fixed?

7 A Yes.

8 Q All right. Now, what was that?

9 A Poly -- polybutylene piping.

10 Q And why did that need to be fixed?

11 A Because I could not get the house insured as
12 long as the polybutylene was in the house.

13 Q Did the owner hire somebody to take care of
14 it?

15 A Yes.

16 Q And who did the owner hire to take care of
17 it?

18 A Lohr Plumbing.

19 Q How do you know that?

20 A Because I called the insurance agent -- I'm
21 sorry, the real estate agent who represented me. She
22 gave me his name.

23 Q And did you call Lohr Plumbing?

24 A Yes, I did.

25 Q What did you tell them?

TESTIMONY OF PATRICIA DOLLER

1 A There was a leak in the house.

2 Q All right. And did they come out?

3 A Yes, he did.

4 Q Did they fix the leak?

5 A Yes, he did.

6 Q And did Lohr Plumbing install replacement

7 pipe in the house?

8 A Yes.

9 Q Did Lohr Plumbing -- did Lohr Plumbing do

10 anything to indicate to you or your closing attorney

11 that the polybutylene was removed from the house?

12 A Yes.

13 Q Would you have -- was -- we looked at Exhibit

14 1. Let's look at Exhibit 1 there.

15 A I have it.

16 Q Is that the letter that was sent to your

17 closing attorney?

18 A Yes.

19 Q All right. Would you have closed on this

20 house if you knew there was polybutylene left in it?

21 A I couldn't.

22 Q Did you rely on this note, on this letter, to

23 close the house?

24 A Yes.

25 Q Have you ever lived in the house?

TESTIMONY OF PATRICIA DOLLER

1 A Yes.

2 Q When did you live in the house?

3 A From November 2010 through December 2012.

4 Q All right. Do you go to the doctor?

5 A Excuse me, please?

6 Q Do you go to the doctor on occasion?

7 A Yes.

8 Q All right. Did you go to the doctor in
9 October -- excuse me, did you go to the doctor in
10 September of 2011?

11 A Yes, I did.

12 Q All right. Why did you go to the doctor in
13 September?

14 A I was starting to have a rash on my body.

15 Q Okay. What did the doctor say the rash was?

16 A She thought that it was like poison sumac or
17 poison ivy.

18 Q Okay. Do you live in the house now?

19 A No.

20 Q Why not?

21 A It would kill me.

22 Q All right.. You discovered a leak, you called
23 Lohr?

24 A Yes.

25 Q What happened? Lohr came out, what happened?

TESTIMONY OF PATRICIA DOLLER

1 A He came out and he called a repairman, and he
2 fixed the leak.

3 Q All right. Did he cut a hole in the wall?

4 A Yes, he did.

5 Q Who did that?

6 A Brett Doran.

7 Q Okay. And then when he cut that hole in the
8 wall, did he tell you anything about it?

9 A He said, yes, it was like a -- a sloppy job
10 basically.

11 Q All right. And was there a leak there?

12 A Yes.

13 Q Is that -- who told you there was a leak
14 there?

15 A Brett Doran.

16 Q Could you see the leak, you, yourself?

17 A I didn't actually see the leak. My husband
18 did, Jim.

19 Q Okay. And did Mr. Doran tell you anything
20 about the pipe that you could see?

21 A No, he did not.

22 Q Look at Exhibit No. 2. Is that what that
23 hole looked like in the wall?

24 A Yes.

25 Q Did Mr. Doran tell you anything about the

TESTIMONY OF PATRICIA DOLLER

1 pipe going up, the gray pipe?

2 A No.

3 Q Okay. When did you -- what did you learn
4 about that pipe later?

5 A I telephoned a neighbor who is a --

6 Q All right. You can't say what the neighbor
7 said.

8 A Okay.

9 Q Okay. That would be hearsay.

10 A Okay.

11 Q All right. We can skip that, I think.

12 Now, Mr. Doran came back out and talked to
13 you?

14 A Yes, he did.

15 Q Did he tell you to call ServPro?

16 A No. No mention whatsoever.

17 Q No mention whatsoever?

18 A No.

19 Q What did he tell you that Lohr Plumbing was
20 going to do?

21 A He said he was going to cut the wall up to
22 like 3 feet up and he would have to replace the
23 flooring because he couldn't match it.

24 Q Okay. That would be all the flooring, I
25 presume?

TESTIMONY OF PATRICIA DOLLER

1 A No, just in that bedroom.

2 Q Yeah, I mean in the bedroom.

3 A Yeah.

4 Q I'm sorry. Okay.

5 Did he tell you you needed to dry the house

6 out?

7 A No.

8 Q Did he tell you you needed to get big

9 industrial fans and dehumidifiers?

10 A No.

11 Q Did you get a dehumidifier?

12 A I already had two in the house.

13 Q Okay. And what did you do with them?

14 A I put both of them in that master bedroom.

15 Q Okay. Did you have a conversation with

16 Mr. Doran about when this work was going to get

17 started?

18 A No.

19 Q When the repair work was going to get

20 started?

21 A No.

22 Q Did you have a conversation with him about

23 whether you could do anything to speed things up?

24 A Yes.

25 Q All right. And what was that -- tell the

TESTIMONY OF PATRICIA DOLLER

1 jury what that conversation was.

2 A Okay. Basically, I wanted to get the house
3 repaired again so I could go on with my life. And I
4 asked if we removed -- start removing the floor, would
5 that help things along? And he said, Oh, yes.

6 Q All right. So did you start removing the
7 floor?

8 A Yes.

9 Q And what happened?

10 First of all, did you get down and start
11 removing the floor, or did somebody else?

12 A Actually, Richard, my friend, he started
13 removing the floor. Jim was back up north again at
14 that time.

15 Q All right. So what were you doing while he
16 was removing the floor?

17 A I was taking the wood that he was ripping up
18 out to the garage because it was making a mess.

19 Q Were you wearing shoes that day?

20 A No, I go barefoot in the house. That's just
21 what I do.

22 Q All right. And were you wearing gloves?

23 A No.

24 Q So you picked up the wood and took it out
25 where?

TESTIMONY OF PATRICIA DOLLER

1 A To the garage.

2 Q All right. What did you do with it in the
3 garage?

4 A I just made a stack. I opened the garage
5 door because it -- it really smelled so terrible. But
6 I just made a stack by the garage door.

7 Q Okay. And we looked at photographs
8 yesterday, Exhibit No. 3. Would you look at Exhibit
9 No. 3?

10 And specifically, look at the next to last
11 photograph. Can you identify that?

12 A Yes. That's the wood that I removed from the
13 bedroom.

14 Q Okay. When you were removing this wood from
15 the bedroom, did something happen?

16 A Yes. By the third trip outside, my hands
17 turned beet red.

18 Q Did you have any sensation in your hands?

19 A It was burning.

20 Q It was burning.

21 A Yes, extremely.

22 Q So then what happened?

23 A Richard looked at my hands and he said, What
24 is going on with your hands? He said, Let's get out of
25 here.

TESTIMONY OF PATRICIA DOLLER

1 Q And so did you leave?

2 A Yes, we did.

3 Q Okay. Now, that was for that day. Did you
4 come back the next day?

5 A I didn't, Richard did.

6 Q All right. Were you talking to Mr. --

7 A Actually, I was still in the house.

8 Q Excuse me?

9 A I was still living in the house.

10 Q Oh, that was my question. Were you sleeping
11 in that bedroom?

12 A That night I did. But then I moved to the
13 spare bedroom.

14 Q Okay. Now, that day your hands are red and
15 burning, what was the next day like?

16 A It was getting worse.

17 Q It was getting worse?

18 A Yeah.

19 Q And how about your feet?

20 A Whatever it was that was on my hands was like
21 all over my body. My feet were beet red, too.

22 Q Your feet were beet red, too?

23 A Yeah.

24 Q Was it on -- now, I'm in the fourth or fifth
25 day of December. Okay?

TESTIMONY OF PATRICIA DOLLER

1 A Okay.

2 Q Is it all over your body at that point in
3 time?

4 A Yes.

5 Q All right. You saw the photographs that we
6 put up yesterday of your body.

7 A Yes.

8 Q Were those accurate depictions to the extent
9 the photographs are visible of what your body looked
10 like?

11 A Yeah.

12 Q All right. And did we progress through the
13 proper sequence?

14 A Yes, you did.

15 Q Okay. Did this rash cause you any pain?

16 A It was extremely painful.

17 Q Why?

18 A Because my body started swelling, and my feet
19 were like breaking up and so were my hands. If I
20 bumped even just a space like this (indicating), my
21 skin would break open.

22 Q Eventually were you able to -- were you able
23 to walk the full time?

24 A Excuse me?

25 Q Were you able to walk, to walk around as this

TESTIMONY OF PATRICIA DOLLER

1 disease progressed through December?

2 A No. I used a walker and a wheelchair.

3 Q All right. And where did you get the walker
4 and the wheelchair?

5 A From Richard. His wife was ill.

6 Q Now, there was some question yesterday about
7 whether you stayed in the house, moved out of the
8 house, when that happened. Do you remember that?

9 A Approximately --

10 Q Let me -- my question was, do you remember
11 the conversation yesterday with Mr. Guffey about when
12 you moved out of the house?

13 A Yes.

14 Q All right. Did you go to see Dr. Cusamano?

15 A Yes, I did.

16 Q All right. Do you remember when you went to
17 see him first?

18 A It was like the first week in December.

19 Q Right. Let's see if this refreshes your
20 memory.

21 See up there at the top in the middle?

22 A Yes.

23 Q What's the date?

24 A 12/6.

25 Q All right. Was that the first time you went

TESTIMONY OF PATRICIA DOLLER

1 to see Dr. Cusamano in your life?

2 A Yes. He was new into town.

3 Q Well, was that -- had you been to see him
4 earlier?

5 A No.

6 Q You don't remember going to see him earlier?

7 A No.

8 Q Did you go see somebody at Lady's Island
9 Internal Medicine earlier?

10 A I don't remember.

11 Q Okay. Well, if you don't remember, let me
12 give you this then.

13 THE COURT: Defense counsel wants to see that
14 document.

15 MR. ROBINSON: Oh, sure. Let me have it.

16 THE COURT: Now, it just goes to medical,
17 right?

18 BY MR. ROBINSON:

19 Q Look in the middle there and tell us what
20 that date is.

21 A It says 11/22.

22 Q All right. Do you remember going to see
23 Lady's Island Medical on 11/22?

24 A Now, I do.

25 Q And why did you go see them?

TESTIMONY OF PATRICIA DOLLER

1 A Because I had a rash that was all over my
2 body.

3 Q All right. Was that the same kind of rash
4 that you're talking about in December?

5 A No. It was much worse in December.

6 Q When you went to see Dr. Cusamano on the 6th,
7 did you tell him about moving the wood out of the
8 bedroom?

9 A Yes, I did.

10 Q What did you tell him?

11 A I told him -- actually, I asked him, could it
12 have anything to do with the mold in the house? And he
13 said no.

14 Q Did you tell him about moving the mold?

15 A The boards, yes, I did.

16 Q Okay. And then you asked him if this would
17 have had anything to do with it?

18 A Yes, I did.

19 Q He said no.

20 A Yeah.

21 Q All right. You went to see the doctors. Did
22 you have a dermatologist?

23 A Yes, I did.

24 Q All right. Who was the dermatologist?

25 A It's a satellite office of Dr. Bundy in

TESTIMONY OF PATRICIA DOLLER

1 Ocatee.

2 Q Okay. And did you go to the satellite office
3 when you had a problem?

4 A Yes, I did.

5 Q Okay. Do you remember going there in -- we
6 talked about September. They said it was poison oak.

7 A Yes.

8 Q Or poison sumac or something?

9 A Yes.

10 Q Okay. Did you go back after that to go see
11 him?

12 A Yes, I did.

13 Q Okay. And what did they tell you when you
14 went back?

15 A That it was psoriasis.

16 Q Okay. In September, did they give you
17 anything to take?

18 A From the dermatologist?

19 Q Yeah, from the allergist.

20 A Yes.

21 Q What did they give you?

22 A It was Olux foam. It's a topical treatment.

23 Q Okay. They give you any pills to take or
24 prescribe any pills to take to you?

25 A Not the dermatologist.

TESTIMONY OF PATRICIA DOLLER

1 Q Stay with me while I find this document I'm
2 looking for.

3 Does the word "Prednisone" mean anything to
4 you?

5 A Yes. I had gotten that from the -- gosh, the
6 urgent care facility on Lady's Island.

7 Q Okay. Let me hand you this document.

8 THE COURT: You might show -- any documents
9 you show the witness, you need to show Defense
10 first.

11 MR. ROBINSON: Thank you, Your Honor.

12 MR. TUPPER: No objection.

13 BY MR. ROBINSON:

14 Q Tell the jury what that is.

15 A Okay. It is the doctor's record.

16 Q Tell the jury what that is. What's it tell
17 you about Prednisone, let me put it that way.

18 A Okay. It tells me the dosage to take.

19 Q What's the date on it?

20 A Okay. September 25th.

21 Q All right. What's it tell you to do with
22 this Prednisone?

23 A Okay. It tells me to take it as directed.
24 It says, One capsule by mouth four times a day, the
25 capsules. Then one tablet by mouth twice a day -- it

TESTIMONY OF PATRICIA DOLLER

1 was a -- what do you say?

2 Q Read it for the jury, please.

3 A Okay. Okay. One tablet by mouth as

4 directed. Additional, SIG -- whatever that means --

5 take four POs three times a day, three POs three times

6 a day, two POs three times a day, one PO three times a

7 day.

