

EXHIBIT A
Excerpts of Trial Transcript

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

THE COURT OF COMMON PLEAS
DOCKET NO. 2012-CP-10-7594

ONE BELLE HALL HOA, et al
Plaintiffs

vs.

BUILDERS FIRST SOURCE
Defendant

TRANSCRIPT OF RECORD

August 31, 2016
Charleston, South Carolina

VOLUME 3 (OF 4)

B E F O R E:

THE HONORABLE DIANE S. GOODSTEIN, JUDGE

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

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Attorneys for the Plaintiff

CATHERINE D. DYER, ESQ.
Attorney for the Defendant

JOYCE C. RUEGER, CVR-M
Circuit Court Reporter

One Belle Hall POA v Builders First Source Southeast Group, LLC
Proceedings
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1 MR. LUCEY: Plaintiffs will publish a short
2 excerpt from the deposition of Galvin.

3 THE COURT: All right.

4 MR. LUCEY: Homeowner Galvin.

5 THE COURT: I gather that is Mr.?

6 MS. LYNN: Mr. Mark Galvin.

7 THE COURT: Perfect. Thank you. As I understand
8 it this is the deposition of Mark Galvin, correct?

9 UNIDENTIFIED SPEAKER: Yes, ma'am.

10 THE COURT: Very well. You may proceed.

11 [Whereupon, an excerpt of the deposition of Mr. Mark
12 Galvin is read into the record] [Not taken down]

13 THE COURT: Thank you. Call your next witness
14 please.

15 MR. LUCEY: Plaintiff rests.

16 THE COURT: All right, very well. Ladies and
17 gentlemen you have now heard the witnesses and received
18 the evidence which you will from the plaintiffs in the
19 plaintiff's case in chief. That signifies to me that
20 there are matters that I must take up outside your
21 presence. I'm going to ask you to step to your jury
22 room. Remember do not discuss this matter or allow
23 anyone to discuss it with you. I don't think we will be
24 long.

25 [Whereupon, the jury exits at 4:32 p.m.]

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1 THE COURT: All right, thank you. Motions?
2 MR. LUCEY: One administrative matter, Your Honor.
3 THE COURT: Sure.
4 MR. LUCEY: We placed on the record or we thought
5 we placed on the record at the very beginning of the case
6 we asked that the exhibit list that was stipulated as to
7 the bold and I think the court reporter wasn't sure that
8 it was in the record and I just wanted to reiterate that
9 the exhibit list submitted the bold was stipulated into
10 evidence by both parties which is why we've been
11 referring to these as joint exhibits, plus there has
12 probably been three exhibits moved in before. Thank you.
13 THE COURT: Very well. I think that is correct.
14 So bold is in plus 3. All right. Motions?
15 MS. DYER: Yes, Your Honor.
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One Belle Hall POA v Builders First Source Southeast Group, LLC
Motion for Directed Verdict
August 31, 2016

1 MOTION FOR DIRECTED VERDICT

2 BY MS. DYER:

3 We'd like to move for a directed verdict. The first
4 directed verdict would be in regards to the cause of
5 action for negligence. We feel there has been a failure
6 by the plaintiff to meet its burden of proof that
7 Builder's First Source had a duty with regard to selling
8 the windows that was in fact breached and caused damage.
9 The second directed verdict ---

10 THE COURT: --- let me go ahead and handle it now.
11 I am going to respectfully deny your motion. Taking the
12 evidence in the light most favorable to the non-moving
13 party I do believe there is evidence of negligence. Yes,
14 next?

15 MS. DYER: Yes, Your Honor. The next would be
16 directed verdict on the cause of action of strict
17 liability. Under the statute code section 15-73-10 it's
18 our position that there has been a failure of proof by
19 the evidence or testimony that the windows were in fact
20 unreasonably dangerous. The windows have been in
21 operation for ten years. If they have contributed at all
22 to damage it is only one small component of the damage
23 and the buildings are certainly habitable. There has
24 been no injury to life or limb. Those are the grounds of
25 our motion, Your Honor.

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1 THE COURT: Very well. Likewise I would
2 respectfully deny your motion. Taking the evidence in
3 the light most favorable to the non-moving party I do
4 believe that there is evidence in which a jury can make
5 that determination that these windows pose an
6 unreasonable danger. Next?