8 Q Okay. So you took the pills for 12 days; is
9 that right?

10 A Yes.

11 Q Four, three, two, one?

12 A Yes.

13 Q Okay. And that started on September 25th?

14 A Yes.

15 Q Did those pills do anything for you?

16 A No, they did not.

17 Q Did things get better with the poison oak or
18 whatever that was?

19 A It cleared up a little.

20 Q And then in November, you went back to the
21 doctor on the 22nd?

22 A Yes.

23 Q Why did you do that?

24 A Because the outbreak was getting much worse.

25 Q All right. And between November 22nd and

TESTIMONY OF PATRICIA DOLLER

1 December the 6th, what happened to this rash that you
2 had?

3 A It went crazy.

4 Q Did it -- okay. And then did it clear up,
5 did it stay that way, what was it?

6 A It was bad. No, it did not clear up.

7 Q Okay. So on December the 4th, when you were
8 working in the room, you got this bad rash all over
9 you?

10 A Yes.

11 Q All right. Did this rash involve your hands?

12 A My hands and my feet.

13 Q Let me -- I don't think we're talking about
14 the same rash. I'm talking about the rash you had on
15 November 22nd?

16 A Okay.

17 Q All right. Did that rash clear up before you
18 were working in the bedroom, that's my question.

19 A Yes.

20 Q Oh, it did.

21 A Not a hundred percent. I still had a couple
22 of little spots.

23 Q Where were they?

24 A On my chest area and my arm.

25 Q Okay. So on December the 4th, when you're

TESTIMONY OF PATRICIA DOLLER

1 cleaning out this room --

2 A Uh-huh. (Indicating affirmatively.)

3 Q -- other than a couple of spots on your arms

4 and on your chest, did you have any rash at all?

5 A No.

6 Q Okay. What happened during December?

7 A December, it was just like the outbreak was

8 incredible.

9 Q You went to see Dr. Cusamano?

10 A Yes, I did.

11 Q Did you go back to see somebody else?

12 A I saw Dr. Cusamano, and he sent me to

13 Dr. Bundy.

14 Q Okay. And then did you go see anybody at

15 MUSC?

16 A Yes, I did.

17 Q Do you remember what day that was?

18 A Shortly thereafter. I can't remember the

19 date.

20 Q All right. Let's see if we can clear that

21 up.

22 What date was that? It's up here in the

23 left, I think.

24 A It says December the 6th.

25 Q No, let me have this. Did I give you the

TESTIMONY OF PATRICIA DOLLER

1 wrong one? Let me have this.

2 What's that date right there?

3 A December the 14th.

4 Q December the 14th. Is that the first time
5 you went to MUSC?

6 A Yes, sir.

7 Q Okay. And did you come back from MUS -- who
8 took you to MUSC?

9 A Richard did.

10 Q Okay. And on the way back, did you have a
11 conversation with Richard about living in the house?

12 A Yes.

13 Q All right. And what did you do about that?

14 A I stayed there for another day.

15 Q All right. So did you then move out?

16 A Yes, I did.

17 Q Where did you move to?

18 A I moved into Richard's -- one of his spare
19 bedrooms.

20 Q Okay. Do you know what day that was? Now,
21 it was the 14th you went to --

22 A The 14th, so it would be about the 16th.

23 Q The 16th, 15th, whatever it was.

24 A Yeah, 15th, 16th, yes.

25 Q All right. Now, yesterday we were looking at

TESTIMONY OF PATRICIA DOLLER

1 photographs -- all right -- about your hand. And I
2 think Richard said he thought he took this at our
3 house. Remember those photographs?

4 A We -- we didn't have a chance to discuss it.

5 Q Well, I'm not -- do you remember that
6 conversation you had with Richard?

7 A Yes.

8 Q Is that taken at your house?

9 A No.

10 Q Well, how do you know that?

11 A Because my blinds were all white, and his
12 has -- his has a bluish tint to it.

13 Q Okay. So if these were taken in mid
14 December, you weren't there in the house anymore; is
15 that right?

16 A No.

17 Q Likewise, yesterday we saw a photograph of
18 your head, Exhibit No. 6. Where was that taken?

19 A That's at Richard's house.

20 Q At Richard's house. Okay.

21 A Yes, sir.

22 Q So you were out of there in mid December; is
23 that right?

24 A Yes.

25 Q Did you go back to see Dr. Cusamano?

TESTIMONY OF PATRICIA DOLLER

1 A Yes, I did.

2 Q Do you remember what day that was?

3 A No, I don't.

4 Q Let me see if this refreshes your memory.

5 A Thank you.

6 Q See the date in the middle?

7 A 12/16.

8 Q Okay. So you went to MUSC on the 14th, and

9 you went to see Dr. Cusamano on the 16th; is that

10 right?

11 A Yes.

12 Q Let me have a minute.

13 And why did you go see him on the 16th?

14 A I -- I was starting with a cough. And it

15 wasn't just like, aha-aha, like that. It was a deep

16 cough.

17 Q Do you know when you went to see him after

18 that?

19 A I don't know.

20 Q Did you go see him after that?

21 A Yes.

22 Q Okay. What date did you go see him?

23 A 12/29.

24 Q Okay. Were things getting better or worse?

25 A They were pretty bad.

TESTIMONY OF PATRICIA DOLLER

1 Q All right. Did you go see anybody at MUSC
2 for a second time?

3 A Yes, I did.

4 Q Do you remember when that was?

5 A 12/30.

6 Q Okay. And why did you go back to MUSC?

7 A First, I went to see Dr. Cusamaño, and he
8 sent me immediately to MUSC.

9 Q All right.

10 A Because my arms and my legs were purple.

11 Q Okay.

12 A And they were swollen beyond belief.

13 Q Okay. What did you -- what did you think
14 about what was going on?

15 A I thought I was dying. I really did.

16 Q So on the 30th, you went to see MUSC. Then
17 did you go somewhere else shortly thereafter?

18 A I had to see Dr. Cusamano to follow up.

19 Q Well, did you go to the hospital?

20 A Yes, I did.

21 Q Do you remember when that was?

22 A I don't remember the date.

23 Q Let me find the date.

24 A January the 4th.

25 Q Why did you go to the hospital on January the

TESTIMONY OF PATRICIA DOLLER

1 4th?

2 A Because I was having severe chest pains, and
3 I was taken by an ambulance.

4 Q Okay. And when you went to the hospital on
5 January the 4th, did you stay in the hospital for a
6 while?

7 A Yes, I did.

8 Q And did they discharge you from the hospital?
9 Did they discharge you after, from the hospital?

10 A After a few days.

11 Q Okay. And did they find anything wrong with
12 your heart?

13 A No.

14 Q Okay. Did you still have the rash?

15 A Yes.

16 Q Was it getting better?

17 A It was bad.

18 Q Was it getting better was my question?

19 A No.

20 Q It wasn't?

21 A At that point it was not, no.

22 Q All right. Did the rash get better?

23 A Yes, it did.

24 Q All right. Did the rash get better all at
25 once, or did it get better over time?

TESTIMONY OF PATRICIA DOLLER

1 A Over time.

2 Q We looked at these photographs that were
3 taken, I believe the testimony was, the 12th day of
4 January. You still have the rash?

5 A Yes.

6 Q Is it getting better?

7 A It is getting better, because you can
8 actually see skin.

9 Q Okay. And then -- and then on the 27th of
10 January, is that getting better?

11 A Yes, it is.

12 Q But is it still there?

13 A It's definitely there.

14 Q All right. Now, when you left the house in
15 the 14th, the 15th, 16th, whatever it was, did you take
16 all your stuff with you?

17 A No, I did not.

18 Q Would you turn to Exhibit No. 8 in that book?

19 A Okay.

20 Q Exhibit No. 8, what are those photographs of?

21 A It's my bedroom furniture with all the linen.

22 Q Look at the photographs. Is it the -- tell
23 us, just kind of thumb through there and tell us what
24 those are photographs of.

25 A Okay. The first one is the bedroom.

TESTIMONY OF PATRICIA DOLLER

1 Q Can you tell us generically what those are?

2 A You want the name of the furniture?

3 Q No, I don't want the name of the furniture.

4 Are those photographs of the furnishings in your house?

5 A Yes.

6 Q Okay. You recognize those?

7 A Yes. They --

8 MR. ROBINSON: All right. We move to admit

9 Exhibit No. 8, Your Honor.

10 THE COURT: Any objection from Defense?

11 MS. CANADAY: Yes, sir. I'm not sure of the

12 relevance. I know she said --

13 THE COURT: Might we approach?

14 (Off-the-record discussion at

15 the Bench.)

16 MR. ROBINSON: Your Honor, that would be

17 Exhibit 8-A through 8-R.

18 THE COURT: 8A through 8-R?

19 MR. ROBINSON: Yes, sir.

20 THE COURT: It's into evidence over

21 objection.

22 *(Whereupon, Plaintiff's Exhibit No(s). 8A-8R*

23 *marked for identification and received in*

24 *evidence.)*

25 BY MR. ROBINSON:

TESTIMONY OF PATRICIA DOLLER

1 Q Ms. Doller, if you look at the book --
2 A Yes, sir.
3 Q -- tell us what the first photograph is of.
4 A That's my bedroom.
5 Q Oh, and that's all the stuff in your bedroom?
6 A Yes.
7 Q Is that stuff still there?
8 A Yes.
9 Q All of it?
10 A Yeah.
11 Q What's the next one?
12 A Okay. That's the armoire that's in the
13 bedroom.
14 Q All right. Is that stuff still there?
15 A Yes.
16 Q What's the next one?
17 A That is the master bath. There's a lamp
18 and --
19 Q Is everything in that photograph still in the
20 master bedroom?
21 A Yes, sir.
22 Q What's 8-D a photograph of?
23 A That's the kitchen and the laundry room.
24 Q Is everything in that photograph still in
25 your house?

TESTIMONY OF PATRICIA DOLLER

1 A Yes, still there.

2 That's the master walk-in closet --

3 Q Let me get it set up first.

4 All right. That's 8-E?

5 A That's the master closet and everything's

6 there.

7 Q Okay. What's 8-F?

8 A And that's all of my cookbooks in the

9 kitchen.

10 Q All right. They still there?

11 A Yes, with the mirror and everything.

12 Q How about 8-G?

13 A That is part of the living room.

14 Q All right.

15 A With artwork and everything.

16 Q Is everything in that photograph still there?

17 A Yes.

18 Q How about 8-H?

19 A That is the living room with the

20 entertainment center.

21 Q And is everything in that photograph still

22 there?

23 A Yes, sir, it is.

24 Q How about 8-I?

25 A Okay. Now, we're showing like part of the

TESTIMONY OF PATRICIA DOLLER

1 living room and the dining room area, and it's all
2 there.

3 Q Okay. How about 8-J?

4 A Let's see, that's what I call my office area.
5 Yes, it's all there.

6 Q 8-K?

7 A And that is an armoire that's in the bedroom,
8 or the office area.

9 Q All right. Is that still there?

10 A Yes, sir.

11 Q What is 8-L?

12 A It's another closet with my clothes.

13 Q They still there?

14 A Yes, sir. And that is a spare bedroom.

15 Q Okay. Is that stuff still there?

16 A Yes, everything is.

17 Q How about 8-M?

18 A That's also part of the spare bedroom, and
19 it's all there.

20 Q 8-N?

21 A That is another closet, and it's all there.

22 Q 8-O?

23 A That is the sunroom, and all the furnishings
24 are still there.

25 And that, I guess you would call it, like a

TESTIMONY OF PATRICIA DOLLER

1 little hallway, and from the living room into the other
2 bedroom.

3 Q Is that the couch on the right-hand side?

4 A That's actually -- it's an oversized chair.

5 Q How about 8-P?

6 A That's my dining room. That's a buffet.

7 Q And that's still there?

8 A Yes, sir.

9 Q And that is the dining room as well. All
10 right. That still there?

11 A Yes, sir.

12 Q And finally, 8-R?

13 A That's another chair that's in the living
14 room. It's all there.

15 Q The rug there?

16 A Yes, it's all there.

17 Q All right. So it's all still there?

18 A Yes, sir.

19 Q So when you moved out, what did you take with
20 you?

21 A An extra set of clothes. That's it, and my
22 clothes. Of course, my makeup.

23 Q Well, in January you started getting better?

24 A Yes.

25 Q Do you remember how much you weighed in

TESTIMONY OF PATRICIA DOLLER

1 November of 2011?

2 A Probably about in the low 90s. I was losing
3 weight at that time. Not trying to, I just was.

4 Q How much do you weigh today?

5 A Right now, I weigh 97 pounds.

6 Q On November 20th, how much did you weigh?

7 A I weighed 95.2 pounds.

8 Q Okay. On January the 4th, how much did you
9 weigh?

10 A I weighed 86.99.

11 Q Do you know how much you weighed at your
12 lightest?

13 A I went into like the -- I guess the high 70s.

14 Q Okay. That's while you had this rash?

15 A Yeah, it was.

16 Q All right. Did you -- were you working
17 before this happened?

18 A Yes, I was.

19 Q Who were you working for?

20 A Rossignol's.

21 Q And how much were you making at Rossignol?

22 A Fourteen an hour.

23 Q \$14 an hour?

24 A Yes, sir.

25 Q And do you remember, did you stop working at

TESTIMONY OF PATRICIA DOLLER

1 some point in time?

2 A Yes.

3 Q Why?

4 A Because part of my job was to open the
5 jewelry case, and I could not handle a key. I could
6 not manipulate it.

7 Q Do you remember when that was?

8 A It was in December.

9 Q Did you get pay stubs when you were working
10 for Rossignol?

11 A Yes, I did.

12 Q Okay. Would you look at these, they're in
13 reverse order. That is to say the latest one's at the
14 top and the earliest one's at the bottom.

15 A Yes.

16 Q What's the last one?

17 A What is what, please?

18 Q What's the last date? Look at the top, and
19 the last date's at the top. What's the last pay
20 period?

21 A Last pay period --

22 Q Over on the right-hand side. All right.
23 It's --

24 A Okay. 12/28.

25 Q 12/20 what to 12/28?

TESTIMONY OF PATRICIA DOLLER

1 A 12/28.

2 Q Well, no, ma'am. Over here.

3 A Oh, I see it. I'm sorry. I got you. Okay.

4 12/11 to 12/24.

5 Q Okay. And that's the last pay period you

6 had?

7 A Yes, sir.

8 Q All right. Do you know -- did you

9 finally get a -- did you get another job later on?

10 A Yes, I did.

11 Q And do you remember when you started working?

12 A It was in April of 2012.

13 Q Okay. And how much were you making in April

14 of 2012?

15 A \$9 an hour.

16 Q \$9 an hour.

17 A Yes, sir.

18 Q So between 12/24 and April of 2012 -- do you

19 remember what date in April?

20 A All I can remember, it was the week before

21 Easter.

22 Q Well, take a look at this. What's that date?

23 A It says 4/5.

24 Q Okay.

25 A Well, 12.

TESTIMONY OF PATRICIA DOLLER

1 Q That's a little bit more than a week before
2 Easter, right?

3 A Well, I had to go through a week of training.

4 Q Okay. So you were out of work for that
5 period of time?

6 A Yes, I was.

7 Q Did Rossignol tell you you had to go
8 somewhere else? Did they fire you?

9 A Basically they did. They were asking me when
10 I would return. I said, I don't know.

11 Q Do you have to get this house remediated?

12 A Yes, I have no choice.

13 Q Okay. Would you look at Exhibit 11 in that
14 book?

15 A Okay. I've got you. Okay.

16 Q What?

17 A I'm there.

18 Q Look that over and tell the jury what that
19 is.

20 A That's a property disclosure statement.

21 Q And does that have anything to do with the
22 purchase of that house that you purchased?

23 A Yes, sir, it does.

24 Q Did you get that at the purchase or shortly
25 thereafter?

TESTIMONY OF PATRICIA DOLLER

1 A Shortly thereafter.

2 Q Actually --

3 A It was shortly thereafter.

4 Q What's the date? Did you -- is that your
5 initial at the bottom?

6 A Yes, it is.

7 Q What's the date there?

8 A 10/4/10.

9 Q Okay.

10 MR. ROBINSON: Move to admit Exhibit No. 10,
11 (SIC) Your Honor.

12 THE COURT: Any objection from Defense?

13 MS. CANADAY: Relevance, Your Honor, and
14 hearsay objection.

15 THE COURT: Might I see the document?

16 MR. ROBINSON: Yes, sir. It's in the book I
17 gave you.

18 THE COURT: Number 11?

19 MR. ROBINSON: Yes, sir.

20 THE COURT: Objection's overruled.

21 Plaintiff's No. 11 is into evidence over Defense's
22 objection.

23 MS. CANADAY: Thank you, Your Honor.

24 BY MR. ROBINSON:

25 Q Now, Ms. Doller, on Exhibit No. 11, item

TESTIMONY OF PATRICIA DOLLER

1 No. 2, says, You must check one of the boxes for each
2 of the 24 questions on Pages 2 through 3 of those
3 forms; is that right?

4 A Yes, sir.

5 Q And what does A say underneath that?

6 A If you check yes for any item, you must
7 explain the problem, or attach a descriptive report of
8 an engineer, contractor, pest control operator, or
9 other expert or public agency. If you attach a report,
10 you will not be liable for any inaccurate or incomplete
11 information contained in the report as long as you were
12 not grossly negligent in obtaining or transmitting the
13 information.

14 Q All right. Now, would you look on Page 3 in
15 item No. 14. Now, at the top of that, there's
16 something in a box; do you see that box?

17 A Yes, I do.

18 Q Read that box, please.

19 A Regarding the property herein identified,
20 including the lot, other improvements and fixtures
21 located thereon, do you have knowledge of any --

22 Q And then what's No. 14 say?

23 A Environmental hazards, substances, materials
24 or products, including asbestos, formaldehyde, radon
25 gas, methane gas, lead based paint, underground storage

TESTIMONY OF PATRICIA DOLLER

1 tank, toxic mold, or other hazardous or toxic material,
2 whether buried or covered, contaminated soil or water
3 or other environmental contamination.

4 Q All right. If you were to try to sell your
5 house today, what would you have to check on item
6 No. 14?

7 A It's contaminated.

8 MS. CANADAY: Objection, Your Honor. He's
9 trying to get something in, but there's no
10 foundation for the question for the purpose that
11 he's using this document for, the question that
12 he's asking this witness.

13 THE COURT: Might we approach?

14 (Off-the-record discussion at
15 the Bench.)

16 THE COURT: Objection's overruled.

17 MR. ROBINSON: So Exhibit No. 11 is in; is
18 that correct?

19 THE COURT: Correct.

20 MR. ROBINSON: Thank you, Your Honor.

21 *(Whereupon, Plaintiff's Exhibit No(s). 11*
22 *marked for identification and received in*
23 *evidence.)*

24 BY MR. ROBINSON:

25 Q Have you moved back in the house?

TESTIMONY OF PATRICIA DOLLER

1 A No, I have not.

2 Q Okay. Have you been out of the house
3 continuously since you moved out?

4 A Yes.

5 Q Have you had any psoriasis since then?

6 A I've had a couple of small little outbreaks.

7 Q When you say "small," what's that mean?

8 A It's like little patches on the elbows or
9 knees.

10 Q Do you know how many?

11 A I'd say like five or six.

12 Q Okay. One a year, two a year?

13 A Yes. I'd say two a year.

14 Q All right. Have you suffered any monetary
15 damages because of this problem?

16 A Yes, I have.

17 Q Would you turn to Exhibit No. 12, please?

18 First of all, have you been paying your
19 mortgage since you've been out of the house?

20 A Yes, I have.

21 Q Continuously?

22 A Yes, I have to.

23 Q Have you totaled up, or has somebody totaled
24 up for you how much money you've paid in your mortgage
25 since you have not been living in the house?

TESTIMONY OF PATRICIA DOLLER

1 A Yes.

2 Q What is that number?

3 A It's \$56,766.

4 Q Have you totaled up what your medical bills
5 are since September of 2011?

6 A Yes.

7 Q And what's that number?

8 A \$28,215.

9 Q Okay. Have you computed, or has somebody
10 computed, the loss of income for that duration when you
11 were not employed?

12 A Yes.

13 Q And what's that number?

14 A It's roughly \$6,200.

15 Q Well, give us the number itself.

16 A Okay. \$6,228.42.

17 Q Okay. And are you claiming anything for the
18 fact that you're not making as much money now as you
19 were then?

20 A No.

21 Q Okay. We heard yesterday, and I'm going to
22 ask you this question, is the air conditioner running
23 in that house?

24 A Yes, it is.

25 Q Why?

TESTIMONY OF PATRICIA DOLLER

1 A I have to maintain the house.

2 Q Is the water still on?

3 A Yes, it is.

4 Q Why? Do you have a yard?

5 A Yes, I do.

6 Q Well, then I'll ask, does the lawn have to
7 get watered on occasion?

8 A It is on automatic sprinklers.

9 Q Ahhh. How much have you spent in utilities
10 in this house you can't live in?

11 A \$4,489.97.

12 Q And yesterday we heard testimony about what
13 the repair was going to cost. How much is that?

14 A \$87,942.

15 Q What's all that add up to?

16 A A lot.

17 Q Okay.

18 A It's \$183,642.12.

19 Q All right. That's your monetary damages
20 since you've been out of the house; is that right? Or
21 since this thing occurred, I suppose.

22 A Yes, sir. Yeah.

23 MR. ROBINSON: Move to admit Exhibit 12 into
24 evidence, Your Honor.

25 MR. TUPPER: No, Your Honor. She's testified

TESTIMONY OF PATRICIA DOLLER

1 to that. And that's in the record. To put a
2 document in the record would just be redundant.

3 THE COURT: Okay.

4 MR. ROBINSON: It's a data compilation,
5 Judge. And I have the back-up right here.

6 THE COURT: Counsel, approach the Bench.

7 (Off-the-record discussion at
8 the Bench.)

9 THE COURT: I understand Defense has
10 withdrawn the objection with the stipulation that
11 they be allowed to cross examine with regard to
12 the amount of the sum of the monetary damages.

13 *(Whereupon, plaintiff's Exhibit No(s). 12*
14 *marked for identification and received in*
15 *evidence.)*

16 BY MR. ROBINSON:

17 Q Ms. Doller, have you suffered other damages?

18 A I feel like I've lost my life. I love
19 my independence. Money's tight, so I can't travel.
20 And just like, I try really hard to make the payments
21 every month.

22 Q Do you have any physical problems left over
23 from that?

24 A As of right now, I don't really feel as
25 though I do, no.

Patricia Doller - Cross Examination by Ms. Canaday

1 Q Okay. But while you were suffering through
2 all this, did you have pain?

3 A Extreme pain.

4 Q Did you go out when you looked like this?

5 A No, I was embarrassed. Too embarrassed.

6 Q Okay. And could you move around, could you
7 move around freely even if you weren't embarrassed?

8 A No. It hurt to walk. It was so painful.

9 Q All right.

10 MR. ROBINSON: I don't have any further
11 questions for you. Let me clean this mess up, and
12 answer any questions that the Defense might ask
13 you.

14 THE COURT: Ms. Canaday, you're recognized.
15 Cross examination..

16 MS. CANADAY: Thank you, Judge. May it
17 please the Court.

18 CROSS EXAMINATION

19 BY MS. CANADAY:

20 Q Good morning, Ms. Doller.

21 A Good morning.

22 Q Now, a few questions to ask.

23 A Okay.

24 Q Now, are you married?

25 A Yes, I am.

TESTIMONY OF PATRICIA DOLLER

1 Q Do you remember me taking your deposition
2 last year?

3 A Yes, I do.

4 Q And asking you if you were married?

5 A Yes.

6 Q And do you remember telling me that you were
7 divorced at that point?

8 A Yes, I did.

9 Q Okay. So -- and do you remember your
10 husband's testimony yesterday, saying that you all were
11 married and divorced and remarried about four or five
12 years ago?

13 A Yes. Total of about 40 years, all and all.

14 Q Okay. So are you married or divorced?

15 A I'm married, dear.

16 Q So last year, when you told me that you were
17 divorced, were you divorced or were you married?

18 A We were married.

19 Q So when I deposed you, you told me you were
20 divorced, that was not right?

21 A No, it wasn't.

22 Q Okay. And you're a smoker?

23 A Yes.

24 Q How long?

25 A Since I was like 24, 25.

TESTIMONY OF PATRICIA DOLLER

1 Q Okay. So over 40 years?

2 A Yes, it is.

3 Q Okay. About a pack, pack a day?

4 A Just about a pack.

5 Q Okay. And that's continuous?

6 Continuously for 40 years?

7 A Continuous meaning what, am I a chain smoker
8 like this? No, I'm not.

9 Q You've been a continuous smoker for the past
10 40 years?

11 A Yes.

12 Q Okay. How about a drinker?

13 A Yes.

14 Q And how about what -- how much a day do you
15 drink?

16 A About a glass and a half.

17 Q Or two?

18 A About a glass and a half.

19 Q Okay.

20 A Yeah.

21 Q Okay. And what do you drink?

22 A Rum.

23 Q How about wine?

24 A Yes, Beringer's.

25 Q Okay. And you've had psoriasis for over 30

TESTIMONY OF PATRICIA DOLLER

1 years?

2 A Yes.

3 Q And you've had those flares for some time,

4 right?

5 A Meaning over a period of years, yes.

6 Q Yes, ma'am.

7 A Yes.

8 Q Okay. And you've had flares the first time
9 you moved to South Carolina, right?

10 A Yes.

11 Q Okay. So that was back in 2008?

12 A Yes.

13 Q Okay. So it flared then. How long do these
14 flares normally last?

15 A It isn't really that long. If it's long,
16 it's incredible.

17 Q Okay. So how long do they last generally?

18 A Three or four days.

19 Q Can it last for a couple weeks?

20 A It can, if I let it go.

21 Q Okay. If you let it go.

22 A Yes.

23 Q All right. You had a flare in September of
24 2009. Were you already living in Beaufort then?

25 A In September of what, please?

TESTIMONY OF PATRICIA DOLLER

1 Q 2009.

2 MR. ROBINSON: Objection, Your Honor. I
3 don't think that's what the testimony reflects.

4 THE COURT: Well, she's asking. She asked
5 the question, Did she? She can respond. I'll
6 allow it.

7 MR. ROBINSON: All right.

8 THE WITNESS: I would say yes. I really
9 don't recall, to be honest with you.

10 BY MS. CANADAY:

11 Q Okay. I'll tell you what, I'll show you a
12 document.

13 A Okay.

14 Q And that might help you remember.

15 A Thank you.

16 MR. ROBINSON: I'm going to object.

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

18 THE COURT: Yes.

19 (Off-the-record discussion held.)

20 BY MS. CANADAY:

21 Q All right. Ms. Doller, I'm showing you --

22 A It says September 10th, yes, it does, '09.

23 Q Of 2009. Who is this with?

24 A It says, Hilton Head Dermatology, but it's
25 actually Okatie office.

TESTIMONY OF PATRICIA DOLLER

1 Q Okay.

2 A Okay.

3 Q But the chief complaint is what?

4 A Red rash on legs, arms, and stomach, three

5 weeks.

6 Do you want me to read further?

7 Q And what -- no, that's all I needed.

8 And where did it start? Towards the bottom.

9 A Still itching, started on upper chest, and I

10 can't -- I can't read this.

11 Q Okay. That's okay.

12 And the past history reads, if you read the

13 line that says --

14 A Oh, it says psoriasis.

15 Q Okay. And do you know, can you tell from

16 that what they did for you, what this physician did for

17 you?

18 A Yes. Actually, she was not a doctor, I

19 thought she was, but it's Olux foam.

20 Q Okay. So a psoriasis outbreak had been

21 ongoing for three weeks, right?