7 MS. DYER: Yes, Your Honor ---

8 THE COURT: --- especially based on what we just saw
9 and heard.

10 MS. DYER: Yes, Your Honor. The breach of warranty
11 cause of action we would move for a directed verdict on
12 that cause of action in that there has been insufficient
13 evidence and proof to establish that the windows are in
14 fact in a defective condition which would constitute
15 breach of warranty.

16 THE COURT: Respectfully denied.

17 MS. DYER: Yes, Your Honor.

18 THE COURT: Very well. All right.

19 MS. DYER: No further motions from the defendant.

20 THE COURT: Very well. Are you ready?

21 MS. DYER: Yes.

22 THE COURT: Excellent. Let's have the jury please.

23 [Whereupon, the jury enters at 4:37 p.m.]

24 THE COURT: Thank you so much. Ladies and
25 gentlemen as I mentioned to you we heard from the

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

ONE BELLE HALL POA, et al

Plaintiffs

vs.

BUILDERS FIRST SOURCE
SOUTHEAST GROUP, LLC

Defendant.

THE COURT OF COMMON PLEAS

DOCKET NO. 2012-CP-10-7594

TRANSCRIPT OF RECORD

September 1, 2016
Charleston, South Carolina

VOLUME 4 (OF 4)

B E F O R E:

THE HONORABLE DIANE S. GOODSTEIN, JUDGE

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1 THE COURT: Will there be any reply or rebuttal?

2 MR. LUCEY: No, Your Honor.

3 THE COURT: All right. Ladies and gentlemen you
4 have now heard the witnesses and received the evidence
5 which you will in this case. What remains for us are the
6 arguments of counsel and then my charge or instruction on
7 the law. That also signifies to me that there are
8 matters which we must take up outside your presence.
9 It's also lunch time and you've got lunch. So ladies and
10 gentlemen I do need you to be mindful that you are not
11 prepared to deliberate. You must not discuss this matter
12 or allow anyone to discuss it with you so please be
13 mindful of that. If you -- it's up to you whether or not
14 you wish to stay in here or remain in here throughout
15 lunch or if you wish to leave. But we have to get lunch
16 and there are matters that I must attend to outside your
17 presence. We will reconvene this matter at 2:30, at
18 2:30. At that time I anticipate that we will have
19 closing arguments and then my charge or instruction on
20 the law and then you will receive this matter for your
21 deliberations. So please be mindful that during the
22 lunch break not to discuss this matter or allow anyone to
23 discuss it with you. Please leave your notebooks in your
24 seat and we will secure them over lunch. Thank you.

25 [Whereupon, the jury exits at 1:00 p.m.]

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Motion for Directed Verdict-Remarks by Mr. Lucey
September 1, 2016

1 MOTION FOR DIRECTED VERDICT

2 THE COURT: All right, motions. Any from the
3 plaintiff first?

4 MR. LUCEY: Yes, Your Honor. Plaintiff moves for
5 a directed verdict on all three causes of action so we
6 can argue them at the same time. The core issues in all
7 three are the same. Among other things but certainly the
8 absolute most obvious, Your Honor, the only testimony in
9 this case, the unrefuted testimony in this case is that
10 the twin windows were illegal for use in this
11 jurisdiction.

12 Now we've established Builder's First Source's
13 duties from a number of sources including the ones they
14 voluntarily undertook in the purchase order. And just
15 referring to that for a moment one of the duties they
16 undertook in the purchase order was to comply with all
17 state and federal laws. They clearly did not do that by
18 distributing a window in this jurisdiction that can't be
19 used in this jurisdiction. Because it can't be used in
20 this jurisdiction it is on its face unsuitable and will
21 not pass without objection in the trade.

22 And Your Honor we have both the expressed warranty
23 and the implied warranty and I think the record will
24 reflect that the defendants never actually said the
25 windows don't leak or the windows don't cause damage.

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1 They were very careful about that. They tried to provide
2 alternative explanations as to why things were occurring
3 in the building and why some of the tests might have
4 failed regardless of the windows performance. But they
5 never actually said these windows don't leak. These
6 windows haven't failed and these windows have not caused
7 damage. In fact they were very careful in that and
8 instead they more couched their testimony in terms of you
9 know these are five, six, eight year old windows. These
10 things may have to be done.

11 And that's another thing I want to point out when
12 the court is considering the testimony on these motions.
13 Ninety percent of Mr. Drake's testimony was this may
14 happen or this could happen. Very little did he actually
15 give an opinion to a reasonable degree of certainty in
16 his field of expertise.