22 A Yes.

23 Q According to this document?

24 A Yes.

25 Q In September of 2009.

TESTIMONY OF PATRICIA DOLLER

1 A Yes.

2 Q Before you moved in the house?

3 A Yes.

4 Q Arms, legs, stomach, neck, chest. Right?

5 According to that document?

6 A According to that, yes.

7 Q Okay. And then you had a flare in April

8 2010; do you recall that?

9 A Would you please state that again?

10 Q Yes, ma'am. Do you remember having a flare

11 in 2010, April 2010?

12 A Yes.

13 Q Okay. And do you remember where it was at

14 that point in time?

15 A Yes.

16 Q And where was it on your body?

17 A Okay. It was like wherever I didn't have my

18 skin covered. No see-ums eat me up. They do.

19 Q Okay. So I'm not -- do you remember where on

20 your body you had the psoriasis?

21 A I said wherever I wasn't -- if I wore a tank

22 top, it was wherever.

23 Q Would it be arms, legs, trunk, and scalp?

24 A Trunk I don't recall, to be honest with you.

25 Q If your records reflected that you had it on

TESTIMONY OF PATRICIA DOLLER

1 your arms, legs, trunk, and scalp, would you have any
2 reason to dispute that?

3 A No, I wouldn't.

4 Q So in April, you had an April flare, a
5 September flare. This is all before you moved in this
6 house?

7 A Yes, ma'am.

8 Q Okay. Arms, legs, trunk, scalp?

9 A Yes.

10 Q And that would be arms, legs, your trunk,
11 meaning your body?

12 A The way you're describing this, it sounds
13 like it was rampant. It was not. It was like spots.

14 Q Well, I'm just, from your records, it sounds
15 like it was all over your body, doesn't it?

16 A The way you're putting it, it does.

17 Q Well, it's in your records.

18 You had another flare in October of 2010; is
19 that right? Do you remember that?

20 A Yes. I'll say yes.

21 Q Well, I'll show you documents to remind you.

22 A Thank you.

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

24 THE COURT: You may.

25 BY MS. CANADAY:

TESTIMONY OF PATRICIA DOLLER

1 Q October 2010.

2 A It says April -- March, April, before.

3 Q No, ma'am, right here. Highlighted portion.

4 A Sorry.

5 Q That's okay.

6 A Yes.

7 Q And that's a psoriasis flare-up, correct?

8 A Yes.

9 Q And that's with who?

10 A That's also with doctor -- I call her doctor,

11 Ms. Wheeler.

12 Q That's okay. Hilton Head Dermatology.

13 A Yes.

14 Q Okay. And that's in October of 2010.

15 A Yes.

16 Q An additional flare before you moved into the

17 home?

18 A Yes.

19 Q Okay. Now, I've shown you four places where

20 you had a psoriasis flare before moving in this house,

21 and they had lasted for more than a couple days?

22 A Yes.

23 Q Okay. And one of these flares happened while

24 you were living in a rental home, because you were

25 renting a home in September or --

TESTIMONY OF PATRICIA DOLLER

1 A In Royal Pines, yes, I was.

2 Q Okay. Did you have that -- well, strike
3 that.

4 Now, you didn't have another problem again
5 until January 2011; isn't that right?

6 A Yes.

7 Q Okay. Do you recall that incidence?

8 A Yes. That's after we took up the
9 floorboards.

10 Q In January of 2011?

11 A 2011, yes.

12 Q Are you sure about that date?

13 A I'll say yes.

14 Q Well, you didn't notice the leak until 2010;
15 isn't that right? Or, excuse me, 2011, November?

16 A November 2011.

17 Q So I'm asking you about January 2011.

18 A I really don't recall. I'll be honest with
19 you, no.

20 Q I'll show you another document.

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

22 THE COURT: You may.

23 BY MS. CANADAY:

24 Q What's that document?

25 A I see it. It's 1/12/11.

TESTIMONY OF PATRICIA DOLLER

1 Q Okay. And what is this document telling you?

2 Does it tell you --

3 A Psoriasis. I can't read all of this. I
4 really can't.

5 Q That's okay. All right.

6 And if you look at the figure here showing
7 you where psoriasis is located, and where is it
8 located?

9 A Arms, legs, looks like elbows, that type of
10 thing.

11 Q Arms, legs, knees, elbows.

12 A Right.

13 Q Psoriasis flare in January of '11?

14 A Right.

15 Q Now, you told Dr. Lieberman, I believe, that
16 you had a flare -- really bad flare beginning in
17 February of 2011.

18 A Yes.

19 Q Is that accurate?

20 A Very accurate.

21 Q You had a flare in February of 2011?

22 A I had something on my body, 2011.

23 Q In February?

24 A February.

25 Q If you did, would you have gone to the

TESTIMONY OF PATRICIA DOLLER

1 doctor?

2 A Yes, I would go to a doctor.

3 Q Okay. And there are no records to reflect
4 that you had any sort of issue in February of 2011. Do
5 you still think you had a problem in February of 2011?

6 A Meaning?

7 Q Meaning you related information to
8 Dr. Lieberman or/and to possibly others that you had a
9 terrible flare of psoriasis in February of 2011. If
10 there are no medical records to reflect that you had a
11 flare of psoriasis in February of 2011 --

12 A I would say yes.

13 Q Even if there's no records to reflect that?

14 A Well, actually, you don't go to the doctor
15 every time you have a flare-up on psoriasis. They
16 usually give -- well, the prescriptions usually will
17 last over a long period of time.

18 Q Okay. So then when you relayed that
19 information to Dr. Lieberman it was one of the worst
20 flares ever, you were able to --

21 A I don't recall that.

22 Q Okay. You went to urgent care in July of
23 2011?

24 A Oh, yeah.

25 Q And you told them it was poison ivy?

TESTIMONY OF PATRICIA DOLLER

1 A Well, that's what we concluded. I didn't
2 know what it was.

3 Q Okay. But you told them, you must have given
4 them some information, right?

5 A Well, it -- it had blisters, like a poison
6 ivy or sumac or whatever.

7 Q Okay. And what did they do for you in
8 July 2011?

9 A Is that when I went to urgent care?

10 Q Yes, ma'am.

11 A Okay. They prescribed Prednisone.

12 Q In July?

13 I'll tell you what, do you remember going --
14 Mr. Robinson's already asked you about the urgent care
15 note in September of 2011.

16 A Right.

17 Q I'm going to show you that.

18 A I really don't remember any other time.

19 Q Isn't it the July -- this note, this
20 September visit is when they prescribed the Prednisone;
21 isn't that right?

22 A Yes, this was.

23 Q And do -- does it note a weight for you on
24 there?

25 A Can't see in all this -- 95 pounds.

TESTIMONY OF PATRICIA DOLLER

1 Q Okay. Now, do you recall telling anybody
2 that you started losing weight as soon as you moved in
3 this house?

4 A People I worked with, they noticed my clothes
5 were getting kind of like weird.

6 Q Okay. But in July of 2011, you're 95 pounds?

7 A Yes. That's standard for me.

8 Q Right.

9 A Yeah.

10 Q In October of 2011, after you've been to see
11 urgent care --

12 A Right.

13 Q -- you go to see Dr. Bundy -- Dr. Bundy, or
14 Hilton Head Dermatology; do you remember that?

15 A If I see the document, I can tell you if it
16 was Bundy or not.

17 I went to the Okatie office quite often
18 because it was closer.

19 Q That's okay.

20 MR. ROBINSON: Counsel, which one is that?

21 MS. CANADAY: It would be in October -- hold
22 on, I'll give you the date. October 2011.

23 MR. ROBINSON: 2/11/11?

24 MS. CANADAY: October --

25 MR. ROBINSON: 10/2/11?

TESTIMONY OF PATRICIA DOLLER

1 MS. CANADAY: Yes.

2 MR. ROBINSON: No objection.

3 THE WITNESS: I don't remember this, I'll be
4 honest with you. But that had to be that
5 satellite office.

6 BY MS. CANADAY:

7 Q That's okay. But you went to see Hilton Head
8 Dermatology? Somebody associated --

9 A Yeah.

10 Q -- with that doctor, with that office,
11 correct?

12 A Right.

13 Q All right. And that's dated October, I
14 believe that's 26th, 2011, right at the top.

15 A Yes.

16 Q Okay. And if we look at, again, where they
17 have noted the location of the psoriasis because --
18 what is this; what does it say right here?

19 A Psoriasis flare-up.

20 Q Okay. And where is it noted on your body
21 here, like the trunk?

22 A Yes.

23 Q Your back?

24 A Yes.

25 Q Rear-end, right?

TESTIMONY OF PATRICIA DOLLER

1 A Yes.

2 Q Okay. So it's all over your body? It's on
3 your head?

4 A The way you say it, "all over," I'm sure it's
5 like here and there.

6 Q Well, I'm looking at the document here. It
7 says it's on the head?

8 MR. ROBINSON: Excuse me. Can I see that for
9 a second?

10 MS. CANADAY: Absolutely.

11 MR. ROBINSON: I got confused about what you
12 were saying.

13 Okay. This is not -- I don't have an
14 objection, I just -- okay.

15 Thank you, Your Honor.

16 BY MS. CANADAY:

17 Q Does this refresh your recollection that you
18 visited --

19 A Yes, the Okatie office, yes.

20 Q Okay. And y'all talked about your psoriasis
21 at that point; do you remember that?

22 A Yes.

23 Q Okay. Did they talk to you about any kind of
24 biologic agents at that point in time?

25 A Yes. I said, No way.

TESTIMONY OF PATRICIA DOLLER

1 Q Okay. Now, when you talked to whatever
2 physician you saw at Hilton Head Dermatology at that
3 point in time, did they --

4 A She wasn't a physician.

5 Q Whomever you were seeing. The PA, the nurse
6 practitioner, whomever you were seeing, did that
7 individual tell you anything about the Prednisone?

8 A Yes.

9 Q What did she tell you about it?

10 A That it's not good for psoriasis.

11 Q Not good for psoriasis, right.

12 A Right.

13 Q Did they indicate to you that coming off the
14 Prednisone caused your psoriasis to flare up?

15 A I don't recall.

16 Q Okay. They told you it wasn't good for you,
17 Prednisone was not what should be prescribed for you,
18 right?

19 A Right, for someone with psoriasis.

20 Q Okay. All right.

21 So the next time, October 26th, you're with
22 Hilton Head Dermatology. The next time that you go see
23 Hilton Head Dermatology, that's November 16th, correct?

24 A I'll say yes.

25 Q I'll show you another document.

TESTIMONY OF PATRICIA DOLLER

1 A Thank you. Yes.

2 Q Okay. And what are you there for?

3 A Psoriasis.

4 Q Okay. And where is it on your body,

5 according to the anatomy?

6 A I have spots on my hand, obviously, on my

7 feet, my arms, my elbows, always. That's it.

8 Q Okay. And, Patient denies any systemic

9 symptoms or complaints.

10 Is that how it reads right there?

11 A Yes.

12 Q Okay. And did you have biopsies performed at

13 this --

14 A No.

15 Q -- visit?

16 A They never did that.

17 Q Hilton Head Dermatology didn't do any

18 biopsies?

19 A Not the satellite office.

20 Q Okay. Well, somebody did some biopsies for

21 you --

22 A Dr. Bundy did.

23 Q Okay. And when I say "Hilton Head

24 Dermatology," I'm using that term --

25 A That's the office. Okay. Loosely. I

TESTIMONY OF PATRICIA DOLLER

1 understand.

2 Q Okay. And so are the results of that biopsy
3 there?

4 A Yes.

5 Q And what were the results of that biopsy?

6 A Guttate psoriasis.

7 Q Okay. This is November 16th, 2011, you've
8 been diagnosed with guttate psoriasis, right?

9 A So he says, yes.

10 Q Okay. And it sounds as if you were treated
11 in September for what you thought was poison ivy, they
12 gave you Prednisone?

13 A Right.

14 Q And when you came off the Prednisone, it
15 flared back up, correct?

16 And then you continued to treat with Hilton
17 Head Dermatology in October and then again in November,
18 where you get the biopsy and they say it's guttate
19 psoriasis, right?

20 A Right.

21 Q Okay. Now, after you see Dr. Bundy, you go
22 to see Dr. Cusamano, correct?

23 A Yes.

24 Q Do you remember why you were seeing him?

25 A What is the date?

TESTIMONY OF PATRICIA DOLLER

1 Q Do you remember when you saw him first?

2 A When he first came to Beaufort. He had just
3 opened his office.

4 Q Okay. I'll represent to you it's November
5 22nd, and you looked at this document with
6 Mr. Robinson, right?

7 A Yes, I did.

8 Q And do you know why you saw him?

9 A I had a rash of some kind, yes.

10 Q Okay. How much do you weigh here?

11 A 96 pounds.

12 Q Okay. And this is, again, 11/22/2011, and
13 let's read global assessment.

14 A Okay.

15 Q And let's read specifically there are patches
16 along --

17 A Okay. There are patches along her back and
18 spine, gluteal area, and at feet level. There are
19 numerous discrete patches on the arms and legs with
20 scales. Non tender, mild itch.

21 Q Okay. And the second to last sentence, Also
22 has some involvement on her palms.

23 A Also has some involvement on her palms and
24 severe hyperkeratotic areas on the soles of her feet.
25 Feet are somewhat edematous, mildly tender, and red.

TESTIMONY OF PATRICIA DOLLER

1 Q Okay. So 11/22, we've already got
2 involvement of hands and feet at that point; is that
3 right?

4 A Yes.

5 Q Before a leak is discovered in the home,
6 right?

7 A Right.

8 Q Okay. Now, did you get any prescriptions
9 from anybody in response to that visit? Were you using
10 your Olux foam?

11 A Yes.

12 Q Were you using any ointment creams to address
13 this?

14 A It starts with a K, I cannot remember the
15 name.

16 Q But you were using those creams?

17 A It's a cream, yes.

18 Q Okay. But you had followed all the
19 instructions that your physicians were giving you?

20 A Always. Always. Yes.

21 Q All right. Did you go see Dr. Bundy, Hilton
22 Head Dermatology, after you saw Dr. Cusamano
23 November 22nd?

24 A Yes.

25 Q Okay. Do you remember what you saw him for?

TESTIMONY OF PATRICIA DOLLER

1 A Because -- because of the rash.

2 Q Did you ever at any point tell Dr. Bundy that
3 you were feeling a hundred percent better?

4 A We never really talked that much.

5 Q So if there's a record that indicates you
6 told Dr. Bundy that you felt a hundred percent
7 better --

8 A Probably his nurse. His nurse did all the
9 talking.

10 Q Would you have said that, that you felt
11 better on the creams, et cetera?

12 A Possibly, yes.

13 Q Okay. Did you get a prescription from
14 Dr. Bundy for -- for an antibiotic; do you know?

15 A No, I don't honestly remember, to be honest
16 with you.

17 Q Have you ever had any colds or bronchitises,
18 upper respiratory infections?

19 A Yes. Yes.

20 Q Did you ever have those outside of this
21 house?

22 A After I left the house, yes, I did.

23 Q Did you have any while you lived in the
24 house?

25 A No. I've had colds, I mean, like common, you

TESTIMONY OF PATRICIA DOLLER

1 know.

2 Q Did you have any colds or bronchitis prior to
3 moving into the house?

4 A That's interesting you're asking. I
5 thought -- really thought about that. Several years
6 ago, I may have had a touch of bronchitis, I had a deep
7 cough. So I don't recall if it was bronchitis or not,
8 to be honest with you.

9 Q So you think that you may have?

10 A Possibly.

11 Q Okay. But not while you lived in the house?

12 A No.

13 Q Okay. You didn't have bronchitis until 2012,
14 January, right?

15 A Yes.

16 Q And you were already out of the house?

17 A Yes.

18 Q And did we establish the date that you moved
19 out of the house?

20 A December 16th or 17th. In and around that
21 time, yeah.

22 Q Okay. You'd never used the bathroom in the
23 master bedroom, did you?

24 A No.

25 Q Why was that?

TESTIMONY OF PATRICIA DOLLER

1 A I hated it. I was going to redo it.

2 Q So you slept in that room?

3 A And the other bath in the house is tiny. So

4 the bathroom is like about 25 feet away.

5 Q 25 feet away?

6 A Well, 50. Okay.

7 Q And you have to go through the kitchen, the
8 living room, the hallway to get to the other bathroom?

9 A I said it's a cracker jack box house.

10 Q Okay. And we saw those pictures.

11 A Yes.

12 Q Multiple rooms, right?

13 A Yes.

14 Q So Mr. Doran arrives on November 30th, Lohr
15 Plumbing arrives on November 30th, right?

16 A 29th, but that's okay.

17 Q You think it's the 29th?

18 A Oh, yes.

19 Q Okay. I'll show you this.

20 Let me show you a document, Ms. Doller. And
21 you said --

22 A I never saw this.

23 Q And you said that Mr. Lohr, or excuse me,
24 Lohr Plumbing came out the same day that he was called,
25 correct?

TESTIMONY OF PATRICIA DOLLER

1 A Oh, yes.

2 Q And what's the date of that document?

3 A It says 11/30.

4 Q Okay. So November 30th, 2011.

5 A Well, as you say. But I say it was the 29th.

6 Q But we have a document from Lohr Plumbing
7 saying it was November 30th.

8 A I read it, okay.

9 Q Detects the leak. And was it the next day
10 that you and Mr. Guffey begin pulling up the floors?

11 A No, it was a couple of days later.

12 Q Okay. And you moved into Mr. Guffey's home,
13 you think, December 17th?

14 A In and around.

15 Q And you moved out of your bedroom into a
16 spare bedroom?

17 A Yes, I did.

18 Q And you moved out -- well, how long did you
19 stay in your bedroom after the leak?

20 A Just that one night that I moved out of it.

21 Q And you moved into where?

22 A The spare bedroom.

23 Q In your house?

24 A Yes.

25 Q Okay. Now, you heard Mr. Lohr -- Mr. Doran,

TESTIMONY OF PATRICIA DOLLER

1 excuse me -- testify that he procured some estimates
2 and made every effort to contact you, but you didn't
3 return his calls, did you?

4 A Well, he never showed me any estimates.

5 Q Well, he wasn't going to ask you to pay for
6 them.

7 A If I'm calling someone, to have them come
8 out, I will pay for it.

9 Q Why -- well, but he wasn't asking you to pay
10 for anything, was he?

11 A Actually, he didn't say a whole lot of
12 anything.

13 Q But he didn't ask you to pay for anything,
14 did he?

15 A No.

16 Q And did you return any of his phone calls?

17 A Not after a week.

18 Q You didn't return any of his phone calls, the
19 messages he left?

20 A I didn't get a lot of messages from him.

21 Q Well, didn't you tell me in your deposition
22 before that he kept calling and calling and leaving
23 messages --

24 A Yeah, when I was in the hospital and
25 everything else. He kept calling, at that time.

TESTIMONY OF PATRICIA DOLLER

1 Q But prior thereto -- but you told me that he
2 was instructed not to call you; isn't that right?

3 A Yes.

4 Q Somebody told him not to call you?

5 A Yes.

6 Q And to not come back in the house; isn't that
7 right?

8 A Right.

9 Q Okay. And who was that?

10 MR. ROBINSON: Objection, Your Honor.

11 THE WITNESS: Thank you.

12 THE COURT: Your grounds?

13 MR. ROBINSON: Excuse me?

14 THE COURT: The grounds?

15 MR. ROBINSON: Attorney-client privilege.

16 THE COURT: Okay. I'll ask you to rephrase
17 the question.

18 BY MS. CANADAY:

19 Q Who do you think told you not to let
20 Mr. Doran back in your home?

21 MR. ROBINSON: Objection, Your Honor.

22 THE COURT: Sustained.

23 MS. CANADAY: May we approach?

24 THE COURT: Yes, you may approach.

25 (Off-the-record discussion at

TESTIMONY OF PATRICIA DOLLER

1 the Bench.)

2 THE COURT: Objection's overruled. Withdrawn
3 and overruled.

4 BY MS. CANADAY:

5 Q Ms. Doller, who told you not to allow
6 Mr. Doran or anybody on his behalf back in the house?

7 A Parker Barnes.

8 Q Okay. And you didn't let him back in the
9 house; isn't that right?

10 A No, I did not.

11 Q When did you first call a lawyer?

12 A It was a couple of days after speaking with
13 Brett, and why I did because everything he was like
14 you're talking now, and I'm hearing you, and we've gone
15 down this road before. And I'm interpreting what
16 you're saying. With him, I wasn't buying anything he
17 was saying. Okay? And that's when I called to get
18 professional advice because I didn't know what to do
19 with the house.

20 Q Okay. And, in fact, the picture that we've
21 all seen, you've took those because you were preparing
22 to file a lawsuit; isn't that right?

23 A No.

24 Q That's not right?

25 A I didn't know what was going on with my body.

TESTIMONY OF PATRICIA DOLLER

1 Q Do you remember -- do you remember the
2 deposition that we -- that I took of you?

3 A Yes.

4 Q And do you remember me asking you why you
5 took those pictures?

6 A The initial pictures were not taken for that.

7 Q Do you remember me asking the question, of
8 why you took the pictures?

9 A Yes, I do.

10 Q And what did you say?

11 A I was advised to take pictures of it.

12 (Ms. Doller's deposition is unsealed by the
13 clerk.)

14 THE COURT: Mr. Foreman, ladies and gentlemen
15 of the jury, once again, depositions are documents
16 whereby the lawyers have an opportunity to the
17 talk with the parties and witnesses who know
18 things about this lawsuit. When depositions are
19 taken, both lawyers are present, both are allowed
20 to ask questions, the witness is under oath. They
21 have a court reporter there, there's a transcript
22 of it. These documents, depositions can be used a
23 number of different ways. One of which is, if
24 there's a statement that a lawyer contends was
25 answered differently at deposition than at the

TESTIMONY OF PATRICIA DOLLER

1 trial, they can point out those differences here
2 in court, and you may give it the weight you think
3 it deserves.

4 Ms. Canaday.

5 MS. CANADAY: Thank you, Judge.

6 BY MS. CANADAY:

7 Q Ms. Doller, turn with me, please, to Page 159
8 of your deposition.

9 A Okay.

10 Q If you would look to line 8, please.

11 A Okay.

12 Q And actually, if you'd look at Page 158, line
13 23.

14 A Okay.

15 Q And it reads -- read with me. I'm sorry,
16 we're talking about the location of the photographs.

17 A Right.

18 Q And Page 159 then reads the dates.

19 Question: No, we're talking about the
20 location. You said that they were taken at 8 Pickens.

21 Answer: Right. In my bedroom.

22 Question: In your bedroom. Okay.

23 Right.

24 And for what reason were these taken?

25 Go ahead and read that.

TESTIMONY OF PATRICIA DOLLER

1 A Oh, easy. Okay. Because I needed something
2 to keep track of what was going on with my body.

3 Q You can complete your answer.

4 A Okay.

5 Everything was just moving so fast and
6 horrible, I was scared.

7 Q Were you anticipating filing a lawsuit when
8 these pictures were taken? Answer?

9 A To be honest with you, yes. At that time,
10 especially on the last one, when my legs were purple.

11 Q Question: Who were you intending to sue?

12 A Brett Doran.

13 Q Definitely, right?

14 A Yeah, definitely.

15 Q And you took those pictures December 5th.
16 Mr. Guffey took the pictures December 4th, right?

17 A Okay. Yeah. Yes.

18 Q That's -- that is less than a week after you
19 found this leak, right?

20 A About a week, yes.

21 Q You were already anticipating a lawsuit?

22 A Actually, no.

23 Q Well -- okay. Are we telling the truth in
24 the deposition, or are we telling on the stand today?

25 A I'm telling you the truth. I said we took

TESTIMONY OF PATRICIA DOLLER

1 pictures initially because I didn't know what was going
2 on with my body. Then I was advised to take pictures
3 so I would have a history of what was going on with it.

4 Q Okay. You didn't call ServPro, right?

5 A I was not advised to call ServPro.

6 Q Okay. But you did call a lawyer?

7 A Yes, I did.

8 Q That was the first thing you did. That was
9 the first thing you did to fix your house was to call a
10 lawyer; isn't that right?

11 A I needed advice.

12 Q And you were given advice from Mr. Doran?

13 A He didn't tell me jack squat.

14 Q And you wouldn't let him back in your house
15 to tell you anything else?

16 A No, I wouldn't let him back in my home, ever.

17 Q Okay. And you wouldn't let anybody else --
18 did you actually call anybody else to come take a look
19 at your home?

20 A Yes, I did.

21 Q To give you a repair estimate?

22 A Okay. I called to see what black mold was
23 all about.

24 Q Okay. That --

25 A Yeah.

TESTIMONY OF PATRICIA DOLLER

1 Q That wasn't my question. I asked you, did
2 you have somebody come in to take any other --

3 A To give me an estimate, no.

4 Q Okay. And you, in fact, at the time I took
5 your deposition -- what's the date of that deposition?

6 A May 28th, 2014.

7 Q And at that time, at that month this time
8 last year, you weren't planning to get any estimates;
9 isn't that right?

10 A I didn't feel as though it was my
11 responsibility.

12 Q You weren't planning to get any estimates to
13 have your house fixed at any point in time, were you?

14 A The house has to be fixed, and I will fix it.
15 But at that time, I thought it was his responsibility,
16 not mine.

17 Q And he tried to do that, tried to repair it
18 for you, didn't it? And you wouldn't let him.

19 A By how, by using bleach?

20 Q And you wouldn't let him, right?

21 A No, I wouldn't let him do that.

22 Q Okay. You go back to Dr. Cusamano December
23 6th; isn't that right?

24 A Do I need this again?

25 Q Ma'am?

TESTIMONY OF PATRICIA DOLLER

1 A Do I need this again?

2 Q For -- in a moment. You can set that aside

3 for now.

4 A Okay. I go back to Cusamano.

5 Q Yes, ma'am. Do you remember going to see him

6 December 6th; do you recall that?

7 A Yes, I do, yes.

8 Q Okay. And what did you see him for; do you

9 remember?

10 A Because my body was turning purple at that

11 time. If that's the correct date.

12 Q Your body was turning purple?

13 A I'm not questioning your date, I'm

14 questioning my memory on that.

15 Q Okay. That's the -- does Dr. Cusamano refer

16 you to MUSC on December 6th?

17 A Yes.

18 Q Okay. And you go to MUSC. We talked about

19 that, right?

20 A Yes, we did talk about it.

21 Q Okay. December 14th, this is before you have

22 moved out of the house; is that right?

23 A Yes, it is.

24 Q Okay. And did they do anything for you at

25 MUSC?

TESTIMONY OF PATRICIA DOLLER

1 A They checked me over.

2 Q And did they give you any prescriptions?

3 A I don't think so. Oh, Clobesol.

4 Q Did they do a biopsy?

5 A Yes, they did.

6 Q And what did that biopsy tell you?

7 A It said psoriasis.

8 Q Same thing?

9 A Guttate psoriasis.

10 Q Guttate psoriasis, right?

11 A Yes.

12 Q So, Dr. Bundy's office, MUSC, everybody is

13 telling you it's guttate psoriasis?

14 A Yes.

15 Q Right? Because that's what it is, isn't it?

16 A Yes, it is.

17 Q Okay. Did anybody tell you what common

18 flares of guttate psoriasis are? Do you have any idea?

19 A No, I never had it before.

20 Q Did anybody tell you what common flares are,

21 what can cause it to flare up? Did anybody ever tell

22 you that?

23 A No.

24 Q You have a disease, and you haven't asked

25 anybody any questions about it?

TESTIMONY OF PATRICIA DOLLER

1 A What I have is a very mild form of psoriasis.

2 Q But you've been diagnosed as guttate?

3 A In fact -- yes, after I picked up the boards.

4 Q Well, with all due respect, Mrs. Doller, you
5 actually were diagnosed with guttate psoriasis well
6 before that; isn't that correct? November 23rd?