17 In fact I'll give the court an example. When
18 Builder's First Source asked Mr. Drake about why windows
19 can fail testing he didn't say he had an opinion to a
20 reasonable degree of certainty or anything like that as
21 to why the windows failed the testing. He said well
22 sometimes you can leak if you apply too much pressure or
23 if the weeps are clogged. He didn't say that's what
24 occurred here. He said it can happen. They really have
25 not contested plaintiff's evidence that the windows leak

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1 and are causing damage. They're illegal. The undisputed
2 evidence is that Builder's First Source employees did not
3 perform any of the undertakings that they agreed to do in
4 the terms and conditions including ensuring the quality
5 of the windows and making sure not just that they were
6 suitable; the terms actually provide that they will be
7 the most suitable for this type of material and goods.
8 And clearly that has not occurred. The evidence is
9 overwhelming and the contradictory evidence is very
10 little, Your Honor.

11 The plaintiffs believe that they are entitled to a
12 directed verdict both on negligence, warranty implied
13 warranty and on strict liability. I'll note to the court
14 too we put in the unreasonable dangerous aspect of this
15 through Builder's First Source's own witnesses in our
16 case. So there can be little dispute on that issue and
17 we believe satisfy the elements of each of those causes
18 of action.

19 THE COURT: Thank you so much. Yes, ma'am?
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One Belle Hall POA v Builders First Source Southeast Group, LLC
Motion for Directed Verdict-Remarks by Ms. Dyer
September 1, 2016

1 MS. DYER: Our position is that we have provided
2 evidence that not only are the windows -- plaintiffs have
3 put up evidence that the windows, the DP windows the
4 certification test reports to prove that they are DP-50
5 haven't been found. We have -- the fact that the
6 evidence doesn't exist doesn't mean that the windows were
7 illegal. We haven't heard from a Mount Pleasant building
8 official; we haven't heard from an architect.

9 But moreover there is evidence, there is testimony
10 and documentation in evidence that there are alternative
11 causes for the windows to leak. Supposing and providing
12 the jury with alternates is an acceptable alternative in
13 this case.

14 As far as the strict liability cause of action Mr.
15 Woodward's testimony is that windows can be unreasonably
16 dangerous. We would argue that there isn't actually
17 testimony here that the windows at One Belle Hall are
18 unreasonably dangerous.

19 As far as the negligence cause of action there is a
20 failure to prove what duty Builder's First Source had
21 with regard to the inspection of the certifications
22 supporting the windows. And the breach of warranty we
23 would argue that there has been sufficient evidence that
24 the windows are defective by manufacturing purposes as
25 opposed to having some kind of damage that's occurred

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1 from the time that the windows arrived on site until the
2 time that they currently exist. We feel that there has
3 been a sufficient showing of evidence on all three causes
4 of action to allow the jury to make the final
5 determination.

6 There is also a question as far as damages go and
7 the damages would be applicable to all three of those
8 causes of action. There is a question on whether or not
9 the windows -- if the windows have caused damage then how
10 much damage have the windows caused. There is an element
11 of speculation there. We've heard Doctor Whitlock wasn't
12 able to quantify for the jury what percentage or what
13 share of the damage at the buildings he would attribute
14 to the windows.

15 We've also heard that Mr. Moore who provided the
16 estimate would defer to Mr. Whitlock as far as how much
17 damage the windows have caused and how much damage needs
18 to be repaired as to the window elements themselves. He
19 was unable to testify or was yesterday in providing
20 documentation as far as what is actually necessary in the
21 field for repair. So we believe there is a question of
22 fact and plenty of evidence that could be weighed either
23 way as to damages which would be applicable to all three
24 causes of action.

25 THE COURT: You haven't mentioned although it was

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Motion for Directed Verdict-Remarks by Ms. Dyer
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1 in your pleadings about intervening negligence and
2 reliability with regards to third parties. You did not
3 mention that in your argument now.

4 MS. DYER: Correct. Well, clearly there were a
5 number of other parties involved in the litigation. The
6 windows are incorporated into a wall system and there is
7 clear evidence there is defects from both sides. There
8 are defects with multiple elements within the wall system
9 that could contribute to and have contributed to the
10 damage and to compromising the window's ability to
11 perform essentially. And for those reasons we believe
12 that the liability of Builder's First Source as the
13 supplier of the windows is unclear as it is muddied by
14 the intervening negligence of other parties who aren't in
15 court today.

16 THE COURT: Okay. Yes sir, anything further?

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One Belle Hall POA v Builders First Source Southeast Group, LLC
Motion for Directed Verdict-Remarks by Mr. Lucey
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1 MR. LUCEY: Yes, Your Honor. There doesn't seem
2 to be that there can't be any intervening negligence as
3 to the windows, only the twin windows because they were
4 the intervening party, they were the -- party, they were
5 the middle party that actually bought the windows and
6 then resold them to this project. That aspect is just is
7 just what it is.

8 As to the damages that are arguing there we didn't
9 move for a directed verdict as to the amount of damages;
10 only as to the issue of liability. To the extent that
11 there is some sort of argument that we had a lack of
12 proof on damages because we can give a percentage ---

13 THE COURT: --- I'm not concerned about that.
14 Don't worry about that. Go back to liability; go back
15 to liability on the twin windows. Talk to me about that.

16 MR. LUCEY: Well, Your Honor, this middle man
17 bought the windows and resold them.

18 THE COURT: I'm not concerned about that. Clearly
19 our law says that the seller of the windows implied and
20 express warranty and it certainly has been your position
21 that they had an affirmative duty to do certain things
22 that they did not do like make sure that they were
23 appropriate windows, make sure that they had -- that the
24 testing had been complied with, etcetera. You've got
25 that. Talk to me specifically your position with regards

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Motion for Directed Verdict-Remarks by Mr. Lucey
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1 to the twin windows.

2 MR. LUCEY: The twin windows were illegal for use
3 from the get go.

4 THE COURT: Okay.

5 MR. LUCEY: They can't say somebody else handled
6 that issue. There are no test reports on the twin
7 windows, there are no certifications. They can claim
8 confusion as to the certification or the test reports on
9 the single windows but there never was, there is no
10 evidence of a test report or a certification on the twin
11 windows.

12 There is no way they can blame somebody else for
13 that; they just never even checked. They never checked
14 anything but had they checked they would have found there
15 is none. There is just no mistake to be made. There is
16 no certification; you can't use it, they can't be sold
17 here. And there is no just way for them to blame anybody
18 else for that.

19 THE COURT: Okay. On that one issue let me hear
20 from you about that.

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Motion for Directed Verdict-Remarks by Ms. Dyer
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1 MS. DYER: Yes, Your Honor. The plaintiff has the
2 burden to prove that the windows were illegal. And here
3 we just have an absence of that proof. We have Doctor
4 Whitlock, the finding that the windows didn't meet
5 building code. Doctor Whitlock is not a building code
6 official. We haven't heard from a building code official
7 to indicate that the windows do violate the code.

8 We also haven't seen again a test report and the
9 plaintiff has the burden of proof that there isn't a test
10 report; not just that there is an absence of one overall.

11 THE COURT: I'm trying to remember the testimony
12 that was elicited by Builder's Source that in fact
13 Builder's Source had made a determination that in fact
14 that the twin windows had -- that they had done a review
15 to be sure that they had been tested because as I
16 remember they were drop shipped to the site.

17 And I don't remember any testimony -- I do remember
18 the testimony about the single windows and I remember
19 there were some questions about a number of issues but
20 you walked the witnesses for the plaintiff through that
21 on the single windows. What about the double windows?

22 MS. DYER: The specification from the architect,
23 the design professional in this case, wasn't exclusive to
24 a single window or a twin window. It was more all of the
25 windows. The window component itself before it is joined

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1 together is the same window.

2 THE COURT: I remember that.

3 MS. DYER: And so the architect design professional
4 is who Builder's First Source relied on as far as calling
5 out the appropriate window for this particular project,
6 calling out that that window met the specifications,
7 which in turn met the building code as it was a permitted
8 project and eventually was C-O'ed [phonetic].

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Motion for Directed Verdict-Remarks by Mr. Lucey
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1 MR. LUCEY: There is actually no evidence of
2 reliance in the record. No evidence that Builder's First
3 Source relied on the architect. The evidence is that the
4 Builder's First Source sales person prepared the purchase
5 order and the model number on the purchase order is not
6 found in these facts. You can believe whatever
7 explanation you want but the two model numbers do not
8 match. And the sales person is deceased and we don't
9 have his testimony.