7 A I wasn't aware that it was, to be honest with
8 you, no. Huh-uh. (Indicating negatively.)

9 Q So Hilton Head Dermatology didn't tell you
10 when they performed the biopsy in November of 2011,
11 early November, that you had guttate psoriasis at that
12 time?

13 A That was a satellite office. No, she did
14 not.

15 Q Okay. All right. And at this point in time,
16 you're still getting calls and messages from Mr. Doran
17 that you're not returning; isn't that right?

18 A No.

19 Q No, it's not right, or you're not getting
20 calls and messages, or no, you're not returning them?

21 A He would call upon occasion, but why would I
22 call him? Yeah.

23 Q Are you still working?

24 A No, I'm retired.

25 Q You're retired today?

TESTIMONY OF PATRICIA DOLLER

1 A I retired back in September.

2 Q September of?

3 A Yeah, I'm 67 years old. You do retire at

4 some time in your life, yes.

5 Q You retired in September of 2014?

6 A Yeah.

7 Q I'm just --

8 A I know it's September of this past year.

9 Q Well, are you still working today?

10 A I work very hard every day, but not at a job,

11 a paying job.

12 Q Okay. Well, that's my question. Are you

13 working someplace?

14 A No.

15 Q Okay. When was the last time you worked?

16 A In September.

17 Q Of last year. I just want to make sure I

18 understand what you're telling me.

19 A Yes.

20 Q Okay. And where did you retire from?

21 A Publix.

22 Q Okay.

23 A Yeah.

24 Q And that was your choice to retire?

25 A Yes.

TESTIMONY OF PATRICIA DOLLER

1 Q Okay. Well, weren't you supposed to return
2 to Rossignol's just after the first of the year?

3 A I went to talk with him, and he wanted to
4 know when I was coming back. And my skin was still
5 rampant, I was still having -- I had just gotten out of
6 the hospital, and I was having difficulty walking. It
7 wasn't easy. But we talked and he wanted to nail me
8 down on a date. And I said I can't tell you when. And
9 so I just handed him my key. That was it.

10 Q Okay. So it was a mutual parting of ways?

11 A Yeah.

12 Q Okay. Now, let me turn your attention --
13 this is December 16th. And who is this -- who are you
14 visiting on this date?

15 A Dr. Cusamano.

16 Q Okay. Now, you move out on the 17th; is that
17 right? 2011, right?

18 A Yeah.

19 Q Okay. And you move out somewhere in this
20 time frame between the 14th and the 17th, roughly?

21 A Yes.

22 Q Okay. Let me point you where I want you to
23 look at.

24 A Okay. Go ahead.

25 Q Under physical exam. Under physical exam.

TESTIMONY OF PATRICIA DOLLER

1 A I got that.

2 Q Okay. The first --

3 A The patient is alert and oriented, looks
4 clinically well, relative to how she has been in the
5 past. The rash is about 50 to 60 percent improved on
6 the crane. Feet are much less now, and much less
7 edematous with resolving hyperkeratosis.

8 Q Okay. This is December 16th?

9 A Yes, it is.

10 Q It says rash is 50 to 60 percent better on
11 the crane, your feet are looking better, and your hands
12 are looking better. This is before you moved out of
13 the house, right?

14 A In and around, yes.

15 Q Okay. But before you move out of the house,
16 because I believe you testified that you moved out on
17 the 17th.

18 So end of the month, you've already testified
19 that while you were in the hospital in January, the
20 rash was still pretty bad?

21 A It was very bad.

22 Q And that's after you moved out of the house,
23 right?

24 A Yes. It was right after I moved out of the
25 house, yes.

TESTIMONY OF PATRICIA DOLLER

1 Q So you moved -- you had been out of the house
2 since the 17th, but by the 16th, you were already
3 getting better. And you're still in the house, you're
4 getting better while you were in the house, right?

5 A No.

6 Q Okay. So the doctor's records were
7 incorrect; is that what you're telling me? They're
8 wrong?

9 A Do they always keep excellent notes?

10 Q It looks as this if they did here.

11 So you moved out of the house, you go to the
12 hospital in January, and that's for chest pains.

13 A Uh-huh. (Indicating affirmatively.)

14 Q And you go to the hospital on the 4th of
15 January; is that correct? Released on the 6th?

16 A Yes.

17 Q And you're given a Z pack, you're prescribed
18 Erythromycin, right?

19 A No. Dr. Marchel, from MUSC, is the one who
20 prescribed the Erythromycin.

21 Q I'll show you another document in a second.
22 But at any point, you're on a Z pack?

23 A Yeah. AZ, it's okay.

24 Q You're on a Z pack, correct?

25 A Okay.

TESTIMONY OF PATRICIA DOLLER

1 Q In January; is that right?

2 A Okay.

3 Q January 6th, when you got out of the
4 hospital, right?

5 A Yes. I was told to continue with it.

6 Q Okay. And you go to see Dr. Cusamano when?

7 A I have no idea. I was told to follow-up with
8 him.

9 Q Okay. What's the date of that document,
10 Ms. Doller?

11 A Okay. January 10th, 2012.

12 Q And that's to -- your at Dr. Cusamano's
13 office?

14 A Yes.

15 Q Okay. Do you remember this visit?

16 A Oh, yeah.

17 Q And you have been discharged from the
18 hospital since January 6th?

19 A Right.

20 Q You were admitted late on the 4th?

21 A Right.

22 Q Okay. You're out on the 6th, and by the
23 10th, how were you looking and feeling?

24 A I was feeling better, but I still had the
25 rash. It was clearing. It was starting to improve,

TESTIMONY OF PATRICIA DOLLER

1 yes.

2 Q Okay. And let's see. Released in
3 January 6th, the diagnosis was bronchitis on
4 azithromycin. She is convinced -- she's convinced --
5 is he talking about "she" is you, that's Ms. Doller?

6 A I guess.

7 Q Is convinced that the beginning the
8 azithromycin has dramatically helped her psoriasis; do
9 you recall that?

10 A He wanted to know what I was taking. I
11 always took whatever I was on in to let him see. No,
12 he was convinced that it was a miraculous drug.

13 Q Well, he was convinced of that?

14 A Yes.

15 Q In a conversation with a physician at MUSC,
16 days ago, they apparently agreed. So MUSC agreed,
17 correct, that the azithromycin --

18 A Well, they had to do something.

19 Q That the azithromycin apparently was
20 alleviating your symptoms; is that right?

21 A I didn't go to MUSC after that was
22 prescribed.

23 Q That wasn't my question. I'm saying MUSC
24 agreed --

25 A You're twisting your statements, and that's

TESTIMONY OF PATRICIA DOLLER

1 my thing.

2 Q Did MUSC agree that the azithromycin was
3 clearing up your symptoms?

4 A They didn't see me after I started it. They
5 prescribed it.

6 Q And they suggested you continue?

7 A Yes.

8 Q Okay. Look at the bottom under physical
9 exam.

10 A Oh. Oh, this is from Cusamano.

11 Q Yes, ma'am. Same document.

12 A Looked dramatically better -- he called me
13 Mrs. America, okay -- very bright and enthusiastic.
14 Stem plaque much improved on toes and arms. Eczema
15 exists on the legs, that raise plaque, and scales are
16 gone.

17 They were not gone, I have pictures of it.

18 Q This is January 10th, Dramatically better.
19 January 10th, After a short course --

20 A Anything would look better after your legs
21 were like totally purple and your arms were purple.

22 Q You were referred to Dr. Lieberman by your
23 lawyers, right?

24 A Well, it's like a joint decision. I wanted
25 to know what was going on. If I'm allergic to

TESTIMONY OF PATRICIA DOLLER

1 something, I want to know what it is.

2 Q This was eight months after you've been out
3 of the house?

4 A Right.

5 Q July of 2012?

6 A Right.

7 Q But you weren't allergic?

8 A I did have reactions to three out of the ten
9 tests. And don't ask me what they were, they were pin
10 pricks.

11 Q I did not ask you what they were.

12 Do you have pets?

13 A Yes.

14 Q What do you have?

15 A A dog and a cat.

16 Q And they live with you in the home?

17 A Yes.

18 Q Okay. Has anybody told you that you need any
19 future treatment for anything?

20 A No.

21 Q Okay. And you haven't had any symptoms?

22 A Since I've been out of the house, no.

23 Q Well, you said that you had some psoriasis.

24 A I will have it until the day I die.

25 Q Right. And it could flare at any point in

TESTIMONY OF PATRICIA DOLLER

1 time?

2 A Yeah. That's right. Yes.

3 Q And you haven't had really -- well, you
4 didn't have any respiratory issues in the house at all,
5 did you?

6 A No. I had an occasional cold, but that's
7 nothing.

8 Q Okay. After I took your deposition in May of
9 last year, when you told me that you had no intentions
10 of getting your house repaired or moving back in it?

11 A I still say, why should I repair it?

12 Q You then went and got a repair estimate,
13 right?

14 A Yes.

15 Q And who -- who actually contacted that
16 individual?

17 A I believe Harvey did. I don't know people
18 that do that type of work.

19 Q It wasn't you though?

20 A No. I'm not that well connected.

21 Q All right. Let me get this straight.

22 November 30th, Lohr Plumbing is called to
23 address a leak, which they do. And December 5th,
24 you're taking pictures in preparation for a lawsuit,
25 right?

TESTIMONY OF PATRICIA DOLLER

1 A No.

2 Q In mid December, you hire a lawyer; isn't
3 that right?

4 A Yes, I did. I needed one.

5 Q In mid December?

6 A Yes. I needed someone.

7 Q Okay. And you were referred to a physician
8 eight months after you experienced the psoriasis flare,
9 right?

10 A Yes.

11 Q And you were referred by your lawyers, right?
12 Never got -- is that right?

13 A Well, I didn't know anyone that was an expert
14 in that field. I needed to talk with someone.

15 Q And then not until over three years later did
16 you get any sort of repairs to try and get anything
17 done with the house, to see what even needed to be
18 done. Because you didn't even know what needed to be
19 done; isn't that right?

20 A No, I didn't know, but I finally realized it
21 was on my shoulders.

22 Q But you wouldn't even let Mr. Doran in your
23 house?

24 A Why would I let him in my house? Never.

25 Q You wouldn't even let him come and see what

TESTIMONY OF PATRICIA DOLLER

1 else needed to be done; isn't that right?

2 A No one in their right mind would.

3 Q Okay. Didn't call anybody to come get the
4 water out, but did call a lawyer right away.

5 A I took care of the water, dear. I had
6 dehumidifiers going.

7 MS. CANADAY: One brief minute. I may be
8 done.

9 Bear with me.

10 (Pause.)

11 BY MS. CANADAY:

12 Q Ms. Doller, you told me earlier, the reason
13 you were admitted to the hospital was not because of
14 your skin condition, right?

15 A No. I had chest pains.

16 Q Had chest pains.

17 A Yeah.

18 Q And that's why you went to the hospital?

19 A I was taken to the hospital by an ambulance,
20 yes.

21 Q But that's why you went there?

22 A Yes, it is.

23 Q Not because of the skin?

24 A For the joy of it, no.

25 Q Right. Not for the joy of it, nobody does

TESTIMONY OF PATRICIA DOLLER

1 that, right?

2 A Right.

3 Q I'll show you this record, if I can find it.

4 But I just want to confirm with you that that was
5 not -- the skin condition was not the reason for your
6 going to the hospital in January?

7 A No. No, not at all.

8 Q Okay. Now, who was Parker Barnes? Sitting
9 over here, counsel table?

10 A Yes.

11 Q Okay. Now, turn with me. Grab that
12 transcript there, if you would.

13 A Okay. Go ahead.

14 Q And if you'll turn with me to Page 8.

15 A Okay.

16 Q Page 8, start at line 14.

17 A Okay.

18 Q Okay. And my question to you, Are you
19 currently married?

20 A We already went over this.

21 Q Yes, ma'am. Answer, please?

22 A No.

23 Q And, question, are you divorced?

24 A Yes.

25 Q Okay. And you said it again, let's see,

TESTIMONY OF PATRICIA DOLLER

1 Page 50. Turn to Page 50, line 11.

2 A Do you want me to read this to you?

3 Q Yeah, you can read that. Go ahead.

4 A Sure. My husband and daughter, my ex-husband
5 and daughter, had come down to visit.

6 At that time, he was my ex-husband.

7 Q Well --

8 A Okay. And that was the 13th of November. He
9 came down for about 24 hours, she came down for two
10 days.

11 Q Okay. So, again, are you married today, as
12 you sit here today?

13 A Yes, I am.

14 Q And you were married or divorced when I took
15 your deposition?

16 A Married.

17 Q So why did you tell me you were divorced?

18 A Because I didn't think it was any of your
19 business, to be honest with you.

20 Q But you were under oath, weren't you, to tell
21 the truth, right?

22 A I do.

23 Q But you were under oath on May 28th, 2014 to
24 tell the truth; isn't that right?

25 A Yes, it is.

TESTIMONY OF PATRICIA DOLLER

1 Q And so why didn't you?

2 A Shall I repeat myself again? I didn't think
3 it was any of your business.

4 Q It didn't really matter, though, did it? Of
5 all things to lie about, your marriage status?

6 A We are married, but we're not -- hmmm.

7 Q Now, going back to Beaufort Memorial Hospital
8 record, you were complaining of shortness of breath,
9 right? Shortness of breath?

10 A Yes. It's hard to breath.

11 Q Okay. Go ahead.

12 A It's actually hard to breath.

13 Q Okay. So why if it's not being -- you didn't
14 go to the hospital to be treated for your psoriasis,
15 why are you claiming that as part of your medical
16 bills?