10 But not only is there no evidence of reliance there
11 was testimony from Builder's First Source current
12 consultant and former area V.P. that neither he nor
13 Bratten looked at the specs or looked at the test
14 reports. They didn't look at anything; that was the
15 their testimony. There can't be reliance if they didn't
16 even look at it.

17 THE COURT: Yes?

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Motion for Directed Verdict-Remarks by Ms. Dyer
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1 MS. DYER: I believe that Bob Lanier did testify
2 that Builder's First Source relies on the specifications
3 from the design professionals.
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One Belle Hall POA v Builders First Source Southeast Group, LLC
Motion for Directed Verdict-Remarks by Mr. Lucey
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1 MR. LUCEY: But that general practice can't
2 contradict the specific testimony as to this transaction
3 where he said they didn't look at it. He didn't look at
4 it. Bratten didn't look at it. They didn't look at the
5 specs, they didn't look at the tests; they didn't look at
6 anything.
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Motion for Directed Verdict-Ruling by the Court
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1 THE COURT: Okay. Taking the evidence in the
2 light most favorable to the non-moving party, which of
3 course would be the defendant I believe that what has
4 been laid out are issues for the jury and I am
5 respectfully going to deny the motion for -- see I think
6 it is an involuntary non-suit with prejudice but a
7 directed verdict is what it is commonly called at this
8 juncture so I would respectfully deny your motion noting
9 your exception thereto. Yes, motions?

10 MS. DYER: No, Your Honor.

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1 THE COURT: Now we've got to get us a charge, we've
2 got to get some lunch, and we got to be back by 2:30. So
3 y'all go get some lunch. Can you do that in just a short
4 period of time? I'm finishing the charge as we speak and
5 meet me back about a quarter to 2. Give some thought to
6 the verdict form because this is going to be a little bit
7 different and the reason is there is a request for
8 punitives and I know what their decision is based upon.
9 So y'all will have to help me with that one.

10 MS. DYER: I'm sorry, Your Honor?

11 THE COURT: Verdict form; I'm just going to need
12 your help with that.

13 MR. LUCEY: On our last couple of trials, Your
14 Honor, we just did an interrogatory at the bottom of the
15 sheet do you find the conduct ---

16 THE COURT: --- if you've got it bring it with you
17 or if y'all can reproduce it bring it.

18 MR. LUCEY: Yes, ma'am. Thank you.

19 THE COURT: That would be lovely. Thank you.
20 I'll see you in about 30 or 40 minutes. Thanks. Let me
21 know because I want to have an informal charge
22 conference. When y'all both get back y'all come on back.

23 [Whereupon, court is in recess from 1:16 p.m. until
24 2:26 p.m.]

25 THE COURT: Thank you so much.

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1 THE COURT: All right. Exceptions, additions from
2 the plaintiff?

3 MR. LUCEY: Yes, Your Honor. Plaintiffs believe
4 that the six year statute of limitations also applies to
5 implied warranty. The both arise underneath Chapter 36
6 and we believe they are both covered by 2-725. And we
7 believe the Green v Bradley case would support us where
8 it discusses this.

9 It sets forth that regarding breach of warranty
10 claims, and I'm quoting, the Uniform Commercial Code, the
11 UCC six year statute of limitations prevails over the
12 general three year statute of limitations when the UCC
13 applies to the cause of action as in the pleading end
14 quote. Would you like me to move on or are you going to
15 call for a response?

16 THE COURT: Yes. I'll hear from you.

17 MS. DYER: I don't have a response.

18 THE COURT: Got it. Okay. I'll correct it then.
19 No problem. What else you got?

20 MR. LUCEY: Thank you. Secondly, Your Honor on
21 page 22 of the charge the charge indicated a requirement
22 to the jury that the plaintiff gives the defendant notice
23 of breach within a reasonable time. We had actually
24 briefed this issue in our pretrial brief but then we were
25 instructed not to deal with that; it had not been filed.

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1 We have -- so I don't have a case but I have the work we
2 did on it. South Carolina courts have recognized that a
3 buyer's duty to notify the seller of a breach of warranty
4 under South Carolina code 36-2-607 mandates that buyers
5 give notice to their direct sellers only. And we cited
6 the Thomas v Louisiana Civic Corporation [phonetic]
7 decision in a case I was involved in in front of Judge
8 Duffy, which the proposition is quote plaintiffs were not
9 required to notify defendants of the breach -- insert for
10 cause -- defendants did not sell trim board directly to
11 the plaintiff.

12 And we also cite the Seaside Resorts case, a South
13 Carolina state case 308 S.C. 2.d 47. And the proposition
14 of that second case, Your Honor, is finding that a
15 substantially similar North Carolina statute requires a
16 retail buyer to notify only the retail seller who
17 tendered him the goods, not wholesalers, distributors,
18 manufacturers or others so that ---

19 THE COURT: --- got it. Any response?

20 MS. DYER: No.

21 THE COURT: Okay. That's why I gave it -- give
22 this thing -- I know y'all didn't have a lot of time but
23 this is why I give it to lawyers in advance so they can
24 certainly help me but y'all were awfully limited on time
25 so I get it. Anything else?

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1 MR. LUCEY: Yes, Your Honor. I'm still trying to
2 check this, I didn't quite follow but we had submitted
3 charge number 24 that breach of warranty does not require
4 proof of negligence. I didn't hear or see it. It may
5 have occurred but I didn't -- we believe that should be
6 charged because clearly there is a distinction.

7 We had also offered charge 28, duty of care created
8 by contract that simply provides that a duty of care can
9 be created by a contract given 44-A page 2 that is
10 actually a huge part of plaintiff's case and we believe
11 that law would be applicable to our claim. And I have
12 extra copies of these I could hand up if that would make
13 it easier for the court.

14 We also submitted charge number 34 that the cost of
15 repair includes bringing the structure or complying with
16 current code requirements when you make the repairs.
17 That's relevant because Doctor Whitlock testified that
18 under the code as written that these windows could not be
19 reused during repair if they were removed from the
20 structure.

21 And we had also submitted a request to charge number
22 36 uncertain damages. The rule that damages which are
23 uncertain or contingent cannot be recovered does not
24 apply as to the uncertainty of the amount but only to the
25 uncertainty as to whether any damage or benefit has

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1 resulted in the breach of the contract involved. We
2 believe that given Builders First Source's closing
3 argument that law is very applicable to the matters
4 before the jury. Would you like those four?

5 THE COURT: Sure.

6 [Whereupon, Mr. Lucey provides documents to the
7 court]

8 THE COURT: Any response at this time?

9 MS. DYER: As far as damages I don't know if it is
10 appropriate as a response or just in conjunction with
11 your review of the damages charge but the defense would
12 like to make certain that the charge included that the
13 damages not be based on guesswork or speculation or
14 presumed rather supported by the preponderance of the
15 evidence which satisfies each juror that any such damage
16 represents a just and reasonable compensation for the
17 particular item under consideration, which is part of one
18 of our proposed charges.

19 THE COURT: Let me -- got it. This is what I will
20 do. I'll go in on implied contract -- implied warranty
21 and talk about that six years so I'll correct that. I
22 will additionally charge that duty of care can be created
23 by a contract. I am not going to charge your 24 to
24 recover for breach of warranty that it is not necessary
25 that the plaintiff prove that the defendant was

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1 negligence. I don't know any better way to separate
2 negligence from warranty than the way I did it and I am
3 satisfied that they were definitely separated. And I
4 didn't use the word negligence or lack of due care when I
5 charged on the issue of warranty so I am not going to do
6 that. I think if I do it now I am making a mess so I'm
7 not going to do it because I'm satisfied that it is
8 separate at this point so I'm not going to do that and
9 that's why.

10 I will however, I will charge that the seller of a
11 product can create an affirmative legal duty by contract.
12 And I will not charge the reasonable cost of repair is
13 competent and probative at evidence on the issue of
14 damages. The cost of repair may include the expense
15 necessary to perform the repairs to existing building
16 codes. I believe that is a charge on the facts and I
17 will not do that.

18 And your 36 is the negative of what I consider to be
19 the positive statement. And the positive statement is
20 you must prove your damages by the greater weight or the
21 preponderance of the evidence. I didn't go into you
22 can't have speculative damages. I did not go into that
23 line with regard to damages. I simply said that in this
24 instance the damages were repairs and loss of use and you
25 had to prove it by a greater weight or preponderance of

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1 the evidence. I did the positive rather than the
2 negative so I think if I go into that at this point it is
3 going to be confusing. And I'm certain that the way that
4 it is charged I think adequately imparts to the jury what
5 the damages are but in a positive way rather than talking
6 about the negative if you will. So that's what I will
7 do. Anything on behalf of -- yes?