17 A I do believe it's all connected.

18 Q But you just told me that you went there for
19 chest pain.

20 A You said -- you said it was not for
21 psoriasis. Then why are you claiming part of medical?

22 Q That's right.

23 A Yes. My condition, I was very weak at the
24 time, very, very weak. So I was -- I was susceptible
25 to anything.

TESTIMONY OF PATRICIA DOLLER

1 Q But you didn't get treated for psoriasis,
2 right?

3 A Not at the hospital, no.

4 Q Not at the hospital. But you still are
5 asking for that, for that damage?

6 A Yes, I am.

7 Q Okay.

8 THE COURT: Do you have any reply?

9 MR. ROBINSON: I do, Your Honor.

10 THE COURT: We're going to take a break.

11 Ms. Doller, this is an unusual situation.
12 You're still on the stand, and you're not allowed
13 to speak with any of the attorneys concerning your
14 testimony during the break.

15 THE WITNESS: We don't eat lunch together.

16 THE COURT: Okay. I don't -- I'm not really
17 inquiring. I'm just saying that you can't discuss
18 with any of the attorneys until you come back.
19 You're under oath, and the rules don't allow that.

20 So we're going to return at 1:45, 1:45 sharp.

21 MS. CANADAY: Your Honor, I just wanted to
22 clarify that I haven't finished my examination
23 yet.

24 THE COURT: Didn't you say you were finished?

25 MS. CANADAY: No, sir. I did not.

TESTIMONY OF PATRICIA DOLLER

1 THE COURT: All right. Well, go ahead and
2 finish your examination.

3 MS. CANADAY: Yes, sir. It won't be long.

4 BY MS. CANADAY:

5 Q Ms. Doller, about this hospital bill, it was
6 around \$19,000, right?

7 A I really don't have a clue. My insurance
8 covered it.

9 Q Okay. But if it's not related to the
10 treatment of psoriasis, that shouldn't be included in
11 your damages; do you agree?

12 A No, I don't agree.

13 Q Even though you just told me you're not being
14 treated in the hospital for the psoriasis?

15 A You don't hear very well, do you? I shared
16 with you. My condition, I was very weak. So I was
17 susceptible to almost anything.

18 Q Uh-huh. (Indicating affirmatively.)

19 A And I do believe that when I had bronchitis,
20 it was related to this whole situation.

21 Q Okay.

22 A Good.

23 Q Did a physician at the hospital tell you that
24 they were treating you for the psoriasis there?

25 A No. I did have a dermatologist walk to the

TESTIMONY OF PATRICIA DOLLER

1 door, didn't even come into my room, a dermatologist on
2 Lady's Island. And he looked at me from the doorway,
3 my bed's against the wall, and he says, Yes -- he with
4 another physician -- and he said, Yes, that's
5 psoriasis. And I got a \$500 bill for that. That's it.
6 That is true.

7 MS. CANADAY: Judge, I think I have a
8 question for you out of the presence of the jury.

9 THE COURT: All right. You may approach.

10 (Off-the-record discussion at
11 the Bench.)

12 MS. CANADAY: I'm done. Thank you, Your
13 Honor.

14 WITNESS: Thank God.

15 THE COURT: Very good.

16 Mr. Foreman, ladies and gentlemen of the
17 jury, once again, do not discuss the case amongst
18 yourself or with anyone else. Do not do any
19 independent investigation on the Internet or any
20 other way. And we'll see you back at 1:45, and
21 1:45 sharp.

22 (The Jury exits the Courtroom.)

23 THE BAILIFF: The jury's clear.

24 THE COURT: Very good. And, Mr. Robinson, I
25 ask that you assist us with Ms. Doller having no

TESTIMONY OF PATRICIA DOLLER

1 discussion.

2 MR. ROBINSON: I will make some instructions,

3 Your Honor.

4 THE COURT: Very good. All right.

5 (Recess.)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

TESTIMONY OF PATRICIA DOLLER

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

CERTIFICATE

STATE OF SOUTH CAROLINA:

COUNTY OF BEAUFORT:

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

DATED this June day of 24th, 2016.

Mona L. Manley /s/
MONA L. MANLEY
Official South Carolina Court Reporter
Circuit Reporter for the 14th Circuit
(850) 893-6662
mmanley@sccourts.org

TITLE PAGE

1 In the Court of Common Pleas for the
2 State of South Carolina, County of Beaufort
3 Case No.: 2012-CP-07-04139

4 Patricia Doller,

5

6 Plaintiff(s),

7 vs.

Transcript of Record

8 Lohr Plumbing, Inc,

9 Defendant(s).

10 VOLUME 4

11 September 2, 2015

12 Beaufort, South Carolina

13

14 BEFORE:

15 The Honorable Michael G. Nettles

16

17

18

19

20

21

22

23

24

25

APPEARANCE PAGE

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

APPEARANCES

LOHR PLUMBING, INC.'s ATTORNEYS:

Stacey Canaday, Esquire
Ralph E. Tupper, Esquire
611 Bay Street
Post Office Box 2055
Beaufort, South Carolina 29901-2055
(843) 524-1116

PATRICIA DOLLER'S ATTORNEY:

A. Parker Barnes, Jr., Esquire
PO Drawer 1729
Beaufort, SC 29901-1729

and

Brian Pratt Robinson, Esquire
Po Box 61110
Columbia, SC 29260

APPEARANCE PAGE

1	INDEX		
2	WITNESS:	PAGE:	
3	PATRICIA DOLLER		
4	Cross Examination By Mr. Robinson		313
5	PHILIP CUSUMANO, M.D.		
6	Direct Examination By Ms. Canaday		342
	Cross Examination By Ms. Canaday		362
7	Redirect Examination By Ms. Canaday		370
8	KENNETH WARREN		
9	Direct Examination By Ms. Canaday		372
	Cross Examination By Mr. Robinson		380
10	Redirect Examination By Ms. Canaday		401
11	LEITH WEBB		
12	Direct Examination By Ms. Canaday		404
	Voir Dire Examination By Mr. Robinson		405
13	Direct Examination ContdBy Ms. Canaday		406
	Cross Examination By Mr. Robinson		409
14			
15	BRETT DORAN		
16	Direct Examination By Mr. Tupper		417
	Cross Examination By Mr. Robinson		418
17	Redirect Examination By Mr. Tupper		418
18	Ex No.	Description	Marked: Received:
19	Plaintiff's Exhibit:		
20	21	worker photo	393 393
21	23	hand photo	400 400
22	Defendant's Exhibit:		
23	1	estimate	409 409
24			
25			

INDEX

1 PROCEEDINGS

2 THE COURT: Anything from the Plaintiffs
3 before we proceed?

4 MR. ROBINSON: No, Your Honor.

5 THE COURT: Anything from the Defense?

6 MS. CANADAY: No, Your Honor.

7 THE COURT: We're ready for the jury.

8 (The jury enters the courtroom.)

9 THE BAILIFF: The jury is in the courtroom.

10 THE COURT: Mr. Foreman, ladies and gentlemen
11 of the jury, good afternoon. Thank you all for
12 being here and being here on time. We will resume
13 with the prior testimony of Ms. Doller. And I'll
14 remind you that you're still under oath.
15 Mr. Robinson you're up.

16 MR. ROBINSON: Thank you, Your Honor.

17 Thereupon,

18 PATRICIA DOLLER

19 was called as a witness, having been previously duly
20 sworn, was examined and testified as follows:

21 CROSS EXAMINATION

22 BY MR. ROBINSON:

23 Q Ms. Doller, do you have trouble with dates?

24 A Yes, I do.

25 Q Has it always been like that?

CONTD TESTIMONY OF PATRICIA DOLLER

1 A No.

2 Q When did it become like that?

3 A I want to say about four years ago.

4 Q You were asked about these psoriasis flares
5 you had during 2011. Do you remember that?

6 A Yes.

7 Q Were they like the allergic reaction you had
8 after you picked up those boards?

9 A No, sir, entirely different.

10 Q How were they different?

11 A That was more other -- like the rash, the
12 scaly. But the -- my outbreak after I picked up the
13 boards, I don't know how to describe it. It was like
14 acid or something. It's crazy.

15 Q All right. You were asked why you took the
16 photographs.

17 A Yes.

18 Q And you said, because I was turning purple. I
19 want to get straight on that.

20 Look at Exhibit No. 4.

21 A I've got it.

22 Q All right. Those are the photographs that
23 were taken on December the 5th, right?

24 A Yes.

25 Q Okay. Are you turning purple in those

CONTD TESTIMONY OF PATRICIA DOLLER

1 photographs?

2 A No, no.

3 Q All right. Look at Exhibit No. 7. And I want
4 you to look at 7H, see that little number down at the
5 bottom?

6 A Yes.

7 Q Look at 7H, look at 7I, 7J and 7K.

8 A Okay. I've got it.

9 Q Are those what you were referring to as
10 "turning purple"?

11 A Yes.

12 Q All right. Now, as I understand the time
13 sequence, you found the leak problem or your husband did
14 on the 28th of November?

15 A Yes.

16 Q You called Lohr on the 29th of November?

17 A Yes.

18 Q Okay. And somebody came out the 29th -- he
19 says, the 30th, you say the 29th, I don't really care.

20 Had you started drying up the water at
21 that point in time?

22 A No.

23 Q When did you start drying up the water?

24 A It was the evening of the 29th.

25 Q Okay.

CONTD TESTIMONY OF PATRICIA DOLLER

1 MR. ROBINSON: I don't have any further
2 questions, Your Honor.

3 THE COURT: You may step down.

4 WITNESS: Thank you.

5 THE COURT: Mr. Robinson, you may call your
6 next witness.

7 MR. ROBINSON: The Plaintiff rests, Your
8 Honor.

9 THE COURT: All right. Mr. Foreman, ladies
10 and gentlemen of the jury, at this juncture you
11 have heard all of the evidence being presented by
12 the Plaintiff in their case in chief. We are
13 required to take up matters of law outside of your
14 presence. At this time I'm going to ask you to
15 retire to the jury room once again. Do not discuss
16 the case.

17 We will proceed and the Defendants will have
18 an opportunity to present their evidence. And
19 then, perhaps, maybe Mr. Robinson might have some
20 evidence in reply. That's kind of where we're at
21 now. Everyone retire to the jury room.

22 Once again, Mr. Foreman, no discussion about
23 the case whatsoever. All right. Everyone remain
24 seated as the jury exits the courtroom.

25 (The jury exits the courtroom at 2:00 p.m.)

1 THE COURT: All right. I'd be happy to
2 entertain motions at this time.

3 MR. TUPPER: Your Honor, the Defendant at this
4 time would move the Court for a directed verdict on
5 the grounds of testimony and the reasonable
6 inferences taken in light most favorable to the
7 Plaintiff requires the Court to direct a verdict in
8 favor of the Defendant.

9 First and probably foremost, on the issue of
10 the personal injury. There's no testimony in the
11 record regarding the proximate cause issue. Now,
12 there's no testimony in the record because the May
13 Report was not submitted that the type -- as to
14 what type of fungus -- not fungus, mold is in the
15 house. And that being the case, there has to be a
16 nexus. It has to be a nexus between the type of
17 mold and her allergic reaction. That is just the
18 consequence of not having the May Report in or
19 somebody here to specifically identify what type of
20 mold was in the house.

21 THE COURT: Let me ask you this. You know, in
22 matters such as this quite often plaintiffs are
23 required to rely on expert testimony with regard to
24 causation and the treatment and the remediation.
25 In all of these cases they quite often have that.

1 But there's a concept in the law that says that if
2 you can rely -- if the facts are so clear, you
3 don't have to rely on expert testimony to do that.

4 It's quite often -- that concept's quite often
5 put forward in medical malpractice cases, that says
6 if the injury occurs so quickly after the incident,
7 then a lay person may reasonably infer that there
8 was an injury.

9 What do you have to say about that concept?

10 MR. TUPPER: I don't think the concept would
11 apply here, Your Honor, because of the technical
12 nature of this type of --

13 THE COURT: I don't think anything can be more
14 technical than medical malpractice. Anyway, as a
15 matter of fact, it's probably about the same thing,
16 whether or not they were injured as a result of an
17 incident.

18 MR. TUPPER: Well, Your Honor, this
19 testimony -- the testimony that's not in
20 specifically relates to the type of mold that
21 causes this type of reaction. The only testimony
22 in the record, I think, is that there was some
23 black stuff. She may have referred to it as mold.

24 THE COURT: A bunch of people have referred it
25 to as mold.

CONTD TESTIMONY OF PATRICIA DOLLER

1 MR. TUPPER: But not what type of mold, Your
2 Honor.

3 THE COURT: All right. Well, let's hear from
4 the Plaintiff with regard to that particular
5 motion. And then I'll hear further from you.

6 MR. TUPPER: Thank you.

7 MR. ROBINSON: Thank you, Your Honor. If it
8 please the court, both Dr. Chiodo and Dr. Lieberman
9 testified unequivocally that the temporal nature of
10 this injury tells you, without any doubt
11 whatsoever, she picked up the moldy piece of wood
12 and within ten minutes she had this outbreak on her
13 hands and the cause was allergic recross.

14 Dr. Chiodo testified all kinds of molds can
15 cause allergic reactions. We don't have to
16 identify the mold, all we have to do is identify
17 the reaction. It was the mold that caused the
18 problem.

19 THE COURT: All right. Anything further in
20 that regard?

21 MR. TUPPER: Yes, sir. I would say, again,
22 that the kind of mold has to be established by
23 expert testimony.

24 THE COURT: Who says you have to identify the
25 kind of mold?

CONTD TESTIMONY OF PATRICIA DOLLER

1 MR. TUPPER: If you -- it seems to me that if
2 you're on the issue of proximate cause and direct
3 cause, the type of mold would relate to the type of
4 injury.

5 THE COURT: Do you have any authority that
6 would seem to indicate that you would have to prove
7 the particular type of mold?

8 MR. TUPPER: No.

9 THE COURT: I understand your position. I
10 disagree with you, though. And really the -- at
11 this level all they have to do is meet a scintilla
12 of evidence, which is very very very small. And I
13 understand your position and those make very good
14 factual arguments, that they have not identified
15 specifically the types of mold.

16 But I'm absolutely convinced that I would be
17 reversed if I granted the motion for a directed
18 verdict based on what's been presented here in this
19 trial. So -- but you're protected on the record.

20 MR. TUPPER: Thank you. I have another
21 ground, and that is on the issue of negligent
22 misrepresentation.

23 THE COURT: All right.

24 MR. TUPPER: And that goes to do with damages.
25 There's nothing for the jury to determine what the

CONTD TESTIMONY OF PATRICIA DOLLER

1 damages would be. I would have expected to hear
2 that she wouldn't close, she spent 400,000 or
3 whatever she spent on the house, and, therefore,
4 she's owed \$400,000. The only testimony was that
5 she wouldn't have closed, because she wouldn't have
6 been able to get insurance on the house.

7 Furthermore, I think that they'd show, for
8 negligent misrepresentation, that Mr. Lohr had a
9 pecuniary interest. The testimony was he wasn't.
10 He was told to write this letter; he wrote a
11 letter.

12 THE COURT: Well, I might be missing
13 something, but it seems to me when you're dealing
14 with damage to real property, the standard proof or
15 standard measure of damages is the value of the
16 land prior to the injury and the value afterwards.
17 There's also a loss of use aspect of it. And any
18 discomfort or annoyance to the Plaintiff is not.
19 That's what the damages are. And what does the
20 Plaintiff have to say about that?

21 MR. ROBINSON: Your Honor, Ms. Doller
22 testified she would have never had closed had it
23 not been for that letter. Letters of
24 misrepresentation requires a false representation,
25 that's not in dispute. It requires a pecuniary

1 interest, that's not in dispute, he had a contract.
2 It requires the duty of due care --

3 THE COURT: I think what he's talking about is
4 the damages, that's the only issue he's talking
5 about.

6 MR. ROBINSON: We'll get there.

7 It requires the duty of due care --

8 THE COURT: He has conceded that. I think
9 what we need to focus on is the damages.

10 MR. ROBINSON: She said, I would not have
11 closed on this house if it were not for that
12 letter. Her damages flow from the fact that she
13 lived in that house. It doesn't matter whether he
14 moved or changed out the polybutylene pipe. If she
15 hadn't bought the house, she'd have never suffered
16 any of these damages. Our contention is her
17 damages stem directly and proximately one way from
18 that letter that was incorrect. And so we think
19 we've got damages there. That is what our damages
20 are.

21 THE COURT: Right.

22 MR. TUPPER: I don't think there's any
23 testimony in for measure of damages. Just as you
24 said, Your Honor, you have to say here's what it
25 would have been, here's what I lost. She's talking

1 about her house, the value before, value after
2 loss --

3 THE COURT: Certainly there's a loss of use
4 aspect for the damages because she said what she's
5 paid for the mortgage, which would closely align
6 with the rental value. And we do know that there
7 has been an estimate to repair it, and that very
8 well could be interpreted into how -- how much the
9 real estate has diminished in value.

10 MR. TUPPER: It may be interpreted as that,
11 but there's no testimony as to how much -- it's
12 pretty simple to say, here's the diminished value
13 of this house because of the condition that it's
14 in.

15 THE COURT: Well, we know that the house is
16 worth something. And if it's been damaged in some
17 sort of way, the way to bring it back up to the
18 original value is the cost of remediation.

19 MR. TUPPER: But there's no testimony about
20 the actual cost.

21 THE COURT: I think there is, isn't there?

22 MR. ROBINSON: Your Honor, my understanding of
23 the damages that we had to present for the loss of
24 property is either -- either the difference between
25 the value you expected and the value you got or the

1 cost to repair. We've got dead certain numbers in
2 there for the cost to repair. We have the
3 estimate. We've gone through the estimate. We
4 have plenty of testimony in there, what that is. I
5 don't -- I just don't see what the question is,
6 actually.

7 THE COURT: As a matter of fact, it says, "If
8 the Plaintiff chooses the cost of restoration that
9 has been and may reasonably be incurred."

10 Didn't we say how -- there were several people
11 that talked about how much it was going to cost to
12 fix it, didn't they?

13 MR. ROBINSON: Yes, sir.

14 THE COURT: What do you say about that?

15 MR. TUPPER: Well, I get -- I understand that
16 the cost of the repair would come in. I don't
17 think it would come in on the cause of action for
18 negligent misrepresentation.

19 THE COURT: Okay.

20 MR. TUPPER: Further, there was no pecuniary
21 interest that Brett had by writing the letter. He
22 said the contract --

23 THE COURT: Well, it would -- it would come
24 under negligent misrepresentation, because the law
25 says that under negligent misrepresentation, "the

1 Plaintiff must prove that Plaintiff suffered a
2 monetary loss as a direct and proximate result of
3 the Plaintiff's reliance on the Defendant's
4 representation."

5 I mean, how more clear can that be?

6 MR. TUPPER: He had to have a pecuniary
7 interest in making that misrepresentation. That is
8 Brett did.

9 THE COURT: Oh, and it says -- the law says
10 that "There's an implied inference that there's a
11 pecuniary interest that's done in the light -- in
12 the framework of a business." It doesn't say that
13 there has to be money exchanged or money lost.

14 As a matter of fact, now if I'm -- I'm going
15 to look through my charge now. I know that's what
16 the law is. Let me see if I've got it written
17 down. "The Plaintiff must prove that the Defendant
18 had a monetary interest in making the false
19 proof -- false statement. Proof that a statement
20 was made in the course of Defendant's business/
21 professional employment is enough to show a
22 monetary interest in making the statement."

23 That seems like that's right on point.

24 MR. TUPPER: All right, sir. Then I move on.

25 THE COURT: Okay.

CONTD TESTIMONY OF PATRICIA DOLLER

1 MR. TUPPER: All right. How about on the
2 issue of her failure to mitigate?

3 THE COURT: I think that is a factual question
4 that's ever been presented to the jury. That's a
5 hundred percent a factual issue.

6 MR. TUPPER: All right, your Honor. Then I
7 would also move on the issue --

8 THE COURT: Now, what -- I mean, what are you
9 moving for with regard to duty to mitigate? I
10 mean, there's no way that I can direct a verdict
11 with regard to that. What you want me to do is
12 charge the duty to mitigate, and I will.

13 MR. TUPPER: All right, sir.

14 THE COURT: And that -- and it's going to be
15 squarely on your shoulders to talk to the jury
16 about that.

17 MR. TUPPER: Yes, sir.

18 THE COURT: About why they ought not be paid,
19 because they didn't do what they were supposed to
20 do.

21 MR. TUPPER: The last one I have is a directed
22 verdict on the issue of permanent injury that she
23 claims --

24 THE COURT: I don't think she --

25 MR. ROBINSON: We haven't claimed permanent

1 injury, Judge.

2 THE COURT: Pardon?

3 MR. ROBINSON: We have not claimed permanent
4 injury.

5 THE COURT: Yeah, she has not -- not only
6 that, she's not proving -- not alleging any future
7 damages. She says she's better.

8 MR. TUPPER: Thank you, that'll be all I have.
9 Thank you.

10 THE COURT: All right.

11 MR. ROBINSON: Your Honor, we -- we'd like to
12 move for a directed verdict on both of these causes
13 of action. On the negligent misrepresentation,
14 because, as I was starting to talk about, we've
15 gone through all of those elements, we've put those
16 up. And I think the only thing that I missed was
17 justifiable reliance, and you know, you go to
18 closing and the guy says he's taken care of
19 business, you are justified in relying on that. So
20 I think we put up everything that we need to on
21 that.

22 As far as negligence Mr. Doran talked about
23 the duty, he talked about the breach and we talked
24 about the damages. So I think we've got that
25 covered.

1 THE COURT: All right. What do you have to
2 say about the request for directed verdict on
3 reliability regarding negligent misrepresentation?

4 MR. TUPPER: I believe that's a question -- I
5 think we just said it was a jury question if the
6 facts in there are enough for the jury to have to
7 make that determination as finder of fact.

8 I don't see how the Plaintiff could at this
9 point in time when it is a very low bar to get
10 over, the inference can -- to move for a directed
11 verdict on questions that you have determined
12 are --

13 THE COURT: Well, you agree that there was
14 indeed a negligent misrepresentation? It doesn't
15 mean that he intentionally did it, but he said he
16 had repaired the plumbing -- corrected the
17 plumbing.

18 MR. TUPPER: I agree to that, Your Honor. But
19 I do not agree that that caused the --

20 THE COURT: Okay. So -- all right. Now,
21 we've have gotten that. You are conceding that
22 there was a negligent misrepresentation, the
23 uttering of a false statement?

24 MR. TUPPER: Yes.

25 THE COURT: Okay. The next thing that they

CONTD TESTIMONY OF PATRICIA DOLLER

1 have to prove is that the Defendant had a monetary
2 interest in making the false statement. He's in
3 the business of fixing plumbing, isn't he?

4 MR. TUPPER: I think you've just ruled it
5 against me in saying --

6 THE COURT: I mean, I'm asking you, what do
7 you think?

8 MR. TUPPER: Yes, he's in the business of
9 plumbing, but he had no pecuniary interest in
10 writing that letter. He got nothing in return for
11 it.

12 THE COURT: Well, he satisfied -- he said he
13 was satisfying his customer.

14 MR. TUPPER: His customer wasn't this lady.
15 His customer was the real estate agent.

16 THE COURT: Okay. Well, I disagree with you
17 on that one. All right. And the Plaintiff must
18 prove that the Defendant owed the Plaintiff the
19 duty to make sure that truthful information was
20 given to the Plaintiff, but Defendant breached that
21 duty by failing to use due care.

22 What do you think about that?

23 MR. TUPPER: I'm not going to concede it, Your
24 Honor. No, I don't -- his representation had to do
25 with there was no polybutylene in the house.

CONTD TESTIMONY OF PATRICIA DOLLER

1 THE COURT: Okay. Well, that -- there was
2 polybutylene.

3 MR. TUPPER: Right. But that didn't cause the
4 injury.

5 THE COURT: Why didn't it?

6 MR. TUPPER: Because the injury was caused by
7 a -- I don't know, it was some fastening, some
8 screw thing, that wasn't tight. He was in the
9 house.

10 THE COURT: Well, didn't your client on the
11 stand say that "a leak was my responsibility, and I
12 should" --

13 MR. TUPPER: The leak -- excuse me -- the leak
14 was his, no question. But the leak had nothing --
15 the only nexus between the polybutylene and the
16 leak is that's -- that's the reason he was in the
17 house. If the leak had come from the polybutylene,
18 I would agree with you, but it didn't. So the only
19 nexus is he -- but for him replacing the
20 polybutylene he wouldn't be in here.

21 THE COURT: All right. I'm going to deny the
22 motion for directed verdict with regard to the
23 negligent misrepresentation at this time. We can
24 revisit it at the conclusion of the case.

25 Anything else?

CONTD TESTIMONY OF PATRICIA DOLLER

1 MR. ROBINSON: I think I also move for
2 negligence, Your Honor.

3 THE COURT: Pardon?

4 MR. ROBINSON: I think I also move for a
5 directed verdict on negligence.

6 THE COURT: All right. I'll --

7 MR. ROBINSON: Duty, breach and damages.

8 THE COURT: I'm glad to hear from the
9 Defendant.

10 MR. TUPPER: I couldn't quite hear the second
11 thing you said.

12 MR. ROBINSON: I said, duty, breach and
13 damages.

14 THE COURT: He's saying that he's met all
15 the -- as matter of law I should direct a verdict
16 with regard to liability concerning negligence, I
17 believe is what he's saying.

18 MR. TUPPER: Well, again, on the same reason
19 that you turned my motion down, certainly the issue
20 of proximate cause is a fact for the jury to
21 determine.

22 THE COURT: I agree with you on that.

23 MR. TUPPER: And that in and of itself should
24 cause his motion to be denied.

25 THE COURT: All right. I agree with you. At

1 least there's a scintilla of evidence with regard
2 to that.

3 MR. TUPPER: Yes, sir.

4 THE COURT: Can anybody think of anything
5 else?

6 MR. ROBINSON: No, Your Honor, that's all I
7 have.

8 THE COURT: All right. Are we ready for the
9 jury?

10 MR. TUPPER: Yes, sir.

11 THE COURT: Oh, wait a minute, just one
12 second. What defenses are y'all alleging? You
13 know, you had pled in your answer comparative
14 negligence. I think that now would be a good time
15 for us to discuss that.

16 MS. CANADAY: Yes, Your Honor, I pled multiple
17 affirmative defenses in my answer.

18 THE COURT: Let's take each. Why don't you
19 pull out your answer, and let's go and see which
20 ones you're moving forward on.

21 MS. CANADAY: Okay. And I submitted
22 proposed -- I believe that I have submitted to you
23 proposed jury charges that set forth -- proposed
24 jury charges that include the affirmative defenses
25 that were --

CONTD TESTIMONY OF PATRICIA DOLLER

1 THE COURT: All right. Let's go through each
2 one of the affirmative defenses you've alleged and
3 let's talk about them.

4 MS. CANADAY: Okay. The first one is
5 comparative negligence.

6 THE COURT: All right. Let's talk about that.
7 You pled that -- how could her negligence have
8 contributed to this?

9 MS. CANADAY: Well, I guess that that,
10 actually, Your Honor, would go more towards -- to
11 damages.

12 THE COURT: So that really -- I don't think
13 comparative negligence applies, because I think
14 what you're saying is that she should have done
15 something different after that, and that really
16 goes more to the duty to mitigate.

17 MS. CANADAY: Yes, sir. And I don't know
18 that -- that I included that as a part of my
19 charge. So I think you would be correct.

20 THE COURT: Okay.

21 MS. CANADAY: And the next one -- we also --
22 negligence of another, I believe that we removed
23 that from our charges. Well, actually, Your Honor,
24 may I go back to comparative negligence?

25 THE COURT: Yes, you may.