8 MR. LUCEY: I'm not sure I heard a decision on is
9 the court going to clarify the requirement of notice
10 under the warranty? Is the court going to clarify ---

11 THE COURT: --- sure, no notice. I'll do that too.
12 No notice got it. Yes?

13 MS. DYER: We're satisfied, Your Honor.

14 THE COURT: Okay. Jury.

15 [Whereupon, the jury enters at 6:13 p.m.]

16 THE COURT: Ladies and gentlemen I do have a couple
17 of additions and clarifications. First of all I will
18 tell you that with regard to the statutes of limitations
19 we talked about the different periods. Let me go over
20 with you again breach of warranty be it express or
21 implied warranty is six years; not three years for
22 implied warranty. Either breach of warranty be it
23 express or implied is six years. Negligence is three
24 years; strict liability is three years so I wanted to
25 clarify that. Secondly ladies and gentlemen I would

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VERDICT

1
2 THE COURT: Thank you so much. Please be seated.
3 It my understanding that the jury has reached its
4 verdict. Anything from the plaintiffs before we bring
5 the jury out?

6 MR. LUCEY: Yes, Your Honor. There is a second
7 phase. Ms. Dyer and I have stipulated as to the net
8 worth of BFS and I will use that for the jury and that
9 will speed things up.

10 THE COURT: Okay. Very well.

11 [Whereupon, the jury enters at 10:20 p.m.]

12 THE COURT: Thank you so much. Ladies and
13 gentlemen it is my understanding that you have reached
14 your verdict. If you would, please pass it along?

15 [Whereupon, the verdict is provided to the court]

16 THE COURT: All right. I find the verdict is in
17 due form.

18 [Whereupon, the verdict is provided to the Clerk of
19 Court]

20 CLERK OF COURT: The State of South Carolina Court
21 of Common Pleas County of Charleston for the Ninth
22 Judicial Circuit case number 2012-CP-10-7594 One Belle
23 Hall Property Owners Association, Inc. and Marvin T. Meek
24 and Francis B. Hill individually and on behalf of all
25 others similarly situated plaintiffs versus Builder's

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1 First Source Southeast Group, LLC. We, the jury, find
2 for the plaintiffs on the following causes of action
3 strict liability and breach of contract and we award the
4 plaintiffs two million one hundred sixty three thousand
5 four hundred ninety three dollars in actual and
6 compensatory damages signed Ms. Foreperson September 1,
7 2016.

8 THE COURT: Ladies and gentlemen if this was your
9 verdict in your jury room and continues to be your
10 verdict here in the courtroom please indicate by raising
11 your right hand.

12 [Whereupon, all jurors comply]

13 THE COURT: Let me observe for the record that all
14 of our jurors have their right hands raised. Thank you
15 so much. You can put your hands down. On behalf of the
16 plaintiffs anything else?

17 MR. LUCEY: Nothing, Your Honor. Thank you.

18 THE COURT: Very well. And from the defense?

19 MS. DYER: No.

20 THE COURT: Very well. It is my intention to
21 dismiss the jury.

22 MR. LUCEY: Yes, ma'am.

23 THE COURT: Very well. Ladies and gentlemen I
24 would tell you what time it is but my watch has died so I
25 can't. But look up here it is now 10:22. You have been

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POST TRIAL MOTION

MS. DYER: The defense would move for a judgment notwithstanding the verdict. We renew our grounds for the directed verdict motion previously heard by the Judge.

THE COURT: Thank you ever so kindly. As you know at this juncture all presumptions are of course in favor of the jury in having reached this verdict. The jury issues I believe were properly placed before the court. It was certainly a well tried, hard fought matter on both sides and I would respectfully deny your motions noting your exception hereto.

MS. DYER: One question as well, Your Honor. It was breach of warranty as to liability not breach of contract.

THE COURT: Not breach of contract, breach of warranty.

MS. DYER: I just heard contract and I wanted ---

THE COURT: --- yes, breach of warranty and strict liability.

MS. DYER: Okay.

THE COURT: All right. Thank you, thank you, thank you.

MR. LUCEY: Thank you, Your Honor.

[Whereupon, the jury trial concludes at 10:30 p.m.]